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The Naked Life

In a recent issue of Offshore Investment, a magazine for which I am a contributing editor, an article appeared which asked: who controls the company? The question was raised in the context of Europe's quest to place on public record the ownership of companies and which also applies, mutatis mutandis, to trusts and foundations. The United Kingdom's legislation in this regard suggests that beneficial owners, in some circumstances, will need to separate themselves from significant control of a UK company. In such instances this strongly suggests that the use of either trusts or foundations – bearing in mind my earlier comments – will come into play. This development is in pursuit of the West's approach to transparency and taxes in this century. The turbulence caused by this drive has played havoc with the modus operandi of financial services providers worldwide, be they bankers, brokers or other professionals and who represent the many pieces which go towards completing the puzzle known as offshore business; a business that is a mystery for some (especially in government) leading to an inclination, therefore, not to trust it. The full disruptive effect on business has yet to be assessed, but it is akin to the impact of the Industrial Revolution, in the late eighteenth and nineteenth centuries, when machinery replaced many hands; it is the machinery of government, however, that I am referring to and the resulting consequences for my industry. This time the regulatory, rather than industrial, revolution is unnecessarily hobbling an industry key to global business flows. In other words, in a nod to

the baby and the bathwater, the commercial benefits, lamentably, have been sidelined. As Winston Churchill said: "Some people regard private enterprise as a predatory tiger to be shot. Others look on it as a cow they can milk. Not enough people see it as a healthy horse, pulling a sturdy wagon". I'm with the horse.

Feather Dusters and Sledge Hammers

The author Graham Greene described the French writer Marcel Proust as "the greatest novelist of the twentieth century, just as Tolstoy was in the nineteenth". The Frenchman has been described as generous, selfish, a strong weakling and compassionate snob, but was still considered to have been the first contemporary writer of the twentieth century to describe the permanent instability of the times. A century on we have seen this continuing uncertainty, particularly concerning relations between nations and the course of the world's economy. In common with my view, the historian and writer Mathew Lyons rightly tells us that the past is everywhere (the ubiquitous term "the new normal" is overplayed) and it is now the turn of offshore business to experience a dose of Proustian insecurity.

Through the foolishness of (mostly) Swiss Banks the ire of the American government was provoked when the scale of evasion by its tax payers, with assistance from foreign banks, was revealed; sympathetic governments in Europe, also strapped for cash, took up the fight. Gradually more governments took a leaf out of America's book and as bastions of confidentiality lay offshore, the industry became the

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West's tax whipping boy. Unfairly, the well and poorly-regulated centres were tarred with the same brush. And it's a big brush.

My firm was the principal sponsor of the British Chamber of Commerce Panama's annual Economic Forum event in August when we heard Roderick Macauley, legal adviser to the British Ministry of Justice's Corporate Crime panel, speak. No foreign companies, including Panamanian ones, will be beyond reach if they become embroiled in investigations under the new UK bribery law. Culpability can be unclear (note the ever-widening circle in US tax evasion cases), not helped by the legal language being employed. So whether service providers are caught in the net will hinge on the interpretation of words such as "adequate" and "proportionality" when applied to the failure to prevent a financial crime.

Other speakers at the forum included Panama's vice minister of Finance, as well as the local heads of the securities commission and banking association, with participation from leading members of the legal and accounting professions. Inevitably, the public and private sector positions clashed on several counts, while one private sector participant referred to the new level of scrutiny as a plague. Whatever your view, however, there is ample evidence that very often the level of control has been excessive and a sledge hammer has been used to crack a nut.

The trouble, is many regulators in developed countries are still locked into an image of offshore business that harks back to the 1980s, one which, I have to confess, leads right to the door of the service providers themselves who, in varying degrees, in the past were just as guilty as those Swiss bankers were; but the regulators were complicit, if only unintentionally, in this outcome. There were situations then that called for a sledge hammer whereas oversight as light as a feather duster, in some instances, was the norm.

Drake Island – Part 1

As an entertaining (hopefully), but very relevant diversion, I would like to go back thirty years and

provide a narrative which shows some of the reasons why a body of bias built up against the offshore financial services industry in the first place. But to hold to that same level of bias today cannot be defended.

Welcome to Drake Island, and please remember that I'm writing about the (Wild) West Indies of yesteryear; the conclusions you draw will depend on your own exposure, if at all, to that environment. One further important point: Drake Island is a fake island; the story, the businesses and the characters are figments of my imagination, and if the island had existed, we must assume that on one of his two profitable trading voyages to the West Indies in 1570 and 1571 Francis Drake seized it from the Spanish and renamed it.

Drake Island had lax laws, poor regulation and government indifference that created a shelter for amoral bankers, businessmen, lawyers, accountants and criminals. Back in the 1970s it joined the list of islands (either independent or dependencies, and not necessarily in the Caribbean) that needed more than coral reefs and stretches of white sand to balance their budgets. Filing cabinets full of papers shielded by strict and unbending confidentiality laws were the key to a financial bonanza. The mostly black Drake islanders wanted independence from the British but did not have the economic wherewithal to achieve it. Although the islanders governed their affairs through Executive and Legislative Councils comprising local elected members, ultimate power lay in the hands of a British-appointed Governor which bred a deep resentment. Their collective inferiority complex made for awkward and often hostile relations with the Governor and other expatriates in senior local government positions.

