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OFFSHORE PILOT

A Straw in the Wind

The British Meteorological Office forecast light showers, bright intervals and moderate winds for October 15th, 1987. Then the worst storm since 1703 hit Britain. I was living in the Channel Islands then and do not wish to repeat the experience. Now, living in balmy and calmer climes, I do not know what the weather was like in the Channel Islands on January 20th, 1998, when Jack Straw, the British home secretary, announced that a review of the laws, regulations and procedures governing financial services in the Crown Dependencies of the Channel Islands and the Isle of Man is to be undertaken. The authorities in the 3 islands learned the news at the same time as the public did: as sudden as that hurricane. I cannot predict what effect the pronouncement will have on the future financial climate of the Channel Islands and the Isle of Man, but the review was a sharp reminder that the British Government retains the power (through its privy counsellors) to approve or reject all primary legislation passed by the three legislatures. The six-month review will be led by a former Senior Treasury Official. Let's hope he doesn't confuse the two Morgans (the President of Guernsey's advisory and finance committee and the President of Jersey's finance and economics

committee both have the same surname) with the infamous Captain Morgan.

Both men have been critical of the fact that absolutely no prior consultation whatsoever took place. The 3 islands under scrutiny control, collectively, about US\$450 billion in investments, much of which is managed through offshore trusts and corporations. The new Labour Government argues that, because the United Kingdom is the responsible sovereign power, any actual or perceived supervisory sloppiness in the Channel Islands and the Isle of Man will reflect poorly on the United Kingdom's regulatory reputation. Jack Straw has stated that it is vital that, for this reason, the laws, systems and practices for financial services regulation and company registration in Guernsey, Jersey and the Isle of Man must be reviewed.

It should be said that the European Union is presently seeking similar co-operation from France, Italy and the Netherlands in the case of their respective wards, namely, Andorra, Monaco, San Marino and the Dutch Antilles.

The story doesn't end there. Robin Cook, the British Foreign Secretary, has recently announced that the U.K.'s constitutional relationship with its 13 dependent territories is also being



reviewed. Unlike the 3 Crown Dependencies, the 13 dependent territories are totally subordinate, as I found out during my tenure as the U.K. Regulator and principal draftsman of much of the 1989-1992 offshore legislation in the Turks & Caicos Islands. The Foreign Secretary has expressed his wish to see appropriate regulation in place by the year 2000 in those dependent territories engaged in financial services. Appropriate regulation is about as broad as a definition gets and those readers of the London magazine, *Offshore Investment*, will have read my article in the November, 1997, edition (*Hostile Exchange: The Pelicans and The Fishermen*) which addressed the very issue of the United Kingdom's delicate political position with America and the European Union, in relation to the financial activities of her dependent offshore centres. Will the British Government repeat its unannounced review in the Caribbean where several offshore centres nestle? In the Cayman Islands alone, it is thought that over US\$500 billion (more than Guernsey, Jersey and the Isle of Man combined) is managed. As I said in the December *Offshore Pilot*, there is something very reassuring about an offshore centre that is an independent state in its own right and it was ironically comforting to read that in the same week that Jack Straw announced his review, the President of Panama said in Switzerland that bank secrecy would be maintained, despite the introduction of tougher banking laws.

In several articles in a variety of publications I have advocated over the years that what is needed is a regulatory environment with credibility but which is not too restrictive to hinder the objectives of honest businessmen and

investors. Panama's record in recent years conforms with that financial services blueprint. More importantly, it is an independent offshore financial services centre within easy reach from Miami and other important centres. It's difficult to guess at present whether or not the choices in the Caribbean will start shrinking. The Chinese believe that powerful winds may start at ground level and we already know that there is a Straw in the wind passing over Europe.

