

BUSINESS INSIGHT

BVI MEANS BUSINESS

BLOCKCHAINS – CAPTURING THE VALUE THEY CREATE

By Graham Stanton

Blockchain protocols are merely software that anyone, anywhere in the world can run, permitting individuals to interact with others running that same piece of software.

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5 IMPORTANT STEPS FOR DATA-PROTECTION COMPLIANCE PROGRAM

By Fanny Evans

When giving the first steps into complex waters like data protection, it is very common that companies get lost in the avalanche of legal requirements or in developing that product or service that might result attractive to its clients.

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SPACE FOR SUBSTANCE: IMPLICATIONS, OPPORTUNITIES AND IMPACT ON THE BVI COMMERCIAL AND RESIDENTIAL REAL ESTATE MARKET

By Chris Smith

The Economic Substance Act requires that a company that is tax resident in the BVI must have adequate staff and office space in the BVI itself. How this will be determined or how strictly it will be enforced remains unclear.

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BUSINESS INSIGHT

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NOTE FROM THE CEO

What It Takes

In his autobiographical business book *What It Takes: Lessons in the Pursuit of Excellence*, Stephen Schwarzman, chairman, CEO and co-founder of leading global financial institution Blackstone, offers 25 rules for work and life. One that particularly stood out to me was Rule 14: “Never get complacent. Nothing is forever. Whether it is an individual or a business, your competition will defeat you if you are not constantly seeking ways to reinvent and improve yourself.”

I think all of us have seen the fundamental truth of the first part of that statement as COVID-19, a dangerous and deadly coronavirus has swept the world, putting countries into lockdown, halting economic activity and driving huge swathes of the global population into their homes where they must be workers, educators to their children and health workers. However, the second part is equally accurate. Economic activity will restart and we already seeing nascent shoots in China as the population there cautiously begins to return to work. While the virus has sadly reached even the BVI's shores, we must ensure that we are set and ready to continue to provide global business with the dynamic and innovative partnerships they have become used to from the BVI. The articles in this edition of Business Insight show the level to which innovation is at the heart of the BVI offer and, importantly, how this will stand us in good stead in the challenging months to come.

Last year, as we in the British Virgin Islands (BVI) commemorated the anniversary of the introduction of the International Business Companies Act of 1984 – the seminal piece of legislation that propelled the jurisdiction indelibly into the global financial services industry – we themed our celebratory activities around ‘35 years of Innovation’.

Indeed, looking over the trajectory of the BVI's financial services journey, we have been constantly innovating for decades. Admittedly, many recent innovations, like our Beneficial Ownership Secure Search System (BOSSs), have resulted from a pressing desire to maintain our leading position with regards to meeting global standards and to satisfy established regulatory criteria.

Having recently been deemed fully compliant with the European Union's Economic Substance requirements, we in the BVI must now shift focus to position ourselves to take advantage of the opportunities that lie before us.

Many of these relate to the digital economy and its complex world of blockchain, cryptocurrencies, digital currencies, bitcoin, Libra and distributed-ledger technologies among others in the financial technology lexicon.

A few years ago, the BVI was presented with a ground-breaking opportunity to be the first in one of these areas, but like many other countries, we remained cautious about moving into uncharted waters. To blaze trails however, we cannot simply find others to emulate, but we must be the innovators.

Thirty-five years ago, we did not wait and today we cannot afford to pause until someone else has tested the digital waters. As Rule 16 of Schwarzman's book says: “If you see a huge transformative opportunity, don't worry that no one else is pursuing it. You might be seeing something others don't.”

The Premier of the British Virgin Islands, the Hon. Andrew A. Fahie, said in his Budget Address for this year that “in 2020, our vision must be 20/20”. That is, seeing something that can move the BVI into the next 35 years of innovation and includes his vision of turning the BVI into a hub for financial technology.

The contributors in this issue of *Business Insight* understand *What It Takes* to elevate the BVI to the next level. Graham Stanton, a recent resident in the BVI and co-founder of ID Theory which advises a thematic cryptoasset investment fund, outlines the nuts and bolts of framing investments in blockchain in his article. Elsewhere, Carey Olen tells us the five things the BVI must get right and Fanny Evans shares five important steps to ensure data-protection compliance.

In addition, Barry Leon outlines the key elements needed for the Commercial Court to remain competitive, while Francois Lasalle suggests the BVI is way ahead of other jurisdictions in the region with its arbitration offerings. As we look to invite family offices to the BVI, Peter Poole, Cristiane Matos and Chris McKenzie capture the blend of legislation that make the BVI attractive.

The issue of substance has dominated many conversations of late and Lisa Penn-Lettsome explains how she will chart the way forward as the Government's chief technical advisor on international business and financial services while Chris Smith assesses the implications and opportunities as we create space for substance.

Dan Wise provides an overview of the BVI's asset recovery regime, and Riina Amalie Aab shares important personal and professional lessons in resilience and how to overcome adversity and thrive.

The BVI is always aware of how political activity in other regions can directly impact upon us and Simon Gray reviews the political sea change we have seen following the election in the United Kingdom, while Benito Wheatley looks at how the Overseas Territories should respond to a slowing world economy.

Rounding out the issue, Adenike Sicard looks at the landscape over the last 35 years and how the BVI has developed over that time, while the ISSA guides us on safe practices for working remotely.

There will be challenges ahead. However, as we progress through the next 35 years, one thing is clear. We in the BVI know *What It Takes* to succeed and we must – and will – move with agility to get it done. We mean business.



ELISE DONOVAN
Chief Executive Officer



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BLOCKCHAINS – CAPTURING THE VALUE THEY CREATE

Blockchain protocols are merely software that anyone, anywhere in the world can run, permitting individuals to interact with others running that same piece of software. They don't require permission to use, cannot be censored and provide a permanent record of truth; qualities providing them the ability to disrupt many industries.

The first incarnation of this technology was Bitcoin which can be thought of conceptually as an excel spreadsheet shared between a group of individuals acting as a distributed ledger. When a number of users run this software simultaneously and continuously, the result is the formation of a decentralised network that allows these individuals to transact together (either financially or with data) without having to trust their counterparty. It is a foundational technology that expands the possibilities of human cooperation and economic coordination on the internet.

The core invention wasn't actually Bitcoin itself, but the notion of 'digital scarcity'. For the first time in history, digital assets could be scarce. Unlike photos and mp3s whereby if Alice were to send Bob one of these files, she would still retain a copy, with Bitcoin, this is impossible. Once Alice send a bitcoin to Bob, she no longer has ownership.



BLOCKCHAIN BOOM

Most successful inventions are created in response to a failure or frustration with existing systems. The financial crisis in 2008 represented failure at a corporate and governmental level and resulted in extreme frustration and pain at an individual level. It was no coincidence that this was also the year that the Bitcoin network was launched. In the years that followed there have been countless examples of the abuse of trust from the institutions and third parties that we rely on to validate transactions, store data and control monetary policies. Blockchain offers an alternative trust model whereby instead of being forced to place trust in the entities that provide products and services, trust is provided through maths and encryption. It cannot be abused.

Importantly, blockchains are not companies. In their purest forms they are permissionless open source protocols free from third party control. In this short essay we expand on the important differences between companies and these protocols, why open source matters and how to frame this unique investment opportunity.

PROTOCOL PROMISE

Firstly, allow us to define what we mean by an open source protocol. A protocol is a set of rules and guidelines for communicating data. Rules are defined for each step and process during communication between two or more computers, and the networks that emerge have to follow these rules to successfully transmit data. Open source denotes that the source code of a protocols is freely available, can be redistributed and most importantly, modified.

The most famous set of open source protocols are the infrastructure commonly referred to as the internet stack. TCP/IP for networking, HTML for the World Wide Web, SMTP for email and FTP for file transfer. These protocols are still hard at work yet have barely been upgraded since they were first created in the 60's and 70's despite the emergence of better alternatives; they are entrenched.

So why haven't these protocols been improved? This is because there are limited incentives for anyone to commit time, energy and money to enhancing and upgrading the code. Even though the internet stack generated immense value, instead there were incentives to build application and companies on top

of the protocols which is where all that value created actually accrued. Fast forward a few decades and we now have highly specialised extractors of value in the form the FAANGS; entities that have capitalised on the stream of users of these protocols by monetising their activity and data.

A key innovation in open, permissionless blockchains that gives them such powerful growth potential is that, unlike the internet stack, they have incentive mechanisms hard baked into their design. Bitcoin the protocol (capital B), is a good foundational example of this incentive design. If it were not for the reward of bitcoin (small b), the native cryptoasset of the Bitcoin network which is paid out to miners for securing the network and processing transactions, then the network would have never made it off the ground. Now, the amount of computational power dedicated to securing the Bitcoin network by these miners is more than a million times faster than the most powerful supercomputer in the world.

Beyond the libertarians and cypherpunks who recognised the potential of Bitcoin, forward thinking developers and engineers, who often starting as hobbyist miners, could accumulate this asset and know that any additions they could contribute to the code would enhance Bitcoin's future potential value. This created a powerful force in the improvement of the protocol in the absence of direct payment for those improvements.

And so, cryptoassets sit at the heart of these blockchain powered decentralised networks, and are the glue that ties together the incentives of the suppliers of the network (in the case of Bitcoin, the miners) and the users of the network (those wanting to transact value over the internet pay the miners fees in the form of bitcoin). With good incentive design, suppliers, users and developers are attracted to the networks and this drives their expansion.

Money was the first killer application for blockchain, and we are excited to see many other great use cases starting to take shape that truly benefit from decentralisation. However, a project shouldn't be decentralised for the sake of decentralisation, and there are many instances where it doesn't make sense to "tack on a blockchain". Sadly, cryptoassets have since been used as a means of raising capital for pseudo blockchain related projects over the last few years, peaking in late 2017 when Initial Coin Offering (ICO) mania took over the world.

The reality in most of these cases is that the projects were promising value accrual in the cryptoasset to raise capital at no cost and with no mandate to deliver anything of value, let alone create a decentralised network. Many other examples have followed where there is no use for the cryptoasset at all and what is actually being built is a centralised, closed source, network. Lacking this value accrual mechanism disincentivises users and provisioners to hold and accumulate these cryptoassets and the network has little hope of proliferating.

THE IMPORTANCE OF OPEN SOURCE

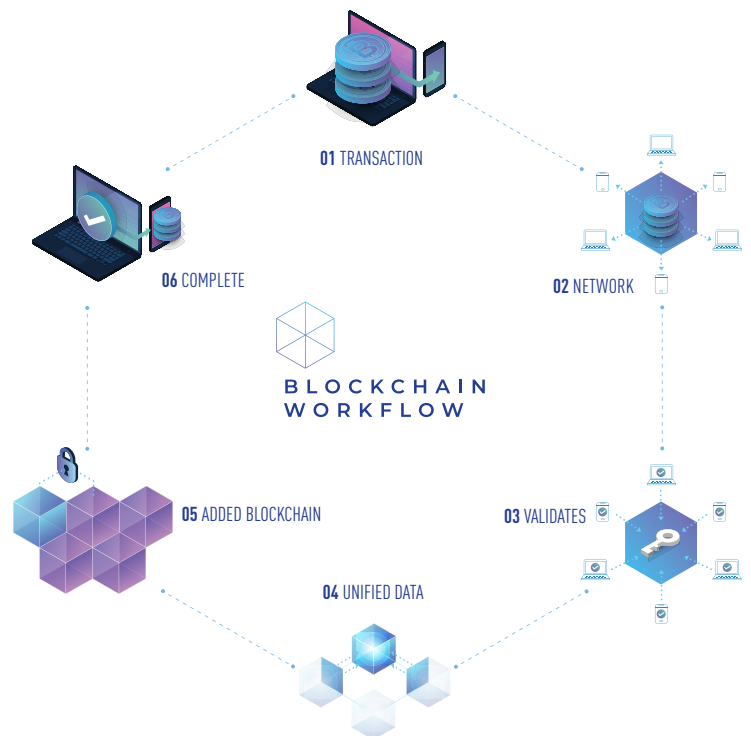
The fact that legitimate decentralised crypto networks are all open source is extremely important. It means that anyone at any time can effectively port the code and run competing software with a few modifications to the protocol design. This concept, known as ‘forking’, means that the protocols can essentially evolve through the process of natural selection; if an enhancement improves the overall ‘fitness’ of the network, it will likely go on to supersede its predecessor. Owners of cryptoassets of the original network will have the same number of cryptoassets on the new fork making it trivial for users to migrate over.

To date there have been 105 bitcoin forks yet only one has managed to garner any kind of material value and ongoing support. This demonstrates the importance and power of the community congregating around the protocols, its social contract, and the entrenchment that happens on a protocol level.

There is no CEO to mandate which fork is the real fork, it is a consensus agreement by every user of the protocol. In other words, it is the free will of the network participants that determine the direction of a protocol and these decisions relate to their incentives.

Why does this all matter? With the popularity of blockchain technology over the last few years, there has been a gold rush for companies wanting to build services or networks utilising this technology. To provide some perspective, venture capital funding into the blockchain ecosystem stood at \$1.3B in 2018 alone. There has been tremendous value accrual in the equity of key ‘picks and shovels’ companies servicing the increasing demand for cryptoassets, such as exchanges and wallet providers. The valuation of Coinbase, one of the leading cryptoasset exchanges increased from \$1.6B in August 2017 to \$8B in October 2018 to give some context.

