



Privacy and potatoes

By Derek Sambrook, FIB(SA), TEP
Managing Director, Trust Services, S.A.,
Panama



I have often compared myself to an iceberg on the isthmus, not in the Freudian sense of believing that most of our personality exists below our level of awareness. No, I am thinking more about the fact that only one-third of my professional career has been in Panama. In so many ways I count this as an advantage in that although as each year passes the local forest may get a little thicker, I can still see the wood for the trees.

During my 45-year career I have experienced five different, and unique, cultures: in Africa, the United Kingdom, the Caribbean, the United States of America and, for the past 15 years, Latin America. When I became a trust practitioner, and before I ventured offshore, the management of trusts was nine times out ten a routine affair. In most instances the trusts were testamentary, following on from a will which had been probated and a deceased estate which, more often than not, I had liquidated; lots of tea and sympathy but very little intrigue or surprises. Was I in for a shock after I left the shores of domesticity and entered the world of offshore trusts.

It may be that in each of those cultures there is much that is different but all of them have common factors, especially human nature, whether, in practitioners' parlance, the location is onshore or offshore (where Piña Coladas often substitute for tea). If, however, there is one trait that human beings share, it is the desire for privacy and this was very well expressed by the former US associate justice of the Supreme Court, Louis Brandeis, who described it as "the most comprehensive of rights, and the right most valued by civilised man".

Three words that mean different things to different people are: secrecy, privacy and confidentiality. Mark Twain once said that the difference between the right word and the almost right word is the difference between lightning and the lightning bug. Some see the last two words in the trio as providing conditional concealment whilst others see all three words having the sanctity of the priest's confessional. In the minds of the various international regulatory authorities and related agencies, however, the words are an amalgamation, just as, it would appear, the two words, "evasion" and "avoidance", in relation to taxes, have become. There once was a line in the sand (particularly on the beaches of some international financial centres) between those two words, but now I have seen a professional business magazine use the term "legal evasion". The reasoning goes that every person espousing the wish for privacy must, therefore, be a secretive person in the eyes of the many government officials and their acolytes because every card-carrying bureaucrat will tell you that secrecy is the number one enemy of transparency.

A whole new body of public opinion has addressed the word "secrecy", some seeing it now as a dirty word and worthy of an attack similar to the siege of Stalingrad in the Second World War; it has led to the contentious question in international financial centres (IFCs): is secrecy dead? And is the subject of a talk I am giving this month at the Offshore Investment Conference in Panama. The short answer is that it may have been curtailed in IFCs but it has not been killed; the rumours of its demise are, as Mark Twain would have appreciated, an exaggeration.

Eskimos don't rely on refrigerators any more than those IFCs worth their salt don't depend on secrecy for survival; so secrecy, as defined in the bureaucrat's bible, is small potatoes. Like the shift from West to East in the global economy, things have moved on since the 1980s.

Writing about potatoes brings to mind the Spanish conquistadors who overlooked a very valuable commodity beneath the soil as they concentrated on gold and silver. Nearly

500 years ago the original city of Panama was settled by the Spanish conquistador Pedro Arias de Ávila which was the first European settlement on the Pacific coast of the Americas, having originally been a small Indian village on the Bay of Panama. It became the capital of the colony called Castilla de Oro and a very important centre for organising the transport of South American gold and silver to Spain.

Those conquistadors, in their plundering of South America, overlooked a natural resource which, as it turns out, has proved to be a far more consistent and important source of survival. The humble potato, with its origins in the Andes, has been farmed for some 7,000 years, but not until 1573, when the original settlement in Panama was a little over 50 years old, did it make its debut in Europe. The perception at the time, however, was that the potato, being a root vegetable, would encourage lust and spread maladies. So the Spanish continued to dig for only gold and silver, satisfying their lust for riches, rejoicing in the malady of greed and storing their treasure temporarily in Panama. The country today is better known for the canal which lies close to that former Indian village and is a vital waterway, transporting wealth in the shape of cargo between continents.

The poet T.S. Elliot who was a former banker in the City of London in the early part of the last century once lamented that "I am sojourning among the termites". Life would have been more exciting for him in Panama, I'm sure. Today, however, the country's enterprising spirit is being tested as international pressure groups descend on the offshore world of finance determined to erode, in varying degrees, the benefits which have been enjoyed for several decades. Although the conquistadors are no longer a threat to Panama, they have been replaced by bureaucrats brandishing the banner of transparency. The country's trading history has instilled a taste for commercialism in its psyche which has made many of its businessmen, including its bankers, very enterprising; the history of Latin America has also taught them the virtue of keeping matters as private as possible and so in Panama, privacy, like the potato, has been cultivated.

The US is casting the spotlight on banking secrecy as an aid to terrorist activities; it is also determined to improve its capacity to locate the worldwide income of its taxpayers. The European Union, on the other hand, has its own agenda: so-called harmful tax practices, information exchange and tracking its citizens deposits in offshore banks. Then behind the countries are the forums, agencies and organisations. The Organisation for Economic Co-operation and Development (OECD), much like the EU, is concerned with transparency of IFCs. An offshoot of the OECD, the Financial Action Task Force, is directing its efforts towards terrorist finances and money laundering practices both onshore and offshore. The United Nations, for its part, is focusing mainly on money laundering and the Financial Stability Forum (another OECD creation) is examining the threats to world financial stability emanating from IFCs; the real threats affecting global financial stability are well known to us all.

