



# A taste of reality

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**I**t may well be a fact that Panama has ratified the Hague convention on trusts but this should not assume that the operation of trusts in Panama, with its “civcom” blend of trust law (civil with common law influences), bears close resemblance to those in the United Kingdom, the home of the traditional trust, if not its concept (see *Fingers and Toes – Offshore Investment Issue 230*).

Let’s start by considering the fact that people everywhere enjoy the cinema, yet when the American multiplex model was brought to Mexico, rather than putting butter on the popcorn served to patrons, lime juice and chili sauce was substituted, in order to entice Mexicans by recognising the important differences in culture, however slight. I have also previously written about the importance of addressing culture, (“The Magical Mystery Tour” – *Offshore Investment Issue 237*). So the first thing to understand about Panamanian trusts is that they might not, like American popcorn, be to everybody’s taste.

Gone are the days when Cecil John Rhodes, the imperial British statesman, ploughed much of his fortune, earned principally from diamonds, into a trust to provide scholarships at Oxford University for promising students who, inter alia, should “not merely be bookworms”. (In this era of technology I doubt if that particular condition will present any difficulties for candidates, many of whom have grown up where browsing on the web, and not in bookshops, has been the norm.) Panama gained independence in 1903, the same year the first selection of Rhodes Scholars was made in terms of his trust which, although extensive, conformed with the prevailing legal language but in a clear and straightforward manner.

I began to reflect on the clarity of Rhodes’ trust in September when I stayed at an airport hotel in Amsterdam on my way back from the 23rd Oxford Symposium organised by *Offshore Investment* and at which one of my fellow speakers, Nigel Goodeve-Docker, had delivered a concise, crystal-clear explanation of the essence of a trust. Today, however, trusts are no longer homogeneous and like whiskey, there are single malts and blends. But it was coffee, not whiskey, that came to mind in Amsterdam, when I tried to have a simple cup of black, sugarless coffee, in the hotel’s club lounge. It appeared that every conceivable kind of coffee, other than ordinary, was on offer. For some reason, having opted for orange juice, the association between Starbucks (without a presence in Panama) and Star trusts in the Cayman Islands came to mind.

Once there was just cups of coffee, served either black or white. But today things are no longer that simple and, helped by clever promotion, it has become exotic. We have, for instance, solo espresso and doppio espresso; cappuccino has evolved into mochaccino and frappuccino. In other words, the coffee bean has been turned practically into an art form. Not just beans. The legal and related professions in many jurisdictions have done to the trust what the world-famous Seattle coffee business (although not alone) has done to cappuccino.

So how much of this transformation in trusts is froth, and how much is substance? All, however, require one fundamental ingredient: awareness. A trust can only exist when the client intends, in the first place, to give his assets to a trustee and then lose legal control of them. Without this animus, the trust is void ab initio. Unfortunately, practitioners, some perhaps with pecuniary motives, can fail to explain the ramifications to the client of his intended actions.

Expert fiduciaries, who have administered trusts and liquidated deceased estates since record turntables were the norm and CDs only referred to bank certificates of deposit (I count myself among their number), will tell you that the source of the problem, nine times

out of ten, is usually not just the practitioners, but the salesmen (the roles are often combined) who promote, especially, asset protection trusts without fully understanding that without the bean, it isn't coffee.

If so much has changed since Rhodes settled his trust and declared that his mission was "to secure the peace of the world" – a goal beyond the abilities of his trustees, although one of whom (Rudyard Kipling), like Rhodes himself, understood its importance – one thing has not: Latin American national pride, another subject which has appeared in my column. Cecil Rhodes thought that "to be born an Englishman was to win first prize in the lottery of life", but there are many Panamanians, for instance, who see themselves equally as fortunate to be Panamanian. The country, in fact, takes its independence very seriously; so much so that it celebrates two independence days (one from Spain and subsequently from Colombia) and both of which are observed this month. There are, in fact, two other holidays during the month which are part of the fabric (literally, in one case: Flag Day) of the country's history.

Is Panamanian pride justified? I think so, with the country expected to have the region's second highest growth (8%) in 2013, just behind Paraguay (10%); it already had the highest growth (over 10%) in 2011 and 2012, as well as in 2008. Earlier this year a successful placement of USD750 million-worth of 40-year bonds, with an annual interest rate of 4.3%, was six times oversubscribed. Fitch, the rating agency, confirmed the country's BBB credit rating and expects consumer price growth to fall to an average of 4.4% over the next two years. Other forecasters suggest that in 2013 unemployment will be 4.2% with an inflation rate of 5.2% and a net debt of 36.4% (as a percentage of GDP). No wonder Panama is in the top 20 of the happiest countries in the world (United Nations' World of Happiness Index).

Actually, unemployment in the entire region is down, according to the joint report from the Economic Commission for Latin America and the Caribbean and the International Labour Organisation. The overall rate in 2012 was already at its lowest in decades at 6.4% and rather than Latin Americans emigrating to Europe in search of work, Spanish and Portuguese nationals are

moving to Latin America. Brazil, for example, has seen its unemployment rate drop to 5.5% last year from 11.7% in 2002; it's a similar story in Argentina which had a rate of 7.2% in 2012 compared with 19.7% ten years earlier. Unemployment in the region has been reduced due to several varying factors: growing domestic demand; growth in gross domestic product as well as manufacturing; reduced inflation and the strengthening of macroeconomic fundamentals across the region.

It is true that the recent boom in global commodity demand has played a very significant role in South America and Brazil, in particular, does have concerns with China's growth only projected at 7.5% this year. It is argued that partly due to fewer Chinese exports and falling commodity prices (some are off 50% of their 2011 peaks), average growth in the country of only 1.8% was registered in 2011 and 2012 whereas in 2010 that figure was 7.5%.

Kevin Gallagher and Roberto Porzecanski in their book "The Dragon in the Room" have gone as far as to suggest that three-quarters of recent growth in Latin America is due to commodity exports. But I see the Chinese demand for commodities continuing, although the focus may be more on mouths than minerals. One Asian commentator has described South America as "the Middle East of food" because it accounts for 40% of global farming exports and already supplies China with large amounts of beef, poultry, soya, corn, coffee and animal feed; a growing Chinese middle class will propel this along. What's more, as China, like many parts of the region, begins to focus on its own domestic needs, it will also require materials to help construct its mega-cities, highways and railways; such construction needs, for example, Chilean copper, Peruvian zinc and Brazilian iron-ore, all of which is being shipped in huge amounts.

The Chinese 2001 trust law, meanwhile, is apparently responsible for creating "a shapeless trust"; let's hope the Panamanians, as with their coffee, never emulate it. They may be shapeless in Seattle, but in Panama, which produces a fine coffee - the equal of any exported to China from South America - it is usually served either black or white.

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ISSN 0954-0628 US PS 002-273.

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**US POSTMASTER:** Send address changes to Offshore Investment, c/o Worldnet Shipping Inc., 156-15, 146th Avenue, 2nd Floor, Jamaica, NY 11434, USA. Subscription records are maintained at European Magazine Services Ltd, Lombard House, 10-20 Lombard Street, Belfast BT1 1BW, United Kingdom. Air Business Ltd is acting as our mailing agent.

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