Many companies, however, are now attempting to cash in on the popularity of decentralised protocols by either building centralised companies on top of the existing networks or attempting to launch their own networks. This is where it is important to really understand and dissect the incentive mechanisms at play.



AN INVESTMENT OPPORTUNITY?

We believe that the most effective way for an investor to achieve maximum upside to the growth in this ecosystem is by investing directly in the native tokens that power these decentralised networks, the cryptoassets themselves. It is counter intuitive to us to invest in the equity of a centralised company that is building a decentralised network, as the CEO will always have a responsibility to their shareholders, and not the holders of their network’s cryptoassets. This results in perverse incentive alignment; for the equity to accrue value it needs to charge rent to the network that will trickle back into the company. This inherently weakens the incentive mechanism for that network’s participants. As these are open source technologies, this rent seeking behaviour can be forked out to form a new network with the same user base, thus removing this obligation to the parent company, ultimately resulting in its demise.

As investment managers within the space, we are therefore focused exclusively on the opportunities we see within these decentralised networks, especially those that have become entrenched, and not with the companies being built on top. For it is here that we believe the true value generated by blockchain technology will ultimately be realised. ■



FINANCIAL TECHNOLOGY: 5 THINGS THE BVI MUST GET RIGHT

By CAREY OLSEN

The British Virgin Islands (“BVI”) as a jurisdiction, is a natural fit for rapidly evolving industries such as financial technology (“FinTech”). The global popularity of companies under the Business Companies Act 2004 (as amended, the “Act”), multiple innovative fund products, recent amendments to the Act to broaden the use of segregated portfolio companies and the sweeping changes under the Limited Partnership Act, 2017 (the “LPA”), all demonstrate a jurisdiction that matches a long established and stable legal framework, with an ability to be forward looking.

The challenges faced by the BVI in capitalizing on its existing strength and continuing to grow its participation in the global rise of FinTech, mirror the myriad of challenges that governments and regulators around the world face in keeping up to speed with the rapid growth and development of the industry.

In order to attract innovation and a concentration of business, there are many different factors, however, in respect of the FinTech marketplace the most important of these is regulation.

Of the following five things that BVI must get right for FinTech, there is a strong focus on the development of regulation: (1) the overall regulatory regime, (2) sandboxing, (3) anti-money laundering (“AML”) and know your client (“KYC”) regimes, (4) physical and digital infrastructure, and (5) data protection and cyber security.

1. REGULATORY REGIME

How the BVI develops its regulatory regime in respect of FinTech will have a key impact on the willingness of market participants to utilize the jurisdiction. The BVI is one of the world’s largest crypto-currency markets, with BVI entities being involved in a number of initial coin/token offerings. This usually takes the form of funds investing in crypto or block chain assets. There is also the traditional use of BVI entities to hold intellectual property.

Digital assets are not regulated in and of themselves. The BVI Government has indicated its intention to establish a legal framework that is supportive of the cryptocurrency and FinTech sectors in the BVI, with further regulatory changes expected soon (as set out below). In the meantime, the consensus is that the BVI is following a “wait and see” approach to the development of FinTech regulation.

2. SANDBOXING

Part of the efforts to establish a regulatory regime and encourage the development of FinTech in the BVI has been the proposals for a regulatory sandbox for BVI entities. A sandbox is designed to provide a lighter touch regulatory framework for start-ups, aligning the need for regulation with the innovative nature of FinTech products. Jurisdictions such as Australia, Taiwan and the UK have successfully used regulatory sandboxes to boost innovation.

The BVI government and the Financial Services Commission (“FSC”) are actively engaged in the proposal for the BVI’s regulatory sandbox, and this is expected to go live in Q4 of 2019. Applicants will be required to meet strict criteria in order to enter the sandbox, including a fit and proper person test, AML requirements and a processing fee. There will be a strong focus on IT security, record keeping and risk management. The FSC will be heavily focused on disclosure to potential clients of the risks and regulatory status of sandboxed entities.

The development of the sandbox and successful implementation of the light touch regulatory regime will be vital in further developing the BVI’s FinTech offering.

3. ANTI-MONEY LAUNDERING AND KNOW YOUR CLIENT

The BVI Government and the FSC will face the same challenges as global regulators in other jurisdictions in order to adapt its AML/KYC regulation to meet the unique challenges of the FinTech market. AML legislation primarily focuses on regulated entities in the BVI and requires certain policies and procedures to be established by “relevant persons” conducting “relevant business”. Both the terms “relevant persons” and “relevant business” are strictly defined terms. If a company is deemed to carry out “relevant business” (e.g. it is a fund, provides money transmission services, advises on money brokering, etc.) then it has to obtain and maintain client KYC and have internal systems and controls and provide the FSC with a copy of such internal policies for approval.

Acquiring sufficient KYC information in order to combat money laundering and terrorist finance is a challenge, especially in respect of funds with crypto assets which are popular in the BVI. The products offered by FinTech companies are open to abuse by criminals and terrorists seeking to obscure the source of funds. A mix of: (a) innovative FinTech products; and (b) the reality that many start-ups lack a fully formed compliance function, together create additional headaches for regulators. As the BVI continues to use its strong financial services framework to attract FinTech business to the jurisdiction, it will need to be mindful of offering the flexibility of digital AML regulation whilst maintaining the integrity of the AML system.

The BVI has already shown its ability to adapt the AML system with the 2018 amendments to the Anti Money Laundering and Terrorist Financing Code of Practice 2008 (the “AML Code”), which help to support the use of digital services for AML purposes in this new digital era. These amendments were, to a





certain extent, to be expected, based on the jurisdiction’s historic ability to provide innovative regulatory frameworks within which new financial services products can thrive, whilst adhering to its responsibility in the fight against money laundering and terrorist financing.

While further changes to the AML Code will be needed to embrace and regulate the growth of FinTech, the changes brought about by the recent amendments provide a helpful indication of the BVI’s forward thinking and technologically supportive approach in developing its AML policies.

4. PHYSICAL AND DIGITAL INFRASTRUCTURE

In order to attract FinTech start-ups and established entities to the jurisdiction, a strong and resilient infrastructure is required in the BVI. The BVI government will need to look at a range of issues, from the physical infrastructure, including transport, office space and power grid, to digital infrastructure including, network structure (i.e. data speed), online platforms, mobile telecommunications and software.

A user friendly, fully integrated online system to deal with FinTech regulatory requirements will also be vital to making the BVI attractive to the FinTech industry.

5. DATA PROTECTION AND CYBER SECURITY

The BVI does not at present have a comprehensive data protection regime and there is no data protection authority in the BVI. As the global FinTech market continues to develop, the BVI will be required to develop its data protection regime. The proposed promulgation of suitable data protection legislation, based on

internationally recognized standards, has been in the pipeline for a considerable amount of time. With big data being an integral part of the development of FinTech products, the BVI will need to develop a strong framework around how data is processed, stored and transferred by BVI entities.

A further point that is of paramount importance for the jurisdiction is ensuring that the sensitive personal data generated by the FinTech industry in the BVI is kept safe. Robust cybersecurity is vital for the continued development of the BVI’s reputation as a FinTech hub. Any risk of the loss or leak of such data would be detrimental to the reputation of the jurisdiction as a FinTech hub.

CONCLUSION

The BVI government and the FSC’s approach to the regulation of FinTech has already seen the jurisdiction establish itself as a market leader in initial coin/token offerings.

As the global FinTech market matures there will be increased opportunities for diversification in the BVI’s FinTech market space. The BVI has a proven track record of being a forward looking jurisdiction that has been an early adopter of technology driven solutions. This can be seen from being one of the first jurisdictions to implement comprehensive electronic signature legislation, the recent FinTech friendly changes to the AML code, the successful roll out of the beneficial ownership system and the adoption of crypto currency into the territory’s disaster recovery plans.

There can be little doubt that the BVI is uniquely positioned to successfully tackle the five items discussed in this article, along with any other challenges it may face in the rapidly developing FinTech world. We expect the BVI to capitalize on its current position and to continue to build on its success in the FinTech industry going forward. ■



5 IMPORTANT STEPS FOR DATA-PROTECTION COMPLIANCE PROGRAM

By **FANNY EVANS**
Managing Director
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In 2013, Virginia Ginni Rometty, CEO of IBM, said *"I would like you to think of big data as the next natural resource that can be to our era what steam, electricity and oil were for the Industrial Age."*

You have probably already heard: Data is the new oil! Data is the new currency! Such analogies have become very popular in current times given data is now considered one of the most important commodities to mankind.

NAVIGATING DATA BREACHES

As such, the need for a data-protection compliance programmes is becoming increasingly important following several high-profile company data leaks over recent years.

Some of the biggest data breaches over the last two years include T-Mobile, Marriott, British Airways, Quora, Google, Orbitz and more recently, Capital One.

And while a successful data breach can occur in less than a minute, many businesses often take weeks to realize a breach has even happened.

When taking the first steps into the complex waters of data protection, companies often get lost in the avalanche of legal requirements or get distracted developing a product or service that might make them more attractive to their clients.

However, changing the focus to other issues should never be an option given the result of a data breach can be so damaging, including both reputational and financial repercussions.

THE RIGHT TO DATA PROTECTION

In the European Union, data protection is a fundamental right with its new General Data Protection Regulation (GDPR), which came into force on May 25th 2018, the framework for protecting that right.

So impressive is this regulation that other countries are looking to GDPR as they develop or implement their own laws to protect data. Even if companies have an 'it will never happen to me' attitude to data breaches, in many countries legislation is now forcing them to rethink this.

I have outlined five steps below that can provide guidance when drafting or reviewing your data-protection compliance program to meet relevant requirements in this field.

1. Understand your risks and legal and ethical obligations

One of the most important elements when building a data-protection compliance program is considering your risks and what is most important and mandatory to the business, instead of jumping into the requirements of a legislation without fully understanding your needs. Not all risks or obligations are managed in the same manner or to the same extent and your program needs to set out the appropriate guidance in key areas for your business.

Having said that, the first step should always be to understand the business necessity to comply. This involves a careful analysis of what your obligations are, what the risk of breaching those obligations might be and what risks your company is willing to take.

2. Document and review your policies

Your data-protection compliance program should be properly documented. Once the obligations and risks are understood, it is vital to document them. It is not just enough to know you are compliant but your program should be clearly verifiable and readily accessible through accurate reports and documentation for internal or external examinations.

The compliance officer should also perform a formal review on a regular basis to ensure that the data-protection program is progressing as planned and that it is adjusted to meet any changes in legislation or the business if needs be.

3. Allocate ownership

The responsibilities and tasks related to confidentiality and data-protection may overlap with other business policies, such as information technology security, recordkeeping, risks and audit, human resources, management of confidential information amongst others given it requires various skills to succeed. Therefore, the most advanced and elaborate data-protection compliance program will fail if there is no clear ownership of the tasks.

Each business will structure the ownership differently, but it is vital that whoever is the owner of each task of the program is clearly understood and that the owners have the necessary resources at their disposal so that they are competent to fulfil their role in a manner that is consistent with the business' culture.

4. Provide training and the necessary resources

Always train your staff. If you have an informed team it will reduce your risk.

Not only does training staff reduce the risk of breaches, it also demonstrates compliance before internal and external inquiries. For example, if an organization was to experience a data breach and they had documented their staff training on data protection, this would be used as evidence to prove that they had taken the appropriate steps to prevent a data breach and were taking relevant legislation seriously.

Training should ensure that all members of the team have an understanding of the data that they will have access to and the risks entailed. Training should be provided on a regular basis, and it ought to be performed again whenever there are significant changes to positions, structures, risks or obligations, or when actual issues arise. Also, the business shall incorporate data protection training into its process for onboarding new employees.

Businesses should embed data-protection compliance programmes into their culture so that protecting information becomes second nature. Training and continuing education should always include senior management.

5. Review the Financial Action Task Force (FATF) Guidance on the Risk-Based Approach

A risk-based approach to compliance involves identifying the areas of high risk within the business's compliance universe and building and prioritizing its compliance programs around these risks.

In order to assist both public authorities and the private sector in applying a risk-based approach, the FATF has adopted a set of guidance in co-operation with relevant sectors. Businesses should review the guidance applicable to their industry to make sure that the appropriate mitigation measures in accordance with the level of risk are taken.

Ultimately, data is one of the most important assets a business can own today. For that reason alone, an effective, robust data protection compliance program should be a top priority for any and all businesses and taking these initial steps will help you get at least part of the way there. ■

ASSET RECOVERY IN BANKRUPTCY AND CORPORATE INSOLVENCY

By **DAN WISE**
Partner
O'Neal Webster

Historically, the core financial services product the British Virgin Islands has offered is the BVI company. Typically, the BVI company is used as an asset holding vehicle, frequently within a wider structure, either for tax mitigation or as part of a joint venture.

Very often these entities, of which hundreds of thousands have been incorporated over the years, have facilitated commerce with links to jurisdictions where the rule of law is both less ingrained and less robust than in the BVI. By this facilitation, substantial inward investment and legitimate commerce has been achieved.

