



TRUST SERVICES, S.A.

*Professional Business Services to
Firms, Institutions and Individuals.
Small by Design. Built on Expertise.*

OFFSHORE PILOT QUARTERLY

Commentary on Matters Offshore

*30th
Anniversary
1981-2011*

CorporateINTL
GLOBAL AWARDS
WINNER 2014

June, 2016

Volume 19
Number 2

Into the Light

The first several hundred words were meant for my Private Client Adviser blog which I have been writing for almost 3 years. But as with so many specialist publications competing for market share, the PCA has succumbed to market forces and is no longer being published.

The blog topic I was to cover, not surprisingly, was the sensational Panama Papers scandal which centred on the Mossack Fonseca law firm and which revealed in May more than just client names. What have we learned from it? That Panama is the Mecca of malfeasance to which the corrupt, rather than the faithful, look towards? Hardly. Anymore than because the British Virgin Islands features prominently in the revelations, can you suggest that companies formed there should be avoided by those with honest intentions. T.S. Eliot, the 20th-century essayist and poet, said that April was the cruellest month; for Panama, May turned out to be.

As this year is the 400th anniversary of Shakespeare's death, one of his most famous plays, Hamlet, will be celebrated. It is, in fact, a play-within-a-play in which the player Queen is thought to protest the reality of the situation too much and so loses her credibility in the eyes of Hamlet's mother, the real Queen of Denmark. As for the Mossack Fonseca affair, reality points to the law firm being only the play-within-the-play; in other words, it is not the big story. The first thing to understand is that what has transpired is not a unique Panamanian phenomenon; one only has to scroll through the names and places professionally

linked to discover that. Importantly, when noting how far back so much of the activity occurred, a line must be drawn between the relative international regulatory climate and due diligence laxity existing in the last century versus today.

Having spent almost 40 years in several offshore jurisdictions, including 3 of them as a banking regulator in the Caribbean for the United Kingdom government, I know the reality whereof I speak and so I hope to avoid opprobrium similar to that meted out by Hamlet's mother as you read on. But the truth is, thanks to the Mossack Fonseca affair, light has been shed in some dark corners beyond Central America; I shall point out some of the most egregious examples which prompt me to quote John Milton, England's 17th-century poet: "neither man nor angel can discern hypocrisy, the only evil that walks invisible".

The swingeing attack on secrecy made at the recent Anti-Corruption Summit in London, which brought together 12 heads of state and included more than 40 countries, was itself revealing by displaying, unashamedly, the double standards which exist, especially on the part of the United States of America. A report, for example, by the Institute on Taxation and Policy entitled "Delaware: An Onshore Tax Haven" has said that the state's tax code made it "a magnet for people looking to create anonymous shell companies, which individuals and corporations can use to evade an inestimable amount in federal and foreign taxes". I am sure that the vice president of the US, Joe Biden, is cognizant of the problem, considering he was the senator for the state between 1978 - 2009.



And yes, in fairness to him, I know that two huge hurdles need to be overcome to remedy the situation: Congress and the powers enshrined in each state's constitution. I need not dwell on the difficulties of a consensus in Congress (where lobbyists can shape laws), and especially when dealing with a state's finances.

Much can be blamed on Britain (often the case) for the US legal system because states applied principles developed by Sir William Blackstone, England's famous 18th-century jurist, and which, in the words of chief justice Lemuel Shaw of the Massachusetts Supreme Court in 1852, empowers state politicians to enact "wholesome and reasonable laws, statutes and ordinances... as they shall judge to be for the good and welfare" of the state. Historically, the federal government and the states were organised according to distinct principles, allowing each state to make laws and regulations for the benefit of their communities. Clearly, Delaware, which has more companies than people sees the "wholesomeness" of corporate business.

