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Panamanian Banks Keep Your Secrets Safe

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U.S. banks are notorious for selling your financial information to the highest bidder. And laws like the USA PATRIOT Act now require your assets be frozen if a computer decides you've committed a "suspicious transaction," for actions as innocuous as suddenly paying off your credit card bill-or failing to pay it off. And wealthy people in many countries, particularly in Central and South America, often become victims of extortion, kidnapping or other crimes if details of their financial activities fall into the wrong hands.

Things are different in Panama. Panamanian bank secrecy laws are among the world's toughest. Sections 84, 85 and 86 of the Banking Act of 1998 prohibit banks from revealing account information to non-bank employees only to specified authorities in the course of a criminal prosecution. This applies to all employees, consultants and external auditors. Any breach of this confidentiality may be subject to a fine of up to US\$100,000. The victim of such a breach is also free to bring civil and potentially criminal charges against persons who breach this duty.

These laws haven't gone unnoticed by the network of global busybodies who claim to be keeping the world safe from criminals, terrorists and tax evaders. Just a few days apart in June 2000, the Financial Action Task Force and the Organization for Economic Cooperation and Development placed Panama on the FATF's money laundering blacklist and the OECD's harmful tax competition blacklist.

The FATF and OECD threatened various sanctions to blacklisted nations, including the possibility of being banished from global money transfer networks. A principal demand from the FATF was that Panama lift bank secrecy laws in money laundering investigations. In turn, the OECD demanded Panama begin disclosing information on the bank accounts of foreign nationals to their respective home tax authorities.

Panama's response to both initiatives was masterful. To get off the FATF blacklist, it brought in outside experts to rewrite its money laundering law to insure that truly dirty money could be tracked down and eradicated from the financial system. It beefed up customer identification procedures, instituted an office to track laundered money and enacted a law requiring the reporting of certain cash transactions exceeding US\$10,000. Panama was subsequently removed from the FATF blacklist. But Panama didn't give in to the OECD. Instead, it engaged in a public relations full-court press against it. Panama pointed to the hypocrisy of exempting financial centers such as the US, and UK from the harmful tax blacklist, when independent studies had shown these countries were engaged in the same practices the OECD condemned.

Unlike so many other offshore jurisdictions that surrendered to the OECD, Panama hinged its cooperation on all jurisdictions - whether members of the OECD or not - being dealt with on an equal footing. Since the largest member of the OECD is the US, which engages in a variety of tax practices the OECD brands "harmful," it

seems unlikely Panama will cooperate with the OECD in any meaningful way for the foreseeable future. That means the key OECD demand of overriding Panamanian bank secrecy to provide home country tax collectors with account information won't be met anytime soon.

Panama maintained a similar attitude when EU bureaucrats tried to convince Panamanian officials to embrace the EU Savings Tax Directive, which provides for interest payments earned by EU nationals in EU bank accounts to be reported to home country tax collectors. When Austria, Switzerland and Luxembourg were exempted from the information exchange provisions of the Directive, Panama scorned the hypocrisy in this arrangement and again refused to participate in it.

The US hasn't been much more successful than the OECD or EU. Short of invading Panama, which it did in 1989, the US simply doesn't have strategic leverage over Panama. Panama's namesake canal gives the US incentive to maintain peace and prosperity with Panama. From a practical standpoint, that means the US hasn't aggressively pressured Panama to abandon bank secrecy, although the Treasury Department regularly criticizes Panama for not signing a Tax Information Exchange Agreement, as it has forced many other offshore centers to do.

The bottom line is that in spite of immense outside pressure, Panama has vigorously defended its bank secrecy laws, and is likely to continue to do so in the future. As with any bank secrecy law in today's world, if you're suspected of committing a crime, and investigators know where to look, Panama will cooperate. There's even a Mutual Legal Assistance Treaty in effect with the US to facilitate cooperation in criminal matters, although it doesn't cover tax matters with the exception of tax fraud.

And Panama is hardly a banking backwater. It is the largest financial center south of its nearest rival, Miami. Seventy-three banks (June 2005) hold over \$40 billion in assets, mainly from offshore clients. Real GDP expanded a heady 6.4% in 2005 and future growth outlook is strong.

Of course, with the USA PATRIOT Act in effect, there's no bank secrecy law in the world that can prevent the US from trying to strong-arm a foreign bank into disclosing information about a depositor. Not to mention US laws require U.S. persons to disclose foreign bank accounts if their assets exceed US\$10,000. Fail to comply with this requirement, and you face mandatory fines of US\$10,000/year plus possible criminal penalties. But it's comforting to know that Panama is one of only a handful of the world's countries that has consistently resisted weakening privacy and asset protection laws in response to outside pressure.