However, from time to time, BVI companies are used to hold or deal with unlawfully obtained assets. Fortunately, the BVI Courts can provide a ferociously robust series of remedies to assist an aggrieved party in recovering such misappropriated value.

These remedies are available as stand-alone BVI proceedings, as an adjunct to civil proceedings elsewhere in the world or within the context of bankruptcy or corporate insolvency.

LEGAL INFRASTRUCTURE

The BVI's legal infrastructure, coupled with a willingness to be both innovative and open to change, has attracted an established body of expertise within the judicial, legal, and insolvency professions, and is highly capable of handling the most complex trans-national fraud recovery actions.

As the BVI's legal system is rooted in English common law, we have access to all equitable remedies, such as freezing orders, Norwich Pharmacal disclosure orders, provisional liquidations, and equitable receiverships. The latter two can be of particular value in the BVI where it can be crucial to immobilize a BVI company shareholding while a substantive dispute is resolved.

Where the circumstances justify it, these orders may be obtained on a without notice basis and the court record may be anonymized to maintain secrecy while the targeted assets are secured.

What's more, these orders are capable of being backed up by penal notices under which persons who are within the jurisdiction of the BVI court may be fined or imprisoned for contempt of court in the event that they knowingly seek to frustrate the order.

As in England, a party seeking an order without notice to the other side will be required to discharge its duty of full and frank disclosure to the court of all matters relevant to the grant of such an order.

In addition, the BVI Court has adopted the English practice of granting interim equitable orders in aid of substantive proceedings elsewhere, under the Black Swan line of cases. This practice allows a free-standing application to be made to the BVI court, essentially to give practical effect to a freezing order over BVI assets, such as shares in a BVI company.

Normal English principles will apply on the grant of such interim remedies, including the usual requirement for a cross-undertaking in damages which may be triggered if it turns out that the interim relief should not have been granted and has caused loss to the respondent.

From an asset recovery perspective, another attraction of the BVI is that our registered agents hold, or can obtain, documentation which establishes the identity of the underlying beneficial owner of a BVI entity. Clearly, in the context of a recovery exercise, this information can be a "war winner."

ASSET RECOVERY AND INSOLVENCY

The BVI has an advanced and flexible insolvency regime. If a BVI company is placed into liquidation, either on the basis of not being able to pay its debts or on "just and equitable" grounds, a BVI liquidator will be appointed.

The liquidator stands in the shoes of the directors of the BVI company and is entitled to call in the books, records, and bank account information relating to all accounts operated by the company.

The BVI liquidator may be formally recognized abroad, for example under Chapter 15 of the United States Bankruptcy Code, in which case he or she will generally be able to avail the remedies provided by overseas insolvency legislation too.

Effective action may be taken abroad in many jurisdictions, even without formal recognition, in my experience. Some Circuits in the U.S. do not require formal recognition for a BVI liquidator to obtain discovery under Title 28 USC §1782 for use in pending or

actual litigation abroad. Similarly, in my experience, formal recognition has not been required to provide standing to seek Norwich Pharmacal disclosure orders in English based jurisdictions.

Notwithstanding, being as clear and specific as possible when setting out what the BVI insolvency holder is entitled to do is worthwhile, so far as the appointing court is concerned, to mitigate against unnecessary delays or groundless technical objections as they seek to take steps abroad.

Very often foreign courts will respond to a request to show comity to an officer of the BVI court—which a BVI liquidator is—if the issue is expressly raised in the order of appointment.

The points made regarding clarity of an appointment order also apply when an overseas office holder seeks to take steps before BVI courts. Such steps often form part of an asset recovery effort, especially when dealing with insolvencies abroad arising from large scale frauds.

While the BVI Insolvency Act restricts formal recognition to office holders from a limited number of countries, foreign office holders are able to avail themselves of remedies, such as freezing orders and Norwich orders, amongst others. The BVI court will normally wish to satisfy itself as to the status of the applicant, but is normally fairly open to accepting such locus.

MEMBERS' REMEDIES PROVISIONS

Occasionally, within an asset recovery effort a claimant will be able to pursue a remedy under the extensive Members' Remedies provisions conferred upon a Member of a BVI company by Part XA ss.184A -184I.

These provisions include the ability to commence a derivative action and to obtain compensation if a company member has been subject to an unfairly prejudicial act.

While such claims are fact sensitive, the BVI Court has a range of remedies under the statute and remains able to deploy interim remedies, if necessary, to "hold the ring" pending the final outcome of the litigation.

These unfair prejudice provisions are frequently invoked and so the BVI courts and lawyers are accustomed to working within this developed framework.

Ultimately, whether within a substantive asset recovery proceeding or by providing important ancillary components to a wider recovery effort, the BVI provides the legislation, remedies, and professionals to constitute an effective and attractive forum for the recovery of misappropriated value and can play a vital part in a global asset recovery process. ■



INTERVIEW: LISA PENN-LETT SOME

EXECUTIVE DIRECTOR OF INTERNATIONAL BUSINESS
GOVERNMENT OF THE VIRGIN ISLANDS

Last October, the BVI Government announced the appointment of Lisa Penn-Lettsome as Executive Director of International Business, serving as the Government of the Virgin Islands' chief technical and policy advisor on international business and financial services.

In this issue of Business Insight, we caught up with Lisa to find out more about her role, the development of the economic substance rules and her ambitions for the future.



What is your role and what does it involve?

As Executive Director of International Business, I'm responsible for charting the way forward for the Government's policy on all matters related to international business and financial services, serving as the Government's chief technical advisor in these areas.

What attracted you to the role?

More recently, I've started to appreciate the opportunities for the BVI to turn the increasing momentum for international regulation into something positive for the jurisdiction and our communities. So, when I was asked to consider this role I knew not only that I had the right skillset to do the job, but I also had a passion to contribute towards our future and be part of this development.

What have you learned so far?

I have met with multiple sectors within the financial services industry, learning about what matters to them and thinking about how we can address some of their concerns. Through doing so, I have come to appreciate the extent to which individual residents – both as ordinary company owners as well as operators of boutique-size financial services businesses – are facing their own set of unique challenges stemming from the requirement to follow the same international rules as offshore users of BVI products.

Getting to know these firms and individuals has been incredibly satisfying, particularly when I have been able to accomplish even the smallest of steps to support them with the help and cooperation of other senior offices throughout the Government service.

What is the BVI's economic substance initiative?

Economic substance is an initiative based on the European Union Code of Conduct Group's assessment of the tax policies of offshore jurisdictions mapped against the presence of economic activity in said regions. The initiative is designed

to encourage offshore structures or arrangements that attract profit to match this with a corresponding level of economic activity within respective jurisdictions.

Who do the rules affect?

BVI companies and limited partnerships (except limited partnerships without legal personality) all fall within the scope of the new rules. However, it is important to remember that there are several exemptions. For example, entities or partnerships able to prove tax residency outside of the BVI (except in a jurisdiction that is listed on the EU's list of non-cooperative jurisdictions) are not required to meet the economic substance requirements for the BVI.

Furthermore, not all activities are subject to the substance requirements, and many that are will have reduced requirements in certain cases. For example, in the case of entities that only hold equity participations that are not actively managed, generally only a minimum substance requirement is imposed requiring adequate staff and premises. In such cases, the functions of an entity's registered agent may also be taken into account.

As a result of this complexity, it is important that entities seek appropriate legal advice to establish the extent to which their activities are subject to the new requirements.

What must companies do?

In order to comply with substance requirements, there are generally four areas that an entity will need to focus on: the relevant activity must be directed and managed from the BVI; there must be adequate expenditure, employees and premises in the BVI; and core income generating activity must be conducted in the BVI. Finally, entities may be permitted to outsource relevant activity to third parties, so long as they also fulfil their respective substance requirements. As such, meeting these requirements may involve moving activity which previously took place in other jurisdictions into the BVI, such as opening new offices on-

island and employing more local staff.

Following these initial considerations, all entities will have to make a filing every year – even if only to confirm that it is still not carrying out a relevant activity.

Permit me to just underscore that not all companies have to meet the full substance requirements. Where an entity only holds equity participations that are not actively managed, such an entity need only meet a reduced substance requirement requiring adequate staff and premises and, in that regard, the functions of an entity's registered agent may be taken into account.

How will the rules benefit entities and the financial services sector as a whole?

One piece of great news that I have heard more than once is that a number of entities are establishing substance in the BVI irrespective of the economic substance laws, because they feel that it is the right thing to do. Overall, the substance rules provide a valuable opportunity for entities and the BVI in general to show that there is transparency on-island and that offshore does not equate to some form of secrecy.

Of course, with the increase in demand for premises, staff and director services (to name a few) we hope that this will have a trickle-down to further benefit individuals and businesses already resident in the BVI. Alongside this, it follows that BVI public services (immigration, labour, trade, health, power and telecommunications) will need to continue to improve to meet this demand.

To wrap things up, can you tell us a little bit about your vision for the BVI, in your capacity as Director of International Business, in the next few years?

Some people say that we are seeing the demise of 'offshore', but I beg to differ. My position is that 'offshore' is being re-defined. I view my own role, and that of anyone who holds this office in the future, as taking the lead to help craft what that new definition will be. ■

SPACE FOR SUBSTANCE: IMPLICATIONS, OPPORTUNITIES AND IMPACT ON THE BVI COMMERCIAL AND RESIDENTIAL REAL ESTATE MARKET

By **CHRIS SMITH**
Managing Broker
Coldwell Banker

The Economic Substance Act requires that a company that is tax resident in the BVI must have adequate staff and office space in the BVI itself. How this will be determined or how strictly it will be enforced remains unclear but one thing that is certain is that the BVI has to up its game in terms of quality infrastructure to accommodate this new demand.

We have not seen a large immediate increase in requests for either office space or residential accommodation but an increased demand is still anticipated. Now is the time for current landlords and those considering investing or developing property to make smart choices with their future projects and in terms of renovating or repairing existing structures.

If, because of this new legislation, BVI companies have to restructure because of logistical needs that make the BVI impractical for a physical presence, or if new businesses are considering where to set up – a like-for-like comparison between BVI and our rival Caribbean jurisdictions is inevitable. How does our infrastructure for business and residential accommodation hold up to such scrutiny? The BVI has many opportunities to expand and improve its inventory in each category.



COMMERCIAL

With the potential for some BVI companies needing to have a physical presence or address in the BVI on a long term basis – the implications are clear – more quality executive standard office space will be needed. But what about those BVI companies who will require specific transactions to be physically carried out in the BVI but not necessarily require a year-round physical presence in the territory? Desks for rent or “hot desks” that can be booked by the day or by the hour will be a necessary option. It is no coincidence that providers of such office space including *Regus* and *Wework* are redefining the way businesses meet and work around the world. The concept of a serviced office-space is not a new one but still relatively new to the BVI. An office space that includes utility charges, cleaning fees, with desks, printers and other supplies already stocked and replenished and all for one monthly fee, is the way forward. Stop thinking large office buildings with elevators and spacious reception areas but rather small offices to accommodate one or two desks within an existing building. Hot-desking on Virgin Gorda? Why not? A physical address in the BVI is the requirement – why limit yourself to working in Road Town?

RESIDENTIAL

Business travellers have long been visiting the BVI and Road Town hotels have strived to service this demand. Some business travellers extend their stay or bring their family along to combine business with some vacation time to enjoy the beauty that our islands have to offer. Recent real estate developments such as those at Nanny Cay and the Pasea Estate condos in Road Town have enjoyed phenomenal success in no small part due to their sleek modern design and the executive quality of the facilities and finishings. Those property owners who are planning a renovation or are still rebuilding storm-damaged properties will do well to keep in mind the potential for an influx of business-driven visitors and the quality of accommodation that these visitors are accustomed to and will be seeking.

INFRASTRUCTURE

Clearly, we can improve our commercial and residential real estate product but ultimately, being able to make the most of this opportunity, also relies on factors such as improved transport links to the BVI, by air and sea, and faster and more reliable internet. How does the BVI compare to the competition in that regard?

Whilst many have been apprehensive on the possible negative impact of the Economic Substance Act on the territory in general, we should rather view it as an opportunity to embrace the change that is coming and to improve our real estate offerings to rival those of any other Caribbean countries.

The real estate market is potentially entering an exciting new phase of potential development. Opportunities exist and the demand is there but only if Landlords and Developers get it right. Now is the time to plan carefully and build intelligently for the next chapter of our country's financial services history. ■

Editor's Note: Not all activities of BVI Companies are subject to substance requirements.





COMMERCIAL COURTS KEY TO UNLOCKING IMPROVED INTERNATIONAL COOPERATION

By **BARRY LEON**

Former Commercial Court Judge

Eastern Caribbean Supreme Court

Cross-border cooperation between commercial courts has become a growing trend over the last few years, enabling commercial court judges from around the world to lead the way in increasing international mutual understanding and facilitating better communication, cooperation and efficiency.

The Eastern Caribbean Supreme Court and its commercial division, the BVI Commercial Court, have played a prominent role in this progress. It is important for our financial services industry – as well as the wider jurisdiction – that we maintain this position going forward to give the BVI the credibility it deserves as a leading commercial disputes jurisdiction.

