

Offshore Banking: Latin America 2009





LATIN AMERICA: OFFSHORE BANKING 2009

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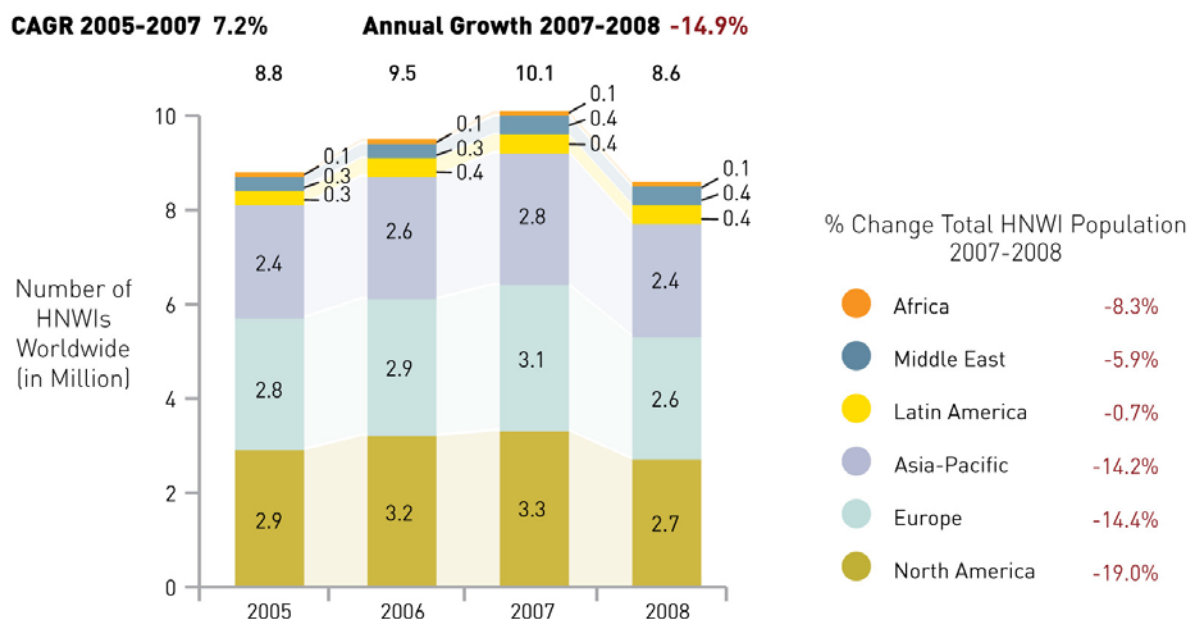
Introduction

In 2007 Latin America had the fastest growing wealth market worldwide in terms of assets under management in U.S. dollars, expanding by 20.4% against 9.4%. Now during the current global economic downturn, Latin America has lost only 0.7% of its high net worth individuals, com-

pared to 19.0% in North America (see figure 1). In addition Latin America has the highest ratio of ultra-high net worth individuals in the world (see figure 2). Given these figures, global attention is turning to this region for investment, diversification and profit.

Figure 1. HNWI Population, 2005 – 2008 (by Region)

(In Million)

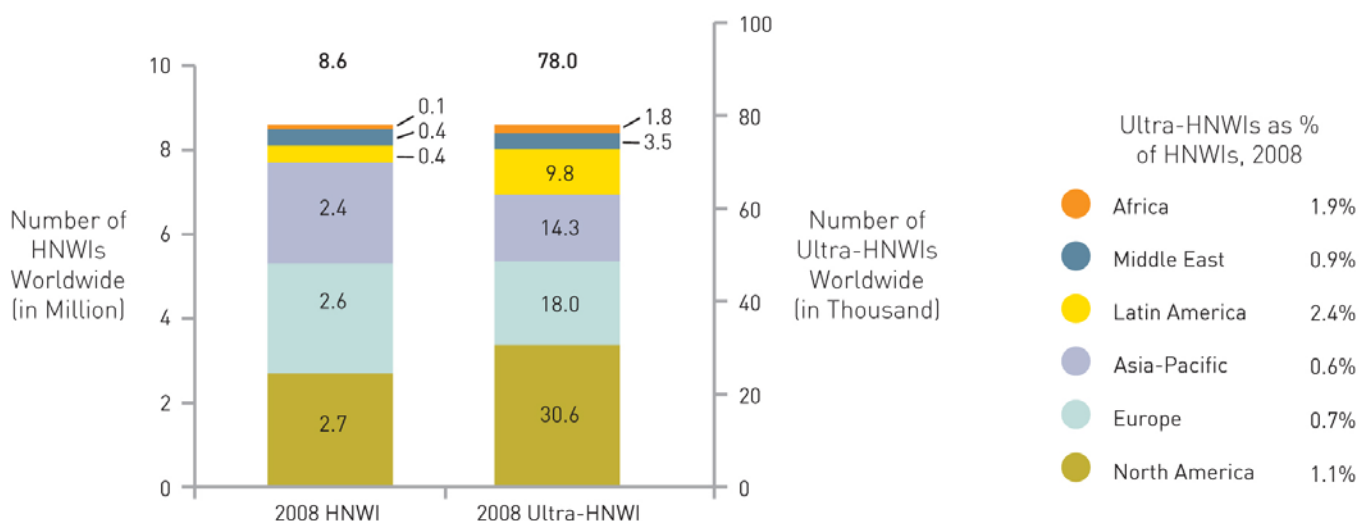


Note: High Net Worth Individuals (HNWIs) have at least US\$1 million in investable assets, excluding primary residence, collectibles, consumables, and consumer durables.

Ultra-High Net Worth Individuals (Ultra-HNWIs) hold at least US\$30 million in investable assets, excluding primary residence, collectibles, consumables, and consumer durables.