The Panama Papers are the start, one hopes, of a cleansing process where only the fittest and the compliant, wherever they operate from, will survive. Thanks to the exposure brought about by this incendiary gigantic leak, the Organisation for Economic Cooperation and Development's card hand has been weakened; some speak of righteous hypocrisy. During the summit in London at which a global standard on the automatic exchange of beneficial ownership information was debated, the premier of the Cayman Islands, Alden McLaughlin, made comments which reminded me of Hans Christian Andersen's emperor who wore no clothes. John Kerry, America's secretary of state, had said it was vital to show a zero-tolerance approach but that his country was not in a position to sign the Summit Communiqué which had been agreed to by the other participants and this made Mr. McLaughlin say that without the US on board no standard could be described as global. The Cayman Islands' financial services minister, Wayne Panton, has reminded us that there were more companies without oversight at

just one address in Delaware than all of those registered in the UK crown dependencies and overseas territories, with the exception of the British Virgin Islands; I have not independently verified that, but believe, if anything, it probably understates the facts.

The Black Holes of South Dakota

President Obama said at the London summit that some countries would want to step in and fill the demand for secrecy if others were persuaded to abandon total secrecy; his already has. And whilst like most commentators I have tended to direct much of my fire on Delaware in the past, this would be a mistake. Trusts touting anonymity and privacy are increasingly being set up in Wyoming, Nevada and South Dakota. Assets held in trusts in South Dakota, for example, have gone from US\$32.8 billion in 2006 to over US\$226 billion in 2014 according to state records; there were 20 trust companies in 2006 and now there are at least 86. International interest in America is growing as foreign practitioners experience the vice-like grip of non-US regulation and see the attractiveness of the US, encouraged by the comments of Heather A. Lowe, the legal counsel and director of government affairs for Global Financial Integrity, a research and advocacy group in Washington. She argues that those 3 particular states, which market themselves internationally, are the tip of an iceberg because "You can create anonymous companies anywhere in the United States".

The US is the world's fastest growing offshore tax haven, and any efforts to reverse this process will have to overcome Sir William Blackstone's influence. I have written about particular Latin American concerns regarding public disclosure of wealth, and you can expect a lot more of it to move to the US to stay under the radar. One estimate suggests that 90 per cent of the registered trust companies in South Dakota have, basically, a post office box or a token office. Somebody will come twice a year to hold board meetings to meet regulatory requirements. There are 40 trust companies sharing one address at a two-storey nondescript white building in Sioux Falls; inside



it is estimated that US\$80 billion in trust assets is administered. One definition of a black hole is a place where people or things, especially money, disappear, without trace. Up to now we've been more aware of the Black Hills, rather than the black holes, of South Dakota.

The Maroon Private Trust Company is in another building in Sioux Falls which shares a receptionist with a roofing company on the same floor and, I am sure, that it needs no help from its neighbour to shelter its activities. Besides hypocrisy, John Milton famously wrote about paradise lost and regained, but for the trust company it remains comfortably marooned in splendid isolation, sheltered (at least for now) from the madding crowd baying for blood and railing against, in its view, and egged on by a hostile press, practitioners of perverse practices ensconced in offshore financial services centres whose fate it is to have, if only metaphorically, an albatross around their respective necks. In the 21st century – at least in the West – they have upset the reformed economic order of the universe, and let us hope that they will not travel a slow and thirsty path toward madness, tormented by an albatross, like the hapless sailor described in Samuel Taylor Coleridge's epic poem, "The Rime of the Ancient Mariner".

The Biggest Little Secret

Public dissemination of beneficial ownership is "a reckless violation of personal privacy and stands to put in physical danger law-abiding individuals and their relatives around the world". Those were not the words of a practitioner in Panama or anywhere else offshore; they were spoken by the president of Reno's Alliance Trust Company in Nevada. Obviously, the "biggest little city in the world" is trying to protect the biggest little secret in the world about Nevada's, and other states', friendly approach to secrecy. He is perhaps emulating the Las Vegas boast: what happens here stays here; CRS, which stands for Common Reporting Standard, is an acronym for Can Remain Secret in the US and Nevada, known for its gambling, is betting on things not changing.