Even so, with high expectations, the archaic company and banking ordinances were altered, based on recommendations from lawyers and accountants in the small but enthusiastic private sector. The changes met with little resistance from the naïve ministers or Paul Hunter, the recently-appointed expatriate Attorney General, whose

experience of the offshore financial industry extended to a small personal bank account in Jersey in the Channel Islands. Next, a confidentiality law was introduced and the stage was set for success - as far as the local politicians were concerned. But the legislation was not backed by effective government regulation and supervision: the private sector wanted the means but not the controls.

By the beginning of the 1990s one senior British Foreign Office official commented that if corruption had a smell, Drake Island would exude a stench comparable with that of its public rubbish tip in the height of summer. But the British government's benign attitude towards the financial services industry on Drake Island could no longer be sustained as one financial scandal after another linked one or more of its dependent territories in the British West Indies. It was the collapse of the Bank of Credit and Commerce International in 1991 with losses of \$9.5 billion that forced the British government's hand. The failed bank had a branch in the Cayman Islands and, predictably, public and parliamentary questions arose concerning Cayman's perceived abuser-friendly confidentiality laws as well as the quality of its banking controls.

The West Indies and Atlantic Desk, known by its acronym WIAD, at the British Foreign Office, subsequently informed the Governor on Drake Island that a bank moratorium was to be imposed with immediate effect and that no further bank licence applications were to be processed until further notice. In the meantime, a consultant was being sent to the island, post haste, who would examine the existing supervisory controls after which he would make recommendations. Optimistically, the Foreign Office expected the consultancy to last no more than two months. Realistically, the task was gargantuan and, beyond scratching the surface of the many issues involved, very little could be achieved in only 60 days. This myopic approach was not surprising because the Foreign Office (nor the Drake Island government, for that matter) didn't understand the magnitude of the exercise.

Peter Boyle, the Registrar of Companies on Drake Island, maintained a loose check over the companies registered and Ian Johnstone, the Financial Secretary, was, in theory, responsible for the supervision of the banks licensed there. I say in theory because Johnstone's background and experience made him ill-equipped for the job – a situation shared by several other expatriates working for the Drake Island government. That was the extent of the supervision. There were 7 banks on the island, 2 were branches of European banks and the remaining 5 were small private banks that were licensed under the amended banking ordinance that permitted banks to have a lower capital requirement if their customer base was defined and restricted to non-residents. 3 of the small banks, however, were in various stages of liquidation with lawsuits and recriminations after the loss of large sums of money. The remaining 2 appeared to be properly managed and prospering. One was controlled by a Swiss investment group and the other, Drake National Bank, was owned by a Miami Jewish businessman, Barney Feinstein. It was not necessary for banks with restricted licences to have a fully-operating office on the island, provided that their local resident representative was either a lawyer or a qualified accountant. Management and administration could take place elsewhere which, in the case of Drake National Bank, was Miami. Martin Kelly, a jovial 62 year old Irish lawyer and one of the prime architects of the changes to the original company and banking ordinances, represented Drake National Bank.

The day after Alan Jeffries, the consultant chosen by the Foreign office, arrived on Drake Island, the Police Commissioner of the Royal Drake Island Police, Arthur Bradfield, had started thinking about the confidential memorandum which he intended to personally deliver to John Ainsby, the Chief Secretary. The Chief Secretary was responsible for the civil service and deputised for the Governor during his absences from the island. The memorandum did not relate directly to Drake National Bank but concerned two of its important clients, Edward Jay Burrige and Mark Peter Wilkes.

They were Canadians who managed an insurance company called Blighpark International Insurance Company Ltd. that was registered on Drake Island but which did business in the United States. Through a network of insurance agents, Burrige and Wilkes had issued fire and accident policies in several U.S. states. Unsuspecting and mainly unsophisticated policyholders were lured by the low premiums and the slick sales pitch of the commission-hungry agents. Those with unusual risks to cover and few available low-cost options (one client had a hot-air balloon business) were particularly vulnerable. In those cases where a valid claim amounted to several thousand dollars, the payment would be made. After all, business was good and meeting claims added to Blighpark International's credibility. The trouble was that the insurance company had no real substance. It was a sham. Burrige and Wilkes had false accounts issued every year which suggested an asset base exceeding \$20 million. Glossy well-written brochures named highly-qualified but fictional personnel and spoke of an international insurance company with roots in Europe which was located "on the stable and secure British colony of Drake Island". Beyond the company's certificate of incorporation issued by Peter Boyle, however, the company had no authentic documentation. And because there was

no insurance law or licensing procedure on Drake Island, Blighpark International's owners were able to perpetrate their scheme on an innocent public, unchecked and uncontrolled. Although the British government was aware of the abusive dangers in banking, it had a blind spot in the case of companies registered by Peter Boyle conducting insurance business but without any licensing requirements whatsoever.

Some victims of Burrige and Wilkes had told insurance authorities in the U.S. that they thought that the certificate of incorporation of Blighpark International was actually an insurance licence. The two Canadians made no effort to have them believe otherwise. However, their run of success, as is so often the case, had led to rashness. There was now a catalogue of large unpaid claims across America and the Federal Bureau of Investigation was co-ordinating a nation-wide investigation. The trail led to the Companies Registry on Drake Island which in turn revealed that the Registered Office - the official address of the company on Drake Island - was at Kelly & Associates.

In the next newsletter you'll read more about Kelly & Associates, as well as the intrepid Arthur Bradfield, who had said he was there "to do a job, not keep one". Such high ideals in low places means that things never end well.



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.

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 in the appropriate jurisdiction before making offshore commitments.

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