Source: Capgemini Lorenz curve analysis, 2009

Figure 3. Geographic Distribution of HNWI and Ultra-HNWIs, 2008 (by Region)



Source: Capgemini Lorenz curve analysis, 2009

Recently there has been a great deal of political priority, mainly through the G-20, given to the issue of the use of tax havens and the offshore banking industry throughout the world. At a recent G-20 summit in April it was agreed that those countries that refuse to pass information to foreign tax authorities to help catch potential evaders would face sanctions in the future. World leaders have pledged to stop wealthy individuals from using offshore tax havens to escape levies. A regulatory clampdown isn't the only issue by far producing chang-

es in offshore banking as technological advances, general fears about the world economy and political shifts are just some of the many factors that are shaping a new landscape. Given the wealth that exists within the region combined with a rapidly shifting scenario in the offshore banking world, Alternative Latin Investor has compiled this supplement in order to assess some of the trends that are starting to emerge together with analysis from industry experts on how they feel it will affect the Latin American region.

WHERE THE MONEY COMES FROM: POST-CRISIS MOVEMENT

OVERSEAS CLIENTS

There is a mixed picture coming from the region with regards to clients moving capital from onshore to offshore and vice versa. The crisis-induced uncertainty surrounding banks in many European countries and the U.S. has made clients nervous, and diversifying locations for capital is a significant trend. Dr. Giovanni Caporaso, from the OPM Corporation based in Panama, provides tax planning solutions for companies looking to locate offshore. Dr. Caporaso believes those new to offshore banking are thinking twice about moving in that direction, but that those familiar with its mechanisms feel it is a haven in the present climate, “Americans are really worried about the situation at the moment. If you see big banks collapsing you may think small ones are too—it’s not true. If you see crisis in Europe and the U.S. you may think there is also a crisis in tax havens, but it’s really not like this. There is a decreased demand from new clients, but an increase from people who know the offshore system as they think the crisis didn’t affect tax havens.”

Americans have traditionally invested within their own country, but concerns about the value of the U.S. dollar are prompting a rethink amongst U.S. citizens about where to invest or save their money. Speaking with Alternative Latin Investor, offshore banking expert and joint editor of the Q Wealth Report Peter Macfarlane says there is a huge change in approach taking place. “What I’ve seen is a lot

more people moving funds offshore.... Whereas before people thought the worst couldn’t happen, now a lot more people are planning for worst-case scenarios. And what I see right now is a lot of Americans scared about the value of the dollar going down. Americans have only traditionally invested in North America basically. They haven’t looked much outside US borders and now that seems to be changing.”

LATIN AMERICAN CLIENTS

Political instability within many Latin American nations both historically and particularly at present makes stable destinations such as Panama an obvious centre for clients from within the region. Venezuela, Peru, Ecuador and the ongoing situation in Honduras are just some examples of how various countries in the region appear to be sliding backwards in this regard. Latin America had arguably enjoyed its most stable political scenario for decades in the early 2000s, certainly helped by the worldwide commodities boom. However, a June 2009 article featured by Lloyds predicts that Latin America could be facing increasing difficulties. “Expropriation was the dominant political risk of the 1970s, but has since become confined to a small number of developing countries. But the instability created by the financial crisis could spark the return of nationalism and expropriation around the world. Not many governments these days would choose to be associated with outright expropriation. But in parts of Latin America resource nationalism remains high on the agenda, and nowhere more so than in

Venezuela. As well as Venezuela, other countries such as Bolivia, Ecuador and possibly Argentina remain at risk of confiscation of foreign owned assets.”

Whilst it may only be foreign owned assets at risk in certain Latin American countries, domestic citizens and companies looking for an offshore location prefer to stay within the region. Xavier Borja is the Marketing Director of Loyal Bank Ltd., an international bank based in St Vincent and the Grenadines serving customers from 113 countries around the world. Borja says language and location are all important for Latin American clients. “ [Customers] would really rather go with international [banks], but in Latin America there is a cultural factor of the language. People would really rather stay within the region. The furthest they would go would be Miami and the Caribbean. They would rather have somewhere close like Panama and would not really be willing to go further than that. They would prefer that than the local bank. Because of the political instability in certain countries people would put their money in a big international bank, somewhere where they have easy access to it.” Adolfo Linares, a Panamanian lawyer, is the current President of the Panama Chambers of Commerce, Industries and Agriculture. (His exclusive interview with Alternative Latin Investor is contained in this supplement.) Linares confirms that Latin Americans provide the lion’s share of funds deposited in Panamanian banks from clients located outside the country, “The majority of international deposits held in Panama are usually from people in Latin America. 60% or over of the funds held are from people in Latin America for many reasons, basically security, political risk. They choose Panama as well as they choose Miami, which is the preferable destination for Latin America. I think we will grow, the turmoil that Latin America is living right now, with the political situations they have been suffering in Honduras, Venezuela, Ecuador, and Bolivia. I would think Panama could become a safe haven for people who would like some kind of safeguard for their savings.”

BRAZIL

In Brazil a law introduced by the Government in March 2008 is having a noticeable effect in the use of offshore subsidiaries by Brazilian companies. The Brazilian news-

paper Valor Economico reports that there has been a surge in U.S. dollar deposits by Brazilian companies that are keeping their export revenue out of the country. Offshore subsidiaries of Banco do Brasil, the largest Brazilian state commercial lender, saw deposits by companies rise tenfold to U.S. \$4 billion in the twelve months leading up to June this year, principally because companies are now permitted by the new law to keep all export revenue outside the country indefinitely. The Brazilian Government introduced the measure to prevent a flood of U.S. dollars into the country that had pushed the Brazilian Real to a near nine-year high. As the Real has strengthened and the dollar weakened it has been more prudent to keep the revenue offshore. Corporate accounts at the New York and Nassau branches of Itau Unibanco, Brazil’s largest bank in terms of assets, have risen tenfold since the beginning of 2008, with the value of deposits up 150%. Brazilian banks reported their total offshore deposits as being U.S. \$13.2 billion in the first half of 2009, according to Central Bank data.