COOPERATION IS VITAL IN THE 21ST CENTURY

With many businesses today operating in multiple countries courts cannot function as they did in the 1800's when businesses were largely based in one jurisdiction. In an age when corporate communications take place via iPhone and business enterprises are global at their core, it is unfeasible for judges to work blindly or in silos.

What's more, in many instances judges are able to develop methods of cross-border communication between courts more effectively than other international bodies, in the process building relationships, understanding, respect and trust that facilitate the effective functioning of processes developed far more cohesively than if they were strangers.

In the future we may see such developments come to include areas such as asset preservation and recovery in situations such as fraud, corporate and shareholder disputes in multiple jurisdictions and international arbitral award challenges, recognition and enforcement.

MULTILATERAL AGREEMENTS BRING TOGETHER COMMERCIAL COURTS

A great example of this bilateral cooperation came earlier this year, when commercial courts of almost 40 jurisdictions across five continents came together to produce the landmark "Multilateral Memorandum on the Enforcement of Commercial Judgments

for Money” was released by the Standing International Forum of Commercial Courts (SIFoCC).

On the surface, the Multilateral Memorandum on Enforcement – deemed a “collaborative tool” – does no more than set out the understood procedures for enforcing commercial monetary judgments of one jurisdiction in the courts of another across 32 participating jurisdictions.

However, lest the importance of the Memorandum be missed, Lord Thomas stated that the Memorandum “shows to users the readiness of the world’s commercial courts to enforce each other’s judgments.”

Another innovative initiative was recently launched in the Judicial Insolvency Network (JIN), an organization of commercial courts initially comprising 11 jurisdictions. JIN’s overall aim is to encourage communication and cooperation between national courts on multi-jurisdictional insolvency matters and outline best practice procedures.

As part of this objective, JIN’s first project was to develop the “Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters”. The Guidelines have since been implemented in 12 jurisdictions, including some that were not part of the initial JIN.

The primary objective of the Guidelines is to improve the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction by enhancing coordination and cooperation among courts.

INTERNATIONAL DISPUTE RESOLUTION BECOMES INCREASINGLY COMPETITIVE

Despite the need for continued progression in this area, it is undeniable that the international commercial dispute resolution business is becoming increasingly competitive at a global level. While commercial courts operate primarily in a dispute resolution capacity, amongst themselves and other providers of international arbitration resolution services it is a very competitive business.

As such, several European jurisdictions such as France, Germany and The Netherlands have recently established their own commercial courts, in part hoping to gain a foothold on any dispute resolution work available from a post-Brexit UK.

Having attended London International Disputes Week (LIDW) a few months ago, it was evident that competitors are beginning to nip at the UK’s heels. However, the capital has been bold in proclaiming that dispute resolution in London is here to stay, boasting that some 80 percent of the cases in the Commercial Court in London do not have a UK connection but are attracted to the jurisdiction as a result of its well-respected reputation.

Perhaps tellingly, those proclaiming this are not just barristers and litigation solicitors, but senior members of government and the judiciary, as well as the London Court of International Arbitration (LCIA) too.

TIME FOR A REVIEW OF THE BVI COMMERCIAL COURT

Given the shifting client environment and increasing competition from industry peers, as well as the magnitude of the responsibility held by international commercial courts, it is my view that in order for the BVI Commercial Court to maintain its leading position on the global stage we must undertake a comprehensive review of the Court and its competitiveness imminently.

It has been ten years since the Commercial Court was established, and as with all institutions and organizations, I believe a thorough review is in order and would be consistent with good practice.

The review should be undertaken by an informed, credible and appropriately experienced taskforce established specifically for the purpose, obtaining input from all relevant stakeholders in a transparent manner and making direct, actionable recommendations to enhance the Commercial Court, its financial footing, relevant legislation, and competitive position globally.

As part of the review, we should also look carefully at a range of possible innovations and enhancements for the Court, as well as exploring the laws of the Territory and dealing with concerns about litigating in the BVI across the following areas;

- Expanding the jurisdiction of the Commercial Court
- Procedural innovations for the Commercial Court
- Adopting international standards and practices for foreign lawyer involvement in BVI litigation
- Financial self-sufficiency, or even profitability, for the Court
- Enhanced service to parties and legal practitioners
- Third party financing (funding) in BVI
- Enforcement of court orders
- Civil asset forfeiture legislation
- Expanding recognition of foreign insolvency office holders
- Cooperation and coordination with other courts
- Implementation of the lawyer disciplinary process provided in the legal profession act
- Commercial court judges
- Advancement of BVI Islanders in commercial matters

While a key challenge seems to be coming to an agreement on how and by whom the review should be undertaken, my recommendation would be for a combination of representatives from the commercial bar, the judiciary and BVI Finance to come together for this purpose.

THE KEY TO STAYING COMPETITIVE AND COOPERATIVE

Ultimately, in order for the BVI to continue to play a prominent role in the ongoing improvement of international cooperation via our leading commercial court, it is vital that we take a step back to assess our current state of affairs, identify areas for improvement and continue to grow and develop our own best practices. Then, and only then, can we continue to drive mutual understanding on a global stage into the future. ■

JURISDICTION OF CHOICE

WHY BVI?

- ▶ Compliance with international regulatory standards
- ▶ Competitive start-up costs
- ▶ Innovative legislation
- ▶ Internationally renowned commercial court
- ▶ No currency controls
- ▶ Qualified professional pool of practitioners
- ▶ Strong partnership between public and private sectors

BRITISH VIRGIN ISLANDS

Pioneering, innovative and leading the way in global business solutions, the **British Virgin Islands (BVI)** is an internationally respected business and finance centre with a proven commitment to connect markets, empower clients and facilitate investment, trade and capital flow.



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THE BVI AS AN ARBITRATION JURISDICTION

By **FRANCOIS LASALLE**

CEO

BVI International Arbitration Centre

Twenty years ago, very few jurisdictions had the necessary infrastructure to accommodate international arbitration. It was reserved for the metropolitan hubs of North America and Western Europe, where the thriving business environment and the transboundary nature of many transactions demanded such a dispute settlement mechanism.

In North America, the American Arbitration Association, established in the 1920s for domestic arbitrations, established the International Centre for Dispute Resolution in 1996, which mostly catered to international arbitration in the US.

In Western Europe, most international arbitrations were split between the Permanent Court of Arbitration, International Chamber of Commerce in Paris, France, and the London Court of International Arbitration in the United Kingdom.

In Asia, Hong Kong, which established the HK International Arbitration Centre in 1985, and Singapore, which established the Singapore International Arbitration Centre in 1991, both of which have now become key international arbitration centres, had not yet positioned themselves as major venues for settling international commercial disputes.

In Latin America, countries influenced by the 19th century ideals of Carlos Calvo, enunciated in the Calvo Doctrine and generally shied away from international arbitration.

Elsewhere, and notwithstanding the establishment of international arbitration centres in Dubai and Bahrain in the past two decades, generally, Middle Eastern states too have historically been impervious to international arbitration.

THE ADVENT OF GLOBALISATION

However, with the advent of globalisation, the tides turned. The impact of the global economy and the continuing trend of the increasing volume, size and complexity of cross-border transactions fuelled the demand for international arbitration as a mean for resolving transnational disputes.

International arbitration is now the accepted mechanism for dispute resolution between parties on international commercial agreements and allows companies to avoid national courts in favour of a demonstrably neutral predetermined decision maker that the parties can choose.

In particular, international arbitration allows the parties to an agreement to decide in advance how matters will be addressed in the event of an unresolved dispute: the choice of arbitral organisation of which there are many, the place of arbitration, the language to be used, the number and selection of arbitrators, the prevailing law and procedures to be followed.

The confidentiality of arbitration proceedings and the ability of successful parties to have their awards enforced in over 150 signatory states to the New York Convention are other key reasons why arbitration has become such a popular mechanism for resolving international commercial disputes.

THE HISTORY OF THE BVI'S ARBITRATION DEVELOPMENT

Traditionally known for its financial services industry, the BVI is fast becoming a nerve centre for the resolution of international commercial disputes and the go-to country for international arbitration and all other forms of dispute resolution in the Americas, the Caribbean, and beyond.

Arbitration legislation could be found in the British Virgin Islands (BVI) from the 1970s with the introduction of the BVI Arbitration Ordinance in 1976. As the territory's policymakers came to recognise its potential as a major arbitration hub in the region, a key focal point became the need to modernise the territory's arbitration regime, with new arbitration legislation as an initial step.

These efforts came to fruition in 2013 when the new Arbitration Act was enacted. The legislation is modelled after the

UNCITRAL Model Law 1985, and section 93 establishes the BVI IAC. This act is one of the most modern arbitration statutes in any major commercial jurisdiction, and its flexibility and opt-ins, which enable parties to arbitration agreements to tailor certain aspects of their applicability to their needs, are perhaps what make the BVI Arbitration Act one of the most appealing to lawyers, globally.

In May 2014, the BVI government, through the government of the United Kingdom, ratified the New York Convention 1958. In 2015, the Cabinet appointed the inaugural board of directors of the BVI IAC. The board is chaired by world-renowned arbitrator and former president of the Court of Arbitration at ICC, John Beechey CBE.

The BVI IAC opened its doors on 16 November 2016, making the BVI the first jurisdiction in the Caribbean region to have established both an arbitral institution and a dedicated international arbitration centre, together with having a modern legislation modelled after the UNCITRAL model and being a party to the NY convention.

In 2017, the BVI government passed a Labour Code (Work Permit Exemption) Order, under which persons coming into the territory to undertake select classes of business will be exempted from the requirement of a work permit. One class of persons captured by this exemption, are persons coming into the territory to participate, in one way or another, in international arbitrations.

THE BENEFITS OF THE BVI

Upon opening, the institution adopted a brand new set of arbitration rules based on the UNCITRAL Arbitration Rules and published a roster of international arbitrators. Additionally, the BVI IAC also administers ad hoc arbitrations under UNCITRAL rules.

Notwithstanding being relatively new, its institutional set-up and legislative backdrop enables the BVI IAC to confidently offer premier arbitration services, on par with more established centres.

What makes the BVI so attractive is the flexibility built in its statutes: the Arbitration Act expressly provides the ability for parties to an arbitration agreement to opt-in or opt-out of certain provisions. A powerful option that allows parties to choose whether or not a court is to have

jurisdiction to consider an appeal against an award, a challenge against an award on the grounds of serious irregularity, or to determine a point of law arising in the arbitration.

Other opt-ins include providing the tribunal with the power to consolidate arbitrations and limiting the tribunal to a single member.

BVI also allows parties to an arbitration agreement to choose a governing law that is distinct from the seat of arbitration. It also recognises that the hearing venue, applicable rules, and the courts in which applications in aid of the arbitration may be brought are just some of the other matters that may relate to separate jurisdictions.

This kind of flexibility can be particularly useful for the enforcement of arbitral awards. In some countries, the process for the enforcement of awards in foreign arbitrations takes much longer and is potentially more problematic than the process for enforcement of domestic arbitrations.

The BVI provides foreign parties contracting with a party in such a jurisdiction the opportunity to choose that jurisdiction as the seat of arbitration, the law of a third-party jurisdiction as the governing law of the contract, but for the arbitration to be heard in BVI, and for the BVI courts to have exclusive jurisdiction in aid of the arbitration. This example would provide a neutral venue and an experienced commercial court to assist with interim matters in aid of the arbitration, yet would result in an award that would be quickly and easily enforceable in that jurisdiction.

WHY BVI?

Taking into consideration the level of commitment that has gone into the establishment of this institution, its facilities and the amount of attention that it is beginning to attract globally, the BVI appears to be way ahead of other jurisdictions in the region in terms of its offerings.

A well-run and well-equipped 'state of the art' centre, together with the acknowledged quality of the BVI legal framework and the stable political environment offered by a British Overseas Territory, are enabling the BVI to rapidly become the leading arbitration hub in Latin America and the Caribbean. ■

LESSONS IN RESILIENCE: OVERCOMING ADVERSITY AND THRIVING IN THE BVI

Business Insight sits down with Riina Amalie Aab, Managing Director, SZC Management (BVI) Ltd



Riina Amalie Aab is currently Managing Director at SZC Management (BVI) Ltd, an office that she built from the ground up after arriving in the BVI in 2015. But it wasn't always plain sailing for her as she worked to achieve her goal of creating a truly client-centric business, experiencing her fair share of challenges throughout. She talks to *Business Insight* about her BVI journey to date and shares her insights on how she managed to thrive in the face of adversity.

Born in Estonia, Riina held a number of international roles before first arriving in the BVI back in 2015.

"I first started my expansion manager career in 2001 when I visited my business' daughter company in Latvia to provide support for an issue they were facing. From there, I took on several roles across the Baltic region before returning to Estonia to join an investment company as a compliance officer and internal auditor.

"Over this time, I discovered my passion for reporting and regulation so I decided to return to university to study part time for a BA in Economics.

"Then, in 2012 I was offered a position by my company at the time to become head of a new office based in Cyprus and obtain a license there. While there I also achieved a master's degree in finance and banking.

"Though I have always been passionate about regulation, banking and finance, I was over 40 by the time I decided to learn more and take on my master's degree so I always say that it is never too late to go back to university and study."

THE NEXT INTERNATIONAL CHAPTER

In November 2015, Riina first visited the BVI to start the next chapter of her international career.

