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Commentary on Matters Offshore

Hats, Hacks and Herodotus

In August, at this year's British yachting regatta in the Solent off Cowes on the Isle of Wight, around 8,000 sailors competed over some 30 different courses at this famous international event which was first held in 1826 and which is the longest running regular regatta in the world. It is high on the British social calendar and during the week in which it is held, after the sailing is over for the day, there are numerous public events, cocktail parties as well as yacht club balls in Cowes. If there were no competitors from Panama this year, the country was still represented, albeit in a different way, by its hat. In fact, rather than going by the date of the official start of summer in Britain (21st June) or looking for the first rose of summer, a far more accurate indicator that summer has arrived is the appearance of the Panama hat. Panamas are as synonymous with the English summer as poached salmon, punnets of strawberries and Pimm's, despite the fact that it was an American, Theodore Roosevelt, who immortalised the hat by wearing one as he toured the construction of the Panama canal at the beginning of the last century. Having recently read some pretty distorted commentary concerning Panama's financial services in a British newspaper, I mused that perhaps one or two of the journalists, doubtless to be found in the crowds at the Cowes seafront, were wearing Panama hats and, if so, those hats were probably the closest they had ever been to the isthmus, much in the same way as I suspect that the writer of the newspaper article had no first-hand knowledge of Panama either. This made me think about Herodotus, the Greek father of western history, who appreciated that you could not view

things objectively from a detached distance and that if you wanted clarity, to understand and comprehend fully, you had to commit yourself to close examination of the facts. More about Herodotus later. There again, if visits are only fleeting ones they can be still less than ideal. Consider, for instance, passengers on ships who make the 10-hour transit through the Panama canal's six sets of locks; it doesn't follow that the estimated 250,000 people per year who are on board those ships, even if they do disembark briefly, can get a grasp, a taste, of the country when they are, literally, only passing through it. Crossing the Continental Divide does not necessarily help one cross a mental divide. So it is when the analysis of a country's offshore financial services industry is made in a distant and disengaged manner; worse still, if superficiality is combined with bias, you tend to end up with the sort of newspaper article which I read.

Paul Gauguin, the French impressionist painter, famous for his Tahitian portraits and landscapes, fell victim to inadequate research prior to arriving in Panama in 1887 where he had hoped to live idyllically for the rest of his life on Taboga, an island some 10 miles off the Pacific coast. It was part of Gauguin's escapist dream of finding a lotus-land where his artistic imagination could be fired. After reality had set in, however, he was reduced to working as a labourer on the fated French canal project just to eke out a living. Panama, unfortunately, for both the painter and France proved to be a disaster.

One wonders what picture, metaphorically speaking, Gauguin would paint of Panama today. Taboga remains a beautiful island and the canal, thanks to the intervention of President Theodore



Roosevelt, is a thriving waterway and a vital part of the country's \$10 billion economy. It handles 4 per cent of world commerce, contributes nearly 10 per cent of Panama's GDP and is the country's largest employer. The canal, combined with the service and banking sectors, in fact, produce 75% of the country's GDP. Banking and financial services in Panama, however, have more than competition to contend with. Readers of this newsletter for the past several years will know that a recurring theme has been how the traditional privacy and tax privileges found in most offshore financial services centres are suffering from gradual erosion due to the sustained efforts of industrialised countries that see these centres posing a real threat to their tax bases. The embodiment of these efforts is represented by the Organisation for Economic Co-operation and Development, based in Paris, which is the club and mouthpiece of the industrialised countries. The first casualties in the OECD's campaign have been the offshore centres that are dependencies of OECD members and which do not, therefore, enjoy independence. In 1997 this newsletter observed that Panama, a country which enjoys sovereignty, would not suffer the fate of several prime offshore centres in the region which will be constantly susceptible to compromise because of their dependence, by definition, on a sovereign power with its own agenda of priorities. Events during the past 5 years, and especially recently in the Cayman Islands and the British Virgin Islands, have borne witness to this. The Cayman Islands government was recently informed by Laurie Lee, the British government's representative to the European Union, that the jurisdiction does not qualify for any European Union financial aid programmes and is not entitled, therefore, to representation before the Union, effectively excluding the Cayman Islands from discussions concerning a variety of important issues, the most significant of which for the Cayman Islands is the European Union's savings tax initiative. The Cayman Net News recently lamented that "with no representation, this initiative, stated to be finalised by year-end, will be endorsed by EU members and signed into law. At this point, there will be no negotiations...". But I contend that the issue of representation is academic. Cayman will succumb to the British government's authority

and it is clear that the United Kingdom is going to push hard for the adoption of the EU's tax information exchange initiative in its dependent (now called Overseas) territories – regardless of the outcome of OECD negotiations with other foreign jurisdictions (see our June issue).

Besides sovereignty, Panama enjoys a unique geographical position not shared by any of the region's offshore centres. Its pivotal location between North and South America and its access to both the Atlantic and Pacific oceans means that it is of considerable strategic importance. Geopolitically, it is of equal importance, testing diplomacy with its canal having China as the third-largest user after the United States and Japan and where Taiwan, China's alter ego, has a strong presence as well. Taiwanese firms have invested \$450 million in Panama in the past 5 years and their government has given generous aid to the country. Panama, for its part, has sponsored Taiwan's quixotic efforts to re-enter the United Nations. So Panama cannot be identified with small Caribbean islands with a heavy dependence on bank accounts and beaches, any one of which could be absorbed without trace by Panama's Canal Zone alone (exceeding 200,000 acres in area).