INSTITUTIONAL vs. PERSONAL ACCOUNTS

Conducting business offshore is a tendency that has been noted within the region, and the breakdown between Institutional against Personal accounts are thought to be evenly split. It’s difficult to make an exact determination of the relative volume of accounts for personal against business use as there is a tendency for clients to keep their savings in commercial accounts. Dr. Caporaso says this is done for a specific reason: “We do not recommend a personal account to our clients because a personal account has a name. Even some banks offer numerated accounts but this is not effective as when you ask for a transfer the bank must put a name. It’s stupid to have an account that will immediately report the operation. We always say to a client the best way is to make a company and open an account for the company. Then divide every activity into different accounts with different companies and that way they are protected.” Whilst a corporate account has certain uses for individuals, Peter Macfarlane believes they are becoming a very useful tool for the modern business environment, “There is a trend toward doing real business offshore—whether it be gambling or just information, marketing, the buying and selling of products business to business—because anything that can be done over the Internet can be done offshore”.

REGULATION

Recent clampdowns on the offshore banking sector and tax havens could ultimately benefit the industry in Latin America. U.S. President Barack Obama has placed a clampdown on tax havens for U.S. companies in Europe and the Caribbean high on his political agenda, and recent G-20 meetings have put the industry in the media and political spotlight. Naturally opinions differ greatly on the reasons, effectiveness and consequences this will ultimately have. However, the Swiss bank UBS's decision to co-operate with the U.S. authorities and release the names of 52,000 American account holders was a significant case mentioned by many experts that Alternative Latin Investor spoke with.

N.B. Since the writing of this supplement the U.S. and Switzerland have signed an agreement designed to end the tax evasion dispute surrounding UBS's U.S. customers. The Swiss banking giant will now give the U.S. tax authorities the details of 4,450 accounts.

Dr. Giovanni Caporaso advises clients on the workings of tax havens in both Europe and Latin America and is finding difficulty in advocating European destinations for his clients. "Switzerland, I don't recommend because it has become too co-operative. The problem is in Europe, when they are investigating tax evasion they also try to put money laundering on the investigation in order to get the authorization from the Judges to check the accounts." As Switzerland

bows to pressure to adopt international information sharing treaties, other traditional European tax havens such as Andorra and Liechtenstein have followed suit. Sergi Lucas Fernandez from the Banca Privada Andorra, which has a representative office in Panama, is in a position to see what is happening both in Europe and Latin America, and he thinks changes in Europe will have an inevitable effect. "People are relocating to Latin America for an obvious motive, for example in a country like Andorra that is within the European territory, the European Union have much more authority to attack them as offshore centres. Switzerland, Monaco, Luxembourg and Liechtenstein—these places each year are going to have more problems continuing being offshore. As well Latin America is a very good opportunity, because it is much closer to Europe culturally than Asia with its centres such as Hong Kong for example. We have a branch here in Panama for two motives, Latin America is a continent where there is a lot of money and we also offer a refuge for our European clients if one day our clients want to locate their capital in Latin America." With some amount of uncertainty with regards to banking privacy in the present climate, Xavier Borja, the Marketing Director at Loyal Bank Ltd., outlined for Alternative Latin Investor how, for example, the European tax directive would affect international banks within offshore operations in Latin America. "If it's an international bank the local rules of jurisdiction will apply, but if they are registered in another jurisdiction with a Class A license that bank would be obliged to the terms and jurisdictions of that location."

RECOMMENDED JURISDICTIONS

FOCUS ON PANAMA

Panama was the preferred Latin American destination for the majority of the experts interviewed by Alternative Latin Investor for this supplement. Uruguay was mentioned for certain services and Chile, with its large, stable banks and economy, is also an attraction. Sergi Lucas Fernandez from the Banca Privada Andorra believes Panama has significant advantages over its neighbouring competitors. “Panama uses U.S. dollars, this gives stability. It’s used [the U.S. dollar] in the country and the financial system. Panama has a very strict supervisor of banks—the Superintendents of Banks (Superintendencia de Bancos de Panama) is an organ that regulates the banks here in Panama and that protects much of the financial system. Panama is an offshore centre and it’s the only country in Latin America that in 2009 is going to grow, predicted at 3.5%. It has political and economic and legal security and the client is looking for all these.” And Sr. Fernandez added that some Caribbean locations lack the solid foundations that Panama has. “These small Caribbean countries for size and outside influence, they can’t offer what Panama does as it’s independent with 3.5 million inhabitants and a stable government. There was American occupation but they gave Panama a stability, a pause to allow it to stabilize and grow. The administrations are organized. There is a very important real estate sector, we have tourism, fishing interest and the Panama

Canal generates much income. It’s not so artificial, it has a solid economy”.

Xavier Borja of Loyal Bank Ltd. firmly believes Panama is the regional centre for Latin America and will maintain its position despite greater international pressure. “The relations and strategies they have been following slowly through the years have been transferring themselves into this financial centre in the region. You have all the big banks there; real estate had a big boom some years ago. All these small factors show that they are reliable to revision with high levels of privacy and security. They have been building on that throughout the years. I think it’s a very well planned strategy that they have. Their task now is to keep up those levels.” As we will discuss in the following section, Panama is currently trying to reach a compromise with the Organization for Economic Cooperation and Development (OECD) and maintain some level of secrecy at the same time, something which Xavier Borja thinks they will succeed in pulling off but with some costs. “They will have to compromise as you have to be extremely compliant to make the due diligence it requires. I think they will be complying more and they will find a balance. I don’t think they will give in like Switzerland did or Liechtenstein. I think they will try to find a balance to satisfy both parties. The requirement for the Patriot Act is that they should do their KYC (know your customer) with their clients and as long as they do that I’m quite sure they can still keep up their levels of privacy.”

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PANAMA BANKING STRUCTURE

Adolfo Linares, President of the Panama Chambers of Commerce, Industries and Agriculture explained to Alternative Latin Investor that Panama is not offshore per se as any bank located there has to have a real operation as opposed to existing on paper alone, which happens in some other offshore locations. There are three kinds of licenses required for banks located in Panama.

