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## OFFSHORE PILOT QUARTERLY

*Commentary on Matters Offshore*

30<sup>th</sup> Anniversary  
1981-2011

CorporateINTL  
GLOBAL AWARDS  
WINNER 2014

September, 2014.

Volume 17  
Number 3

### **Privacy on Tap**

Many years ago I was intrigued by a cartoon of two businessmen standing in an office doorway looking at a man sitting on a tall stool and dressed like a bank clerk out of a Dickensian story. Before him was a very large ledger on a high, slanted table; the clerk, with quill pen poised, was making an entry in the ledger. One of the businessmen observing this was saying to his colleague: "I believe we have the solution to computer theft".

Is it perhaps right to say that sometimes progress is achieved by regress? George Orwell (who comes into his element this quarter) may have written in "1984" about "...the clocks were striking thirteen", but in June the hands on Bolivia's Congress building clock began to move anticlockwise. This was deliberate and is intended as a protest against the West's (primarily the United States of America) level of involvement in world affairs. It is a complaint found in this month's Latin Letter (Embrace of the Dragon) in Offshore Investment about the disillusionment which has caused the next generation of major economic powers to find fault with both the international political and economic blueprints that have prevailed for so long. I will come back to this subject, but first let's return to regress.

Whilst I do not predict the future universal use of ledgers for accounting, I anticipate more typewriters coming out of storage and being tapped back into life. The telegraph and floppy disk may have been lowered into their respective technical tombs but expect to also hear the whirring of more faxes too, because a

lot of people now believe that documents attached to e-mails are less private, and faxes also avoid the perils of serial hackers. Covert internet surveillance is a growing concern and as the saying goes, needs must when the Devil drives. The head of the parliamentary committee in Germany which is looking into the activities there of America's National Security Agency recently revealed that the committee had considered using a mechanical typewriter to produce sensitive documents. Typewriters are still around (just like long-playing records) and in the US alone they continue to be used by government agencies, city halls, police forces and many commercial businesses. I have one in the office.

Not for one minute am I playing down the immense advantages that technology has brought; there is little doubt that business and individuals have benefited greatly. Let's remember, however, that it is the mind of man that has been its creator and whilst more astounding inventions lie ahead, there are other mental attributes that man has and which cannot be replicated or adapted by machines. Thus, advancement needs a blend of man and machine. What they do have in common, however, is fallibility.

Sometimes speed and sophistication in business can be fatal; like arsenic, however, in the right doses they can be beneficial. There's one Knight, for instance, a former champion of technology, that is no longer wearing shining armour. In just 45 minutes, due to a trading glitch, a US\$440 million loss was suffered by the market trader Knight Capital in 2012



(subsequently it was merged with another trader in 2013, after a protracted and painful demise). That loss equalled nearly twice the revenue generated by the company in its entire second quarter that year and within 24 hours three-quarters of the market-maker's value had been lost. In 2011 Knight had dominated trading in the New York Stock Exchange and Nasdaq-listed stocks and had been frequently given awards for its advanced information technology and high-speed trading systems. I appreciate that Knight was not alone and UBS and Facebook suffered from electronic gremlins in 2012 too. Worryingly, however, it has been estimated that pure high-frequency trading in US stocks (including algorithmic strategies) is fast taking over from "real money" stock trading. Bear in mind that Knight's downfall followed the installation of market-making software that suddenly sent erroneous orders to the market.

Many experts believe that we have brought on a high-frequency arms race, applying a military simile, and that the limits of the technology available are being stretched beyond a safe level. Despite the arrival of driverless cars, the aerospace industry – so far – has seen the drawbacks of aircraft automation. "Automation" became a buzzword on Wall Street a few years ago and joins the ranks of words and phrases that have been added to my "1984" list, named after Orwell's masterpiece in which the idea of controlling language as a way of controlling what people think came to the fore; the words and phrases on that list – not to mention others – are a seductive force in the thought process and their application in the offshore financial services industry has been profuse.

### ***Worlds Apart from Bonaparte***

Many of the competing offshore financial services jurisdictions, whose hype has almost reached the stratosphere, have usually been islands and the culprits have been a mix of their respective public and private sectors; in the case of the former, many bureaucrats,

unfortunately, start from a paucity of technical knowledge and a lack of appreciation of the big commercial picture. The practitioners, however, in the great majority of instances, have no such excuse and should know better. To those practitioners I say this: the professional, and not the place, with few reservations, is what counts.

My "Latin Primer: A Practitioner's Perspective" is a 27-page booklet which – besides delving into the culture of the Latin American region – suggests the key elements to look for in an offshore practitioner. It is a reflective work and like this quarterly, its purpose is neither the promotion of Panama nor my firm; the sole aim being to continue to provide a commentary and stimulate thought.

Understanding the practitioner's philosophy is vital and his working environment – not his location – becomes important. If he represents a large organisation then, of course, he becomes a piece on the chess board and learning about the organisation's philosophy, not his, is key; that might be a more difficult task.

In this interlinked global environment a keypad can co-ordinate a plan from the Island of St. Helena, deep in the South Atlantic, if needs be. The sheer isolation felt by Napoleon, however, once exiled there, is for another era. What truly matters is that the heart of any structure must be situated, if not the practitioner, where political stability exists and governance, laws and regulations are sound. Wherever the practitioner's location, of course, the perception of the place comes into play – although regular readers know only too well my views on perception.

