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## OFFSHORE PILOT QUARTERLY

Published since 1997



*Providing a helping hand for those navigating the hazardous reefs and shoals of international business structures*

March, 2021

Volume 24  
Number 1

### **Pots, Kettles and Tumbrils**

Has the United States turned a corner in the fight against money laundering? A continual bugbear of mine through the years has been the country's refusal to accept that until it is prepared to apply the same rules that it expects others to follow it is the pot calling the kettle black.

Now, at long last, it would appear that the end is in sight for this gross hypocrisy since the Federal government - which always had the power to do so - has acted and approved the National Defense Authorization Act, requiring the disclosure of beneficial ownership of companies more often than not associated with those registered in jurisdictions offshore. The law also opens the door for a new whistleblower programme aimed at people who want to report potential anti-money-laundering violations.

Former President Trump had previously vetoed the bill for reasons unrelated to corporate ownership (including such extraneous subjects is not uncommon when bills are prepared) and more about defense operations and

national-security programmes contained in the bill. At the time, before Trump's departure from office, it was more a case of politics once again raising its ugly head. Nonetheless, this reversal had the desired effect.

Clark Gascoigne, a senior policy adviser for the Financial Accountability and Corporate Transparency Coalition, a Washington-based group in favour of ownership disclosure, is delighted with this outcome. He has said that "Anonymous shell companies where the true beneficial owners are unknown is the biggest weakness in our anti-money-laundering safeguard." Clearly, Mr. Gascoigne, has, like so many before him, stated the blindingly obvious. He is right to say that "It's the single most important step we could have taken to better protect our financial system from abuse."

In theory, then, beneficial ownership disclosure will be the same in Panama City, Florida, as it is in the city of Panama in the Republic of Panama where such controls are already in place. I say in theory, because the US Treasury Department must first issue accompanying, and essential, regulations (my regular readers will know

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my view that without them a lot of legislation is much like a car engine idling: you can't move forward until the gears are engaged). The Treasury Department has been given a year to produce them; will this be achieved or will the deadline be extended? In any event, in the case of existing companies they will be given two years to comply; I hasten to add that my own interpretation of the present situation is that both the regulations and the two-year rule are wrapped in the unspoken words "probably" and "expected".

Disclosure rules require the owner (or owners) to provide their names, birth date, address and government-issued identification number (driving licence or passport would suffice). The very same information, in other words, that is already available to the Panamanian authorities, but not the public, for companies formed in Panama. Similarly, in America only the Federal government's law enforcement would have access to the data.

There would be exemptions. Publicly-listed companies and many firms regulated by the Federal government would not need to report and nor would companies with more than 20 full-time employees, US\$5 million in annual sales and a physical place of business.

I for one welcome this development but certainly believe that not only is this road to hell paved with good intentions, but hurdles as well, in a country riven by toxic politics glaringly exposed recently in Washington. Insofar as politics goes, I am reminded of Graham Greene's view: "Sooner or later... one has to take sides. If one is to remain human". It is a quote from his prescient book, "The Quiet American". Sides were taken during the last US presidential election and, I should add, quiet Americans were in short supply.

The Organisation for Economic Co-operation and Development (OECD) which celebrates its 60th anniversary this year is alive and well in its Paris headquarters. Its tumbrils continue rolling, in its drive to decapitate all international tax advantages known to man. It therefore seeks a playing field that is not levelled, but dishevelled, and is preparing a public consultation on potential improvements to its ubiquitous Common Reporting Standard (CRS) which provides for the automatic international exchange of financial account information. The original version of CRS was published in February 2014 after which some automatic information exchanges began in 2017.

Financial institutions in those participating countries - this does not include the US - are required to collect account information relating to foreign tax residents or entities with such accounts and report the information to each account holder's domestic tax authority for scrutiny.

In 2019 information, apparently, was exchanged on 84 million financial accounts worldwide, involving assets worth billions. It is claimed that the programme reduced deposits held in 40 leading international financial centres by 34 per cent from their peak of US\$1.6 trillion in 2008.

The OECD consultation, which will not take place until later in 2021, has been brought to the boil because of the rapid increase in innovative financial products, caused in part by the affects the pandemic has had on economies. In particular, virtual currencies and other crypto-assets present a challenge to the CRS regime and so the quest for a single and consistent view continues; it is an ambitious (very) goal. The OECD is seeking the input not only from national tax authorities but from a wide range of outside experts, in order to come up with solid recommendations for changes and improvements that will improve the overall effectiveness of the CRS regime.

### **There will be Casualties**

The very fact that some of these financial innovations are recent must surely beg the question: has there been sufficient time to justify calling anyone an expert in such areas? Readers of my last December's Offshore Pilot Quarterly will know where I stand on this very important question. Herein lies the danger: financial services firms (particularly small and medium-sized ones) are frantically seeking alternatives to their (once) normal revenue sources, in some cases regardless of the risks to themselves or their clients. I would say this to anyone seeking expertise, advice and guidance this month: beware the guides of March, and for that matter, any other month. There will be casualties.

In London the Financial Conduct Authority (FCA) is charged with the regulation of financial companies, and it has warned of a potential "heightened" risk of collapse, due to the pandemic, that will affect several thousand of them. A survey taken of over 20,000 firms found that at the end of last October some 4,000 of them had low financial tolerance, increasing the real risk



of failure. And that was before last December when the pandemic worsened and new variants of the virus were found.

Optimistically, it is important to say that the FCA urged caution regarding its data, with the situation being in a state of flux following improved changes in government aid and the arrival of a vaccination programme. Prior to the survey, however, around 11,600 investors were already facing losses of at least GBP 237 million after the mini-bond operation, London Capital & Finance, went into administration. And one other thing the survey did reveal was that many investment management firms were battling liquidity challenges, with over half of them (59 per cent ) experiencing losses of net income. Subsequent events have hardly improved things.

