



# TOPAZ SERVICES, S.A.

(Formerly Trust Services, S.A.)

## OFFSHORE PILOT QUARTERLY

- Foundation and Corporate Management
- Business Administration and Accountancy

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### **A Guest in Many Houses**

The Offshore Pilot Quarterly was first published in December 1997, and so this December's issue marks its 25th anniversary. It will be the last issue. Those who have read it since 1997 will be, like me, astounded by the marked changes that have taken place in what was once the traditional offshore financial services industry. I, for one, do not recognise the industry that I first entered in 1979. Today, it is difficult to define either "traditional" or "offshore" any more.

Even if many of the issues raised in my quarterlies may have now lost their relevance, there are observations drawn, for example, from history and literature that can serve as lessons well worth the learning, no matter how great the passage of time which may have passed; they are as fresh as the tea or coffee you drank this morning. For this reason the 100 issues will remain a permanent part of our website library and will be found

in our "Publications" section. They are the product of 50 years of practical experience in financial services from Africa to America and many places in between; you might say that I have been a guest in many houses. My hosts have taught me that offshore centres (some more than others) are destined to remain the whipping boys for the authorities in developed economies, now more than ever, as the international thirst for much needed tax revenues grows. And the Cinderella of the offshore centres, in the eyes of the leading mainland jurisdictions, still remains the ubiquitous offshore company. Prejudice alone has often meant that such a company is a synonym for "suspect", "nefarious" and "shady".

It may be that offshore companies bear the mark of Satan in some eyes, but they have also played a key role, often for good, in international affairs for a very long time. The company concept, in fact, had drawn its



critics ever since the joint-stock company, the forerunner of the modern company, was used for trade by English merchants in the 17th century - ironically, not for domestic but offshore business, principally in Asia and Africa. Far beyond England's shores, in other words, and which attracted a wellspring of thievery, financial abuse and every other shameless act of chicanery.

It was Edward, First Baron Thurlow, the Lord Chancellor of England, during the 1788 impeachment proceedings brought against Warren Hastings for his role in the East India Company, who said that "Corporations have nether bodies to be punished, nor souls to be condemned, they therefore do as they like". 120 years later in a letter dated 14th December, 1908, Leo Tolstoy described colourfully how, in his view, the East India Company had "enslaved a nation comprising two hundred millions". In it he asked: "What does it mean that thirty thousand men, not athletes but rather weak and ordinary people, have subdued [in India] two hundred million vigorous, clever, capable, and freedom-loving people?"

The venal exploits of the East India Company, which was in fact controlled by just a handful of men in London, rather than its 30,000 employees, were documented in great detail and would rival the outrages in this century. The subsequent impeachment proceedings alleging mismanagement and personal corruption by Hastings, when he was the Governor-General of India's Bengal Province, became a cause célèbre. Some things never change.

### **The Many Meanings of Trust**

From companies to trusts, which can be equally contentious and invite the same suspicions and misconceptions that offshore companies do today.

Some 100 years ago J.P. Morgan, the renowned banker, was questioned by a congressional committee in the United States of America about the workings of New York's Wall Street (I am of the opinion that even today they continue to remain a mystery for many of us). To the question of whether commercial credit should first and foremost be based on money or property he, apparently, replied: "No Sir: first thing is character".

On that issue we read and hear constantly more about trusts (often the crown jewel of succession planning) than we do about trust, a key ingredient in business. It is an inextricable essential when creating a trust, or indeed any business endeavour whether or not it involves the financial services industry.

Unfortunately the erosion of trust right across the board has been steadily worsening, especially since the terrible recession in the first decade of this century (the aftershocks of which are still being felt), only to be followed, firstly, by the COVID-19 pandemic (suggesting parallels with the Black Death in the 14th century which killed an estimated one-third of the population living between India and Ireland) and, secondly, the current international economic crisis that is still unfolding during a confrontation between Russia and the rest of Europe. All this and international tensions also with China. If ever there was a need for an abundance of faith in others it is now, considering that for the past 15 years or so events have meant that the world has become a breeding ground for swindlers, cheats, tricksters and their ilk.

So people in the financial services industry must prove their credibility. The other challenge for those in the industry is the wall of regulation that keeps seeing a further row of bricks added, slowing operations down and adding to the cost of doing business.

It used to be that a more streamlined system, with lighter regulation (and therefore lower costs), would be found when one went offshore to jurisdictions (very often islands) that specialised in corporate and fiduciary services, collectively described as offshore centres. I argue, however, that this description is now a misnomer, because there is no clearly defined borderline, as I have already said, between onshore and offshore business anymore. Loose regulation in the distant past and what was once the exclusive advantage of offshore centres, has been, and continues to be, whittled down. What will eventually be left will be offshore centres that specialise, perhaps in insurance or mutual funds, for example, supplementing the normal menu of services. It is true, too, that some centres might also offer a geographical advantage.



### **Leading by (Poor) Example**

For decades the two weapons in the arsenal of onshore government bureaucrats were transparency and tax evasion; in both cases, and for years, the offshore industry was always vulnerable to attack. This has undergone a radical change, although even today there still remains one or two miscreants, but where, wisely, angels usually fear to tread. The question is, however, have onshore governments lead by example? having gone on a witch hunt, whenever and wherever they could, against offshore centres. Sadly, the answer is no, particularly regarding the US, although change is afoot. After years of criticising the ineptitude of the US for being far too lax in allowing states to write their own rules on ownership transparency (we know that opaqueness can be the handmaiden of tax evasion), there appears to be a sea change taking place and the Federal government will require most corporations, limited liability companies and other entities doing business in the US to report information on those who ultimately own or control them. The reporting requirements extend to both domestic and foreign companies. In the case of a foreign entity, however, it only applies if the entity has to register in any US state in order to do business. Domestic entities that are not doing business also need not register when their creation does not involve the filing of a document with a secretary of state or similar office. This regulatory leap in supervision has come about as a result of various US administrations over the years working with the US Congress as well as law enforcement agencies. Progress in reaching this point has been painfully glacial. It is, nonetheless, a clear sign that the borderline between the offshore and onshore worlds will, again, eventually become even more indistinct. This war of the worlds (with apologies to H.G. Wells) has been raging for decades, although this move by the US is a landmark moment.

