# Unholy deeds and the devil

By Derek Sambrook, FIB(SA), TEP, Managing Director, Trust Services, S.A., Panama

**Not surprisingly, there are far more foundations than banks in Panama and the concentrated expertise in the financial services sector has become a magnet for South Americans who need them.** Families in the region favour foundations because businesses are often controlled by an individual shareholder, or one or two families. Brazilians are no exception and, in fact, two-thirds of businesses with sales over USD1 billion a year are family-owned according to McKinsey, a consulting firm.

William Wordsworth described England's Lake District in 1806 thus: "for, if unholy deeds/ ravage the world, tranquillity is here!" Right across South America, in fact, asset shelters, not nuclear shelters harking back to the 1960s and the Cuban missile crisis, have been a priority for decades after the ravages of economic turbulence have left their toll; never more so than now for those with sound investments wishing to escape the mushroom cloud of economic gloom spreading across those regional countries that, once again, are hostage to the curse of commodity boom-bust cycles (The Foolish Maidens, Issue 259).

But those shelters have to now face the new (perceived by many) tyranny of transparency – whether the arguments made for it are both sincere and sound – and this has merely added to the concerns, raising alarm bells for wealthy Latin Americans for reasons mentioned in Issue 261 last month (Feather Dusters and Sledgehammers).

A Chinese ruler in northern China, King Wu-Ling, observed in 307BC that "A talent for following the ways of yesterday is not sufficient to improve the world of today". And the world of today – whether developed or emerging – is certainly, slowly but surely, parting company with yesterday's ways. No longer can those in the West confine themselves to the viewpoint of Europe and the United States of America just because for the last four centuries the world has centred on European empires and the US. One commentator has referred to a new age of confusion where the signals are mixed and trends contain countertrends, particularly as the axis of global affairs has tilted in an easterly direction. A report by Oxford University's Saïd School of Business refers to a loss of what was termed "sustainable competitive advantage". If old models are breaking down, it appears that no new reliable ones are taking their place. Almost half the companies on the Fortune 500 list in 1999 have disappeared from it.

Fortune of another kind is playing its part for both companies and countries. In June 1815 the congress of Vienna ended after the new political landscape of Europe had been refashioned and that November, Russia, Prussia, Austria and England signed an alliance "for the maintenance of peace in Europe"; by 1915 we knew just how successful that had been and that was the year when Japan issued its demands to China as it tried to increase its power in East Asia (today it's China's turn) and at the same time President Wilson, before the US became embroiled in the European war, was warning Germany that it would be held "to strict accountability" concerning property and lives lost during it; meanwhile, American bankers arranged a USD500 million loan to the beleaguered British and French. Now in 2015 Vienna has once again been the setting for talks, this time concerning Syria in the Middle East; their significance goes well beyond Damascus.

Today there are more references made to world powers rather than just a singular super power, with the focal point of world affairs moving back to regions where the world's great religions were born; it was where Judaism, Christianity, Islam, Budahism and Hinduism collided and competed. Understanding the past and how it influences the present requires an equal understanding of the regions that knit the East and West together; it is a past being brought back to life as connections are being re-established by countries such as Russia, Turkey, Iran, Pakistan, India and China.

China knows a thing or two about powers that rise and decline, understanding that nothing is permanent; this experience comes from 5,000 years of civilisation. It has the world's second largest base of high net worth individuals and they are becoming familiar with the western concepts of trusts and foundations. This seems inevitable as China integrates itself more into the global financial system and which has been readily recognised by the UK as it embarks on closer economic links with the Middle Kingdom. David Cameron talks of a "golden era" and Washington speaks of a golden error on his part.

The Channel Islands Securities Exchange has listed China Cinda Finance (2014) II Limited, a first for a company whose ultimate corporate parent is domiciled in China (it was incorporated in Beijing in 1999). In 2014 some 47 per cent of wealthy Chinese had invested overseas, up from 34 per cent the year before. China Cinda perhaps represents China Cinderella, a country, instead of a young girl, coming out of a long period of obscurity and neglect.

China will make its contribution to both competitive advantage and the disintegration of old models which I mentioned earlier. Meanwhile, Deloitte has considered the progress of automation in business and has concluded that up to 35 per cent of British jobs are at high risk during the next ten to twenty years with reference being made to a "tidal wave of change". It seems to me that 35 per cent of the compliance function performed by banks and other financial institutions, and which has had its own tidal wave of change, has already become robotic, eschewing common sense and judgement, the two essential ingredients for handling compliance for either foundations for Brazilians or trusts for rich Chinese.

I concede that compliance can often be a simple process and a good checklist will suffice: after all, once source of funds, their ownership and control have been determined, the holy trinity is present and the compliance officer can bless the application. But what about the less frequent situations? I received this enquiry from a leading financial institution:

"The various divisions of the risk department that have reviewed this account application are focused on the "ownership" and/or control of the entity" and because a bare trusteeship was involved, I was asked "Where/how is the role defined?" Not much focus there, particularly when a detailed outline had been provided. Would you not think that one person in those risk department "divisions" would have understood the role of a bare trusteeship? Compliance robocops need to step to one side.

It all points to a deficit in core knowledge which hobbles the professional. If compliance departments struggle with the difference between principal and agent in clearcut cases, how will they cope with the ever-widening boundaries of definitions of control and ownership under the Organisation for Economic Co-operation and Development's Common Reporting Standard?

The British Treasury and Home Office have continued to study the many activities in the finance sector, nearly all of which are conducive to money laundering, and so the banking, law and accountancy industries have been classified as "high risk" – especially in light of the United Kingdom's prominence in international financial services. To its credit the report recognised shortcomings in its compilation and is peppered with words and phrases suggesting that law enforcement agencies themselves were "still establishing the strength of understanding needed". It seems that so are a number of compliance departments in the private sector.

During this festive season many service providers in the Caribbean, as well as Panama, confronting compliance issues will find the word "merry" only applies to activities outside the office. Meanwhile, I am thinking about New Year resolutions, one of which will be: "Try to be kinder to compliance officers". They do not have an easy job, but whatever the competency level, many of them in places like Europe and the US tend to tag a number of offshore financial services centres (especially on islands) with the word "corruption" in big, bold letters. So do many international financial institutions and the Financial Action Task Force has expressed serious concerns about how some banks are shunning particular classes of customers and some offshore financial services centres (even withdrawing correspondent banking facilities) without taking into account the level of risk involved.

There is only one Devil's Island located just a few miles off the coast of French Guiana in South America; just try telling that to some compliance departments.

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