Just as we must wait to see whether or not, firstly, the US achieves its ambition to fully expose corporate ownership of American corporations to the light of day and, secondly, whether the OECD is able to accomplish its goal with a revised CRS in place - one that does not look like a confounding maze of inconsistent rules with several, selective, interpretations - so we will have to also wait and see where this pandemic is taking us.

Wherever it does take us we have to be able to adapt (not an easy, if not impossible, choice for everyone). I call this the Flitcraft factor, the name of a character created by Dashiell Hammett in his novel "The Maltese Falcon". Flitcraft is nearly killed by a falling beam which makes him realise the randomness of life, so much so that he decides to vanish, becoming a case for Hammett's fictional detective, Sam Spade. Flitcraft drifts for years but eventually settles down to a new life but one that is very similar to the one he once had. Sam Spade observes: "he adjusted himself to beams falling." Those of us in business must have equal adaptability and fatalism.

Remember how currency experts once saw China as the real threat to the US dollar? Although China's share of global central bank holdings has increased, it still comprises only some 2 per cent of the total, due to its financial system being subject to capital flow restrictions. However, Jeffrey Frankel, a Harvard professor, says, "People assume that nothing the US does could turn into a situation where the dollar loses credibility. But that's wrong and you only have to look at Britain as a cautionary tale. Sterling used to be the world's reserve currency but lost its status, which shows that you can lose that exorbitant privilege".

Frankel, an economist, has pointed out the special status that has been enjoyed by the dollar: the capacity to maintain its value in the form of limited inflation and depreciation. But in 2021 we are faced with the randomness of the roulette wheel. This could not be more relevant when Professor Frankel names two other dollar advantages up to now: the size of the American economy with financial markets that are "deep, liquid and open".

If nothing else, history has shown us surprises - along with pandemics through the ages. As a reference point, history, of course, plays its part as a study of people, actions, decisions, interactions and behaviours. E.H. Carr, is the author of the 1961 book, "What is History", which has had a longer shelf-life than most books dealing with actual history have. He saw history as, basically, a problem-solving discipline: an aid and a reference point, in other words. It's not a question of seeking exact parallels, but, rather, detecting problems recurring through the ages and trying to find a final solution to them.

#### **A Rush to Destruction**

This is a time to challenge conventional wisdom (as if there have not already been recent examples of it being turned on its head), because it seems to me that this pandemic has not just put up obstacles, but broken down barriers behind which some assumed beliefs have stood for a very long time (a popular theme of mine). It is time for us to be more inner-directed; regular readers are aware that the Offshore Pilot Quarterly has always been for independent thinkers. If nothing else, as the confused crowds plummet from the cliff top, in their headlong rush to destruction, we should at least perhaps try to reduce their number.

The Russian writer, Anton Chekhov, when asked why he always wore black, replied: "I am mourning my life". Chekhov spoke of the art of saying serious and profound things in a light vein. Humour is not an antidote for the times through which we are travelling, but it can at least bring some momentary relief. With that in mind, and with all the political furore in the West, I tend to agree with the elderly Irish aunt who told her nephew that "The Lord will send you nuts when you have no teeth".

Panama has been given its share of nuts to chew, but so far it has not choked on them. It still scores very well in some categories on its handling of the pandemic. Many



controls implemented preceded similar actions taken in both, for example, the United Kingdom and the US. The thought that masks could still be considered optional in 2021 astounds me. My mother taught me to put my hand over my mouth when I coughed with a cold, not just politeness dictated it, but as so many other mothers knew, it was a sure way to help avoid spreading germs. Predictably, many reports reaching my ears about Panama's handling of the pandemic, and the consequent risk to life, are scurrilous: the centuries-old truism that "a lie can travel halfway around the world while the truth is still putting on its shoes" could not be more apt.

Subject to Flitcraft's falling beams, the World Bank expects this little republic to be among the leaders in Latin America in any economic rebound in 2021, with an estimated growth of just over 5 per cent. The Washington - based organisation estimates the global economy might expand by a comparative 4 per cent.

It is important to bear in mind that Panama's canal, which began as a "dry canal" created by the Spanish in the 16th century, when donkey trains carried gold from the Pacific to the Atlantic oceans, is today as important to Panama as oil is to Saudi Arabia or copper is to Chile. It is a global maritime hub and, despite the pandemic, is in constant use, the exception (for now) being cruise ships. By some accounts, however, the economic

contraction last year has brought about a drop in gross domestic product nearing 14 per cent. There's a lot of catching up to do.

Let it be said that Panama owes much of its initial good fortune at the beginning of the last century to the generosity of the US. This was not, however, motivated principally by benevolence at a time when this (once) "colony" of the US proved to be of strategic importance militarily. Panama, since then, has matured and moved on, forming important global alliances while the US, starting near to the end of the last century, has damaged many of its own.

There are lessons to be learned and the late Mr. Carr would have been the first to agree that education (distinct from the blackboard) is what survives when what has been learned has been forgotten. One important element of education that Panama should never forget comes from Nicolló Machiavelli: "The promise given was a necessity of the past; the word broken is a necessity of the present". Governments worldwide, not just in Panama, are being (some more than others) reminded of this harsh reality as the third decade of this century begins.

On a personal note, as we venture further into 2021, may you be confronted only by beams to be found on people's smiling faces.

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*Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Trust Services, S. A. which is the British face of international business in Panama. It is written by Derek Sambrook, our Managing Director, a member of the Society of Trust and Estate Practitioners and a Fellow of the Institute of Bankers in South Africa who was both a member of the former Latin America and Caribbean Banking Commission and an offshore banking, trust company and insurance regulator. He has over 50 years combined 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.*

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