Finally, there is the International Monetary Fund (IMF) which has its sights set on both money laundering and the health of the world's economies. It is to be hoped that the IMF has more success with its money laundering efforts than it has had with its economic monitoring: before Argentina imploded at the turn of this century the IMF gave the view that although there was a short-term problem with fiscal management, Argentina did not have either a fundamental economic or currency problem. That Enronesque view was given just weeks before the country defaulted on its debt, becoming for a while more famous for its tangled finances than its tango.

The business of offshore financial services has been turned into a battlefield by bureaucrats and the governmental bias in some countries against the right to privacy by civilised man is not dissimilar to the prejudice against the potato centuries ago. Privacy may be contentious at the moment, but just like the root vegetable, the real benefits to be found in IFCs remain hidden to many: they are the opportunities, regardless of either taxes or transparency, that wait to be exploited by the nimble. Anyone who attends The Offshore Investment Conference in Panama this month will be very well aware of this.

www.trustservices.net

European Magazine Services Ltd, Lombard House, 10-20 Lombard Street, Belfast, BT1 1BW, United Kingdom • Tel: +44 (0) 28 9032 8777 • Web: www.offshoreinvestment.com

PUBLISHER AND CEO
Barry C Bingham
barry@offshoreinvestment.com

EDITOR-IN-CHIEF
Charles A Cain
editorial@offshoreinvestment.com

EDITOR
Jenny L McDonough
editorial@offshoreinvestment.com

CONTRIBUTING EDITORS

Howard S Fisher

F. R. Jenkins, Esq

Derek Sambrook

Yongjun Peter Ni
editorial@offshoreinvestment.com

ADVERTISING
Paul R Dean
advertising@offshoreinvestment.com

CONFERENCE
Susan M Kearney
conference@offshoreinvestment.com

SUBSCRIPTIONS
Louise Loughran
subscriptions@offshoreinvestment.com

DESIGN & PRODUCTION
Dave Johnston
Gillian Devenney
administration@offshoreinvestment.com

FINANCE
Rosalind Maguire
accounts@offshoreinvestment.com

MEDIA MANAGER
Gillian Abernethy
administration@offshoreinvestment.com

International Bureau

Anguilla - **Claudel VV Romney**
Antigua - **Brian Stuart Young**
Australia - **David Russell QC**
Barbados - **Wayne Fields**
Bermuda - **Lynda Milligan-Whyte**
British Virgin Is. - **Ralph Nabarro**
Canada - **N Gregory McNally**
Cayman Is. - **Michael L Alberga**
Cyprus - **Christos Mavrellis**
Dubai - **Andrew De La Rosa**
Gibraltar - **Nigel Featham**
Greece - **George Econoum**

Guernsey - **Charles Parkinson**
Hong Kong - **James A F Wadham**
Hungary - **Dr Gabor B Szabo**
India - **Nishith Desai**
Ireland - **Peter O'Dwyer**
Isle of Man - **Prof Charles A Cain**
Labuan - **Chin Chee Kee**
Liechtenstein - **Andrew J Baker**
Luxembourg - **Paolo Panico**
Malta - **Dr Max Ganado**
Mauritius - **Suzanne Gujadhur**
Nevis - **Mario Novello**
Ras Al Khaimah - **Dr Theodor Strohal**

Samoa - **Graeme Briggs**
Seychelles - **Simon J Mitchell**
Singapore - **David Chong**
St. Vincent - **Alex Jeeves**
S. Africa - **Prof Christian Schulze**
Turks & Caicos - **Jonathan M Katan**
United Kingdom - **Matthew Cain**
United Kingdom - **Floyd Ronald Jenkins, Jr**
Uruguay - **Geoffrey Hooper**
USA - **Susanne R Wadsack**
USA - **Howard S Fisher**
US Virgin Is. - **Marjorie Rawls Roberts**
Vanuatu - **Lindsay D Barrett**

ems European Magazine Services Limited. © 2012.
ISSN 0954-0628 US PS 002-273.
All worldwide rights reserved. Reproduction in whole or in part by any means without written permission of the publisher is strictly prohibited. Printed by Pensord Press Limited, Pontlanfraith, Blackwood, Wales, UK. *Offshore Investment* has tried to ensure that all information contained within this publication is accurate, however, the publisher would emphasise that he cannot accept responsibility for any mistakes or omissions. No legal or investment instruction is intended. The opinions expressed are strictly those of the authors. *Offshore Investment* **USPS 002-273** is published monthly except July and December by Offshore Investment, Lombard House, 10-20 Lombard Street, Belfast, BT1 1BW, United Kingdom. The 2012 US annual subscription price is 930.00. Airfreight and mailing in the USA by agent named Air Business Ltd, c/o Worldnet Shipping Inc., 156-15, 146th Avenue, 2nd Floor, Jamaica, NY 11434, USA.

US POSTMASTER: Send address changes to Offshore Investment, c/o Worldnet Shipping Inc., 156-15, 146th Avenue, 2nd Floor, Jamaica, NY 11434, USA. Subscription records are maintained at European Magazine Services Ltd, Lombard House, 10-20 Lombard Street, Belfast BT1 1BW, United Kingdom. Air Business Ltd is acting as our mailing agent.

SUBSCRIBE!
INPRINT • ONLINE

Subscription includes the print edition and **FREE** unlimited downloads from the online archive.

Tel: +44 (0) 28 9032 8777

Email: subscriptions@offshoreinvestment.com

One Year (10 issues)
UK & Europe GBP370
US Mainland USD930
Rest of World GBP499



Asset Protection

The Jurisdictions: Panama, Uruguay, Mauritius, Seychelles