Still, in my opinion it is nothing more than an encouraging sign because these statutory obligations need to be implemented and rulemaking procedures have to be put in place. To my mind the most contentious aspect to be addressed is an agreement

about who will have access to beneficial ownership and why; safeguards will need to be put in place to ensure that information is secure and protected.

One can imagine the lobbying and countless committees (at state and federal level) that might be encountered during the process – not to mention input from the private sector. Even if by some miracle a competent ringmaster can bring some order to the project, we are at the stage where the circus big top tent hasn't even been raised.

But let's get back to trusts, that most valuable jewel of succession planning. Well, the federal legislation does cover business trusts created by the filing of a document with a secretary of state or similar authority. In many states, however, the creation of non-business trusts does not typically involve the filing of any information and presently the Financial Crimes Enforcement Network (FinCEN), which is central to the project, appears not to recognise that any disclosure rules for trusts in general should apply. FinCEN is the bureau of the US Department of the Treasury charged with combatting domestic and international money laundering, terrorist financing and other financial crimes, and could be the ideal ringmaster I referred to. I admit that trusts, in fairness, are a conundrum to many international authorities, but this particular exclusion creates a Shangri-La, an idyllic hideaway, for trust practitioners in the US.

A new report from the Institute for Policy Studies (IPS) has put several states in the US and their respective trust industries under the microscope and has concluded that they are opening the door for money launderers and tax evaders. It estimates that the US holds US\$5.6 trillion in trust and estate assets on behalf of citizens and foreigners. Estimates, we know, can be inaccurate, but common sense argues that the world's capital of capitalism either meets or exceeds that estimate.

### **Perception and Reality: A Pernicious Combination**

"The concept of the 'offshore tax haven' has very much washed ashore", says the IPS report, and as you will appreciate this doesn't come as news to me. The report names 13 states that are able to provide opaque



beneficial ownership involving trusts, highlighting South Dakota, Nevada, Alaska and Delaware, describing them as “the shadow states in the darkest corners of the wealth management industry.” Also mentioned in the report are, what is termed as “Emerging Enablers”, being the states of Rhode Island, Ohio, Missouri, Illinois, Florida and Texas, seen as becoming willing aids in the effort to maintain the secrecy of those wishing to hide their wealth for nefarious reasons. To a much lesser extent, but nonetheless important aids in support of the US trust industry as it operates today, are Tennessee, Wyoming and New Hampshire, all of which the report describes as “Bad Actors”. It is an idiomatic term with a multitude of applications and, indeed, interpretations, that have nothing to do with some actors found in spaghetti westerns.

The report, close on the heels of the revelations of the Pandora Papers, pulls no punches: “The clandestine world of financial secrecy stretches around the world, all the way back to the United States”. The IPS, having been started in 1963, is no newcomer to the scene, like so many similar organisations (from the credible to the unreliable), and is based in Washington D.C. But regardless of the pedigree of the IPS, every seasoned corporate and trust practitioner either onshore or offshore knows that the report, irrespective of any rhetoric, speaks the truth and countries, not just people, who live in glass houses should not throw stones.

Is it any wonder that the Integrated Values Survey, a global research project established in 1981, found that between 1985 and 2020 individuals who believed that most people can be trusted fell from 38 to 26 per cent? Since then, with the social, political, and economic calamities that have befallen us, how the picture must have become even more bleak, from Australia to Zambia. And this is before we examine not just individuals but governments and institutions.

Low levels of trust were once identified with regions of the globe such as Latin America. One hears the constant view (correctly) that improving civic trust is essential to Latin America's economic growth; now that problem has travelled to the developed world. This mistrust is fostering populist and authoritarian regimes. In the United Kingdom, Sir Mike Rake, former chairman of BT Group, has commented on “the disenchantment in institutions by the populace and even in democracy... I don't need to elaborate on the issues we face in our disunited kingdom”. No longer are these comments confined to so-called banana republics.

### **Conclusion**

Armand Jean du Plessis, Duke of Richelieu, known as Cardinal Richelieu, was a French clergyman and statesman in the 17th century. Steeped in statecraft, he is said to have opined “If you give me six lines written by the hand of the most honest of men, I will find something in them which will hang him”. Even a curmudgeon like myself, who is as sceptical as the late H.L. Mencken, an American journalist, cultural critic and satirist, does not believe that we have gone that far, but the humourist in me can identify with a sign I read many years ago in a small family grocery store on West Bay in the Cayman Islands which read: “In God we trust. Everyone else cash”. This fits nicely with some graffiti I once saw: “If God made Man who can you trust?” Friedrich Nietzsche, the 19th-century rebel philosopher who once asserted that God was dead, would have appreciated that.

“The more things change, the more they stay the same”, observed Jean Baptiste Alphonse Karr, the 19th-century French critic and novelist. It is a dictum well worth always remembering. So if you need to, find yourself a reliable offshore pilot in order to avoid a crash landing in any of your international business endeavours.

*Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Topaz Services, S. A. which is the British face of international business in Panama. It is written by Derek Sambrook, our Managing Director, a member of the Society of Trust and Estate Practitioners and a Fellow of the Institute of Bankers in South Africa 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 combined 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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