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Grave New World

Anton Chekhov said that every person lives his real, most interesting life under the cover of secrecy. One United States financial services company in Miami, Florida, has taken the Russian dramatist and writer seriously and built a conference room next to its elevators so that clients run less risk of being seen by the general office staff. I must say that my office in Miami had no such facility for our financial services clients, but I can understand its appeal in today's regulatory climate when those who place such a high value on privacy see it melting away just like icebergs are, according to global warming campaigners.

Naturally, privacy advocates are drawn to the remaining offshore financial services centres which still offer confidentiality. Those pockets of privacy are a magnet to them, just as Europeans in winter travel in search of tropical sunshine and some find it in Florida. Miami, besides its weather, has many financial services companies some of which are servicing the needs of those who have been victims of economic disruptions in Latin America, starting over 40 years ago when Fidel Castro took power in Cuba. Today, Miami-Dade county has a population of 700,000 Cubans. Latin American clients find a friendly and familiar environment in which their instinctive desire for privacy heightened by their concerns over security (wealthy Colombians, for example, fearing kidnapping) can be met. The city is a financial hub and a large number of corporations doing business in Latin America have established their

regional headquarters there; Miami now has one of the largest concentrations of multinational banks in the hemisphere outside New York.

It follows that this financial services prominence leads to interaction with offshore financial services centres. Many of the opulent homes in Miami in areas such as Key Biscayne, according to public records, are registered in the names of offshore companies. Foreign property buyers from all over the world often use offshore companies in order to buy their Florida homes so that they can legitimately shelter assets from estate duties. The use of such companies is sometimes frowned upon because the actual owners can remain unknown and this can be of concern, for example, to the Financial Crimes Enforcement Network, an agency of the US Treasury. The associate director for regulatory policy of FinCEN has said that although there are legitimate uses for such companies, "there is an opportunity for abuse when you can't get to the real owners". That may be true, but there is also an opportunity for abuse when you can get to the real owners. Ask those who have suffered from frivolous and groundless lawsuits. More on this subject later.

Long before Latin Americans and others discovered the attractions of Miami, however, the city had gained a reputation for questionable financial activities after Al Capone checked into the penthouse suite of Miami's Ponce de León Hotel back in 1928. And some twenty years ago, the city had its image tarnished by drugs and corruption that was the central theme of a popular TV series at the time, "Miami Vice".

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Now the city is projecting a softer image with such descriptions as “Gateway of the Americas” and “Centre of the New World”. The head of the Miami-based Washington Economics Group, Tony Villamil, has said that Miami is, basically, a Latin American city that happens to be in the US.

But before you go comparing, say, Panama’s or Liechtenstein’s financial services with those offered in Miami, ask yourself why some locals and not just some foreigners have their Miami properties registered in the names of offshore companies. It is because Miami, although it could be described as a Latin American city, is, as Tony Villamil has said, still in the US where the government’s mood since 2001 has made many people uneasy and its actions to thwart terrorism have caused some to remember the words of Edmund Burke: “True danger is when liberty is nibbled away for expedience and by parts”.

I would say that Miami is not the centre of the New World, but it is certainly a gateway both to the Americas and the New World. This New World, however, bears no resemblance to the one European seafarers discovered in centuries past. This world might, in fact, be described (with apologies to Aldous Huxley) as a Grave New World, brought on by terrorist attacks in the US which, besides many other consequences, have spawned both the Patriot Act and the Homeland Security Act. Perhaps Henry Kissinger’s words are an uncomfortable reminder: “The illegal we do immediately. The unconstitutional takes a little longer”.

Blind Men

At the end of the first year of a war the Athenians held a customary elaborate funeral for those who had been killed in it. Pericles, the outstanding politician and general, delivered the funeral oration one year which, besides anything else, was a declaration of Athenian ideology. It was delivered at a time when Athens was at the pinnacle of its power. Even so, Pericles had his own views concerning those threats facing the city-state: “What I fear more than the strategies of our enemies is our own mistakes”.

Now that terrorism’s shadow has fallen across the financial services sector, the activities of people using them – whether onshore or offshore – are being scrutinised as never before, particularly in the US. Anti-money laundering laws are being enforced more vigorously, particularly in regional banking centres. Regulators are targeting banks that they suspect have not improved their due diligence sufficiently in order to reflect the concerns manifested by the Patriot Act, especially in the case of vetting new clients. The US Justice Department has exercised its increased powers to seize millions of dollars from foreign banks, some of them headquartered in Israel, Oman, Taiwan, India and Belize. A number of officials at the US State Department, however, have expressed concern that these new powers that can strain diplomatic relations are being misapplied because the seizures have mostly involved fraud and money-laundering rather than terrorism, the declared target.

International bankers with many years of experience of financial crime issues argue that a lot of the rules introduced since 2001 to prevent terrorists using the mainstream financial system will not achieve their objective. They see customers having to pay more for services due to the cost of mandatory new extensive checks. When the Federal Bureau of Investigation tried to design a profile of how a bank might be used by terrorists it only came up with one main characteristic: large deposits with withdrawals of cash in a series of small amounts. According to the head of anti-money-laundering at one large American bank, such a profile matches a quarter of the customers of most banks. No wonder some fear that while icebergs might be melting, their bank accounts run the risk of becoming frozen, if not literally.

