

The Undertaker of Panama



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THERE CAN BE FEW GREATER MARKETING COUPS THAN FOR your company's name to enter the popular vocabulary. My mother never vacuumed, but she was always hoovering. Indeed she still hoovers with her Dyson. We google something no matter which search engine we are using. The value this adds to a brand can be phenomenal. Well, usually. Last month a new word entered into the vox pop. Its meaning is "to have accidentally left your flies undone". It is called "a fonseca", as in "careful mate you've just come out of the genes with a bit of a fonseca going on". There is such a thing as bad publicity. As I write, the alleged hacker has broken his silence, if not cover. Calling himself John Doe he is seeking immunity from prosecution. Personally, given the number of dead bodies in American crime series who are given that particular name, I would have chosen a more upbeat pseudonym. We do not yet know how he did it but I think it is safe to assume he did not wander out of the Fonseca offices in Panama City with a USB the size of a hockey stick tucked under his arm.

Regardless, 11.5 million documents are now in the public domain, with the names of individuals, companies and

trusts on a fully searchable database. For anyone involved in finance, let alone international finance, the vast amount revealed is standard fare; legal, boring and common. Some misdeeds have been identified. Some politicians appear to have failed to be as transparent as they had claimed. No doubt some tax dodgers will be wishing they had not used that particular law firm. Yet, of the 11.5 million documents, these uncovered misdeeds appear to account for a fraction of what was otherwise the standard activities of a reasonably large law firm.

Yet the moral outrage has been overwhelming including, regretfully, from those who should, and indeed do, know better. Indeed, in the UK Jeremy Corbyn, the Leader of the Opposition Labour Party has stated that British Overseas Territories who were harbours to 'tax avoidance' (I think you will find that is legal, Jeremy) and 'tax evasion' (Jeremy, a number of Overseas Territories have actually been taking the lead in this fighting this) should become subject to direct rule. This is the same man who has voted against virtually every foreign intervention by the UK regardless of its humanitarian intent. I assume that, if the Islamic State set up a financial centre with a low tax structure, rather than simply torturing and killing

people, Jeremy would have very strong words to say about it.

The bulk of the Panama Papers are historic, going back decades. To use these as evidence of a current lack of transparency or failure to cooperate is akin to saying London is poorly regulated and basing your evidence on the collapse of the South Sea Bubble.

Indeed, I have a lot of sympathy for Panama. Not only are they called 'The Panama Papers' but scarcely a month earlier, the Financial Action Task Force, the global watchdog against money laundering and the financing of terrorism announced that it:

"recognised that Algeria, Angola and Panama have made significant progress in improving their regimes to combat money laundering and terrorist financing and will therefore no longer be subject to the FATF's monitoring process."

To get off the FATF list is no mean feat. Yet a month later the champagne is back on ice. So, did the FATF make a colossal mistake or is Panama being pilloried for the very things they worked assiduously to change?

Yet the result of their effort was lost in the vilification which followed. John Le Carre may have written about the 'Tailor of Panama'. Fonseca, albeit

accidentally and unfairly, may turn out to be the 'Undertaker of Panama'.

Bad people exist. Some of them use companies and trusts to do bad things. Provided it is well regulated you cannot blame the jurisdiction any more than you can blame Ford for the fact some getaway drivers use Ford cars.

One area you can look at is in the changing pattern of the location of company formations. Indeed, the trend in company formations is quite a telling one. According to the FT, a number of jurisdictions saw a drop in company formations between 2011 and 2015. This drop, or reduction in growth, tended to be at the higher end of the market, with Guernsey, Jersey, The Isle of Man and Gibraltar all appearing at the bottom of the growth league.

At the top, appear those who have shown less enthusiasm for the move towards international cooperation, including but not unexpectedly, Delaware and Nevada. These two are protected under the wing of the American Eagle, as no international body is going to put the USA onto a blacklist anytime soon, regardless of some of their States' questionable adherence to modern standards of transparency.

13 years ago I wrote a paper for Transparency International UK on the abuse of corporate and trust structures. Indeed my Masters had been on that subject. The Transparency International paper explained that there were failings which opened the door to abuse, but to attack the international centres and ignore bigger failings at home was misguided, verging on the hypocritical. It was titled 'One Problem, Two Standards'. I might as well have saved my time and the part of a rainforest destroyed to publish the report.

The current UK proposal for a central

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registry, which is not verified (guess what, bad people lie!) is far weaker than what was proposed for the UK in the Transparency International paper, namely to regulate company service providers as happens in the international finance centres and require them to verify a person's identity. I fear that this central public register is partially driven by other, possibly more prurient, interests.

The Annual *IFC Review* is 10 years old. A fine achievement and its success is well deserved. I had the privilege of writing for its first edition and therefore was delighted to be asked to contribute to its tenth anniversary publication. When I asked what I should write about, the editor suggested a comparison between then and now. What has changed over the life of the periodical?

There are many things that have changed. The first edition had virtually nothing on Bitcoin. Over the last 10 years the international financial centres have evolved. They have grown in their sophistication. As some sectors, such as private banking, have declined in a number of places, family offices have sprung up. We have fintech, insurance and fund structures flourish. Regulation, transparency and cooperation in the main IFCs are unrecognisable to what they once were.

What has not changed is perception. We kid ourselves it has when we are praised by international bodies and by

governments for the fact that in many areas we have led the way against tax evasion and other financial crimes. Then along comes Panama.

The problem is that, no matter how many Fonseca companies were used for legitimate purposes, no matter how many people and companies have been slurred by spurious accusations and guilt by association, this mud has a tendency to stick. The vast number of Tax Information Exchange Agreements we have all signed and how significantly we have cooperated with the OECD and others are completely ignored in the frenzy to condemn. Our enemies attack and our friends go silent.

It is this battle of perception which now must take the foreground and we must fight it vigorously. We have a right to exist and a valuable role to play. Maybe if we win this, the most difficult of battles, the *IFC Review*, when it enters its twentieth year will be able to say 'One standard, No bias'. ■

About the Author

Marcus Killick OBE was CEO of the Gibraltar Financial Services Commission for nearly 11 years and previously held positions at regulators in the Isle of Man, the Cayman Islands and UK. He is currently CEO of ISOLAS law firm, Chairman of the Gibraltar Stock Exchange and a Non-Executive Director of the Gibraltar International Bank. The article is written in his personal capacity.

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