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Commentary on Matters Offshore

Panama and the Tunnel Dwellers

Mark Antony came to bury Caesar not to praise him. In my remarks which follow, I neither attempt to praise Panama nor bury it under a mountain of bias, but to just look for some balance in the way Latin America's largest financial services centre is viewed. The reason for the focus on Panama this quarter is because the country will celebrate its 100th anniversary in November.

In comparison with developed countries, the Republic is still in its infancy as a nation and democracy, although firmly rooted, is still, in relative terms, a sapling. The Republic of Panama separated from Colombia in 1903 after having chosen to become a part of it 82 years earlier in 1821 at the end of Spanish rule rather than join the union of Central American provinces. The choice at that time is revealing because Panama has often displayed a reluctance to be assumed to be an integral part of Central America. Panama has had its setbacks, successes and excesses and there is no doubt that much remains to be improved, but it is also true that much has been improved. What Panama must wrestle with – and in this it is not alone – is the ever-present jaundiced perceptions which it must try not to unintentionally reinforce whenever it can. People with tunnel vision will be hard to win over and will always believe that light at the end of the tunnel is probably a runaway express train rather than evidence of progress. But people's opinions can be changed over time. A Tunisian physician once described a particular drink as addictive and that its abuse "has taken on the characteristics of a plague – it is not only confined to men, but has even spread to women

and children. The situation is becoming very dangerous". He went on to say that the abuse "takes the form of an imperious and irresistible craving". This was Tunisia in the 1930s when tea was first introduced.

Times and opinions do change, but cultures, however, do not. An English comedian once said that Americans, for example, think that irony is a metal while the British think it's one of life's essentials. Traditions, as well as temperaments, differ. At All Souls College, Oxford, there is a hunt for a mallard duck every 100 years (which puts Panama's infancy in perspective) which commemorates the finding of a duck that was hiding when the college was being built in 1437. North of the English border, in Burghead, Scotland, there is the annual Burning the Clavie ceremony. The event is held on the Julian calendar's New Year's Eve and requires a whiskey barrel to be filled with tar and wood chips which is then set alight and rolled up and down the streets. Whilst seen as, perhaps, curious in the United Kingdom, a country which is a member of the Organisation for Economic Co-operation and Development, I wonder if the search for a duck in the ruins of the original city of Panama or the rolling of a blazing barrel down Avenida Balboa, the modern city's seafront boulevard, would perhaps be seen by many foreigners in a different and far less flattering light? And in Swaziland, in Southern Africa, despite the modern environment found in the capital Mbabane, with its shopping centres and office blocks, the country is still governed by a monarch who can rule by decree and chooses his brides at the annual Reed Dance



(King Mswati III had seven wives before the last annual dance). Swaziland emulates the African style of authoritarian government based on tradition and community, as in Asia – if perhaps sometimes taken to the extreme. The king is expected to have many wives and children but needs no encouragement from certain products heavily marketed over the internet; he gets his inspiration from the Ncwala ceremony when a black bull is punched to the ground by young warriors and slaughtered (which sounds a bit like Wall Street not so long ago) after which the king, naked, sits on the dead bull to renew his virility. Nubile maidens and dead bulls were the furthest thing from the minds of the businessmen at the meeting which I attended in Mbabane, but they are of immense cultural, if not commercial, importance to the social fabric of Swazi society. In China, it is the rule of man, rather than the rule of law, which prevails and relationships, rather than rules, are the key in business matters. The Chinese refer to such relationships as *guanxi* and it is applied in commercial transactions. The west may have known contract law since the 16th century, but it is not a feature in Chinese business where the written word is not inviolate. All of this, of course, sends mixed signals to westerners doing business in China. Literally. Sometimes you can encounter the sight of traffic lights turning green, amber and red and yet the traffic policeman on duty at the junction is giving the traffic conflicting hand signals which results in confused drivers often crashing. Two professors at the University of Hong Kong explain this phenomenon by identifying the traffic policeman as having a physical *guanxi*-like relationship with the drivers as opposed to the robotic traffic signals which represent an inanimate rule-based approach. Over time, as China moves more into the global mainstream, the traffic policeman will disappear from those junctions. In Japan there is *wa* which represents harmony in relations and foreign businessmen need to understand its importance. Japanese business meetings, therefore, strive to emphasise areas of agreement in a conflict in the hope that from the positive will flow a resolution of the problematic. Perhaps this explains why the United States has 15 times as many lawyers per capita than Japan.

Not so Many Pig-Slaughterers Any More

In judging other countries, therefore, whether it's Poland or Panama, it is so important to have a reasoned, rather than reactionary, approach which brings to mind someone better known than the Tailor of Panama who was in the Republic earlier this year. The visitor was the original James Bond, Sir Sean Connery, and the only tailoring which occurred, I'm sure, was to his itinerary. He apparently had a grand time, promising to return. Those with a taste for both the sensational and the sinister (and who exercise the mouth more than the mind) will doubtless suggest secret visits to bankers by the subjugator of Dr. No and other evil masterminds. Perhaps even the possibility of tax-avoiding antics which would have made the erstwhile Moneypenny blush but which couldn't be further from the truth in the case of Sir Sean who not so long ago, and very publicly, gave full disclosure of his tax affairs. Even so, isn't that why most wealthy people come to the Republic of Panama? It certainly wouldn't be, however, because it's easier to open bank accounts here: in order to do that you should think about visiting some countries belonging to the Organisation for Economic Co-operation and Development.

