



Watch with glittering eyes

By Derek Sambrook, FIB(SA), TEP
Managing Director, Trust Services, S.A.,
Panama



As Panama continues to attract business it creates the problem that Chinese premier Deng Xiaoping identified when he found that the trouble with an open-door policy was the number of flies it attracts, especially in a country where the Ministry of Economics and Finance expects statistics to show that the economy last year will have grown by 11%, due to the growth in construction, finance, mining, tourism, telecommunications and transport; the International Monetary Fund (IMF) projects a more conservative 8.5%.

A further boost is the free trade agreement with the United States of America which is now in force and, significantly, due in part to the growth in Latin American countries, a record amount of cargo passed through the Panama Canal last year. Thanks to the Canal, east is 8,000 miles closer to west, with the shipping distance between New York and San Francisco halved; and it was the Canal that opened up Asian markets to the US. Already by the end of September last year almost 334 million tonnes of cargo went through the Canal – up from the September 2011, total of 322 million. Goods going to or from the US (the main user) amounted to approximately, 144 million tonnes, followed by China (53 million) and then Chile (28 million).

The IMF has forecast that Panama should grow by 7.5% in 2013 with unemployment just above 4% and a net debt (percentage of GDP) of 35.6%; only Guatemala (29.4%) and Honduras (34.6%) will have lower percentages than Panama in the Central American region.

On the subject of attracting flies, last month in Panama a week-long conference entitled “Latin America and Caribbean Forum on Financial Transparency” was held which included local and foreign speakers representing officials from a variety of regulatory bodies, including law enforcement agencies and other financial experts. This month’s issue of *Offshore Investment* features Panama from various aspects but I would like to consider the transparency element of last month’s forum which focused on financial crime prevention and, inter alia, the revised recommendations issued by the inter-governmental body, the Financial Action Task Force. That said, linked with financial crime and the medium by which profits are transmitted, is the drug trafficking problem. Although the Central American isthmus is smaller than Texas, its seven countries seize almost 100 tonnes of cocaine a year, which is more than Europe does. Some 200 tonnes more go undetected and supply 90% of consumer demand in the US.

Anonymous companies, a tool of financial crime, were the theme in last year’s Latin Letter (*Peacocks on Parade – Issue 232*) and since writing that column, Belize has enacted controls on the movement of bearer shares; bearer share certificates must now be held by either the company’s registered agent or a professional intermediary in or outside Belize. Panamanian bearer shares, for the time being, are subject to no such restrictions although for me, from a professional perspective, the issue is academic; under no circumstances would I allow bearer shares of clients to be held anywhere other than in my firm’s safe custody (exceptionally, an approved professional intermediary is an acceptable alternative).

In that last column, I mentioned how both Panama and Belize have been criticised for allowing bearer shares, whether controlled or not, but, frankly, if we are looking at anonymity I would suggest that their role is more that of a red herring rather than the pivot of subterfuge. As I also wrote, the Panamanian brief written by Jason Sharman examining, inter alia, the use of bearer shares in relation to transparency was, unlike anonymous companies, very revealing. It is very clear that it would not be fair to target the state of Delaware in the US as the master villain of the plot, despite its regulatory shortcomings.

How does Panama fare in the financial crime stakes, particularly when it comes to secrecy? Professor Sharman answers that question in a detailed and methodical way over 14 pages, comparing the beneficial ownership standards relative to members of the Organisation for Economic Co-operation and Development (OECD) – particularly the United Kingdom and the US. Those standards are ones set by the OECD Global Forum on Transparency and the Exchange of Information for Tax Purposes and twins with Recommendation 24 (prevention of money laundering and terrorist financing) of the FATF.

Unfortunately, when applying principles of “consistency, fairness and objectivity” the brief makes bleak reading and highlights the plight of offshore financial services centres caught in the vortex of a strain of McCarthyism – only this time it is confidentiality, not communism, that is the new evil. Jason Sharman concludes that “an objective consideration of Panama’s legal and material compliance with beneficial ownership standards indicates that this compliance is superior to that of the UK and US”.