1. A General Business license, which authorizes a bank to operate bank accounts and savings accounts in Panama.
2. An International license, which means the bank is established in Panama, but is not authorized to provide services to Panamanians. These are bank services for foreign
3. A Representative Office Bank license

According to the Superintendencia de Bancos de Panama, banking activity is listed as follows:

- 43 – Banks with Licencia General
- 30 - Banks with Licencia Internacional
- 2 - Banks with Licencia Oficial (Banco Nacional de Panama & Caja de Ahorros)

OECD REPORT & LISTINGS

The group of G-20 nations has recently agreed that the Organization for Economic Cooperation and Development (OECD) will have a three tier grading system for tax havens. The first will be for those nations that have already concluded their tax information sharing agreements, the second tier will include countries which have committed to better information exchange but have not yet met all the requirements of the agreements, and the third will be used to name and shame authorities that have not even committed to the information sharing agreements. As you will see from the progress report published by the OECD on the 9th of July 2009, Argentina, Barbados, Bermuda, Mexico

and the U.S. Virgin Islands have been classified as having “jurisdictions that have substantially implemented the internationally agreed tax standard.” Latin America dominates the second tier list, those being “jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented [the standard].” The progress report concludes by saying, “All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard.” It should be noted that Panama is a “stand out” jurisdiction in the second tier of the list as, though they committed to the internationally agreed tax standard in 2002, they have yet to conclude a single agreement. In our interview with Adolfo Linares, President of the Panama Chambers of Commerce, Industries and Agriculture, he addresses this issue and elaborates on a counter proposal the Panamanians are currently offering to the OECD. There remains the possibility of sanctions being imposed on Panama by the OECD if an accord cannot be reached in the coming months.

FIGURE 3 - OECD PROGRESS REPORT 18TH AUGUST 2009

A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD¹

Progress made as at 15th September 2009 ([Original Progress Report 2nd April](#))

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Argentina	Estonia	Jersey	Slovak Republic
Aruba	Finland	Korea	Slovenia
Australia	France	Luxembourg	South Africa
Bahrain	Germany	Malta	Spain
Barbados	Greece	Mauritius	Sweden
Belgium	Guernsey	Mexico	Turkey
Bermuda	Hungary	Netherlands	United Arab Emirates
British Virgin Islands	Iceland	Netherlands Antilles	United Kingdom
Canada	India	New Zealand	United States
Cayman Islands ²	Ireland	Norway	US Virgin Islands
China ³	Isle of Man	Poland	
Cyprus	Israel	Portugal	
Czech Republic	Italy	Russian Federation	
Denmark	Japan	Seychelles	

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented					
Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Tax Havens ⁴					
Andorra	2009	(0)	Montserrat	2002	(0)
Anguilla	2002	(4)	Nauru	2003	(0)
Antigua and Barbuda	2002	(9)	Niue	2002	(0)
Bahamas	2002	(1)	Panama	2002	(0)
Belize	2002	(0)	St Kitts and Nevis	2002	(4)
Cook Islands	2002	(1)	St Lucia	2002	(0)
Dominica	2002	(1)	St Vincent and the Grenadines	2002	(4)
Gibraltar	2002	(7)	Samoa	2002	(0)
Grenada	2002	(1)	San Marino	2000	(4)
Liberia	2007	(0)	Turks and Caicos Islands	2002	(4)
Liechtenstein	2009	(4)	Vanuatu	2003	(0)
Marshall Islands	2007	(1)			
Monaco	2009	(6)			
Other Financial Centres					
Austria ⁵	2009	(7)	Malaysia	2009	(1)
Brunei	2009	(6)	Philippines	2009	(0)
Chile	2009	(0)	Singapore	2009	(6)
Costa Rica	2009	(0)	Switzerland ⁵	2009	(7)
Guatemala	2009	(0)	Uruguay	2009	(1)

Jurisdictions that have not committed to the internationally agreed tax standard			
Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

¹ The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

² The Cayman Islands have enacted legislation that allows them to exchange information unilaterally and have identified 12 countries with which they are prepared to do so. This approach is being reviewed by the OECD.

³ Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.

⁴ These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.

⁵ Austria and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention and announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.

EXCLUSIVE INTERVIEW WITH ADOLFO LINARES, PRESIDENT OF THE PANAMANIAN CHAMBER OF COMMERCE



Alternative Latin Investor spoke with Adolfo Linares, President of the Panamanian Chamber of Commerce. The largest and the oldest private sector association in the country, in order to better understand the offshore banking structure of Panama.

Can you briefly explain the offshore banking structure in Panama?

In Panama, we do not have an 'off-shore' banking industry per-se. We do have the banks that are established in Panama, they have to be established in Panama: That is to say they have to have an office, real operations and they must have employees of course. And they are all regulated by the Superintendency of Banks. Then the banking institu-

tions that are established in Panama, they can perform their banking businesses under three kinds of license and the license is not restricted to Panamanian capital banks or international/foreign capital banks. The first license is what we call a general business license: Banks which have this license are authorized to perform all kinds of banking business in Panama, meaning receiving monies from citizens in Panama, offering bank accounts, loans, mortgages, etc. Then we have what is called an international license: This license is for those banks established in Panama but are not authorized to perform banking business in Panama [itself]. This means, for example, they can establish an office here but then they will provide loans to companies in their countries of origin, or they will hold bank accounts in Panama for citizens of their country. Last we have what is called the representative office bank license: Obviously, this license only authorizes you to have a representative office. I just wanted to explain exactly how our banking system is regulated, as there is no such thing as 'off-shore' banking activity.

Has the current global economic situation had an effect on foreign deposits within Panama?

I don't have specific data but from what I can see deposits have remained steady, increasing at a normal level. There really has not been any effect yet, from the economy in that sense. The majority of international deposits, that I would call them, rather than 'off-shore,' are usually from people in Latin America; I would say over 60%. There are very, very few from the U.S. and other countries. There are many reasons the majority of international funds held in Panama are from Latin Americans. Basically for reasons of security, political risk – they choose Panama, as well as they choose Miami, which I think is the preferred destination for Latin America, but they also have Panama as another option.

Do have any reason to believe that percentage of deposits (by region) will change?

I would think, actually, that we will grow. The turmoil which Latin America is feeling right now with political situations in Honduras, Venezuela, Ecuador, Bolivia – I think Panama could become a safe haven for people who like some kind of safeguards for their savings.

