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OFFSHORE PILOT

Panama Hats and Other Misconceptions

The Cayman Islands, the Channel Islands, the Turks & Caicos Islands and Panama all have something in common. Although 3 are islands, whereas one is an isthmus, each (along with others) has suffered from slanted views and distortions of the truth over the years when it comes to their role in offshore banking and other financial services. I have witnessed this first-hand in each place during my career and I have concluded that, for some people, the prejudice runs too deep to ever change their minds. They are lost causes and suffer from, what I call, worm syndrome, because it reminds me of the attempt made by a gentleman of the cloth to convert an alcoholic. He dropped a worm in a jar of pure alcohol and both watched it disintegrate before their eyes. "What does that tell you about alcohol?" admonished the minister. "That you'll never get worms", came the reply.

Besides prejudice, misconceptions too can arise, but usually they are easier to dispel. When I lived in Africa, I had fancied the broad-brimmed protection of a Panama hat and when I visited Panama for the first time some fifteen years ago, I looked for one to buy. I quickly found out that a genuine Panama is from Ecuador and as it turned out, I eventually bought one in London. The Panama hat is only one of many misconceptions about Panama itself.

On the basis of land mass, Panama is the largest offshore centre, but it is more famous for its canal than its trusts or banking. It is the largest trading zone in the Western Hemisphere and the second largest in the world. Despite the prominence today

of some offshore companies registries, Panama's corporate law which was based on the law of Delaware in the United States of America was promulgated in 1927, and served as the model that many jurisdictions subsequently followed. The country's Companies Registry is still the largest one offshore. Its Trust Law, in fact, was enacted earlier in 1925 and recently a Foundation Law (1995) and a Captive Insurance Law (1996) were passed, the latter being the only one of its kind in Latin America.

English is widely spoken by professionals so communication is not hindered and access, either via Panama's sophisticated telecommunications or its airports, with daily international flights to several countries, means that the flow of international business is unimpeded. There is a stock exchange, a large legal community, international brokers and accounting firms and over 100 banks from more than 30 countries. Brass plate banking is not allowed in Panama so the offices are real, with names that include Citibank, Chase Manhattan, the Hong Kong & Shanghai Banking Corporation and Dresdner Bank. There are no exchange controls and all offshore banking and related activity is tax-free. Panama is one of the most important banking centres in the region, but it is not out of step with the international concerns of supervision, drug trafficking and money laundering. The Government of Panama recognises its responsibilities and has introduced stringent monitoring and vetting procedures for application by the banking community and other related businesses as well. Banks have Compliance Officers (responsible for

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adherence to the regulations) and the Government has created a financial intelligence unit. Being a member of the Offshore Group of Supervisors, Panama can draw upon the assistance and guidance of the Basle Committee on Banking Supervision which was established by the central bank governors of the Group of 10 industrial countries in 1975. The continuing desire to promote good banking practice is reflected in the new Panamanian banking law promulgated in February, 1998. A complete overhaul of the 1970 law has been undertaken which enhances Panama as an offshore financial services centre. Heightened supervision, increased minimum capital requirements and capital weighting in accordance with Basle Committee standards are some of the significant features of the law.

One of the bugbear's experienced by governments has been the secrecy laws of offshore financial centres which can, unintentionally, shield illicit activities, and in Panama confidentiality will be lifted once there is evidence that criminal activity has occurred. Also, Panama has a Mutual Legal Assistance Treaty with the United States of America which will be invoked in the case of money laundering and drug trafficking. The honest investor, however, can draw comfort from knowing that the secrecy laws in Panama will not be swept aside from over-reach by a foreign country, whereas several prime offshore financial centres are dependent territories and are constantly susceptible to compromise because of their dependence, by definition, on a sovereign power with its own agenda of priorities. Examples of these conflicting interests have arisen in recent years.

It is true that Panama is the world's fifth largest producer of bananas, but it is also true that it is now a fully-fledged member of the PBR club (Post Banana Republic) which comprises those Latin American countries that have, during the last decade or so, switched from military to civilian rule. Under the Constitution an army is not permitted, there is an elected President with a Legislative Assembly and an independent

Judiciary. The country enjoys economic stability and continues to maintain an inflation rate below 2%, having done so for the last 40 years. The United States dollar remains the legal tender, and in a region where inflation and currency fluctuations can give investors nosebleeds, Panama is, indeed, unique. Economic growth has continued to be positive for several years and the Government's determination to maintain fiscal discipline has seen privatisation and de-regulation continue apace. A business plus is the fact that professional fees are usually less (because of the lower salaries and business expenses) compared with those of other large financial centres.

Nothing you have read up to now, however, should be the reason why Panama should be chosen instead of another offshore financial services centre. After all, practically all of the services or products are available in any one of over 60 offshore centres that are scattered across the globe. This choice is made easier by the speed at which one offshore centre's innovative legislation is replicated (plagiarised is often nearer the mark) by its competitors. Normally, management itself does not need to be in any particular location either, because the assets themselves inevitably remain in one of several unrelated places anyway. Yet, great play is made of the advantages of one offshore financial centre over the other; but if your service provider is in the Arctic or Zimbabwe, and whether or not he is suffering from frostbite or heat stroke, it matters not one iota to you, provided he performs.

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business references, police clearances and evidence of experience and qualifications. The company and its shareholders must submit audited financial statements. Adequacy of capital is of paramount importance and must be further supported by security of \$250,000 that must be available to the National Banking Commission for the proper fulfilment and enforcement of the licensee's obligations. Once a licence has been issued, there is an annual requirement to file audited accounts with, and the licensee is subject to inspections by, the Commission. Any lawsuits filed against a licensee must be reported to the Commission, which must also be informed of all judgements rendered. The shares of a licensee cannot be subsequently transferred without the Commission's approval, because the calibre of ownership is an extremely important factor and is carefully controlled. Breaches

of client confidentiality are sanctioned by fines and imprisonment and clients' interests are protected under law if a Trust Company is dissolved, for whatever reason.

You can learn more about us from our brochure, web site and the several summaries and other articles which we publish. Finding practitioners who are licensed, qualified, experienced and reliable is not the problem: the problem is finding all those elements housed under one roof – whether it is an Arctic igloo or an African grass hut. You will find those 60 offshore centres quicker than you will find an equal number of practitioners who meet the criteria. So, if you can see beyond those worms in the jar of alcohol, the Canal is not the only smooth passage to be experienced in Panama. You can also find it at Trust Services, S.A. - and that's not just old hat, whether of the Ecuadorian variety or not.



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Engaging an offshore representative is an important decision and we advise all persons to seek appropriate legal and tax advice from professionals licensed to render such advice before making offshore commitments.

Bankers

Citibank, F.S.B.
UBS (Panama) S.A.
ABN-AmroBank, N.V.

Auditors

Deloitte & Touche

Physical Address: Suite 522, Balboa Plaza, Avenida Balboa, Panama, Republic of Panama.

Mailing Address: Apartado 6-2495, Estafeta El Dorado, Panama, Republic of Panama.

Telephone: (507) 263-5252 – Telefax: (507) 269-4922

E-mail: marketing@trustserv.com Web site: www.trustserv.com