"Having been introduced to a business opportunity in the BVI by a colleague on my master's course, I decided to find out more about the company and learn all I could about the country. I accepted a job in June 2015 and by November I'd made my first trip to begin the process of opening a new office here.

"When I first arrived, to be honest I was a bit confused – it's not easy to set up completely afresh in a new country. I knew that before I could start a business here, I needed to understand the culture and background to know how to work with people successfully.

"Thankfully, on my first trip I met many friends who have helped me over the years, including my future husband."

OVERCOMING ADVERSITY

Just two years later, devastating Category 5 Hurricanes Irma and Maria had a life changing impact on Riina and her business.

"I took all of the safety recommendations very seriously and did everything I could to prepare my office and house for the disruption from the hurricanes. Even when my colleagues laughed at my preparations, I did my own research and took all of the recommended precautions which in the end saved my life.

"However, despite all my provisions, when the first hurricane hit I panicked and became a completely different person. When faced with something like that, you don't always behave like you expect and I felt completely helpless.

"Being in a situation like that shows how resilient we can all be. As soon as the hurricane moved on, my boyfriend and I went out into the streets to help those that had been cut off. Before we were evacuated from the islands, a group of us also organised a community where we lived together for three weeks. We shared our food and worked together to repair the roofs to ensure our survival until we could be taken to safety.

Despite the challenges of the hurricane, Riina's office was never far from her mind.

"When I was preparing for the hurricane, my first priority was how to save my business. I feel a very strong sense of responsibility for the people that trusted me here to represent them and the company is my baby.

"After the hurricane, I was heartbroken when I saw that my office building had lost its third floor. That said, if it had been the second floor we would have lost our whole office and, despite our

preparations, who knows what would have happened to our clients' records and documents."

After being evacuated, Riina returned to Cyprus where she set up another new office to do BVI work while the country was in recovery. However, shortly before returning to the BVI she attended a routine medical check-up where she was diagnosed with breast cancer.

"Within the space of two months this was the second point in my life where I was not myself. I had never believed that anything like this could happen to me, and just like the hurricane, I had 24 hours of extreme panic.

"I had to change all of my plans and within two weeks I had surgery to remove the cancer. I am so grateful to the doctors and surgeons who helped me, not only physically but emotionally to give me peace of mind. Thankfully, I am now on course to make a full recovery.

"I feel very lucky with how things have turned out. It was only because of the hurricane that I returned to Cyprus, and only because of a change in my schedule that I had my check-up and received my diagnosis. For me, the hurricane was the last magic kick to get me to the doctor and save my life."

PUTTING THE CLIENT FIRST

Despite her diagnosis, Riina's chief concern was still for the business that she had left behind in the BVI.

"I went to our head office and spoke to my shareholders and management board. I explained the situation and that I would need to stay in Cyprus for my treatment, but my boyfriend would return to the BVI in my place to rebuild the office and get things back on track. Of course, he wanted to be with me, but I would prefer to feel the pain by myself as long as I knew that the office was in safe hands.

Looking back, the hurricanes and cancer

have not changed Riina's priorities in life. She remains dedicated to her career and it is clear that her clients will always come first.

"I think it's inside me. I cannot change. It is not about money or power, but something drives me.

"For everyone who is working in this industry, your client should be your first priority. If you don't have a client, then tomorrow you don't have a business and the day after that you don't have a job. This is important not only for all businesses, but the wider industry that we work in and for trust in the BVI.

"In business everything starts with you, so every boss should lead by example. Your reputation is built on everything you do, from the way you treat your partners to the way you pay your taxes. This is the only way to have a successful and responsible business."

THE FUTURE REMAINS BRIGHT

For Riina, who got married last September, the BVI has been good to her.

After reflecting on the last few years, Riina shares her outlook for the future of the BVI and some of the challenges the industry is facing.

"The first thing I tell my clients is that if they were ever to see the BVI, they would never leave. People are fascinated by the islands and are always asking me about my life here.

"But it's really important that along with the place and the lifestyle, our clients are aware of the BVI's business priorities to protect its future. We need to assure our clients that confidentiality is one of the top priorities for the BVI, explain what that means for them and how it can help protect their business. Of course, things are changing on an international stage at the moment but the BVI will always remain consistent in its fight for people's right to privacy.

"Another key development at present is economic substance which was recently introduced by the European Union. A lot of clients come to me with incorrect information about economic substance and there is a lot of false information out there. My advice to everyone is for them to speak to me or others in the industry in order to understand the facts about the legislation before looking into next steps if required.

"In my view, as long as we continue to share accurate information about the industry we work in and its latest developments, as well as working closely with our clients to solve any challenges as they arise, the financial services industry in the BVI will continue to prosper." ■





FAMILY FIRST

By **PETER POOLE**
Managing Director
Sable Trust

THE FAMILY OFFICE - A NEXUS FOR ADVICE AND MANAGEMENT

Every family looks for advice from trusted parties – whether that be other family members, friends, or professional advisors.

In the areas of succession planning, investment management, administration, taxation, accounting and reporting, it makes sense to source as many of these as possible from one place and have one point of contact.

The alternative, i.e. sourcing each service from separate and distinct providers would mean that numerous relationships must be maintained, whilst reporting and monitoring would become consequentially fragmented and more demanding of your already precious time.

This is where a family office comes in. Depending on the range of services sought, the scale of assets under management and the number of parties (both individuals and entities) in the family, a family office might be an independent function established solely for the purpose of servicing the needs of one family.

Equally, the scope and scale of each family's requirements might not justify a dedicated professional team and office, so the family office provider might provide services to a number of families seeking services comprising similar elements and overlapping to some extent.

INTERNATIONAL FAMILIES

Different generations residing in different countries, young adults moving away from their home domicile for education or career opportunities, the “settler generation” retiring overseas – each of these changes prompts the need for careful planning and advice.

A well-structured family office service can provide advice both prior to and following such changes of residence, ensuring compliance with new and ongoing tax rules for relevant family members, whilst also revisiting the long-term planning aspects in a new country of residence or any significant development a change of circumstances might bring into question.

BEYOND FINANCIAL SERVICES

As well as services related to investments, family trusts, fiscal planning and compliance, family offices often extend their services beyond the financial arena.

Employment arrangements for household staff, travel arrangements for family members, achieving the family's philanthropic goals, administration of property ownership (maintenance, insurance, utilities etc.) all constitute vital parts of the full range of services needed to discharge the family office function comprehensively.

RECENT LEGISLATION

In more recent years trustees, legal advisors and corporate administrators have seen increasing focus on providing substantive fiduciary services to maintain their own viability in an environment where economic substance must be established, maintained and reviewed regularly.

Now that the BVI and most other international finance centers (IFCs) have introduced substance legislation, the focus on value-added services has tended to push both clients and service providers to consider family-office type services.

That said, it might not be feasible for the majority of service providers currently servicing a significant number of client entities to reinvent themselves as a family office. As such, in practical terms, the change is usually initiated by the families seeking a dedicated service.

Once they proceed to make arrangements, they usually break away from existing services procured on a fragmented basis

from a number of providers. Needless to say, the privilege of having the family office style of service structure comes at a cost.

Where the effective threshold lies in terms of assets under management to make this change viable for both client and provider will depend on a few key factors, including the services required, complexity of existing entities and their investments and geographical office location.

A few years prior to the arrival of substance legislation, the Common Reporting Standard and FATCA added significantly to the compliance aspect of managing assets for client structures.

In the context of a family office, maintaining compliance and timely reporting to tax authorities, banks, fund administrators and others has been an increasing burden – one which families increasingly look to their trusted advisors to fulfil.

THE ROAD AHEAD

One of the upsides to legislation on substance in IFC jurisdictions, including BVI, is that it reinforces the approach taken by many advisors who attempt to meet the demand for more of a specialized service covering a range of functions.

In my view, this shift in the nature of how services are provided will help to safeguard the robustness of the industry more generally. It also improves the experience of client families and allows them, through timely advice from a family office provider who knows their circumstances intimately, to stay ahead of rapidly developing legislation and regulation.

The recent trend is clear – selecting or establishing a family-office style service is attractive from the viewpoint of the client family as well as the service provider. The drivers of this trend are still gathering momentum – more complex legislation, widening service demands, and the desire for advisors to be aware of all aspects of intentions on succession, investment and lifestyle.

Our view is that family offices may turn out to be a new and important element in safeguarding the future of the BVI's wider finance industry. We're already starting to see it happen and your clients may be thinking about it too – have you discussed possibilities with them? ■

IN BVI WE TRUST

By **CRISTIANE MATOS**

*Senior Manager – Head of Fiduciary and
Business Development Department*

Trident Trust

The British Virgin Islands (“BVI”) is widely known as one of the world’s foremost locations for the establishment of international business companies, which play a key role in the facilitation of international investment flows. In addition to this, the BVI is also a popular jurisdiction for the establishment of trusts for asset protection and succession planning purposes.

Key to the BVI’s success as a trust jurisdiction is the clarity and quality of its trust legislation and the integrity and effectiveness of the judicial system. The BVI benefits from a legal system that is rooted in English common law, meaning that its trust law is based predominantly on English trust law principles. That said, the BVI’s lawmakers have also made a number of innovations such as the introduction of the VISTA trust, which is a succession planning vehicle that is unique to the BVI.

In the event of a dispute, there is a specialist Commercial Court which is equipped to handle trust matters, as well as the Eastern Caribbean Court of Appeal. Parties also have ultimate recourse to the Privy Council in the United Kingdom if a final appeal is required. The BVI trust sector is very sophisticated, with a large number of experienced and technically skilled professional firms and trust practitioners within the corporate, legal, tax and accounting fields.

BVI trusts are recognized by many countries and used by high net worth families and entrepreneurs from all around the world to protect their assets, guard against political uncertainty, maintain privacy and ensure the continuity and orderly succession of their business and financial interests from one generation to the next.

While it is not possible to cover all the distinguishing features of BVI trusts in these notes, below are some of the highlights of what the BVI offers.



CORNERSTONES OF SUCCESS

- BVI trusts are extremely flexible and cost-effective and can be used to benefit both charitable and non-charitable purposes.
- BVI trusts preserve the confidentiality and privacy of the trust’s settlor and beneficiaries, since the trust documents are not public (however, beneficiaries of a trust may be entitled to receive financial and other information relating to the trust, and as part of the exchange of international tax information, the BVI trustees might have to disclose certain information about trusts they administer or for which they maintain financial accounts).
- BVI trusts can last a number of generations and can protect the assets in them from creditors and forced heirship, from beneficiaries who have difficulty in managing their own affairs or who pose a risk to the family’s assets, and also from exchange controls or other government interference.
- BVI trusts can be used for succession purposes, avoiding the costs of the probate process and ensuring that beneficiaries are well-maintained in the case of death or incapacity of the settlor.
- Generally, there are no estate, gift, income or capital gains taxes in the BVI; therefore, BVI trusts may enjoy tax and fiscal neutrality, provided that the beneficiaries do not reside in the BVI and the trust does not conduct any business or own any land in the jurisdiction.

THE BVI TRUST MENU

Discretionary, fixed-interest, and accumulation and maintenance trusts

- Discretionary trusts provide maximum flexibility, as the trustee is given wide powers in terms of the distribution of the income and capital of the trust to beneficiaries, and is able to decide to whom, when and how distributions are made, as per the terms of the trust deed. This type of trust is useful where the future needs of the beneficiaries cannot be determined at the time of creation of the trust. However, because the trustees have discretion regarding the distribution of trust assets, beneficiaries do not have a specific entitlement to any particular portion of the trust fund; they only have a right to be considered when the trustee is deciding how and when to exercise their discretion.
- Fixed-interest trusts limit the discretion of the trustee when distributing the assets (e.g. by pre-determining the fixed portion of the trust fund to which each beneficiary is entitled). They can be adopted for tax planning purposes due to the transfer of the ownership of the trust assets to the trustee, particularly if they are irrevocable and if the trust assets are sitting in a jurisdiction other than the settlor's domicile, residency or nationality.
- Accumulation and maintenance trusts are particularly useful if the settlor intends to preserve the trust assets, by accumulating income over a certain period that will accrue to the trust capital, for the benefit of a group of beneficiaries (e.g. children and grandchildren). The trust capital and/or the income will generally be used over time to ensure the education and maintenance of beneficiaries up to a specified age.
- The trustee of these types of BVI trusts must act as a "prudent businessman" in relation to investments of trusts assets, monitoring their performance and taking action to ensure that the trust fund is being preserved. This gives the settlor a level of comfort when transferring the legal ownership of their assets to a professional trustee.

VISTA Trusts

- The BVI's Virgin Islands Special Trusts Act, 2003 ("VISTA") can be a valuable and effective succession planning tool.
- VISTA trusts allow the owner of a corporate business to place the shares of the company into a trust structure, thereby creating a mechanism for orderly succession of ownership of the business following the owner's death or incapacity, without placing the day-to-day management of the business in the hands of a trustee, which may not have the specific knowledge and experience of running that business. The directors of the business continue to make the key decisions relating to the company, while the BVI trustee holds the shares in the company in trust indefinitely.
- VISTA trusts can be revocable, a feature which often gives the settlor a measure of comfort. The settlor is also able to set

out "permitted grounds of complaint" and "office of director rules" which determine how and under what circumstances the trustee can intervene in the company's affairs and request information from the directors regarding the management and financial situation of the assets of the underlying company.

