

A Different Kettle of Fish

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After giving a talk on trusts to the local branch of the Society of Trust & Estate Practitioners, I realised that tortillas and trusts have something in common with each other: the meaning of either word depends very much on where you are. Unlike the tortilla, however, the trust has never been indigenous to either Central or South America and this presents a challenge to Panama because it is an offshore financial services centre.

Panama, in fact, has had a trust law since 1925 – which I am sure was highly motivated by the desire to grease the wheels of commerce between the United States of America and the tiny, but financially important, republic following the completion of its canal. But the trust has always sat awkwardly within a body of legislation that owes its heritage to the invading Spanish conquistadores; so whilst readily understanding the Roman fideicommissum, (but which is restricted to testamentary dispositions), Panama lawyers find the English trust, a development of equity, a different kettle of fish. And although nearby Belize (formerly British Honduras) is English-speaking and is no stranger to the trust, its offshore financial services industry does not have Panama's sophisticated banking and related professional services infrastructure.

But Panama's services industry is very broad and is not rooted in the standard, but narrow, range of financial services found in some offshore centres. It is transport, rather than trusts, that is of greater importance and is likely to continue to be, with Panama along with much of the region, being cast in a new light. The familiar boom-and-bust cycles of the past are giving way to, what many believe to be, long-term Latin American investment opportunities. The number of regional liquid stocks available for investment has increased significantly. There were, for example, perhaps 35 stocks trading sufficiently to attract institutional investors in the early

part of this decade compared to about 250 today. And they represent a wide range of sectors; so when profits are spoken of, 'commodities' is no longer the only word on people's lips. It never was in the case of Panama where containers, not commodities, rule.

Panama deals with transporting, rather than producing, commodities. According to the Panama Maritime Authority, in the first six months of 2007 (these are the latest figures available at the time of writing) the container traffic through the Panama canal increased by just over 45% compared to the same period in 2006. In 2000 when Panama took control of the canal from the US, only 11% of the container traffic between Asia and the US East Coast used it whereas today that figure has jumped to 40%. The planned expansion of the canal facilities, now under way, includes the construction of a third set of locks with over USD1 billion being earmarked for such items as 14 new tugboats and a new lighting system at the locks which will enable the largest vessels to transit 24 hours a day.

In order to have the canal function efficiently (some 50 ships per day now pass through it), its operators need to be properly trained. The degree of competency required has been recognised by the canal authorities and the study programme put in place reflects this. Since its start in May 2003, the course, with its custom-designed content, has provided students with a solid base upon which to gain experience. The special Executive MBA tailored by Incae business school based in Costa Rica and Nicaragua is a 16-month course that concentrates on best business practices weighted towards the specific requirements of canal management. Besides studying the history of Panama and the canal, students learn about particular aspects of the shipping industry (this forms a separate element taught by Sweden's Malmo University).

The canal expansion programme,

coupled with the country's economic and political state of health, has raised Panama's profile significantly. Latinobarómetro, a non-profit organisation in Chile, says that Panama is only one of five countries in the region which shows an increase in support for democracy since 2006.

In today's offshore financial services world the ability to diversify and adapt, despite being a well-worn cliché, is a must and now we have Jamaica (where saltfish rather than tortillas is a staple food) several hundred miles off the South American coast, wishing to become an offshore financial services centre. This is part of its government's drive to shake Jamaica loose from its economic inertia. Kingston, the capital, is seen as the future magnet to which international investors, finance advisers and other business professionals will be drawn. Like Belize, it has a common law system, following England's 1655 conquest of the island, so the ubiquitous trust is already at home. If only it was that simple!

As a poacher who was once temporarily a gamekeeper, charged with the establishment of an offshore regulatory regime, I would suggest to Mr. Bruce Golding, the new Jamaican prime minister, that before he draws up his finance centre blueprint he considers why Panama's canal is so successful. It is because government has put it in the hands of well-trained professionals and then left them to get on with running it. This is the essential ingredient for success in such endeavours.

John Maynard Keynes might once have said that it was better to be roughly right than precisely wrong but when it comes to creating offshore centres, roughly right will not do.



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