The Order of the Hammer and Machiavelli

The following words are not for those who repose more faith in family and friends than professionals in the management of their assets after death. In 1514 Machiavelli contended that it was a safe generalisation to make about men that "they are ungrateful, fickle, liars and deceivers". Whether or not you share those sentiments is another matter, but after having been a professional executor of countless estates I can tell you that honesty and dishonesty are not determined by bloodline or the absence of it. It is still a roll of the dice, except that you can hedge your bets to a greater degree when using a professional. Here's my checklist of precautions to consider. A family member, business associate or friend can be given oversight of the management of your assets – perhaps in the role of adviser or protector. You can supplement the monitoring by having a trust fund, for example, audited annually by an accountant. A healthy dose of common sense helps also. Are the professionals licensed and regulated in the jurisdiction from which they operate? Are they annually audited by an international accounting firm? How long have they been in



business? Who are their bankers? Can references be provided? What is the calibre of management? What are their qualifications and are they in good standing with their respective professional bodies? If all those questions can be answered to your satisfaction, the next step is to meet them. This type of relationship should never be consummated at a distance, unless exceptional circumstances prevail or you are employing a professional intermediary with experience of the offshore professionals in question. Personal visits are helpful to both sides. Thoughts, concerns and attitudes are sometimes not amply conveyed through the medium of the written word and yet might be crucial to your overall strategy.

You also get the opportunity to weigh-up the professionals and be certain that they are worthy members of The Order of the Hammer. Let me explain. An Engineering Plant Manager was unable to fix a mechanical breakdown. In sheer desperation, he contacted the retired engineer who had installed the equipment. After a brief inspection, surrounded by the Manager and his team of technicians, the elderly engineer took a hammer and, with a resounding blow, hit a particular piece of piping. Suddenly, the machinery sputtered and came to life, much to the relief and delight of the Plant Manager. The next day, the retired engineer sent a bill for \$1,000 and the Plant Manager protested that this was excessive for one solitary blow from a hammer. "Oh", rejoined the old engineer, "I only charged \$1 for hitting the pipe. The other \$999 was for knowing where to hit it." So, besides academic degrees, look out for the degree of experience as well. If a professional trustee tells you that a bare trust is associated with

nudity and that the 3 established essentials of a valid trust are a client, his cheque book and a pen, my advice to you is to make a hasty departure.

I think choosing a professional who can model your will or trust to your exact liking and who will be able to serve as either the executor or trustee afterwards makes a lot of sense. The right professional has the technical ability and operational back-up to provide the service needed. Always remember, you may think your bestowing an honour on your family or friend whereas the reality is you could be imposing an awful burden, especially if they don't have either the time or training (or both) to fulfil their obligations. So, before you leave those bearer shares representing a fortune in third-party hands, think about including a professional. It's better to hedge your bets when you roll the dice.

The Silence of the Scams

I've saved a final world for the Internet. This phenomenon is an extremely effective tool for marketing offshore financial services. The Internet, like the practitioners it serves, has no boundaries and can offer services in the Netherlands Antilles to a Mongolian banker. I have been a constant advocate of the belief that it's not the place, but the professionals that counts. Browsing websites can become addictive and the problem is that webs have spiders who, in this instance, are the silver-tongued con-men with a smooth patter that are capable of turning an innocent investor into a born-again fool who readily parts with his money as eagerly as a convert at a revivalist meeting does. Last year we saw scams that broke down law and order in parts of Central Europe and produced the Bre-X Minerals fiasco,



the greatest mining fraud of all time. In both cases the Internet was an effective accomplice.

You have to separate the wheat from the chaff when sifting through the staggering amount of information made available on the Internet. Professionalism has, unfortunately, given way to pure salesmanship in some cases, where no distinction is made between selling vacuum cleaners or complex products. Sometimes the detachment of the Internet can make it an easier sell. Many victims of Internet and other types of fraud are never known to us; we usually only see pictures of the harrowed faces of the duped when the scandal reaches major proportions and yet there are many

investors in lesser frauds without recourse who suffer in silence. The Internet should be treated like any other type of advertising: being electronic gives it no special magic. You should remember the checklist I mentioned earlier before you commit yourself.

Now that offshore financial services reach a wider market with the help of the Internet, there are more practitioners of various disciplines wrongly professing to be specialists in particular fields. They hope to play catch-up as they go along, which is all very well, unless it happens at your expense. Remember one or two years of offshore experience or several business trips to a few offshore centres does not produce an expert.



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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.

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