Private Trust Companies

Many wealthy families use trusts as part of their international asset protection and tax planning, and usually appoint a third-party institutional trustee to act as the trustee of the assets settled in a trust. However, some families prefer, for various reasons, to establish a private trust company which acts as the Trustee of the family trust. Similarly, in the corporate environment, a number of multinational companies employ trusts for purposes that range from employee benefit programmes to off-balance sheet transactions and prefer to entrust the management of these trusts to a corporate trustee which is owned by the multinational company and which provides services exclusively to them.

In 2007, the BVI government responded to the needs of both international families and multinationals with its Private Trust Company (PTC) regime which has been amended and enhanced on several occasions since then, with the last update occurring in May 2013. A PTC is a BVI company that is limited by shares or guarantee, which carries on trust business for specified groups of individuals and entities where, generally speaking, the parties are related and the trustee is not compensated for its services. The company must contain a statement in its memorandum of association that it is a private trust company and it must also include "(PTC)" in its name. A company that meets these and the other applicable requirements, is exempt from obtaining a trust license under the BVI Banks and Trust Companies Act, 1990 and can act as the sole trustee of a BVI purpose or VISTA trust.

THE FUTURE FOR BVI AND ITS TRUSTS

There have been significant changes in the global financial services industry in the last decade, and the BVI has constantly evolved in response. We have developed and implemented international standards to maintain the country's status as a top tier international financial centre, creating flexible vehicles that can operate in different countries and offering several valuable ancillary services for reasonable costs in comparison to other jurisdictions.

BVI trust legislation in particular has been updated and refined to offer innovative and user-friendly solutions, thus helping the BVI to remain at the forefront of trust structuring and international business today and beyond. ■



SUCCESSION PLANNING INVOLVING BVI COMPANIES

By **CHRISTOPHER MCKENZIE**
O'Neal Webster

As the world's leading international finance centre for the incorporation of international business companies, the British Virgin Islands has few, if any, serious rivals with over 400,000 active companies in the jurisdiction.

The BVI is now also one of the world's leading jurisdictions for private trust companies with over a thousand PTCs on its register.

Given this context, it is no surprise that there are therefore many hundreds of thousands, or even millions, of shareholders of BVI companies, each of whom should have appropriate succession plans in place.

As such, I have outlined just a few of the considerations they should be thinking about as a starting point for effective succession planning below.

GRANT OF REPRESENTATION

What would invariably be needed on the death of a shareholder before shares in a company are transferred to the deceased's heirs – assuming that the situs of the shares is a common law jurisdiction – is a grant of representation: either probate or letters of administration.

The grant would need to be one from the situs jurisdiction. The situs of shares in a company would be determined by applying the rules of private international law such as those in section 245 of the BVI's International Business Companies Act which provides that, for succession purposes, the situs of shares in a BVI company is the BVI.

This therefore means that a BVI grant will be needed when the shareholder of a BVI company dies, but applying for a grant in the BVI is usually a relatively straightforward process.

The BVI lawyer who is instructed to make the application would need to prepare the documents prescribed by the 2017 Probate Rules. These include a declaration on oath of the value of the estate, listing the deceased's BVI assets and (in the case of non-BVI domiciliaries) an affidavit of foreign law. That affidavit is needed since succession to movable property is governed by the law of the deceased's last domicile.

Furthermore, notice of the application needs to be given in two consecutive editions of a local newspaper.

Once issued, the grant will be a public document (as will be the deceased's will and any codicils). The grant will also specify on it what the gross value of the deceased's estate was and, for these purposes this will be the estate's actual gross value and not a value which merely reflects them the nominal or par value of any shares in the estate. This could give rise to concerns in the case of those who have valuable shareholdings and legitimate anxiety about confidentiality.

Timing could also be an issue because, although there is a procedure for obtaining expedited grants, it normally takes up to three months (and sometimes more) for a grant to be obtained. This can cause difficulties if the relevant company is a trading company which has entered into contracts in circumstances in which the deceased was both the sole shareholder and sole director of the company. If the deceased was both the sole director and the sole shareholder other problems can arise, some of which are referred to below.

CIRCUMVENTING THE NEED FOR A GRANT

The most tried and tested way of avoiding probate is to transfer the shares to the trustee of a trust so that it does not form part of the deceased's estate on his or her death. This can sometimes have additional advantages because the BVI's robust 'firewall provisions' in section 84A of the Trustee Act should prevent gifts to the trustees of BVI trusts from being set aside as a result of 'forced heirship' provisions in the deceased's home jurisdiction which might effectively prevent the shares from being left by will to those whom the shareholder wishes to inherit them.

The BVI's unique VISTA trust regime is of course an opt-in trust regime which is tailor-made for shares in companies. VISTA trusts will generally provide shareholders with an ideal solution to their succession needs whilst insulating trustees against some of the more worrisome consequences of holding assets involving risks.

The trust deed should be drafted or reviewed by a BVI lawyer with relevant experience so that the trust is not merely a bare trust i.e. since the establishment of such a trust would not avoid the need for a BVI grant.

Another way of circumventing the requirement for a grant is for the shares to be held as joint tenants – so that they pass by survivorship to the other joint tenant(s) on the first death. Of course this might not be an effective solution if the joint tenants are family members who could die together in an accident. What's more, holding shares as joint tenants will only postpone the ultimate problem because a grant will be needed when the surviving joint tenant dies.

Another option is for the BVI company to be structured so that it has different classes of shares – so that the A shares are held by the A shareholder whilst he or she is alive, but cease to have any voting or economic rights when the A shareholder dies, at which stage the B shareholders acquire these rights. The latter might typically be the children of the A shareholder. This solution is inflexible in that it is difficult to change it without the agreement of the B shareholders, who may be minors, and it might not anyway be appropriate for the B shareholders to become entitled to valuable shares on attaining majority, but it is popular with some shareholders who are based in jurisdictions in which the creation of trusts may give rise to tax problems.

Careful thought must also be given to the drafting of the company's memorandum and articles if the aim is that specific individuals are not to be named or referred to in those (public) documents.

STEER CLEAR OF BOGUS PROBATE AVOIDANCE SCHEMES

On the other hand, a wholly different ineffective planning mechanism is for shares to be held by a nominee or the trustee of a bare trust. If the nominee wishes to avoid liability for intermeddling, a

grant of probate from the situs jurisdiction (i.e. a BVI grant) will be needed before the absolute beneficial interest in the shares can actually be transferred to those entitled to the beneficial owner's estate, pursuant to the laws of the jurisdiction which he or she dies domiciled. The position would accordingly be no better than it would have been had the shares been held in the name of the beneficial owner. Indeed, the position could potentially be worse: if the nominee is an individual, a grant will be needed if the nominee dies.

Another ineffective solution is to include provisions in the company's articles to the effect that reliance can be placed on a grant of representation from the jurisdiction in which the deceased shareholder domiciled. Such provisions would of course be contractually binding on the shareholders and the company – but not on third parties, i.e. since they contradict the generally applicable law. Anyone who deals with, or assists in dealing with, the transfer of the shares to the heirs without the authority of a grant from the situs jurisdiction (i.e. the BVI) risks exposure to liability for intermeddling. The exposure would usually be to creditors or to those whom it subsequently materialises are actually entitled to the deceased's estate, e.g. if a later will subsequently comes to light.

At the most problematic end of the rainbow we have the 'undated share transfer form solution'. A shares transfer form which is signed but not dated is retained with the share certificate and only dated after the shareholder dies. Obviously, that is fraud and the potential consequences for anyone assisting with such schemes would be severe.

An additional, 'chicken and egg', problem can arise if someone who is both the sole director and sole shareholder dies. After the BVI grant has been obtained, the personal representatives can sign the share transfer form transferring the shares to the heirs, but there will be no director in office to authorise the changes to the share register and, until the shares have been transferred to the new shareholder, no director can be appointed by the new shareholder.

This means that, unless a 'reserve director' has been appointed, an application

to the court will need to be made in order to resolve the problem. These applications are relatively commonplace and straightforward. They involve short hearings, but do give rise to additional costs and delays. As such, it is advisable to take advantage of the 'reserve director' provisions in the BVI Business Companies Act which have been designed to address this issue.

DIRECTORSHIP SUCCESSION

As far as succession to directorships is concerned, the 'office of director' rules, which are an element of the BVI's VISTA trust legislation, provide a unique mechanism for succession to directorships in companies.

The legislation provides that the trustee-shareholder can only exercise its powers to change directors pursuant to the 'office of director rules' in the trust instrument. Typically, these rules would provide that the trustee would need to follow any directions from an appointor (who might be the trust's protector) in relation to such changes. Alternatively, detailed provisions specifying the identity of future directors could be set out in the rules.

These office of director rules are particularly popular in the case of PTCs given the identity of a PTC's directors is critical since it is, effectively, the directors of the company who will exercise all the corporate trustee's discretionary powers under the trust. One would not really want to create a situation in which the shares in the PTC are held in the settlor's sole name because, when the latter passes away, these will form part of his estate and the beneficiaries of the estate could easily be conflicted if they are beneficiaries of the trust.

There are understood to be hundreds of thousands of individual shareholders of BVI companies who have not yet made any succession plans, nor indeed any contingency arrangements for incapacity. However, for the very reasons that I have outlined above, I would strongly recommend that they and their advisors begin to consider all their options at the earliest opportunity. ■



FIVE WAYS IN WHICH IFCs WILL HELP SHAPE EMERGING GLOBAL ECONOMIES BY 2030

By **ELISE DONOVAN**
Chief Executive Officer
BVI Finance

By 2030, the world economy will likely look very different than it does today. Socio-economic changes, coupled with technological advances, will likely shift economic power from the West and towards today's emerging economies in Africa, Latin America, Asia, and the Middle East. Amid this shift there will be a need for innovative solutions to new business problems arising from borderless economies, outmoded legal jurisdictions, and an increased need for international partnerships and co-operations.

I have outlined five key areas where I see International Financial Centres (IFCs) will be able to play to their strengths and perform a major role in helping shape the future global economic leaders:

1 SUPPORTING THE STABILISATION OF LATIN AMERICAN ECONOMIES

Between 2008 and 2018, Latin America's middle-class expanded from 33 million households to 46 million households. In 2018, 14 per cent of the population aged 15 or over in Latin America had attained a higher education degree, a rise from 8 per cent in 2000.

But for that burgeoning generation to be able to realise its full potential in the next decade, its private sector will need to find some surety. Political uncertainty in the region's largest economies and ongoing corruption have all played into disappointing growth forecasts – the International Monetary Fund predicts the region's GDP will only rise by 1.4 per cent in 2019.

A vital component to stabilising the Latin America region is creating security for individuals and businesses, given they live in regions that can lack the political stability and legal strength to ensure their long-term plans can be executed with certainty.

IFCs have a long track record of recognising and subscribing to the common-law principle of privacy and the individual's right to privacy, especially in relation to personal and business transactions. We are seeing an increase in the number of small businesses and families seeking a safe and secure harbour for their wealth, away from disruptive politics and interventionist states. By incorporating their wealth and assets in an IFC, they are able to grow their businesses with steady income streams and business structures safe from business-unfriendly jurisdictions.



2 MAKING IT EASIER FOR EMERGING ENTREPRENEURS TO SUCCEED

It's not just Latin America that is set to see an explosion in its youthful middle class in the coming decade. According to the European Commission, by 2030, the global middle class is expected to reach 5.3 billion people, and most of this growth will be in Asia.

For that population to thrive, small businesses will need to be cultivated. The World Bank estimates that 600 million jobs will be needed by 2030 to absorb the growing global workforce. In emerging markets, most formal jobs are generated by small business, which create 7 out of 10 jobs. IFCs are already helping young businesses - vital to a burgeoning middle class - thrive in developing economies.

Currently, many jurisdictions in emerging economies are not as business friendly as those in the West. The "Ease of Doing Business" Index finds that the least business friendly states are in Africa and the Middle East. Even China, now a global powerhouse for trade and commerce, is ranked outside the top nations for business-friendliness.

Archaic corporation laws, onerous rules around business, and debt and asset management as well as intrusive governments and weak rules of law make many jurisdictions in emerging regions not conducive to starting a business. IFCs are allowing small businesses today to set up secure and robust business

structures offshore, so entrepreneurs can run their nimble businesses without fear of tripping over antiquated and arduous business rules in their home jurisdiction.

Setting up a business in a tried-and tested jurisdiction also gives investors more confidence to help a company grow. Careem Inc., the Dubai-based ride-sharing platform, is a prime example of start-up entrepreneurs successfully securing investment via an incorporated investment vehicle in an IFC. Established in 2012 as a website-based service for corporate car bookings, the business was recently valued at US\$1 billion and is widely recognised as the "Uber of the Arab world".

It found that its early investors were more assured of its future even when it was temporarily banned for operating in the region because it was based offshore. Middle East-based firms can be subject to opaque bankruptcy and debt default laws, for example, but being a BVI vehicle allowed Careem to avoid those rules, which satisfied investors.

Careem is a great example of a small businesses gaining access to a tried-and tested jurisdiction. Through this access, IFCs can support the middle-class prospects of entrepreneurs all over emergent and emerging economies.



