

Private Client HUB

Published in the United Kingdom by KNect 365, an Informa PLC business which is a leading business intelligence and academic publishing source. The Private Client Hub is the go-to-platform for insights into the state of the industry which has been curated by a specialist content team with contributions from industry experts.



AUTHOR
Derek Sambrook

PUBLISHED
17 Jan 2018

RADIOS, COFFEE BEANS AND TRUSTS

Businessmen and wealthy families in Latin America understand the vagaries of politics and the seesaw economies of the region.

Such uncertainties beg for both asset protection and succession strategies to be implemented, preferably by creating either a trust or a foundation and when I am not writing about Latin America, I concentrate on being a trust practitioner. Since, however, I entered the field of trust administration in 1971 the profession has been infused with unforeseen complexity and has also been confronted with the formidable hostility of the Organisation for Economic Co-operation and Development; even so, for a vast number of trusts the fundamental things still apply as time goes by, just as the message of the song in the classic 1942 Humphrey Bogart film, *Casablanca*, reminds us.

Radios and coffee beans spring to mind. One of the big selling items in the United Kingdom last Christmas during a family visit which I made were radios; those who reach adulthood during this century might need to look up the word in the dictionary. One leading department store in London, however, had 80 different types on sale, 53 of them portable models. This essential 1960s mains or battery-powered item had basic functions, just like trusts once had, in that you only had to reach out your hand to turn it on for almost instant listening.

Once upon a time there was just coffee. It was either black or white, depending on personal preference, but today things are no longer that simple. Coffee has become very exotic, thanks in a large part to clever promotion. We have solo espresso and doppio espresso; cappuccino has evolved into mochaccino and frappuccino. In other words, the coffee bean has been turned into an art form. It is not alone.

Marketing has done to the trust what a certain coffee chain from Seattle has done to cappuccino. But how much of this transformation in trusts is froth and how much is substance? Without travelling down the road of sham trusts, many of which are a bi-product of aggressive marketing, a pure trust can only exist when the client intends, in the first place, to give his assets to a trustee and lose ownership of them. Without the bean it isn't coffee. Without this animus, the trust is void ab initio and it is the responsibility of the practitioner, therefore, to explain the ramifications to the client of his intended actions when settling a trust.

Unfortunately, this has not always been the case. Unscrupulous practitioners might convince a client that provided it is baked properly, it is possible for him to have his cake and eat it. The consequences can be catastrophic in some instances, and it is little wonder that the concept of protectors appeared offshore several decades ago, the merits of which are, however, debatable – particularly when the calibre and integrity of a corporate trustee has been proven and is, therefore, beyond question. Marketing by some of those who have turned the role of protector into a profession, however, have played their part in sowing seeds of doubt.

A British law professor commented several years ago that marketing demands were pushing the trust concept beyond its fundamentals to the extent that its very essence was being eroded. Once upon a time a trust, like coffee, was a black-and-white issue: the concept was easy to understand.

Trust experts who have administered trusts and liquidated deceased estates since record turntables were the norm, not a fad, and "CD" was for bankers just shorthand for bank certificates of deposit, whilst APT was just a lower-case adjective meaning "appropriate" and not an acronym for asset protection trusts, will tell you that the source of many subsequent problems with settled trusts lie at the feet of unethical practitioners and salesmen (the roles are often combined) who, by their business approach, have meant that the acronym can also stand for Aggressively Promoted Trusts.

All of this is of particular relevance to me because many of the trusts I manage are for families in Latin America where the common-law trust is still today far from common, the exceptions being Belize and Panama. Usually, the needs are basic: protecting assets and putting in place a succession plan; in other words, a Casablanca trust. The challenge, however, is to keep things simple, and although, for example, Brazilians know their beans, do they recognise the real thing when presented with a trust deed – already an alien concept? This applies to many Latin Americans, of course, and it is important that if this solution is to be chosen rather than the civil-law foundation, or in conjunction with one, then the choice of professional adviser becomes of particular importance.

Assuming the trust is properly created and managed, this is where my reference to OECD hostility applies due to the organisation's rules regarding transparency, which impinge on the basic right to privacy, especially valued in the Latin American culture. And, of course, after the so-called shell company scenario, it is the offshore trust that is often brought to the whipping post by onshore governments. This is set to continue in a climate where the image of the offshore financial services industry – including Malta, a member of the European Union – is clouded by the degree of prejudice and perception onshore.

I am drawn to the story of the minister of the cloth who gave a talk at an Alcoholics Anonymous meeting. He put two jars, one full of water and the other containing alcohol, on a table and then produced a match box from his pocket, opened it and extracted a worm. The curious alcoholics watched as he first put the worm into the jar of water where it wiggled and twisted. He then took it out and dropped it into the second jar, asking his puzzled audience to watch carefully. Within no time the worm had disintegrated.

“What does that tell you about alcohol?” admonished the priest. “That you'll never get worms”, one of the alcoholics shouted out. And so it is. There will be successes in overcoming the hurdles of the Panama Papers and the Paradise Papers, but the hard fact remains that some people will never have their minds changed, regardless of the evidence. Practitioners must persevere and should follow the advice given by the British government in 1939 as the country prepared for war with Germany: keep calm and carry on.