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## OFFSHORE PILOT QUARTERLY

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### ***Chekhov's Credo***

In last quarter's newsletter I introduced readers to Drake Island which in this century would be struggling, as other Caribbean British dependencies are, with the mounting demands for transparency with the full backing of the Organisation for Economic Co-operation and Development. Perhaps "envelopment" is more suitable than "development" in its title as this bureaucratic behemoth, without any legal standing, smothers financial services centres (some of them islands) to the point of operational asphyxia, with its diktats. Having said that, I have commented before that it was the existence in the last century of offshore financial centres that shared some, if not all, of Drake Island's characteristics, that materially affected, and prejudiced, the OECD's approach; to deny this would make one just as guilty of bias as the OECD is with its twentieth-century broad-brush approach.

The Victorian poet Samuel Butler said: "I do not mind lying, but I hate inaccuracy". "Treasure Islands", written by Nicholas Shaxson, is a thoroughly good read and in some instances rivals the intrigue engendered by the fictitious Drake Island; however, accuracy and inaccuracy collide on more than one occasion. The subject matter is all about the world of international finance but its title carries a not very subtle subliminal message that is suggestive of "Treasure Island" by Robert Louis Stevenson, a book which I read as a boy about piracy and buried treasure. Had I not spent almost a decade on Caribbean Islands, perhaps I would assume that such places are the very termini of turpitude, where mountebanks, malfeasance and mendacity merge.

Offshore islands may sometimes serve as a convenient conduit, but they are more effect than cause: for that, look onshore (more later).

The American lawyer, G. Warren Whitaker, said in the June issue of Offshore Investment that "Americans need to understand that the neutrality and secrecy offered by offshore financial centres has served and continues to serve a legitimate and valid purpose in many situations. On the other hand, those centres could have been quicker to realise that the major democracies are in a different category from corrupt and repressive countries, and they could have been more discerning about accepting non-compliant clients from those countries, which would have avoided their being compelled to disclose them now." Drake Island syndrome?

Not just Americans, however, need to understand one's legitimate desire for secrecy of some of one's affairs – and I'm not referring to buried treasure on tropical islands where bankers substitute for buccaneers. It should be a right, one that must only be denied by a government when prima facie evidence warrants otherwise. No matter how intrusive Facebook and video surveillance becomes, the human yearning to have exclusive knowledge of some things will remain a fundamental part of ourselves. Anton Chekhov put it this way in "The Lady with the Little Dog": "He had two lives: one, open, seen and known by all who cared to know, full of relative truth and of relative falsehood, exactly like the lives of his friends and acquaintances; and another life running its course in secret. And through some strange, perhaps accidental,

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conjunction of circumstances, everything that was essential, of interest and of value to him, everything in which he was sincere and did not deceive himself, everything that made the kernel of his life, was hidden from other people”.

The depth of disclosure of one’s affairs to government is going to increase and in the last newsletter I had mentioned regulation as being either as light as a feather duster or as heavy as a sledgehammer. I reiterated the point again in November’s Latin Letter, using the analogy for the column’s title. The application of either approach requires more than a surface knowledge of the business being regulated, but so often that is what the offshore industry ends up with; not only does the wrong weight of control result, but the seasoned professionals, rightly, are offended by the (often) amateur hand applying it. This month’s Latin Letter (Unholy Deeds and the Devil) extends the criticism to compliance departments in the private sector.

### ***Drake Island – Part 2***

In part 1 the scene was set to illustrate the freewheeling environment in which corrupt behaviour and cowboy practitioners flourished. There was an inexperienced attorney general, a self-serving government minister and, with few exceptions, local and expatriate civil and crown servants willing to let sleeping dogs lie. One of those exceptions was the police commissioner and he is where we take up the story.