The press often shapes perception and over the years it has fired many missiles at offshore financial centres; there have been many innocent casualties. Experienced journalists, whose library of knowledge has well-stacked shelves of measured opinions, can be respected for their views; however, regarding the rest, the late Italian-born British civil servant and poet, Humbert Wolfe, was sceptical:



“You cannot hope to bribe or twist,  
Thank God, the British journalist.  
But seeing what the man will do  
Unbribed, there’s no occasion to!”

Today, of course, the observation goes well beyond Britain’s borders. We have seen the results of inaccurate reporting brought on by poor research and often scant knowledge of the subject – in this case offshore business. Perhaps apprehension caused Joseph Pulitzer to say: “a cynical, mercenary, demagogic, corrupt press will produce in time a people as base as itself”.

There’s plenty of evidence of Wolfe Syndrome out there if one just looks at the coverage where the central theme is tax evasion, as financially-crippled governments seek revenue. Torrents of condemnation have been poured on the offshore centres in particular as developed countries decry the repugnance of citizens avoiding their tax man (legitimate avoidance is no longer palatable to governments in the West). President Barack Obama has said that inversions may be legal but they are not moral. He was referring to American companies which, in some cases, can reduce taxes by moving their US headquarters to a foreign country and have been labelled “corporate deserters” by the president.

Orwell wrote about political language being “...designed to make lies truthful and murder respectable, and to give an appearance of solidity to pure wind”. World affairs in this century bear testament to that but when it comes to pure wind some offshore centres, seeking profit and not political gain, with hype almost becoming hypnotic, are equally guilty. Ideally, the application of the regulations will be in capable hands too, because, as with pilots guiding ships through the Panama canal, wobbles at the wheel can lead to indecisiveness and worse. It’s no use premiers or practitioners (not just) on islands espousing the virtues of the financial services available at conferences, or through advertisements or articles in

professional magazines, referring in heady terms, for example, to “innovative legislation” that is “cutting edge” and, therefore, is guaranteed to keep the jurisdiction “ahead of the pack”, unless the pitch is matched with performance.

In fact, Frank Luntz, described as America’s top political wordsmith by The Atlantic, had this to say on the subject of communication: “There’s a simple rule. You say it again, and then again and then again, and again and again, and about the time that you’re absolutely sick of saying it is about the time that your target audience has heard it for the first time”.

#### ***Trusts and Transvestites***

Over-eager salesmanship driven by competition has seen a surge in copy-cat offshore legislation and products. The Bahamas, for example, has attempted to replicate the success of the company law in the British Virgin Islands (featured in my Private Client Adviser August blog) by producing legislation almost word for word; even spelling mistakes were, apparently, repeated.

Foundations are being increasingly adopted in common law offshore centres where they have been ripped from their civil-law roots and transplanted. As such, I predict that they will not flourish but will develop into a transvestite trust: clothed to appear as a foundation, but in reality being something else, with the courts attempting to hammer a square peg into a round hole. The end result might be “confoundations”.

But besides competition, the offshore centres have to wrestle with America’s Foreign Account Tax Compliance Act, a tax policy which has been eagerly replicated, if not exactly, by other countries. It has been met with unvarnished hostility by international bankers because of its complexity and attendant costs of compliance; its extra-territoriality is also a bone of contention and it is seen as invasive. It’s shifting compliance guidelines to date calls for



an apt Orwellian description of its obscure, tangled text that, in sum, “falls upon the facts like soft snow, blurring the outlines and covering up all the details”. In fact, Basil Zirinis of the American law firm, Sullivan and Cromwell, graphically emphasised its unpopularity at a conference for offshore wealth managers in Geneva when he suggested that if Islamist fighters threatened Baghdad, President Obama might “drop FATCA on them”. Sullivan and Cromwell have an absorbing history and one which, like FATCA, touches Panama. Perhaps the subject for a future Latin Letter column, the firm was established in 1879 by Algernon Sydney Sullivan and William Nelson Cromwell in the City of New York and became involved in international finance from the very beginning.

William Cromwell was hired in 1896 by the bankrupt French Panama Canal Company to sell its rights to build a canal; he was, in fact, instrumental in having Panama chosen over Nicaragua for a canal route across the isthmus. Rumour and intrigue abound concerning Cromwell’s involvement but many commentators agree that whatever the facts, he was key to not only Panama gaining the canal, but its independence also. Any controversial comments made by Mr. Zirinis, I

suspect, probably didn’t match the standard set by Mr. Cromwell about Central and American politics during his career.

As for the growing Islamist threat in the Middle East which has its origins linked with the West’s involvement there, I go back to my opening comments about a political blueprint that seems dated. It is just another illustration of why the emerging economic powers have become critical of the West, driving forward a view which is bucking against global rules traditionally made by the US and Europe. Is it appropriate for the West to represent, in key areas, the interests of the world? The US sets the rules for the internet, for example, but the traffic is no longer mainly American. One thing is for sure, the bank created by the BRICS (see “Embrace of the Dragon”) will have neither a European nor an American in charge, unlike the International Monetary Fund and the World Bank, both based in Washington.

Changing times (not just on the face of Bolivia’s congress clock) are likely to be of greater political significance in this decade, more so than those in the first decade of the new century. It would help, however, if we could guard against loose language and, for once, try to keep the Wolfe at the door.



*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. You can also read his Latin American blog on [www.privateclientadviser.co.uk](http://www.privateclientadviser.co.uk).*

*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.*

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