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## OFFSHORE PILOT QUARTERLY

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### Seeking Shelter

“Go West, young man”, is thought to have been first proclaimed by American author and newspaper editor Horace Greely, directed at those seeking new opportunities, as a young United States of America expanded westward. Today, you will increasingly hear “Go South, young man.” This advice is certainly attracting that group of people (whether they are young, male or female) commonly described as digital nomads.

I tend to think of deserts and not digitalisation when I hear the word nomad: images of Lawrence of Arabia dressed in his Bedouin garb, riding his camel in the Middle Eastern deserts, come to mind. Both the Bedouin and Lawrence have important lessons for the digital nomad in that when the Bedouin folded their tents, and wherever their journey led them to next, they were intimately familiar with the

terrain they traveled, whereas in Lawrence’s case he understood the Arab culture.

In increasing numbers, this new breed of nomad is finding South America attractive as a consequence of this century’s global pandemic and the uncomfortable parallels between the beginning of the last century’s political turbulence in Europe, ending in two world wars, and today’s not dissimilar international unrest, fuelled by power struggles. Many countries, in fact, some of them islands, have recognized a silver lining in this dark cloud of uncertainty that has spread across the globe and have reacted by introducing friendly laws and visas that are tailored with the adventurous in mind and who can easily pack a suitcase and travel to friendlier climes just as long as a plug point socket will be available. But before you pack, be sure that you have considered carefully both the culture and the terrain.

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Preconceived ideas can be the modern-day nomads's downfall if the only lure has been promotional material and flashy websites. Don't suffer the fate described in the novel by the late Graham Greene, recounting his 1935 trip to Liberia, an African republic founded for emancipated slaves. The book records his many trials and travails and the title says it all: "Journey without Maps".

South America ranks fourth in area after Asia, Africa and North America and its history has been one of authoritarian rulers, both domestic and foreign. Over some 30 years I have seen the political pendulum swing left and right brought on by an incendiary mix of economics, poverty, nationalism and populism. I should add that you could be forgiven for thinking that I am also writing about some developed countries in the west, many of which have often been derisory about a continent they saw as full of Banana Republics.

For the uninitiated who seek business opportunities in South America, let me say that it is a continent full of surprises. In centuries past it was the draw of possible wealth (especially in Argentina, Brazil and Venezuela) that attracted foreign immigration on a large scale and today the continent has a plethora of foreign nationalities. Two former great powers, Spain and Portugal, were predominant cultural influences, and yet Argentina has had a president of Syrian origin, one Peruvian president was an ethnic Japanese and past presidents of Paraguay and Chile have had, respectively, Hungarian ancestors and British blood. Another historic influence has been the United States of America, having also had an impact on South America's development.

Beginning in 1819, independence under Simon Bolívar (whose revolution was helped by Britain to thwart the Spanish) meant that the previous dictatorial control enjoyed by Spanish and Portuguese colonial administrations came to an end. With the crumbling of the old order a vacuum was created which was exploited by President James Monroe of the US who, in 1823, boldly declared that henceforth his country (which had suffered itself under the yoke of colonialism) would protect all territories south of its border from threats against their sovereignty from nations outside the hemisphere. It was a time when the US was

emerging as a growing power as Europe's great powers headed for self-destruction. This proved to be a bonanza for the US and led to the Monroe Doctrine which said that the American Continents, by the free and independent condition which they have assumed and maintained, were not to be considered as subjects for future colonisation by any European powers. As it was then, so it is today: it is all about power struggles.

The US influence was particularly felt in Central America and in 1903 it encouraged Panama to break away from Colombia which it had become a part of when Spanish rule ended in 1821. The US motives - not unlike Britain's regarding the Suez canal - centred on self-interest and one of the overriding reasons was Washington's realisation that completion of a failed French canal project in Panama linking the Atlantic and Pacific oceans would have immense military and commercial benefits; the need for a quick passage between those two oceans had exacerbated the US navy operations during its, albeit successful, 1898 war with Spain. The background to Panama's independence, with its chicanery and intrigue, has been written about extensively, as have Washington's motives vis á vis the canal, and perhaps the words of Jean de La Bruyère, the French satiric moralist, are most apt: "Even the best intentioned of great men need a few scoundrels around them; there are some things you cannot ask an honest man to do". An observation that holds true to this day and applies not just to the US.

For Panama it must be said that the US involvement and influence enabled the country to develop rapidly and because English became widely spoken, it became a centre for American business in the previous century.

In the main, however, US regional involvement elsewhere in South America would not be significant in any measure for several decades after Monroe's presidency, and in the intervening period that role was left mainly to resilient and talented British businessmen, particularly in Argentina, Bolivia, Brazil and Uruguay. It was the British who would build much of the infrastructure in South America, including railways and public utilities, and it wasn't until the Second World War that British influence

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really began its steady decline as its former empire (especially India) was dismantled. Meanwhile, between the 1898 Spanish war and its entry into the First and Second World Wars, the US was becoming a great power, only to eventually become a superpower. It was in the period between the two world wars that the US would begin to make its presence felt in both Central and South America. The outcome was not always positive.