Panama's regulatory framework has seen a gradual tightening of the supervisory controls affecting financial services over the past few years. Following the introduction in 1999 of a new banking law, the International Monetary Fund has praised Panama for its money laundering controls. In the United Kingdom, despite the established infrastructure in place, money laundering has recently been described by Transparency International (an anti-corruption body) as "staggeringly large". It is thought that each year around US\$28 billion is laundered through the UK banking system which has prompted comparisons with the effectiveness of money laundering controls in some of the UK's banking-centre dependencies. Transparency International observed that "the UK can do more in particular by defending the well-regulated dependencies from unjustified criticism". Panama's banking community suffers its own share of unjustified criticism in that context.

Effective money laundering controls are even more important today when the profile of money



launderers has become less obvious. These days, they're far more likely to carry brief-cases rather than suit-cases of the sort once seen in banks in the Cayman Islands and elsewhere. The late Robin Cook, an old Etonian and novelist, was perhaps a more obvious suspect. He was described in his obituary in *The Daily Telegraph* of London as "a pornographer, organiser of illegal gambling, money launderer, roofer, pig-slaughterer, mini-cab driver and agricultural labourer". I doubt if those members of senior management at Enron (more later), however, who frequented its boardroom and have been indicted for money laundering, have anything in common with the late Mr. Cook beyond illegal pecuniary practices.

Although the general war on terrorism has inescapably impacted on confidentiality – one of the bedrock tenets of traditional offshore financial services – there are still lawful ways in which it can be preserved. One thing is sure: the offshore world has weathered several storms of adversity in the past few decades but has kept its instinct for survival in the same way that Zeno's tortoise always kept ahead. Zeno, the ancient philosopher, devised a mathematical paradox in which a tortoise, which is given a head start, beats Achilles in a running race; even although the distance between the two narrows, Achilles cannot overtake the tortoise. The offshore centres have also been subjected over the years to a barrage of biased reporting with many misleading stories having been included with those which were objective and accurate. Earlier this year the 152-year old *New York Times* was in the spotlight for inaccurate reporting by one of its journalists, Jayson Blair. A lot of his stories were either compilations of other reporters' efforts or sheer fiction (like, apparently, his college degree). The *New York Times* itself, of course, has got it wrong before, once praising Josef Stalin's virtues and Fidel Castro's democratic principles, but the Blair scare leaves one with the disquieting thought that the newspaper might have other charlatans working for it. And if it can happen to prominent and mature purveyors of information... Another reminder to be cautious in accepting at face value the veracity of every article one reads about offshore business.

Negligence and Profusion

In considering the differences (tradition, temperament and culture) between developed and developing countries, it is equally important to understand how alike they are. The European Union Commission has been embarrassed by revelations that were once perceived by proponents of tunnel vision as being problems found only in sunnier climes where palm trees, rather than birch trees, flourish. The European Court of Auditors has recently found that every year some 5 per cent of European Union payments (around US\$5 billion) wind up in the wrong hands. Expenditures made in respect of the Common Agricultural Policy are a case in point and there is the story of the British farmer who, for years, claimed subsidies for land which, according to the map grid reference which he gave, was somewhere off the coast of Iceland. In more ways than one, this has turned out to be just the tip of the iceberg. Not just farmers but financiers have fallen under the spotlight. The European Union Commission discovered that a group of bankers, calling themselves the Lombard Group, had, for years, operated a price-fixing cartel by which, inter alia, lending and deposit rates were fixed. They held regular lunches at the Hotel Bristol, Vienna, not to be confused with The Bristol Hotel in Panama, because, rather than being a cabal of Central American bankers, the Lombard Group represented 8 Austrian banks.

Right across the developed world the boom of the 1990s has exposed a degree of dishonesty, incompetence and vested interests which has taken many business commentators by surprise. It would seem that the extremes, in every category, however, are most apparent in the United States. And the names of the top 10 recalcitrant US companies involved (not to mention 12 Wall Street investment banks) illustrates this: Enron, WorldCom, Xerox, Adelphia, Tyco, ImClone, Qwest, Global Crossing, HealthSouth and Ahold. The charges against senior management of these companies (such as Chairmen, Chief Executive Officers and Chief Legal Officers) include money laundering, fraud and conflicts of interest. It seems that Adam Smith's 18th-century admonition has been forgotten by many directors: "The directors of such companies, however, being the managers



rather of other people's money rather than their own, it cannot be well expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Negligence and profusion, therefore, must always prevail". One of the things that needs to be done is for governments to enforce existing trust law upon which the fiduciary duties of directors is based. The directors, in turn, need to understand what being a fiduciary means. Furthermore, when auditors are expected to monitor accounting reports in a detached manner, it is surprising to find them having often been given very lucrative consultancy work by the company they are auditing. This can be the slippery slope down which a fiduciary duty to shareholders can tumble. This is good advice to give to developing countries; how sad it is that it is needed in so much of the developed world as well. So developing countries in Latin America, or elsewhere for that matter, are not the sole

repositories of greed, corruption, vested interests, dishonesty and incompetence. Their presence is just sometimes less obvious in the developed countries which have matured and where although some may search for ducks every 100 years, they no longer need traffic lights backed-up by policemen. More objectivity and less subjectivity is certainly important when considering Panama's offshore financial services which continue to attract growing interest as doors of opportunity close in many other offshore centres.

Still, I'm an optimist and believe that entrenched biased views can change. After all, besides tea in Tunisia, Senator Morris Sheppard during prohibition in America said that re-legalisation of alcohol sales was as likely as a humming bird's flying to the planet Mars "with the Washington Monument tied to its tail". Three years later prohibition was repealed. People, I suggest, in judging Panama, shouldn't repeat the monumental mistake made by Senator Sheppard.

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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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