3 CHAMPIONING BORDERLESS DIGITAL ECONOMIES WITH FINTECH INNOVATION

An estimated 70 per cent of new value created in the economy over the next decade will be based on digitally enabled platforms. This is presenting a new set of challenges for governments and regulators. Digital goods being highly mobile or intangible, the physical presence of a company in the market country is often not needed, which is at odds with the outdated international tax system.

As on-shore jurisdictions struggle to understand and accept emerging financial technologies, IFCs are now go-to destinations for fintech entrepreneurs. We are already seeing that cryptocurrency is fast becoming a symbol of 'stateless' digital economies. By 2030, it's likely that currency managed on distributed ledger technology will be commonplace and may be driving global business.

The pioneers of stateless, digital assets are seeking jurisdictions that support and encourage these new asset classes. IFCs are leading the way in developing and facilitating this new global technology. A recent report found that the BVI, Cayman Islands, and Singapore were the top three jurisdictions of choice for Initial Coin Offerings in the world in 2018.

Moreover, another recent study found that 80 per cent of all crypto hedge funds operating in 2019 are domiciled in IFCs.

The potential for digital assets and a new digital economy is huge for the unbanked peoples in Africa, Latin America, Asia, and the Middle East. We're already seeing how mobile financial technology is revolutionising the movement of money around Africa, for example. As innovative incubators for these technologies, IFCs can have a hand in making financial services available to billions.



4 FOSTERING INVESTMENT INTO AFRICAN ECONOMIES

Since 2000, at least half of the world's fastest-growing economies have been in Africa. And by 2030, Africa will be home to 1.7 billion people. But key to growing those economies will be the ability for African nations to receive and use international development finance, mostly through Foreign Direct Investment (FDI).

According to a recent Overseas Development Institute (ODI) report, IFCs galvanised additional finance to developing countries of US\$1.6 trillion between 2007 and 2014, much of which went into Africa. By using IFCs as an intermediary into the continent, private investors into FDIs are safe in the knowledge that their investment is subject to the legal jurisdictions of established international contract law centres. Also, IFCs provide a neutral location for funds to be amalgamated from multiple sources and then collectively invested into Africa.

Much of the increase in the use of IFCs for investment into Africa specifically has also been driven by Development Finance Institutions (DFIs) or development banks. A good example of IFCs working with DFI is the China–Africa Fund for Industrial Cooperation, a Chinese state-owned fund for investing in Africa. It has made investments in 92 projects in 36 countries, with US\$23 billion of co-financing from private Chinese companies. These investments were made through BVI structures and have been instrumental in

financing manufacturing and agricultural ventures in the likes of Zambia, Malawi and Rwanda.

Crucially, the risks of a DFI not using an IFC in Africa are also well-recorded. Norway's Norfund stopped using non-OECD IFCs due to political pressure in 2009. As this prevented it from using business structures in Mauritius, the DFI made no new investments in sub-Saharan Africa in 2010 and 2011. Pipeline deals in the agricultural and small business sectors - essential to job creation and poverty alleviation - ground to a halt.



5 FACILITATING CHINA'S GLOBAL VISION

Only 15 years ago, China's economy was one tenth the size of the US economy. But, by 2030 it will be the biggest economy in the world. As it supersedes the United States as the economic superpower, it will be developing both its 'Going Global Strategy' and its Belt & Road Initiative to expand its reach across Asia, Africa, the Middle East and into Europe. To achieve this, it will need to continue to develop international joint ventures and co-funded infrastructure projects, mediated through IFCs.

IFCs are already becoming a vital conduit to funding Chinese infrastructure projects throughout Asia, Africa and Europe. According to a recent study by Capital Economics, mainland Chinese and Hong Kong companies accounted for more than 40 per cent of the US\$1.5 trillion in assets

mediated through the BVI, underscoring the offshore investment centre's growing status as a hub for Chinese overseas investment - outward investment in 2015 mediated via BVI business companies from China and Hong Kong stood at US\$608 billion.

IFCs are vital to China's ability to court international investment because inward investment by international entities is heavily regulated by China. The approval, registration, and filing procedures can be a complicated and time-consuming process. Incorporating offshore also enables joint venture businesses to choose to refer to English Common Law - the world's most recognised and agreed-upon legal system.

Conversely, the statutory framework underpinning IFC vehicles has been well-tested in courts and is therefore trusted allowing for several variations of a Joint Venture and bespoke partnership agreements that help to create transparent, mutually beneficial cross-border agreements that suit all stakeholders.

IFCs - CRUCIAL TO THE LEADING ECONOMIES OF THE 2030s

IFCs are a sound platform for business establishment, growth and diversification and will be crucial to help stimulate emerging economies in the next decade.

We must continue to champion the unique facets of IFCs, from their ability to foster international business partnerships to their capability of incubating and supporting the growth of innovative financial technologies. The time is now to ensure that we continue to deepen connections with business leaders and politicians in Africa, Asia, the Middle East, and Latin America and share a message of cooperation and growth.

The future is bright for the billions of people working to make today's emerging nations the economic powerhouses of the world. It's the job of IFCs to help shape that future for the many. ■

POLITICAL SEA CHANGE IN THE UNITED KINGDOM

By **SIMON GRAY**

Head of Business Development and Marketing
BVI Finance

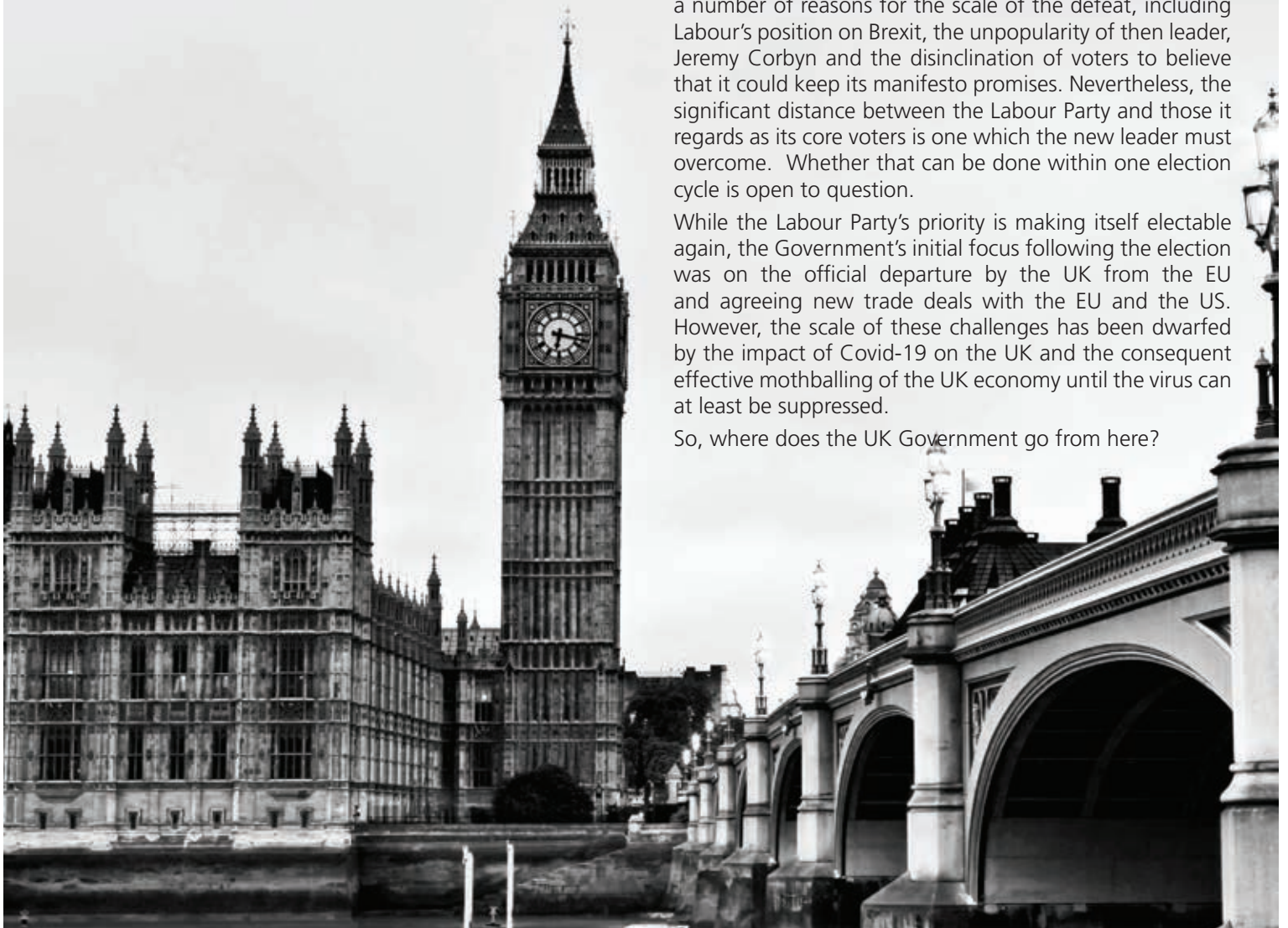
The 2019 UK General Election resulted in a political changing of the guard in the United Kingdom (UK). For the first time since 2010, one political party (Boris Johnson's Conservatives) won not only a clear majority, but one large enough to ensure that the Prime Minister and his team do not need to be beholden to one faction or another - either in their own party or any other.

The Labour Party suffered a poor result, eclipsing the 1983 Michael Foot loss and is now down to 202 seats, while the Liberal Democrats are diminished with Leader, Jo Swinson, losing her seat, and is down to 11 members. While the Liberal Democrats have postponed their leadership election due to Covid-19, the Labour Party has elected Sir Keir Starmer MP, its former Brexit spokesman and a former Director of Public Prosecutions as its new Leader. He is expected to appeal to a broader range of voters than his predecessor.

However, there is no question he faces a significant challenge. The election changed the political geography of the UK especially in the north of England and the Midlands where seats previously held by Labour for decades, in its so-called Red Wall, switched to the Conservatives. There are a number of reasons for the scale of the defeat, including Labour's position on Brexit, the unpopularity of then leader, Jeremy Corbyn and the disinclination of voters to believe that it could keep its manifesto promises. Nevertheless, the significant distance between the Labour Party and those it regards as its core voters is one which the new leader must overcome. Whether that can be done within one election cycle is open to question.

While the Labour Party's priority is making itself electable again, the Government's initial focus following the election was on the official departure by the UK from the EU and agreeing new trade deals with the EU and the US. However, the scale of these challenges has been dwarfed by the impact of Covid-19 on the UK and the consequent effective mothballing of the UK economy until the virus can at least be suppressed.

So, where does the UK Government go from here?



COVID-19

Over recent weeks the UK has followed other countries around the world into significant levels of lockdown to restrict the spread of COVID-19. To combat the economic consequences, a £billion package has been announced to protect businesses; workers and the self-employed. Along with others the London Stock market suffered sharp falls and the economic outlook continues to be volatile while certain sectors such as the airline industry face specific challenges with entire fleets being grounded. It is not yet clear when economic activity will be able to increase anywhere near the levels the world is used to, with some speculation that life won't really be able to return to normal until there is a vaccine which is probably 12-18 months away.

Pre-COVID-19 the UK Government had launched an ambitious budget which would allow for visible investment in infrastructure; a reorganisation of the civil service which would place senior teams from key departments including the Treasury into the regions and a significant upgrade in communication and transport links across the country. Government finances would have been supported by borrowing at low rates and bolstered by planned free trade deals with the US and the EU.

The economic picture however, has changed beyond all recognition as the country's economic powers are diverted to support the UK during the COVID-19 crisis. It is also clear that even once the UK is beyond the worst, the ability of the Government to meet its manifesto commitments from only a few months ago will have changed beyond all recognition. The PM is only too well aware that to these he will have to add substantial investment into the NHS and into other areas which have proven to be critical in recent weeks, such as social care. While any health service in the world would find it a challenge to deal with a pandemic of the scale of COVID-19, the way the NHS and other key public sector organisations are meeting the needs of the population has been widely applauded and no Government in the medium term could risk taking any action which depletes resources.

GOVERNMENT STILL DETERMINED TO GET BREXIT DONE

Polls since the virus spread would seem to indicate that for many people, this is not the priority it once was. Nevertheless, the Government is still keen that it uses the current one year transition period to agree a new trade deal with the EU.

The Prime Minister has a stated goal of achieving a Canada ++ deal but there are red lines, such as any involvement by the European Courts in British law, which the EU would find difficult to reconcile itself to. The degree to which the formal talks can continue remains to be seen given they have to be remote and that the focus of government machinery for almost all member states is on restricting the spread of the virus and providing an economic safety net for their people. Conversations have begun but speculation continues to suggest that at some point before the end of June the UK will ask for an extension of the transition period which the EU would be likely to grant.