The former British prime minister, Margaret Thatcher, once said that the US was unlike any other country because it was founded upon an idea rather than upon a culture. Some argue that in today's political climate the US needs a few new ideas. In recent years the US has become more preoccupied with global, rather than South American, issues. China's regional and global influence, on the other hand, with what became known as its "peaceful rising" policy, is moving forward, especially in South America. As tensions rise alarmingly at present between the US and China, the world's only two heavyweights in the ring, one wonders if the rising can remain peaceful. China's economic power, not unlike the US in the last century, has changed the global political balance with Russia as the wild card.

In the scheme of things, South America is still a low-key player in global affairs and with such a low profile is it any surprise that some digital nomads will find solace there? But a word of caution: one should not make the journey without maps.

### **Plato and the Affairs of Men**

In centuries past the Catholic church amassed a fortune from wills which left money for prayers to be said for the souls of the departed. John Shakespeare, William's father, for example, died in 1601, the year that Hamlet was written, and left a plea, along with a spiritual, if not an actual, last will and testament, that his relatives should pray for his salvation. In today's world, salvation can concern temporal matters as well, and needs the intercession of not just prayer if one has assets abroad.

A lot of personal wealth is held in companies registered in foreign jurisdictions, but what happens to the assets when the owner dies? Although Plato contends that nothing in the affairs of men is worthy of great anxiety, I can guarantee that not getting

your affairs in order before your rendezvous with death can cause great anxiety for those left behind. If a will exists, it will be either a domestic or a foreign one; there may be both kinds. In any case, control of the deceased's foreign assets will pass to his executor upon his demise. If there is no special foreign will covering the company assets, there will be a delay whilst the domestic will is dealt with and the executor obtains the court's authority to represent the deceased's estate (a grant of probate or its equivalent) in the place where the will is registered. Once probate has been granted, there will be a further delay whilst the domestic will is then recognised by the foreign court that must deal with the foreign assets. Often, official translations, because of language barriers, will be needed which adds delay, as well as costs, to the process. Meanwhile, the ensuing passage of time might impact on the operations of the overseas company managing the assets.

Then there is intestacy which is the worst-case scenario. Without a will anywhere an executor has still to be named and so even before a grant of probate can be obtained there will be a delay while families decide who to appoint as executor. Often family rivalries (and the fact that some members may live in different countries) can exacerbate the process. And intestacy doesn't guarantee that the eventual beneficiaries will be the ones that the deceased would have chosen.

Very often, the far-sighted company owner has established a foundation, whose popularity is beginning to challenge the trust. The trust, just like the word "offshore" frequently raises suspicion with the authorities in other countries. A foundation, inter alia, is a will with all the extras, you could say, but without the need for probate and which has a lower profile than a trust. Usually a special foundation has been created to set out clearly the manner in which the foreign company's assets are to be managed and how they are to be dealt with after the owner's death. Foundations are popular, especially in Panama, which has particularly attractive laws concerning them. In Panama a foundation is known as the "Foundation of Private Interest", but it is also called either a "Private foundation" or a "Family foundation". It is the civil

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code equivalent of the common law trust and performs the same functions, but offers more flexibility, it is more akin to a company, however, except that instead of having shareholders, the foundation has beneficiaries.

The frequent failure to cover the contingency of death is what I describe as the Achilles' heel of estate planning. If inadequate succession planning is made, then it evokes this piece of common sense from the Book of Common Prayer: "We have left undone those things which we ought to have done; and we have done things which we ought not to have done".

#### **Flight Checklist**

International business can be complex, so look for experience in a practitioner, whether you are a digital nomad or not. As an article by Dorothy Leonard and Walter Swap in the Harvard Business Review put it: "We would all rather fly with a pilot who has taken off, flown and (especially) landed in all kinds of extreme weather than with one who has

always enjoyed smooth conditions". Turn to this checklist before boarding your flight:

- Deal with professional firms who are licensed in the jurisdiction where their principal office is located.
- Do business with professional firms that are independently audited.
- Consider obtaining references and also find out how long the business has been operating.
- Review the calibre of management, particularly their qualifications and experience.
- If possible, always visit the firm before conducting business, even if you have already communicated visually via zoom, for example.
- Take tax and legal advice when necessary.
- Don't base your service-provider choice on the lowest fees tariff in the mistaken belief that there is never any correlation between cost and competence.
- If there is a website, be sure to visit it (so many people don't) and read it carefully.

As with succession planning for your assets abroad, caution is key.



*Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Topaz Services, S. A. which is the British face of international business in Panama. It is written by Derek Sambrook, our Managing Director, a member of the Society of Trust and Estate Practitioners and a Fellow of the Institute of Bankers in South Africa who was both a member of the former Latin America and Caribbean Banking Commission and an offshore banking, trust company and insurance regulator. He has over 50 years combined 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.*

*Engaging a professional 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 commitments.*