What has resulted from the OECD's tax and transparency drive has been a forced re-assessment by some international practitioners and their clients of alternatives that might not have been considered a few years ago but which are now becoming increasingly attractive. The hard facts are that all British Overseas Territories (and, to a lesser extent, British Crown Dependencies), some of them with significant offshore financial services industries, will increasingly become hostages to the dictates of Whitehall. "I may have said something yesterday, changed it today and will change it tomorrow. This does not mean that simply because I made a statement yesterday I should adhere to it". This is not a quote from Alice in Wonderland, but from Ayatollah Khomeini, and they are sentiments which could be just as easily expressed by a Whitehall mandarin in the context of the UK dependencies. It all leaves the sort of impression that Paul Gauguin, self-taught impressionist painter, seaman and financier, could never have depicted on canvas, despite his vivid and wild imagination.



Better Vision with a Blindfold

Panama hats, as those wearing them in Cowes on the Isle of Wight during August can attest, are excellent shelter from the sun just as Panama itself continues to be an excellent shelter from intrusions into privacy for those using offshore financial services. Some of those affected by the OECD's ideology have taken a fresh look at Panama despite entrenched perceptions which have often been supplemented by the prejudice of superficial scribblers posing as objective financial journalists. Perception and prejudice are colossal challenges in the offshore world and a first step, literally, is to see for yourself.

We should take our example from the ancient world, which brings me back to Herodotus. It is small wonder that he advocated not relying on facts gleaned from a detached distance after being fooled by the Arabs in the 5th century BC who, at the time, controlled the spice trade. Spices were an extremely valuable commodity; the Egyptians used cassia and cinnamon in embalming and Europe imported spices as a food preservative before Rome was even founded. Pepper ranked alongside gold and silver as a precious commodity. Chaucer sang the praises of putting nutmeg in ale (nutmeg to this day remains an essential ingredient of Coca-Cola's secret formula) and European sailors coming ashore in parts of Asia in the 16th century cried, "For Christ and spices". The Arabs were making a fortune and so in order to protect their position and to continue to reap incredible profits as middlemen they devised elaborate stories. They told Herodotus that cinnamon was found only on a mountain range in Arabia where it was guarded by vicious birds of prey who made their nests from cinnamon on steep mountain slopes. The Arabs would feed the birds with large heavy pieces of fresh donkey meat which the birds would carry back to their nests. The nests would then often fall to the ground under the weight of the meat at which point the Arabs would retrieve the cinnamon, bravely risking injury from the talons of the enraged feathered guardians. Such subterfuge would surely humble today's international fraternity of fraudsters. It wasn't until the Roman historian, Pliny, in the 1st century AD, who, unlike Herodotus, resolved to find out for himself, that this supreme example of Arabian cunning was exposed.

Coffee, like spices, has a message also. Hawaii is famous for Kona, which is considered by aficionados to be the world's finest coffee. But in 1993, Michael Norton started importing coffee from the highlands in Panama into the United States and then re-sold it as Kona. The Kona con was, in more ways than one, swallowed by many coffee connoisseurs who couldn't tell the difference. Perception and its handmaiden, prejudice, had been blindfolded, a circumstance from which great advantages can often flow, particularly in business. Norton went on to make a profit of around \$15 million before eventually being jailed for 30 months.

Accepting that not all Panamanian coffee is the quality of Kona, it is also right to say that not all offshore financial services in Panama compare in quality to the best to be found, say, in London or Zurich. But that quality, as is the case with coffee, can be found in Panama. If you are impervious to the Kona factor and predisposed towards a belief in cinnamon nests, you might need to follow the Pliny principle and find out for yourself. And if the coffee turns out to be as good as Kona, why not drink it?

A related footnote to this quarter's commentary, one which is tinged with irony, concerns the administration of offshore trusts in one particular premier offshore centre where unregulated professional trustees operate. What's more, there is no defining law even covering trusts for those settlors or beneficiaries resident in the jurisdiction. In other leading offshore centres professional trustee regulation has either been introduced or strengthened in recent times (note moves in this area in the Channel Islands) and as a consequence of this lax state of affairs, some trust companies have chosen this particular jurisdiction in order to avoid the need to comply with licensing requirements elsewhere. Consequently, this offshore centre has made itself prone to questionable trust business, much in the same way as Montserrat, before regulation, was a haven for hustlers operating offshore banks with balance sheets that didn't balance.

You may well think that this jurisdiction is perhaps located in tropical climes where bankers and beaches, secrecy and sand flies, rather than snow, are prevalent. Quite the opposite. The offshore centre is Switzerland, bastion of the private banker and renowned for the quality of its

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financial services; a repository of the fortunes of some of the rich, famous and infamous. Trust management has basked in the glory of Switzerland's justified reputation for banking, even though, unlike banking activities which are covered by legislation and regulation and which define the parameters of confidentiality, professional trustees have no such anchor.

In Panama, and many other offshore centres, by contrast, trustees are licensed, regulated and supervised. Professional trustees in Panama fall under the banking laws which also subjects them to strict confidentiality rules. Panama stands in the shadow of banking centre giants such as Switzerland and, most certainly, it is no Wall Street; but it can provide a wall from the street as

far as privacy is concerned and which embraces professional trustees. And Switzerland is an OECD member, the very organisation which has castigated some offshore centres for poor supervision of trust business. The Bible puts it nicely: "Physician, heal thyself".

It is often the case in the offshore financial services arena (as it is with life in general) that if one is to take an objective view of a situation, things will be seen to be neither black nor white – unlike the pages of that British newspaper in which I read the provocative Panamanian article while sipping my Pimm's on the Isle of Wight. Perhaps the best one can hope for, in the words of Procol Harum, is a whiter shade of pale.



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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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