Trust Services, S.A.
OFFSHORE PILOT QUARTERLY

Licensed Trustees and Professional Business Advisers

Published since 1997

Providing a helping hand for those navigating the hazardous reefs and shoals of offshore structures

March, 2018

Volume 21
Number 1

Changing Times

The demise of Offshore Investment magazine at the end of last year, after 32 years of publication, saw the end of its Latin Letter column which I had written for almost half that time. The Latin Letter columns, however, didn't just cover current affairs, they provided a window into the different political and economic histories of many of the region's countries and in addition to remaining on our website, a printed version of them will also be available in book form. Offshore Pilot Quarterly will, in future, sometimes include Latin American content.

The changes which have taken place for those providing offshore financial services during the last four decades have been startling and this has been particularly so for trust companies licensed in Panama, only one of two countries (the other being Belize) in the region that can lay claim to a sophisticated, statutory approach to the trust concept from a common-law perspective; for Belize this is not surprising due to its former status as a British Crown Colony whereas Panama's road to trusts began with the historic influence of the United States of America in its affairs.

In May last year changes established new rules and controls for professional trustees in Panama and which I will briefly pass comment on. I would add that following this major overhaul of the trustee regulatory system, the supervision of trust companies is certainly more rigid than is to be found in many other countries (if it exists at all) and which are members of the Organisation for Economic Co-operation and Development.

Panama has made remarkable strides when it comes to international tax transparency by recently agreeing to the free exchange of tax information with some 100 countries under the auspices of the Common Reporting Standard. The European Union, in turn, has recognised Panama's efforts by removing the country from its tax haven blacklist, and Panama's system of regulation of trust companies now, as I say, rivals those to be found across the globe, with an average two-year cycle of extensive on-site inspections imposed by the fiduciary department of the Superintendent of Banks. In order to continue conducting trust business, even if a licence had been held for many years, which applies in our case, every licensee was already required in 2017 to apply for accreditation under revisions to the law. The stringent, demanding and costly process involved suggests to me that some local trust companies may close up shop.

Those which are approved must have their accreditation recorded in the country's Public Registry which means that cautious members of the public wishing to use the services of a trust company, for either their personal or commercial business, can quickly establish its bona fides, and despite the considerable time and costs involved for local trust companies, I am sure that the accreditation exercise has been well worth it. People seeking fiduciary advice and management, particularly concerning family succession planning and legitimate asset protection, need to know that they are in safe hands. What other countries are replicating this regime?

Consider, for purposes of comparison, the US and Switzerland. Whether or not trust companies in those US states which have become magnets for foreigners (because the US has not signed up to the Common Reporting Standard put in place by the OECD) will be faced with similar regulatory standards in the future remains an open question; if Delaware's attitude to disclosure of corporate ownership is anything to go by, it suggests that the late President Calvin Coolidge's words will prevail: "the chief business of the American people is business". In Switzerland (where trustee regulation is in its embryonic stage) the current self-regulation policy has shown its fallibility, particularly in recent years.

The Voice of God

Rogue elements, however, in Switzerland or elsewhere, should not dictate the image of any country; they shouldn't, but they do, because we cannot ignore the invidious power of perception. Not just Panama, but other offshore financial services centres are today standing in the dock accused, inter alia, of providing refuge for greedy tax-evading capitalists. Mounting any defence in the wake of public anger is an uphill struggle, particularly against those determined to ignore the worm in the jar experiment (see last December's OPQ). Mark Twain once said: "It's name is Public Opinion. It is held in reverence. It settles everything. Some think it is the voice of God."

Such hostility, however, can be, and has been, manipulated, fanning the flames of righteous outrage which is a powerful weapon indeed. Tim Hartford, the English economist and author, rightly says, however, that we should "pull the trigger of that weapon with care, not with abandon". Speaking of which, the International Finance Corporation, part of the World Bank Group, has published a paper in the aftermath of the Panama Papers on the subject of disclosure of beneficial ownership. Mark Fenwick and Erik P. M. Vermeulen, the authors of the paper, concluded that "It turns out that there are multiple legal strategies to circumvent any regime that requires beneficial-ownership disclosure". One assumes this excludes the already distinct advantages available in the US, a no-go area for the Common Reporting Standard, where trusts for foreigners flourish at present under what can only be euphemistically described as relaxed regulation.

