



TRUST SERVICES, S.A.

*Fiduciary and Corporate Services to
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Dragons and Virgins

Offshore financial centres need thick skins. Not only are they under constant criticism from the governments of developed countries, those individuals who don't use their facilities are, generally speaking, less than flattering in their views of them as well. Monaco (in the public eye this year because of the death of Prince Rainier) is an example. Even before its present offshore profile as a miniscule money centre, when playing cards rather than presenting them prevailed, it was described by Karl Marx as a "robbers nest". Paul Theroux felt that it was a place for "anal retentive tax exiles" and the writer, Katherine Mansfield, saw only "rich fat capitalists".

Although perhaps not in such strident terms, China's Ministry of Commerce has been critical of another offshore money centre, this time the British Virgin Islands because of its strong connections with Hong Kong. The Asian dragon is not upset that some of the estimated 28 million Chinese tourists who will travel abroad this year might visit the BVI on holiday; its worry concerns banking not beaches and, more particularly, the Chinese money (not all of it legal) that could be passing through facilities provided by the British dependency's financial services industry which is frequently (and unfairly) known more for its shell companies than for the shells on its beaches and which allow backs to be often scratched rather than covered in suntan lotion.

It would be unfair to suggest that the BVI is the only offshore financial centre at which a finger can be pointed but because of its runaway

success as an offshore company location, it has earned a corresponding profile. A report published in 2004 providing foreign inward direct investment figures for Hong Kong tells its own story. It reveals not only the number of Hong Kong enterprises managed offshore, but the prominent role that BVI plays in their management. The single biggest investor economy identified by location was BVI, pushing mainland China into second place. By comparison, other offshore jurisdictions such as the Cayman Islands and Panama contributed a fraction of the BVI total.

In Hong Kong a single portion of shark's fin soup can cost \$75, but the Chinese government is more concerned with the sharks in suits that facilitate the return of questionable monies, often via BVI, back into the Hong Kong banking system as fresh, untainted funds. These funds are then usually invested in China. The mainland is convinced that Hong Kong is central to its money laundering problem which is responsible for hundreds of billions of yuan flowing through an underground banking system. One estimate suggests that China's tax-evading shadow economy represents about 15% of the country's declared GDP and its government's concerns are sufficient to have prompted involvement with the Financial Action Task Force, a group established by the Organisation for Economic Co-operation and Development. The scale of the Chinese money laundering problem is exacerbated by the fact that the country has 31 provinces, 656 cities, 48,000 districts and, as if that's not enough, the



authorities have to get their message across in seven major dialects with 80 spoken tongues.

Family Castles

In Chinese culture, Confucian teachings underpin the importance of family and it is obvious that offshore financial centres such as BVI are particularly attractive to businesses run by Chinese families. But it's not just Chinese families. The OECD has estimated that over 75% of all onshore registered companies can be described as family businesses. In another study it was discovered that around a third of the Fortune 500 listed companies had families in control and that these companies employ about 50% of the workforce in the industrialised world.

Business families worry about management and succession. They are concerned about who will be behind the desk and who will be behind the shares when the next generation takes over. The late Giovanni Agnelli, former patriarch of Fiat, Italy's industrial dynasty, once commented: "The company is an inheritance to be protected and handed on. It is the outcome of the next and each generation's commitment to the last". Then there is the need to ensure that the family castle, so to speak, the bastion of its financial welfare, has adequate protection.

Very often keeping their affairs private is important to families as part of their defences against rivals, ambitious regulators, unreasonable plaintiffs and corrupt politicians. Some families have resorted to surrounding their castle with more than the usual moat to defend themselves against adversaries. They have located their financial castles offshore on one of many islands where the moat has been replaced by a surrounding sea. Essential elements in their armoury commonly include trusts, foundations and companies that are readily available offshore. Many of those islands have replicated the financial services found onshore in addition to enhancing and modifying them in ways that are often appealing to besieged businessmen. They have created vehicles that Giovanni Agnelli could never have manufactured at Fiat;

they do not have wheels and need filing cabinets rather than garages.

Financial services onshore had their own fair share of innovation and adaptation centuries before the modern offshore financial centre came into being. Until it succeeded Amsterdam as Europe's financial centre during the Napoleonic wars, London's financial institutions, for example, had imitated developments elsewhere, especially in Italy which gave birth to European banking. The first bank in the world, Banco di San Giorgio, was established in Genoa and was the underwriter of Genoese trade. Machiavelli may have called it the first "state within a state", but Genoa introduced to the world the wonders of compound interest and the first promissory note. By one estimate, near the end of the 15th century as many as 4,000 out of 30,000 adult males living in Venice had bank accounts. Although there were no bank notes at the time, the first public bank, the Taula de Canvi, was founded in Barcelona in 1401. In Florence, Francesco di Marco Datini invented double-entry bookkeeping and in the middle of the 14th century the first cheques appeared. The earliest surviving Florentine cheque is one drawn on the Castellani bank in 1368 in order to pay a draper for black cloth for a funeral. Today, succession planning would perhaps see such a payment come from the offshore bank account of a trust or foundation.