Arthur Bradfield had been liaising with the FBI’s Miami office for several weeks and warrants for the arrest of Burrige and Wilkes had been issued. Their whereabouts were unknown but it was suspected from circumstantial evidence that they were both in Costa Rica. The two Canadians had claimed that they were not the owners of Blighpark International and only served as advisers and consultants. It was difficult to prove otherwise from the public records. The amended Companies Ordinance permitted the registration of companies with only 1 director and a secretary. One person or a company could be both the director and secretary and in this case that

person was Martin Kelly. Shares did not need to be in the owner’s name because bearer shares or nominee shareholders were permitted. Effectively, with a lawyer or other third party serving as the putative director and secretary, ownership could be hidden. The island’s confidentiality statute thwarted the FBI and the cheated policy holders of Blighpark International. From records provided by the FBI it was clear that over the last couple of years the insurance company had deposited several millions in Drake National Bank, and Kelly was the common denominator.

Bradfield had retired from the Metropolitan Police in London after over 30 years service before taking up his appointment on the island 3 years earlier. He had reached the rank of Chief Superintendent in the commercial crimes and fraud section where he had worked for several years. He had developed a nose for trouble and Kelly was trouble. Although he had only met the Irish lawyer at public functions, such as the Governor’s frequent cocktail parties, he knew that the lawyer was close with Melvin Browning, the Chief Minister, who Bradfield thought was thoroughly untrustworthy. He wouldn’t be surprised if the Chief Minister wasn’t involved in the drug smuggling traffic that passed through the island and which stretched the Police Commissioner’s financial resources and manpower to the limit. Bradfield was astute, intelligent and determined to do his job well. Since his appointment he had made a concerted effort to crack down on the corruption in the police force. It made him very unpopular, especially when he proposed recruiting policemen from other Caribbean islands to try and dilute the incestuous family links that were inevitable on such a small island with a population of just over 4000 people. Juries, for instance, had members who were cousins of the accused.

Bradfield’s arch enemy was Austin Davey, Deputy Police Commissioner and officially designated as his counterpart. The expectancy was that, eventually, all key government posts would be filled by Drake Islanders. Many served in the role of counterpart, but the reality was that few counterparts had either



sufficient education or background experience to handle the work; their apprenticeships were long and often ended when they resigned in frustration. And so the farce would start all over again, fuelling the deep resentment already felt towards the expatriates. Davey was a rabid nationalist who supported George Cowley's opposition party that wanted Drake Island to have its independence. He was unreliable and underhanded with little dedication to his work. The Police Commissioner was certain that any sensitive information, especially of a political nature, that Davey got his hands on would be passed on to Cowley for use, if possible, against his sworn enemy, the Chief Minister, Melvin Browning. To compound matters, Bradfield's secretary was Davey's sister-in-law and so he preferred to personally type the confidential memorandum concerning Blighpark International. Even the extra copy he would keep for his records would not be filed in his office, but in the 4-drawer filing cabinet which he kept at his house.

The confidential memorandum had been finished early Wednesday afternoon and he intended to drive to the Chief Secretary's offices which were on the outskirts of Elizabeth, the island capital and centre of commerce, later that afternoon. But he was telephoned by the Drake Island Governor, Gerald Tewkes-Rigby, and asked to attend a meeting the Governor was having with the Director of Civil Aviation and a senior agent from the United States Drug Enforcement Agency. Doubtless more evidence had been found that airport staff were helping with the shipment of drugs destined for Miami or Puerto Rico. Bradfield decided to postpone seeing John Ainsby until the next morning, which meant that he would take the confidential memorandum home with him in his briefcase. It was likely that the Governor's meeting – if it followed the course of previous ones – would last a couple of hours so he wouldn't be returning to police headquarters afterwards. He checked his watch, snapped his briefcase shut, and left for the Governor's office in Elizabeth.