Heavy-handed regulation elsewhere has drawn these comments from the paper's authors: "We need to start by acknowledging that many companies are currently experiencing 'disclosure and reporting fatigue', in which the constant demand for 'more' and 'better' transparency and reporting is having the unintended effect of promoting indifference or evasiveness. The practice of disclosure and reporting is widely perceived as an obligation to be fulfilled and not as an opportunity to add value to a firm". They go on to say that "The key takeaway of the study is that – even in jurisdictions that have a robust disclosure regime – the majority of firms engage in 'grudging' or 'boilerplate' compliance, in which ownership and control structures are not adequately revealed in an accessible way…" They conclude that perhaps more, and stricter, rules are not needed because "The current effect of disclosure rules has been to promote among most firms a defensiveness that has resulted in formalistic compliance. The crucial takeaway from our study is that an increase in the number of rules only seems likely to promote even more defensiveness, depersonalisation, and boilerplate compliance – and to feed reporting fatigue, in which key stakeholders … first become indifferent, tired, or hostile in the face of additional rules".

It is important to appreciate that despite jaundiced views, Panama has many irons in the fire with a very impressive and extensive services industry and it is not dependent upon the classic mix of financial services and tourism which has been the fate of a large number of small island offshore financial services centres. In other words, it need not be soft on the financial services sector. It was once said that the Panama Canal just happened to have a country on each side of it, such was the canal's importance a century ago when the US encouraged (or, as some believe, engineered) Panama's breakaway from Colombia in 1903. At that time the canal's strategic importance for the US was all about swift movement of its navy between the Atlantic and Pacific oceans. In commercial terms, however, the canal has become one of the most strategically important cogs in the world's trade infrastructure, servicing annually some 6 per cent (400 million tons of goods) of world trade. The Chinese intend to improve on this figure with their One Belt One Road Initiative.

China Rising

Panama celebrated carnival in February and the second-largest user of the canal, China, was also in celebratory mood with the advent of the Year of the Dog, after having been, for a very long time, the underdog. Recognising this change, Panama's President Varela visited China last November, the first Panamanian president to officially do so, and following talks with President Xi Jinping both countries will begin negotiations in June to sign a free-trade agreement. President Varela left Beijing after signing 19 co-operation agreements covering such matters as finance, agriculture and tourism.

For the US, the Shakespearean ghost in Macbeth at the banquet is not Banquo, but Xi Jinping. This must have been on the US Secretary of State's mind as he stepped off the aeroplane in Mexico City at the start of his first Latin America tour last month. Unlike the play, however, it is not guilt but apprehension about the Middle Kingdom's continuing and growing influence in the subcontinent that worries the White House. China was known by that appellation when the country saw itself as the centre of the world, just as the Romans would later assert that all roads led to Rome, after Greece, despite its intellectual and artistic achievements, succumbed to Roman military prowess. Since then, as we know, other countries have claimed that mantle.

Rex Tillerson, the US Secretary of State, just before leaving on that trip to Mexico and some other countries in Central and South America, referred in a speech to China's "imperial power" which he said was spreading across Latin America and presented a danger to the region. A Spanish saying reminds us that although we can remain the master of our thoughts, we are always the slave of our spoken words; unfortunately, Mr. Tillerson committed a diplomatic faux pas, equivalent to President Trump's demands for a Mexican wall to protect his country, when he went on to refer to the 1823 Monroe Doctrine as a success, saying that it remains relevant to this day.

US President James Monroe, its architect – with Europe, once a dominant force in the region, in mind – was determined to stop any further foreign colonisation or interference in the Americas. Subsequently, US President Theodore Roosevelt added his weight to the doctrine by declaring that the US could, if needs be, exercise "international police power" in the hemisphere. His comments were made in 1904, one year after Panamá became independent from Colombia, when the vital need for a strategic waterway providing fast passage between two important oceans for his war ships had become all too apparent.