The International Consortium of Investigative Journalists doesn't share the value system of the head of Reno's Alliance Trust Company. According to its moral compass, public interest trumps any twinges of conscience over theft, violation of secrecy laws or the illegal access of a data base. Let's detour, at this point, and consider Antoine Deltour. He is the mild, former auditor with PricewaterhouseCooper, an international firm of accountants, who has gone on trial in Luxembourg. Called "LuxLeaks", it was the biggest financial leak before the one in Panama, when, in 2012, he passed on 28,000 pages of documents to a French journalist, much of which has been put online by the ICIJ. If found guilty he could be heavily fined and face up to 10 years in prison (although prosecutors are asking for an 18-month sentence). The government's lawyers argue that Mr. Deltour revealed tax arrangements that were legal while the accused says that his action was in the European public interest; the ICIJ gave the same reasoning in respect of the Panama Papers, and which has also revealed legal arrangements (ask the UK prime minister), although it did not restrict itself to European concerns. It is true that LuxLeaks could assist the OECD's plans for closing its Base Erosion and Profit Shifting loopholes, but this ignores the impact on those exposed. I must agree with Luxembourg's justice minister who says his country's secrecy laws do not permit persons such as Mr. Deltour to "denounce everything and anything according to his own moral values". Quite.

In its defence, the ICIJ has said that it took legal advice before disclosing the Mossack Fonseca information and upon being questioned on the issue of receiving the stolen data, the ICIJ implication was that you can do some things in the US (where the consortium is headquartered) that can't be done elsewhere. We know that this is a fact, not just in the case of transparency, and to explain why requires more space than I have to spare, except to mention again (see the March Offshore Pilot Quarterly) the sad case of the collapsed Caledonian Bank in the Cayman Islands, brought low by a US Securities Exchange Commission investigation that produced no indictment of the bank



but impelled the judge in the US to castigate the prosecution council.

The nomenclature, Panama Papers, deflects geographic attention from practices in other countries that need to be put under scrutiny. With Panama's colourful history and its past battles with the OECD, it is far too easy to parade Panama as the whipping boy of wayward practices. To do so ignores the central role played by Mossack Fonseca in only supplying companies incorporated for others to operate, with wealth directed from offices in the UK, Hong Kong, Switzerland and elsewhere. You can only, however, sweep so much dirt under Panama's carpet before lumps begin to show, prompting inconvenient questions. Where were the majority of illicit acts actually performed and by whom? Regardless of the past, why has Panama now been put on the Financial Action Task Force's white list? The play-within-the-play.

America has been called the new Switzerland. As a professional trustee I find it astounding to read that only in 2016 does the US Treasury Department intend to issue a rule compelling banks in the US to identify the people behind shell-company account holders

following the international uproar over hidden wealth disclosed in the Panama Papers. In 2011 the Florida Bankers Association told Congress there were hundreds of billions of foreign deposits in US banks because for nearly a century the government has enticed foreigners by exempting their deposits from taxes and reporting. The Boston Consulting Group reckons that up to US\$800 billion of offshore wealth is in the US, with nearly half of it coming from Latin America; I have little doubt that the material contribution towards its management made by Mossack Fonseca will have been minimal.

The cat is out of the bag. And what of the self-appointed arbiters of moral and public interest judgements? When the ICIJ on its Panama Papers website assures us that there are legitimate uses for offshore companies and trusts and that it is not implying that persons, companies or other entities mentioned "have broken the law or otherwise acted improperly", this comes with no guarantee that others who read its Leaks Database will not break the law or otherwise act in an improper manner themselves to the detriment of the innocent exposed on the website.

Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Trust Services, S. A. which is the British face of trust business in Panama where it is licensed under the fiduciary laws. It is written by Derek Sambrook, our Managing Director, who has been Treasurer of the British Chamber of Commerce Panama, a member of the former Latin America and Caribbean Banking Commission as well as an offshore banking, trust company and insurance regulator. He has over 45 years 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 including his Latin Letter column which appears in every issue of Offshore Investment, a British professional journal published since 1986.

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 in the appropriate jurisdiction before making offshore commitments.

Local Bankers
Banco Panameño de la Vivienda, S.A

Auditors
Deloitte

©2016
Trust Services, S.A.
All Rights Reserved