Have you seen an increase in establishment in foreign banks in Panama?

Actually, there are about five new banks which are being established right now, with non-Panamanian capital. The Panamanian banking system has always had representation from banks of many countries over the last 25 years. There is no real new trend towards banking in Panama, things got started in 1970.

How does Panama deal with foreign (U.S.) pressure for greater transparency?

The private sector and the government are aware that there are some concerns from the U.S. and other countries that we need to address as friendly countries. We have no problem with that and I believe the best way to deal with those kind of issues is by promoting the execution of double taxation treaties with the U.S. and any other country that would like to have that kind of situation. I prefer – suggest double taxation treaties instead of exchange of information treaties and the reason is very simple: With a double taxation treaty we obviously have a process which will regulate the exchange of information within the country. Panama can have some assurance or benefit that will help us get more investors from abroad and will help the development of the country. Whereas signing an exchange of information act, the topic those kinds of treaties address is only the exchange of information. Panama being a country which does not need to receive any information from abroad, as we do not tax the income of our citizens nor residents which is generated outside of Panama. Really when you get to the point, there is no benefit for Panama with these kinds of treaties. On the other hand, a mutual

benefit will be realized by the implementation of double taxation treaties. This way, countries like the United States will have a real tool to obtain any information that they will require for tax or criminal purposes. However we as a country can use this kind of agreement to promote the country as a safeguarded place for investment.

Where does the implementation of a double taxation policy stand?

The private sector is recommending that the government take that path, and the government has the same agenda. So I think the government will, very soon, announce to the U.S. and to other countries that we are willing to start negotiations [for] the execution of double taxation treaties.

Industry insiders have coined Panama, the 'center' of Latin American banking (in regards to foreign deposits), would you agree?

I would say Panama is the center of Latin American banking, but we cannot compare the Panama banking system with other banking systems, in say the Bahamas or Cayman Islands, where actually the banks do not exist. If you go to there, the banks are only located on paper and that's not the system in Panama. Here over 16,000 people are employed by the banking system, so it's a real economy not a shadow economy.

How does Panama provide security for deposits?

The funds here are not insured by the State, but Panamanian bankers have been very conservative in the way they do their business. We've had hardly any bankruptcies within the banking system here. Look at us right now compared to the crumbling systems in the U.S. and Europe, Panama has excess liquidity.



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Other Locations

Amongst those working within the offshore sector interviewed by Alternative Latin Investor, Brazil and Colombia are considered to have a lot of bank regulation and controls. Ironically this is something that is being championed in many Western countries at present, but by its nature is not always a desired characteristic when a customer is looking for a tax haven. As mentioned previously, the Brazilian offshore industry is significant for Brazilian Companies and individuals but generally less attractive for foreign entities. Agreements between the U.S. and U.K. Governments and some Caribbean banking centres will have an impact on their future attractiveness as offshore locations. The Bahamas and the British Virgin Islands have signed several agreements that are likely to provoke American and British banking clients seeking greater secrecy to look to for alternative locations. At the same time there has been an increase in banks applying for licenses to operate in Panama. Ken Proulx is Principal at Advanced Offshore Solutions, a firm providing accounting for a variety of international business needs and helping companies interested in offshore structures. Proulx gave Alternative Latin Investor an outline of what may not always be in the brochure for some offshore territories. “We look at what image do you want to project when people do due diligence on you, because different jurisdictions say different things—there are some jurisdictions that scream Russian Mob, narco-trafficking or terrorism, whether it’s true or not. When you make these decisions you have to recognize that people doing due diligence on you are going to size you up, right

or wrong, based on where you are. One thing is to be in the Cayman Islands, another to be in Nevis, the Caymans being much cleaner, having gone through a process of the Americans forcing them to clean up their act, which they’ve tried in various places, some successful. There have been some cosmetic changes and some real changes depending on how serious the governments take them.” However, whilst some centres carry better reputations than others, Ken Proulx believes the region is improving its reputation. “In Latin America the level of legitimacy and competence is growing—the British Virgin Islands and the Caymans are fairly respected. In some of the smaller places the rules are one thing but what happens is different—it’s an “I’m required to tell you this” situation. Other than tourism it’s a great way for income, so they are not going to scare you away! They get a lot of business for lawyers and banks. The U.S. Government have twisted their arms, so they introduce legislation, but there is a varying degree of true commitment to those legislations.”

REASONS FOR LOCATING OFFSHORE

Latin American offshore centres, particularly in the Caribbean, facilitate business activities not always permitted in other countries and offer some degree of legal protection. Ken Proulx told Alternative Latin Investor that two of the main reasons companies look to go offshore is to reduce taxes, which can be problematic, and perhaps the biggest reason concerns liability. Online gambling companies serving the U.S. market have favored Latin America, and Proulx

shed some light on how this could be done. “Doing certain activities in the U.S. is problematic for a number of reasons. [Online gambling companies] like to incorporate overseas, setting up servers in another country that may not have the same anti-gambling legislation or maybe favourable gambling legislation. They either want to go offshore to set up a company whose sole purpose is to set up the servers so they are physically offshore or there can be a combination, so they set up their company in another location for tax reasons. People are very strategic about what they choose and they have a combination of companies to do that.” As well as enabling activities that would be difficult to undertake in the U.S., Ken says that offshore centres offer some degree of protection from the litigious culture that exists in the United States. “It’s a sue happy country like no other. In the Caribbean you have to place a \$50,000 dollar bond, so what that does is keep spurious lawsuits from occurring. If you want to sue someone in the States it doesn’t cost you anything but you can go bankrupt defending yourself. Overseas, in some of these jurisdictions you can’t even file a case until you put a bond down for \$50,000, so it protects people from that.”