During the 14th century Italian banks had drawn a distinction between accounts that earned interest and those that did not. Religious orders found deposits that earned interest were ideal for trust funds managed, perhaps, for orphans or monasteries where income, rather than capital, was required. Many cajas de ahorros (savings banks) in Spain that had originally been pawn shops set up by Roman Catholic charities in the 19th century, followed the Italian precedent.

Blank Looks

Many trust funds today are administered offshore where fiduciary services have become big business. Professional offshore fiduciaries



handling trusts and foundations of the kind used by family businesses and others are usually either accounting, trust or law firms. No one is in doubt about what services lawyers and accountants provide, but that is certainly not always the case with trust companies. Try telling a layman at a cocktail party that you work in a trust company; nine times out of ten a blank look is guaranteed.

The common denominator that these three types of professional share is the word “fiduciary”. It is a word that has been defined by academics and others over the centuries, but unlike the evolution of banking and its eventual migration to offshore centres, its fundamental meaning has not changed one iota since its Roman origin. A professional fiduciary controls assets that belong to another and from which the fiduciary cannot benefit beyond the receipt of fees and the refund of expenses for services rendered. Executors, trustees and foundation councils are clearly fiduciaries, but the reader will realise that the scope of the meaning really does have a very broad application and touches our everyday lives more than many of us realise.

A traditional trust company neither practices law nor accounting but, unlike either a normal accounting or law firm, its primary work will focus on the liquidation of deceased estates and the management of trusts and foundations. My use of the word “traditional” in the context of trust companies refers to those companies that follow the origins of the service and are, therefore, run on the same lines as trust departments or trust company subsidiaries of large banks. Lawyers and accountants may be employed, but whether they are or not, the senior officers of the trust company will be both experienced and have formal training in fiduciary law, accounting and administration, all of which is fundamental to their work.

But, unfortunately, when trust companies first started moving offshore the quality, in many cases, slipped. In some locations trust companies were often stretched to find qualified and experienced staff willing to give up their home comforts in exchange for humid climates

and difficult living conditions, despite higher incomes and tax savings. This meant that they often employed the wrong people in order to meet business demands. In addition to this, in some of those offshore centres the authorities were ill-equipped to deal with trust companies from a regulatory standpoint and often the trust legislation (if enacted at all) was inadequate. What’s more, they didn’t fully understand what a trust company did and how it operated. More blank looks but without the cocktails. It must be said that the picture today is considerably improved, but caution is still called for because just as the quality of fiduciary management varies, so does the government supervision of it in offshore financial centres.

Catching Mice

There is a particular style of music known as nu-metal, which has been described as “a genre of extremes” and one of the bands playing it is called Trust Company. No wonder there’s so much confusion about what trust companies do. The description of the genre, however, applies to many offshore trust companies that I have encountered. Even though they are involved with fiduciary instruments rather than musical ones, they were found to be out of tune when, shall we say, their own particular metal was tested.

Unfortunately, it would be wrong to assume that disappointment is confined to the minions rather than the mighty in the trust business, some of whose corporate logos loom large internationally and from which one assumes that a high degree of skill and expertise is guaranteed. Don’t you believe it. It would be a risky assumption indeed when, clearly, there are too many employees leaning on logos these days rather than supporting them, as many readers, I am certain, will have found out for themselves. When it comes to service, a famous logo won’t help if the office you use doesn’t have the staff to deliver the high standards expected from the image presented. One financial journalist, Stephen Schurr, warns readers to beware of investment newsletters that bear the slightest



gloss or sheen. Chuck Sullivan, Director of business-development marketing at Ford, the car manufacturer, describes a website (another often misleading source of introduction) as being like a living brochure. But in order to test the products, he says that people need to “touch the vehicle, to smell its inside, to kick the tyres and take it for a test drive”. It’s just the same with the offshore variety of financial vehicles. It is delivering the service that counts and in the case of an offshore trust company you must look beyond the gloss and sheen. Odysseus had himself tied to his ship’s mast before it passed the island of the Sirens so that he could hear their entrancing song without the risk of steering his ship towards the rocks and sure destruction. In much the same way, those seeking the services of professional fiduciaries must not be lured by clever and intoxicating websites, gloss or logos alone; nor the slick sales pitch that promises quick-fix solutions. It is important that professionals understand your needs and that you speak the same language. Sometimes literally. Besides the problems with an underground banking system

which I mentioned at the beginning of the newsletter, the Chinese had a serious problem with birds at Beijing airport. The authorities bought an off-the-shelf bird-scaring machine which had been manufactured in the United States of America. Unfortunately, the recorded sounds of American birds were alien to their Chinese relatives and ineffective. Equally, an off-the-shelf approach to professional fiduciaries can prove just as unsatisfactory. It’s important that you identify the ethos of the professionals you intend to engage to represent your international interests. This is best done by a personal visit. Ethos addresses issues of distinguishing character, beliefs, moral nature and codes of conduct and although the ancient Greeks did not have professional fiduciaries in mind when the word was first used, its commercial application is just as appropriate all these centuries later.

Do your research and go wherever it leads you. Remember what Deng Xiaoping once observed: “it doesn’t matter whether the cat is black or white, as long as it catches the mouse”.

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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 before making offshore commitments.

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