In the latest FATF Mutual Evaluation Review of the UK, concerns over mobile bearer shares were dismissed by government on the grounds that their use was rare and so special measures have not been put in place to avoid their misuse. But the FATF’s report goes on to give an example of how such a UK bearer share company could be used for tax evasion: “[A] non-UK national owning a yacht in the Mediterranean may register ownership of his yacht under a UK registered company thereby entitling the yacht to fly the UK flag. The shares in the company would be issued to a particular person and then be exchanged for share-warrants to bearer. The yacht would not attract the attention of the national authorities of the owner, who may not wish to display openly his wealth for tax purposes”. So there you have it, the Union flag flapping, and at the same time, perhaps metaphorically, slapping the tax authorities in the face.

Speaking of which, should we really take, at face value, the argument that the use of bearer shares in the UK is rare? Consider the website of a prominent corporate services provider that says that England and Wales bearer share companies are its most popular

package with UK residents. The website also says: “The trick behind Bearer Shares... is that they must be issued properly by a qualified and knowledgeable corporate director. As long as you do not have them in your possession at the time you are questioned, you can legally and truthfully say under oath, ‘I am not the owner of that corporation’. It’s always recommended that people keep their bearer shares. This way, if your nominee officer is ever questioned about your corporation, he can say the same thing: ‘Bearer shares were issued, I don’t know who owns the company, and I can prove it.’”

I won’t go into the finer points of bare trusts and substance over form, but because a share certificate for assets you own is not actually in your possession, for a “knowledgeable corporate director” to suggest that they are owned by the person in whose actual possession the share certificate is held suggests to me an IQ akin to a jelly fish. Yogi Berra, said: “In theory there is no difference between theory and practice. In practice there is”. Bearer shares are one thing: Yogi Berra shares are something else.

Martin Wood, former senior AML Compliance Officer at Wachovia Bank in the US, runs a private anti-money laundering firm called Hermes Forensics and he believes that UK bearer share companies are today one of the corporate vehicles of choice for organised crime, especially so in the case of criminal gangs from Eastern Europe.

As events unfold remember the late writer, Roald Dahl, who advised “And above all watch with glittering eyes the whole world around you because the greatest secrets are always in the most unlikely places”. Some OECD countries spring to mind, and which now seem more concerned with morals. The backlash against moral turpitude is palpable and offshore centres need to be sure that the rising level of scrutiny that is lapping the ramparts of privacy does not produce flood conditions.

Offshore centres will remain, as will secrecy, a part of the fabric – or fabrication – of life. Some, alas, will find their glittering eyes may fill with tears as they watch professor Sharman’s principles of consistency, fairness and objectivity continue to be selectively applied.

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European Magazine Services Ltd, Lombard House, 10-20 Lombard Street, Belfast, BT1 1BW, United Kingdom • Tel: +44 (0) 28 9032 8777 • Web: www.offshoreinvestment.com

PUBLISHER AND CEO
Barry C Bingham
barry@offshoreinvestment.com

EDITOR-IN-CHIEF
Charles A Cain
editorial@offshoreinvestment.com

EDITOR
Jenny L McDonough
editorial@offshoreinvestment.com

CONTRIBUTING EDITORS

Howard S Fisher

Vadim Fedchin

Derek Sambrook

Yongjun Peter Ni

editorial@offshoreinvestment.com

ADVERTISING
Iain A Stirling
advertising@offshoreinvestment.com

CONFERENCE
Louise M Gregg
conference@offshoreinvestment.com

SUBSCRIPTIONS
Louise M Loughran
subscriptions@offshoreinvestment.com

DESIGN & PRODUCTION
Dave Johnston
Gillian Devenney
administration@offshoreinvestment.com

FINANCE
Rosaland A Maguire
accounts@offshoreinvestment.com

MEDIA MANAGER
Gillian M Abernethy
administration@offshoreinvestment.com

International Bureau

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