Dr. Giovanni Caporaso, who has published a guide to offshore banking, written in Italian, titled *I Segreti della Banca Offshore* (Offshore Banking Secrets), advocates Panama and Uruguay in Latin America, but says the ultimate decision is highly influenced by the needs of the clients. “Everything depends on the client. Sometimes we use several different banking centres, accounts in one country, credit lines in another and a company in a third one.” Dr Caporaso prefers to deal with international banks as he says local banks, which are often more conservative, deal more with Latin American clients and 90% of his clients are from outside the region and looking to invest abroad. In dealing with those looking to locate offshore, Dr. Caporaso and the law office he represents undertake pre-checking on clients so they know where the money comes from. He comments that in the current climate many institutions take great care with their reputations. “At the moment all banks are concerned about their image, they undertake a very thorough compliance on new clients.” However, even amid the current clampdown climate Dr. Caporaso says clients still enjoy certain protections. “If the bank knows that the cli-

ent is clean and they just didn’t pay taxes, that is a crime in their country but not [in Panama and/or other tax havens]. [The bank] can protect the client if there is an investigation or a court order.”

NEW TECHNOLOGY/ ONLINE CAPABILITY

The very nature of offshore banking has ensured that the introduction of the latest banking technology is seen as fundamental by many operators within the industry, however non high-tech banking can be assuring for some clients. If your clients are located in a variety of locations around the world it makes sense to make full use of the convenience that digital and Internet technology provides. Sergi Lucas Fernandez from Banca Privada Andorra knows it is what his account holders are looking for. “We have American, English and German clients and that has obliged us to invest much in technology, communication and online services. I would say that what we have is better than the onshore banks. We use a system called Token, which is the latest in security. We offer an instrument to the client that produces a different code each time. If a client wants to make a transaction, the client has to put in a card and they will get a new code in twenty seconds. If the client doesn’t put in the code the operation stops. The majority of our clients demand it because they are not in our location. You have to invest in everything virtual.” New technology doesn’t just provide a more convenient way to maintain an offshore bank account; it has also proved to be a valuable tool for making contact with a variety of new clients and exposing them to some of the products available, according to Xavier Borja from Loyal Bank Ltd. “We are seeing much more HNWI’s now. Because of the Internet people are discovering the use of trusts as foundations of IBC’s. Ten years ago people didn’t know much about this. Now because of the Internet it’s becoming more mainstream. Even if you are not a big company or a HNWI you can still have access to open an IBC (International Business Company) right now through the Internet.” Whilst online technology is undoubtedly predominant and an absolute necessity for the majority of both clients and the banks providing services, Dr. Giovanni Caporaso of OPM Corporation feels there is still a place for more traditional methods. “Myself, I maintain the bigger part of my capital in a bank that doesn’t allow

you to do operations on the Internet. I feel more secure like this. Any operation must be confirmed by functionaries that know your voice, account number and where you are located.” However, Dr. Caporaso concedes that it really depends on what you need from your account. “If it’s for investment or paying invoices, etc., you really need a faster system.”

MULTI-CURRENCY ACCOUNTS

Multi-currency accounts and real-time transfers are a very significant trend and a growth market being developed by offshore banks. Those within the industry that Alternative Latin Investor spoke with told us that the financial crisis combined with technological developments have created a great demand for products that for example offer accounts within which up to thirty different types of currency can be held and sums transferred easily between those nominated currencies. Peter Macfarlane of the Q Wealth Report says International offshore banks are providing something not available in the U.S. and moving money is slowly becoming easier in Latin America. “Americans that moved abroad were keeping their money at home in the States, but now more of them are looking to international offshore banks. They are feeling safe because it’s the opportunity to hold different currencies. There are very few banks in the U.S. offering accounts in anything other than dollars. In the past you had to deal with time differences, international correspondence and faxes. Now, an account can be logged into online and it’s the same as having an account in the U.S. Currency restriction and regulation in Latin America is easing. The crisis has been good for offshore and it’s been an impetus for growth in Latin America. People looking for offshore are smaller to medium investors facilitated by online Internet...convenience. Before you had to be a multi-millionaire to make it worthwhile. Now there are people with U.S. \$100,000 looking to diversify into foreign currency or invest in another country and that has been made easier by Internet banking.” Naturally as technology advances so do the products on offer, as Xavier Borja from Loyal Bank Ltd. outlined. “What is big right now is real-time transfers. Banks are trying to tap the mobile market. You can receive state-

ments in real time on your cell phone, meaning as soon as you get a transfer into your account you’ll get a notified SMS anywhere in the world.”

CREDIT & PRE-PAID CARDS

The provision of debit cards and pre-paid credit cards by offshore banks is thought of as being a market with huge potential in a continent such as Latin America, where access to credit and credit histories are frequently non-existent. The majority of offshore banks don’t give credit as such, so to obtain a credit card it would have to be secured by a formal deposit account unless you are a HNWI with millions deposited in the bank. Most banks have their own card programs, some of which work with regional card issuers who offer back-office card services for a number of banks. Debit cards don’t usually require any security deposits and there is a wide range of pre-paid credit cards on offer from offshore banks. Three products mentioned to Alternative Latin Investor are of particular interest; one is offshore banks offering a facility for immigrants to send their remittances through a card. Xavier Borja from Loyal Bank Ltd. thinks it’s an indicator of what is to come. “If they are targeting immigrants with cards that means there is a lot of potential.” And Borja went on to tell us of other uses he has noticed recently. “There is a big demand in bank cards, especially debit cards because it’s more secured, especially for payroll programs. It’s increasing and there is a lot of demand in the market.” Another interesting product development was picked up on by Peter Macfarlane. “I’ve seen Caribbean banks offering pre-paid cards domestically in the U.S. They compete on equal terms with onshore banks.” One of the most frequent needs for a credit or debit card is for traveling internationally as it’s not very convenient to fly with a wads of cash in your suitcase. Ken Proulx feels that the Latin Americans’ habit of not keeping their money in local banks is a huge opportunity for the industry. “The advantage of a pre-paid credit or debit card is that you don’t need a credit history. If you are traveling to the U.S. you don’t want to take a lot of cash with you. The pre-paid credit card is a humongous underserved market.”

INDEPENDENT FINANCIAL CENTRE OF THE AMERICAS (IFCA)



Founded by banker Gaetan Bucher, the Independent Financial Centre of the Americas is designed to serve as a capital markets hub for the Americas, similar to the Dubai International Financial Centre in the Middle East.