It’s not just broadened powers, but lack of knowledge that is worrying. Back in the 1990s when I was still a gamekeeper before returning to the fraternity of poachers as a trust and estate practitioner, it always concerned me greatly how little many onshore regulators understood the offshore element of financial business. And a decade later, my personal experience suggests



that little has changed. Lord Bowen may have been giving his definition of philosophy, but for me his words have most resonance when applied to the plight of inexperienced regulators coming to grips with the subject of offshore services: “A blind man in a dark room – looking for a black hat which isn’t there”.

Meanwhile, back in Florida with its strategically-located elevators, several banks have recently felt the tightening of the regulatory screws and more are expected to receive visits from regulators. Gateway to the New World, indeed.

The Nervous and the Naked

What troubled Pericles is clearly shared by a lot of Americans today who are coming to offshore centres such as Panama. Like a child with a comfort blanket, many of these troubled travellers seek assurance; in their case it is that some of their assets will not remain within a domestic environment with its attendant restrictions, uncertainties and erosions of privacy, whether real or perceived. During a speech in the British House of Commons in November, 1783, William Pitt the Younger argued thus: “Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves”. Last year’s satirical film, “The Stepford Wives”, was about slavery, only in that case the manipulation and control was of wives by their husbands. Many Americans over coffee have told me that the US government is trying to do the same to those it is answerable to, attempting to create Stepford lives and spread the creed of slaves.

Those concerns, of course, are in addition to the worries over civil lawsuits that can annihilate wealth and are reason enough to place assets beyond the reach of avaricious plaintiffs. A 2003 report from the US Congressional Budget Office on the tort system revealed that only 46 cents of every tort lawsuit dollar was going to the victims with the remainder consumed by legal fees and other costs. If further proof was needed of the current craziness, consider a case near San Francisco where the Rubin family filed

a \$1.5 million dollar suit for damages against the New Haven Unified School District because their son was thrown off the high school varsity basketball team. The coach was blamed for ruining the son’s chances of winning a university basketball scholarship and thus the possibility of a professional career with the National Basketball Association. It has been said that civil suits have become a sport, but this is ridiculous. In 1999, incidentally, a survey found that one in four US public school principals had been involved in a lawsuit. Ten years earlier the figure was one in ten.

There are 3 main reasons for this move offshore: Privacy, Protection and Probate. The first two have already been mentioned and probate issues were covered at length in last December’s Offshore Pilot Quarterly. There again, the gargantuan twin deficits in the US, rather than civil suits, controls and confidentiality are having unintended consequences also. A lot of people uncertain about the fate of the US dollar are opening accounts in foreign currencies via offshore financial services centres. They are following Otto von Bismarck’s advice and want to have two irons in the fire. Once they do this, of course, they are then exposed to other offshore opportunities as well.

Much of late has been written about the US dollar. John Kenneth Galbraith said that “if the history of commercial banking belongs to the Italians and of central banking to the British, that of paper money issued by a government belongs indubitably to the Americans”. Paper money, in fact, has its roots in China where the earliest banknotes were printed over 1,000 years ago. (It was Croesus, king of Lydia, who invented coinage.) Europeans had to wait until 1661 for paper money to be introduced when Stockholm Banco in Sweden issued banknotes. It is the Bank of England, however, established in 1694, that is now the longest continuous issuer of banknotes in the world.

Americans have worried about the value of their paper money before now. In order to finance the 1776 war of independence the colonies issued a considerable amount of paper money which very quickly became devalued. The deep mistrust of



paper money was such that the 1789 US constitution banned the issue of paper money by any state; in the 1830's, Andrew Jackson would not allow the establishment of a central bank and it was not until 1913 that the US had one.

Paper money is fine, however, when you follow the simple 1817 dictum of David Ricardo ("Principles of Political Economy and Taxation"): "It is not necessary that paper should be payable in specie to secure its value, it is only necessary that its quantity should be regulated". Besides any other concerns, we are asked to believe in the credibility of something with no inherent value. Here there is a clear parallel with diamonds that are perceived to be precious mainly due to the South African company, De Beers, best described as lord of the (diamond) rings. To quote Nicky Oppenheimer, Executive Chairman of De Beers: "We're selling something which has immense value to the person who buys, but which has no real value". De Beers has a controlling interest in the rough diamond market through its Central Selling Organisation in London. It can, therefore, heed Ricardo's words by regulating

supply and then, with the help of masterful marketing, distort the value.

Next month will be the 200th anniversary of the birth of Hans Christian Andersen, author of "The Emperor's New Clothes". In the tale, no one wished to state the obvious to the king for selfish motives except a child with a frankness born of innocence. But the king refused to admit that he had been duped and that the clothes he was wearing were illusory. Naked, he continued to ride in the procession in his carriage with a page holding a mantle that wasn't there. Common folk and not just kings can be taken for a ride sometimes.

Is it possible to write over 2000 words about the main attractions of offshore financial services centres without mentioning personal income taxes? Many onshore regulators would say that it was not, even although I just have. Times have changed and so have the principal reasons why assets are migrating offshore. It's very clear to me, but then I'm not one of those looking for a black hat. My Panama hat fits me just fine.

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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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