As he drove to the meeting, he went over in his mind what the possible significance of the Blighpark Insurance enquiry might be. His experiences made him sceptical about coincidences. Kelly represented the insurance company and perhaps its main bankers. Bradfield knew that before Martin Kelly's arrival on Drake Island in 1978 he had lived for about 5 years in the Cayman Islands. Following political tensions in the Bahamas, the Cayman Islands had been adroit at taking advantage of the situation and had offered attractive legislation, emphasising the fact that it was a highly stable British colony. In those days, however, Grand Cayman was also under-regulated and was a haven for financial manipulators. Today, it is a premier offshore destination in the financial services industry and, as one Bank of England official wryly put it, "it now displays the righteousness of a converted whore." Shortly after the FBI enquiry involved Drake Island, Bradfield, suspicious of the lawyer's link to Drake National Bank and Blighpark International, had contacted the Cayman Islands police to see if a background check would reveal anything. It most certainly had. Kelly had joined a one-man practice in Cayman after being recruited in England and within a year he had been connected peripherally with a mining fraud in Mexico. Kelly had been reprimanded by the law society in Cayman for unprofessional conduct. This was followed a few years later by a Cayman land price-fixing scandal on 7 Mile Beach near the end of 1977 which implicated several Caymanians, including high-ranking government officials. Kelly left several months later under a cloud and set up his office on Drake Island. The Cayman police file pointed to Kelly's involvement in the distribution of false documentation but he had left the Cayman Islands before that line of enquiry was opened. It was rumoured that he had earned several hundred thousand dollars for his part in the earlier Mexican mining swindle and, as in the case of Blighpark International; he had represented the offshore company at the centre of the mining fraud. It was just as well that he was a lapsed Catholic and avoided the confessional.



The policeman stopped in the small parking area in front of the Governor's office and got out of his car. He locked the brief case in the trunk and made his way towards the single storey white concrete building. He would visit the Chief Secretary first thing tomorrow, and as he walked up the office steps, he was thinking that the timing was just perfect. This Jeffries from the Foreign Office was apparently going to be looking into offshore banking controls and he gathered that the consultant had Whitehall clout; he was to report his findings to WIAD direct rather than the usual route through the Governor.

Bradfield hadn't met Alan Jeffries yet, but he would do so on Friday at the welcoming cocktail party that the Governor had arranged for the consultant. Who knows? If the suspicions laid out in his memorandum to the Chief Secretary were correct, Mr. Kelly might not find it so easy this time to extricate himself. Bradfield was looking forward to talking to Jeffries. Unfortunately, before the two could meet, Bradfield would be dead.

### ***Singing in the Lifeboats***

Would Jeffries make a difference? In this backwater of Britain's eclipsed empire it was only too clear that regulation and reality were strange bedfellows. The story might have ended, but not the discrimination and hypocritical behaviour of some OECD members. The United States of America, according to the Tax Justice Network, is now the third most secretive

jurisdiction for the purposes of corporate camouflage and it has failed to participate in the OECD's Common Reporting Standard drive. Its absence from the list of countries endorsing it (almost 100) is unexpected, just like the dog that didn't bark – whether it was the lady's little dog or not. In this instance the US, once again, not only rules the waves, but waives the rules. It should be at the forefront of CRS and in this instance the "indispensable nation" is the "indefensible nation".

But wherever men live and whatever they do, Socrates was right to remind us that the more men think of making a fortune, the less they think of virtue; and the greatest transgressions to date have not needed assistance from any offshore financial services centre, and where none of the worst examples of either corruption or fraud have taken place. I believe that will remain so.

Voltaire (an intellectual giant of the Enlightenment) arrived at the court of Frederick the Great and subsequently operated a bond-market scam that could have bankrupted the Prussian Exchequer. Needless to say, relations with the king became strained (as did so many of Voltaire's relationships) and doubtless it helped that the Frenchman viewed life in disastrous terms: "Life is a shipwreck, but we must not forget to sing in the lifeboats". A fitting thought, perhaps, for offshore financial services providers who, as far as the OECD goes, are in the same boat, and gasping for breath.

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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 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).*

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