Construction of an U.S. 850 million dollar purpose built facility is due to start by the end of the year in the Dominican Republic city of Guayacanes. The ambitious project will house private and commercial banks and an electronic exchange, called LAIFEX, to clear and settle emerging market debt and other tradable products. The IT platform has been designed to underpin all banking transactions to increase the speed and cost efficiency for institutions and their clients.

Amid worldwide concerns about transparency in banking, the center say they will embrace positive regulation through independence, responsiveness, efficiency and transparency. The centers regulatory arrangements are being drawn up by Patton Boggs, a Washington law firm and Deloitte consulting in London. The proposal is for regulations to be separate from those that already apply to the Dominican Republic's domestic financial system. Located centrally between North and South America, the IFCA aims to provide consolidation to the fragmented markets that are currently prevalent in Latin America in particular. The joint venture between Swiss-Dominican banker Gaetan Bucher and a local investment group called Grupo Vicini project they will complete the project by the year 2012.

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EXCLUSIVE ALTERNATIVE LATIN INVESTOR INTERVIEW WITH IFCA FOUNDER GAETAN BOUCHER

How would you most succinctly define this project?

We have been working on this for six years now and have already done a substantial amount of investment, over U.S.50 million dollars, in the research and development phase. Precisely avoiding the 'copy & paste model' or 'lets just go out and there and be one more financial center.' So the point we are at right now and what this project is all about is creating a true financial center, if you will. A standardizing financial platform for the Latin American region; from the region to the world and from the world to the region. We've taken a long time to look at all the weaknesses, on a financial basis, that the region has. We've taken a long time to talk with all the major global financial institutions about this region, about the challenges they face, etc. And we have an almost purpose designed solution for them in this financial center. We've taken our time; again, we've wanted to do it right. One of the corner stones of the project is the legislation, which was passed and approved in December of 2008. This is specific legislation for these financial centers or these financial zones in the Dominican Republic and they are the result of a very lengthy period of research and development between ourselves, Lloyds of London and Patton Boggs in Washington DC: To look at the best practices the world over and weed the not so good practices out. And look at the current 21st century challenges and create a 'best of class' financial center. Which turns out into a global financial center, which happens to be in the middle of the American continent and therefore services more the Latin American region [which



we undertake] happily, gladly and effectively. This law that was approved in December of 2008, which we lobbied in Washington for, it completely aligns with the latest G-20 guidelines and the OECD guidelines — against tax havens. This is not a tax haven, this is a true financial center: So I think that is one of the main differentiating points, from what is actually out there and us. So happily, in a certain sense we are just beginning construction towards the end of this year and will be up and running by 2012. We are a long way from have the financial center ready, but we have all of the basics ready and we are negotiating with global financial institutions right now who will be our anchor tenants.

Those conversations are very advanced and before the end of the year we will make announcements on who has already signed up. These are the usual ten large banking suspects in the Latin American region, as I call them. The major global banks from the U.S., Europe and Asia that are active in the Latin American region.

You said you received 50 million dollars in investments for R&D, where did that come from?

The two main partners are a local group, called Grupo Viciini and myself. We are partners in this. We already have the actual land for, which is about 7000 acres: a Greenfield site which is about 10 minutes drive due east from the main airport. What started as a financial center 'exercise' six years back has turned into a new financial city for the 21st Century. Very carefully thought out in a 25 year business plan and developed to create an ideal environment for financial services in the 21st Century.

What was the spark that gave you the idea for this project?

Well, I am from the Dominican Republic. Actually, I'm half Swiss half Dominican and grew up in the Dominican Republic between the ages of 5 and 20. My family has been here for a long time and we were, sort of, in the influential spheres here. My father, although he died a long time ago, very young at the age of 59, was one of the country's leading economists and sugar experts. And so I had lived in Switzerland myself and was in banking for 15 years. I decided to move back to the Dominican Republic in the first quarter of 2003, realizing there was a need for a true financial center in the Latin American region, to help consolidate all of the financial power and all of the transactional requirement the Latin American region has in order to give it more strength for the 21st century. At the same time, you see things like, within this first phase for the project, we have a clearing and settlement house for Latin America, which as you know the region lacks. We bring a lot of things like that within the first phase, which makes us ideal – the Dominican Republic is an ideal place for this. We created

our own legal framework and this law was obviously passed through the Dominican Republic congress. It went through all the normal channels, and was then approved and enacted by the President in December of 2008.

Do you see the Financial Center working for Latin American companies to reach the rest of the world or more for the rest of the world to reach Latin America?

Both actually, very much so.

Is one more prevalent?

It's been pretty equal so far, though we have been talking a lot more with the global banks which actually reach better into the Latin American region. When you look at what the economy is doing right now, and how these banks are living through it, obviously we have – apparently we have reached the bottom of the trough...or at least we're all praying we have. As things start looking up and these yield curves start going up, all these banks are already looking within their own frameworks to see how they can create efficiencies and savings in all regions, not only for the Latin American region. Now, no major global bank has ever done a consolidation of Latin American business or operations. So what we bring to these banks right now is, on the one hand efficiencies and economies of scale and on the other, a risk management platform and a risk management tool through the clearing and settlement system for the Latin American system, which nobody has now. So economies, efficiencies, and risk management: Three very important things now going forward, particularly for these banks. You look at most global banks that are active in the Latin American region and you'll see they replicate the same model through each country. They'll have a front, middle and back office in Mexico and they'll replicate the same thing in Chile, Buenos Aires, Venezuela and everywhere else. Here they have an actual chance to come into an absolutely optimal infrastructure that'll be much cheaper for them to consolidate their back office, their middle office

and even part of their front office for the Latin American region. So it is very effective right now within the current markets. Actually, our sales have improved thanks to the current economy.

In terms of banking, will the IFCA participate in exchange of information Acts, double taxation, etc?