The hubris of great powers is a thread which runs right through history's tapestry and up to the present. We saw its handiwork in 1918 when a crippled Europe gave way to the overwhelming economic power of the US, and which saw its grip further strengthened in 1939 when Europe, slowly getting back on its feet, once again had the rug pulled out from under it, falling into a dystopian darkness. 2018 is not 1918, but neither is the US any longer the only country sitting at the banquet's head table, just as the British empire found out for itself in the early years of the last century. This time, however, yesteryear's Middle Kingdom (no longer in a muddle) might be returning to the table for a second helping.

Moats and Drawbridges

China's enthusiasm to strengthen its relationship with Central and South America stands in stark contrast to

US apathy. Total annual trade between China and Latin America was more than US$200 billion in 2014 and the White House is in danger of seeing a repeat of the situation in Africa during a year when much is at stake in Latin America. Brazil, which is now in tumult since former president Luz Inácio Lula da Silva's conviction on corruption charges was upheld by the Brazilian Federal Court, is preparing to hold a presidential election in October and there will be similar elections this year in Mexico, Costa Rica (second round), Paraguay, Venezuela and Colombia. Next month a presidential transition is expected to begin in Cuba.

Some of the US State Department's most seasoned advisers on Latin America are no longer in post and it begs the question: who is advising Secretary Tillerson? Consider his incendiary Monroe Doctrine comments that can only provoke anger in the region. Elsewhere, China has already gained the upper hand in Africa, and if, as reported, President Trump referred to some of its nations in excrementitious terms, even more damage will have been done to America's standing in the world's second-largest, if poorest, continent. Some African leaders already believe that the US is no longer in command of a world order put in place in 1945 when the US gave some US$140 billion, in today's dollars, in economic assistance to western Europe after the Second World War. As I write this, the US has still not appointed an ambassador to Pretoria in South Africa, nor an assistant Secretary of State for Africa.

Despite having several of the world's fastest-growing economies and with a population explosion predicted, Africa presently only accounts for 3 per cent of global trade. Others, however, see the potential, with China at the head of a queue which includes India and Turkey. China's African presence can be felt everywhere and as a young man growing up in Rhodesia (now Zimbabwe) back in the 1970s, I was already aware of the Chinese infrastructure projects, especially in East Africa. Today, in Djibouti, on the Horn of Africa, they have built a naval base and right across the continent their influence can be found in road, rail and telecom projects. China has the most peacekeepers in Africa among the five members on the Security Council of the United Nations.

Perhaps this African and Latin American detachment is symptomatic of President Trump's "America First" isolationist stand; after all, the country's new embassy in London is surrounded by a moat. China's foreign minister, Wang Yi, on the other hand, is banging the drum of globalisation and deepening his country's ties with African and Latin American countries.

Not just China, but Russia, is flexing its muscles, with the Russian president claiming this very month to have new weapon systems that could hit any target around the globe. One need not live in Latin America to appreciate that neither international politics nor economies can be said to be passing through calm waters, with a possible return to the great power rivalries which were disastrous in the 19th century.

Whatever the challenges or risks ahead, offshore assets should be stored in a metaphorical castle surrounded by a moat, defended by a secure and competent management in control of the drawbridge. If you have structuring offshore, unlike for an embassy, this could turn out to be the most valuable weapon in your armoury; and if a trust company is your weapon of choice, be sure to choose carefully.

Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Trust Services, S. A. which is the British face of trust business in Panama where it is licensed under the fiduciary laws. It is written by Derek Sambrook, our Managing Director, a member of the Society of Trust and Estate Practitioners and the International Tax Planning Association, and a Fellow of the Institute of Bankers in South Africa and who was both a member of the former Latin America and Caribbean Banking Commission and an offshore banking, trust company and insurance regulator. He has over 50 years private and public sector experience in the financial services industry about which he has written extensively and our website provides a broad range of related essays.

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