If you look at our law that's all contained within it. It's very tough, very tight and very strict on it. What this law does, in these financial zones – it creates a Chinese wall around these financial zones, as none of the local banking laws apply within it. Instead a brand new regulator is created specifically for this financial zone. Some of the candidates that are being considered for the oversight board for this regulator have been Chairman of the SEC, Chairman of the Executive Committee of Price Waterhouse Coopers, etc. Its that level of expertise on a regulatory basis that is going to be brought to this new regulator and will then regulate this zone and all the banks that are in it. So on a clean slate we'll be able to set a completely new standard for the Latin American region, in complete compliance with the London summit of the G20, the OECD, the Financial Action Task Force and so on.

How do the IFCA laws act towards hedge funds?

It contemplates the issuing of regulations by the regulator for that sector also. What this law does – it is a framework law, and it very specifically lists the minimal amount of regulations the regulators must actually issue. When these experts come in they will actually write what the regulations will be, which have to be, naturally, aligned with this law, and then they will be published. Hedge funds are contemplated in those.

Has there been interest from non-traditional Latin American players, i.e. the Middle East or Asia?

I think it's a fair statement to answer that in a positive way.

The standards with which this project has been made are very high and they really apply to and attract investors, and not just the usual suspects.

Has the current crisis increased interest in Latin America?

I think Latin America has fared very well throughout this and has actually done better than most of the world. I think that puts the Latin American region in an advantageous position and this financial center is going to help consolidate the regulatory basis, the legal basis and the financial basis in order for the region to take off stronger now when the whole economy takes off over the next several years. So I think it is fair to say 'yes' that the economy has attracted, in relative terms, more investors to Latin American regions because it has fared better. In fact, the Dominican Republic has done very well throughout it, and its tourism has exceeded the tourism sectors of other regions within the Latin American region.

The Latin American region has to be able to seize this opportunity, and in order to do that we have to become structured and we have to be disciplined about the way we do business. Several countries in the region have done this; some have become investment grade over the past years. I think the trend will be for some of the other countries in the region to go in that same direction.

Will there be an opportunity in the financial center for participation on a national level?

No, absolutely not. Actually the law is very tough on this – it's very tight. It actually enacts it as a crime, punishable by imprisonment if a bank or banker does that.



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DEPOSIT SECURITY

There is no Federal Deposit Insurance Corporation (FDIC) equivalent being employed to insure deposits within the Latin American offshore banking industry, and though some territories will offer some kinds of deposit insurance, it really depends upon the country you are dealing with. Peter Macfarlane of the Q Wealth Report says that whilst an FDIC equivalent does not exist in the region there are other safeguards that have proved beneficial. "A few countries may have an insurance scheme, but they are not really significant in terms of offshore investors as they are more designed to protect local investors with small deposits. Certainly investors putting their money offshore need to do their own due diligence on the banks they are dealing with, as it's obviously a significant concern. On the other hand a lot of offshore banks have not taken risks whereas FDIC insurance encouraged U.S. banks to take enormous risks knowing they basically had a guarantee from the U.S. government. The regulatory regime in many offshore centres has prohibited banks from dealing with derivatives and taking huge risks." The international financial crisis ap-

pears to have had some effect in that it has led banks to be particularly careful to assure customers their money is safe and consequently some Latin American offshore centres are now putting insurance systems into place to provide confidence in their banking services and dissuade customers from emptying their accounts. So whilst the merits of the FDIC were questioned by many of those interviewed for this Alternative Latin Investor supplement, Sergi Lucas Fernandez from the Banca Privada Andorra feels that nothing beats doing your own homework on an offshore destination before you finally select. "I think the problems that we have suffered in the last year show that the size of the bank doesn't matter. We have shown that the smaller banks are more orderly than the bigger banks. There isn't an insurance certificate like there is in Europe. In Spain for example it's 50,000 Euros for a current account. In Latin America this doesn't exist, so I recommend you look for a historic bank that has worked well for many years, that has a strong balance and that doesn't do strange things. We are a bank that has a liquidity balance double or triple than a European or American bank. These are things to take into account."

RETIREEES

Alternative Latin Investor found that European and U.S. citizens retiring to locations such as Panama did not have a significant need for offshore accounts. Sergi Lucas Fernandez commented that whilst they may transfer funds to their retirement locations they have little use for the benefits of a tax haven. "Retired people use local banks; they would not be using an offshore account.

For example there is a lot of retired people from the U.S. going to Panama just to buy a flat or a condo there, but they would be opening a local bank account and transferring their retirement funds over there. Their profile is a little bit different; it's not like expats who would be working and need an international bank account. These are retired people who are planning to stay in that country so therefore open a local bank account".

CONCLUSION

There are many positive factors indicating that offshore banking services in Latin America will have sustained growth in the coming years. At present there is great political momentum for greater regulation of tax havens, though the ability to enforce agreements worldwide looks complicated. Pressure being placed on European offshore centres, particularly by the U.S. Government, could see Latin American locations benefit as customers look for alternative jurisdictions for their savings. The geographic location and cultural similarities of Latin America to Europe and the United States make the region a natural choice for customers looking to relocate. Historically, there has been a tendency for Latin Americans to keep at least some of their assets outside of their home country. The present instability in some Latin American States indicates that this will continue and possibly increase into the future.

Offshore centres within the region realize the necessity and

possibilities that Internet banking and new technology can bring to their attractiveness to clients. Multiple currency bank accounts and debit card services are two product areas identified as having excellent potential for growth as clients look to spread their savings in different currencies and move money more easily across national borders. Latin American locations are well placed to benefit from the constant increase in services and business activities that can be wholly undertaken on the Internet. Offshore locations enable activities such as online gambling, which can often be problematic in countries such as the United States. Locating a company in another jurisdiction can also be attractive from a legal perspective. Finally, the lack of an FDIC type insurance for customers is not a significant factor. If anything banks in offshore locations appear to be more conservative than onshore banks who have endured a very difficult period during the Credit Crisis. Jurisdictions such as Panama are going to great lengths to highlight their stability and sound levels of self regulation.

APPENDIX

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Figure 1 HNWI Population, 2005 – 2008 [by Region, In Million]

Figure 2 Geographic Distribution of HNWI's and Ultra-HNWI's, 2008 [by Region]

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Figure 3 OECD Progress Report, 18th August 2009

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