NEW HANDS ON THE TILLER

Following the departure from the EU, the PM took the opportunity to undertake a major Government reshuffle. The touted merger of the Foreign and Commonwealth Office and the Department for International Development was put on the back burner until the results of the Government's major review of foreign affairs, security and defence policy. However, many of the Ministers now hold joint responsibilities in both departments. Included within this group is a new Minister for the Overseas Territories, Parliamentary Under Secretary, Baroness Sugg. Appointed as a peer in 2017, as part of David Cameron's resignation honours list, and a previous leading advisor to the then Prime Minister, as Director of Campaigns and Operations at No10, Baroness Sugg will also hold the portfolio for Sustainable Development. Her responsibilities also include children, education and youth (including girl's education), sexual and reproductive health and rights; civil society; disability; LGBT rights and inclusive societies.

THE BEST LAID PLANS...

Poet, Robert Burns, most famous phrase could not be more apposite. While the Government had a clear agenda, the issue of COVID-19 is now dominating political life in the UK and personally for the PM as he and a number of members of the Cabinet have tested positive for the virus.

This domination will no doubt continue long after the virus has been suppressed. The free trade panacea which many in the Conservative Party had hoped for following EU departure is perhaps now less likely. Winning seats which had been held by Labour for decades represents a huge opportunity for the Conservative Party and the MPs for those seats will be pressing Government to ensure that its policies are more in tune with the demands expressed by those voters. While many were focused on Brexit, the other element is the clear frustration that, while many cities have become dynamic centres, smaller towns have struggled as the manufacturing and industrial centres around which many were built, have declined. Voters in these seats were already calling for stronger state intervention to drive economic growth. The COVID-19 pandemic is likely to reinforce that. By the time of the next election the PM will be facing a new Labour leader and a Labour Party whose central mantra of a bigger and potentially more expensive state will have suddenly become much more acceptable. The UK public may want to see and be prepared to pay for more investment in health and social care, education and infrastructure. As a consequence, a Conservative Party with very different policy priorities may emerge from the crisis.

The PM and his new MPs are only too well aware of this and that effectively they have less than five years to demonstrate their commitment to what may be the public's new focus. If the party is not attuned to those demands well, as someone once said: "the North remembers..." – and so will everyone else. ■

**Business Insight recognises Susan Eastoe's editorial contribution to this article.*



HOW WILL THE OVERSEAS TERRITORIES RESPOND TO A SLOWING WORLD ECONOMY?

By **BENITO WHEATLEY**

*Policy Fellow at the Centre for Science and Policy
University of Cambridge*

As the UK's Overseas Territories (OTs) look ahead to the rest of 2020 and beyond, they face the challenge of navigating a slowing global economy beset by trade and political tensions among the world's major economic powers. This will be compounded further by the predicted global recession brought on by the COVID-19 global pandemic.

The US-China Trade War and economic slowdown of two key nations has put a drag on global growth, which has been further dampened by political, social and economic instability in other parts of the world.

According to the IMF, the economic trends of greatest concern to OT financial centres such as Bermuda, the British Virgin Islands and the Cayman Islands, are the weakening of financial services trade and the global fall in investment as a consequence of declining demand and recession fears.

A prolonged global economic slowdown could negatively impact the incorporation, funds and reinsurance sectors that are the mainstays of these jurisdictions.

While the US, China and other global players have taken stimulus measures to stem their respective economic shocks and sustain growth, the OTs – as providers of the corporate services which facilitate international trade and global investment – have little sway over the direction of the global economy which is unpredictable at this stage.

MAINTAINING A POSITIVE EDGE

Instead, the OTs must simply weather deteriorating global economic conditions until things improve. In the meantime, however, their focus must remain on maintaining their competitive edge.

This will require them taking additional steps to make their business climates more friendly by streamlining government processes, adopting IT solutions to improve administrative efficiency and developing digital infrastructure for new services. They must also set themselves the goal of rising in the ranking on the World Bank's Ease of Doing Business Index.

A strong focus should also be placed on product innovation to meet the new demands of international business under the emerging regulatory landscape and changing global economic environment. Fintech (i.e. block chain), digital assets (i.e. cryptocurrencies and digital currencies) and special services in relation to the Internet of Things are but three dimensions of this, and it is key that other areas are explored.

The OTs must position their financial services industries for sustained growth in the medium and long-term by anchoring themselves in new markets, particularly the fast-growing economies in South East Asia, Latin America and Africa whose high growth potential will drive demand for years to come. The OTs cannot afford to ignore large emerging markets such as Indonesia, Nigeria or Brazil.

At the same time, they must hold their positions in more traditional markets such as the United States, China and the European Union whose economies are amongst the major drivers of the global economy.

BASTIONS OF STABILITY

Perhaps most importantly, the OTs must ensure they continue to be bastions of stability as the world drifts toward increasing economic, social and political instability.

This stability is underpinned by their strong rule of law and legal systems based on English Common law, as well as long-term proven track records as financial centers.

These attributes, coupled with their adherence to global standards and ability to adapt to new regulatory conditions, make the OTs the jurisdictions of choice for international business.

Even as storm clouds hover over the global economy, OT financial centres can sustain their success by strengthening their competitiveness as jurisdictions and tapping new markets for future growth. ■



THE BVI FINANCIAL SERVICES LANDSCAPE OVER THE LAST 35 YEARS

By **ADENIKE SICARD**
Partner
Sinclairs (BVI), BVI

In 2019, the BVI celebrated the 35th year anniversary of its first international business legislation, the International Business Companies Act, 1984 (the IBC Act). It has paved the financial services' landscape of the BVI as a well-known and respected international financial centre. Growth in the financial services products offered by the BVI is evidenced by the number of new and innovative legislations enacted since 1984, which keep the BVI relevant, robust and compliant.

TAKING A DRIVE ALONG THE FINANCIAL SERVICES PATHWAY

There were many amendments made to the IBC Act prior to its evolution in January 2005 when it was repealed and replaced with the BVI Business Companies Act, 2004 (the BC Act). The BC Act, among other things, saw the introduction to the BVI of seven different types of companies, including companies limited by shares, companies limited by guarantee authorised to issue shares and those not authorised to issue shares, restricted purpose companies, and segregated portfolio companies, whereas the IBC Act had only one type, companies limited by shares. Under both legislations, the acts of and transactions entered into by the BVI company are not invalid by reason that the company lacks capacity. This is a salient provision which serves to protect third parties dealing with BVI companies.

The BC Act removed the concepts of “authorized capital” and “share capital” and the requirement for par value shares.

Another useful feature introduced by the BC Act is the ability of the directors of a company (when in the best interest of the company or its creditors or members) to approve a plan of arrangement and to apply to the BVI Court for approval of the proposed arrangement, which is given effect upon filing the Court order with the Registry of Corporate Affairs (the Registry). The Court may make interim or final orders, which are not subject to an appeal unless a question of law is involved.

To embark on an exercise to list all the amendments to the BC Act would be a herculean task. I will make mention of a few notable ones below:

- Mandating companies to maintain records sufficient to reflect the company’s transactions and financial position at any time with reasonable accuracy;
- Requiring companies to file a register of directors with the Registry and the optional filing of a register of members;
- Allowing a company’s articles of association to provide that disputes involving the company or any of its members may be settled through arbitration. The Arbitration Act, 2013,

which came into force on 1 October 2014, adopted the UNCITRAL Model law on international commercial arbitration and, along with a state of the art Arbitration Centre, has promoted the BVI as an international centre for fair and swift settlements of disputes through arbitration;

- Disabling bearer shares;
- Allowing BVI companies listed on a recognised stock exchange to dispense with keeping a register of members and allowing its shares to be transferred without a written instrument of transfer; and
- Simplifying the requirements for executing deeds governed by BVI law.

DEVELOPMENT OF THE FINANCIAL SERVICES LEGISLATIONS

The BVI enacted several pieces of financial services legislation over the years, including the Banks and Trust Companies Act, 1990; Partnership Act, 1996; Proceeds of Criminal Conduct Act, 1997 (PCCA); Insolvency Act, 2003; Trustee Act; Virgin Islands Special Trust Act, 2003; Financial Services (Exemption) Regulations, 2007 (creating private trust companies); Insurance Act, 2008; Financing and Money Services Act, 2009; Securities and Investment Business Act, 2010 (SIBA); Trade Marks Act 2013; and the Limited Partnership Act, 2017.

The Financial Services Commission Act, 2001 (which came into force on 1 January 2002) established the BVI Financial Services Commission (Commission) as the regulator and supervisor of financial services being conducted by BVI business companies or foreign companies registered in the BVI. The functions of the Commission (among other things) include:

- (a) Supervising and monitoring compliance by licensees, and other persons who are subject to them, with the PCCA, Anti-Money Laundering Regulations, 2008 (AML Regulations), Anti-money Laundering and Counter Terrorist Financing Code of Practice, 2008 (Code) and with such other similar enactments and guidelines; and
- (b) Monitoring the effectiveness of the financial services legislation in

the supervision and regulation of financial services business in the BVI to internationally accepted standards.

INVESTMENT VEHICLES

In addition to the investment business vehicles introduced by SIBA, the world of investment funds in the BVI has welcomed approved funds and incubator funds to the existing private, professional, and public funds. These funds are lightly regulated vehicles, attractive to emerging managers or persons wishing to manage funds for a group of investor friends, family members, or non-institutional investors.

Since coming on stream in 2015, the number of incubator funds and approved funds has increased from nine of each type at the end of March 2015, to 74 and 116, respectively, as at the end of September 2019.

The Investment Business (Approved Managers) Act, 2012 introduced a fast-track approval process and “light tough” regulation of managers by the Commission where, among other requirements, the managers did not have more than US\$400 million hedge fund assets or US\$1 billion closed ended fund assets. Approved managers may manage funds established in the BVI or in a jurisdiction recognised by the Commission as having similar AML laws and regulations to the BVI.

CHANGES IN THE BVI ANTI-MONEY LAUNDERING PENALTIES REGIME

One cannot mention changes in the financial services landscape without mentioning changes in the compliance regime, including the requirement to appoint approved compliance officers and money laundering reporting officers for regulated entities, and a recent important change in the way in which service providers accept business from third party introducers.

Running along with the changes in the compliance requirements, the BVI also made changes to the accompanying penalties over the years.

The PCCA imposes penalty restrictions on the AML Regulations, the Code, and on the administrative penalties that may be levied by the Commission under the

Code. Initially, the PCCA penalties were in the range of US\$3,000 to US\$25,000. The Commission could not levy administrative penalties above US\$4,000 prior to 2010. In 2010, the maximum fine increased to US\$20,000, and in 2012 the amount increased to US\$150,000.

Similarly, the maximum penalty for an offence under the AML Regulations was US\$15,000. In 2010, the maximum fine was increased to US\$30,000 and in 2012, to US\$150,000. See table below.

The increases resulted from the 2008 CFATF Mutual Evaluation Report of the BVI and a subsequent report in 2011. While the BVI received favourable ratings for its legal and regulatory regimes, the BVI was required to enhance compliance with its AMLCTF laws by making its penalties more dissuasive.

The BVI conducted legislative reform and fully implemented FATF Recommendation 14.2 (tipping off) and Recommendation 17 (sanctions) in 2010 and further increased the penalties in the AML Regulations, Code and the PCCA in 2012.

Observing the regulatory amendments enacted by the BVI over the years, it is clear that the BVI is dedicated to complying with and, in some cases, surpassing its international obligations to combat money-laundering and counter terrorist financing.

| PCCA Offence | Conviction Type | Pre-2010 | 2010 | 2012 |
|---|-----------------|----------------------|----------------------|----------------------|
| Tipping Off | Summary | \$3,000 &/or 6mths | \$25,000 &/or 6 mths | \$250,000 &/or 2yrs |
| | Indictment | \$10,000 &/or 5yrs | \$40,000 &/or 5yrs | \$500,000 &/or 5yrs |
| Assisting another to retain benefit of criminal conduct | Summary | \$3,000 &/or 6mths | \$25,000 &/or 6 mths | \$250,000 &/or 2yrs |
| | Indictment | \$20,000 &/or 14 yrs | \$40,000 &/or 14 yrs | \$500,000&/or 14 yrs |

MORE RECENT ENACTMENTS:

ECONOMIC SUBSTANCE

The BVI enacted the Economic Substance (Companies and Limited Partnership) Act, 2018 on 1 January 2019 (ESA), and the BVI International Tax Authority (ITA) published Rules on ESA on 9 October 2019, to address the European Union’s concerns about the possible misuse of BVI companies for profit shifting and the OECD’s concerns regarding economic presence.

ESA applies to all BVI companies and limited partnerships (LPs) (including foreign registered ones) (the Entities) unless they are and can prove that they are tax resident outside of the BVI in a jurisdiction that is not included on the EU’s list of non-cooperative jurisdictions. Entities tax resident in the BVI are required to demonstrate economic substance by reference to adequacy of expenditure, staff, and premises in the BVI if they carry on any of the nine “relevant activities” defined by ESA.

ESA amends the Beneficial Ownership Secure Search System Act, 2017 (as

amended) (BOSSS) requiring Entities to annually submit basic information on their tax residency and their activities. Entities tax resident in the BVI must provide information via BOSSS to the ITA to enable it to determine whether or not the Entity is carrying on relevant activities during its financial period and, if so, whether it is complying with the economic substance requirements.

SIBA

SIBA was also amended to introduce a new supervisory regime for private investment funds and licensed private investment fund managers (which provide investment management services to a private investment fund or a fund with equivalent characteristics in another jurisdiction). The legislation essentially captures closed ended funds, prior to which, only open ended funds were regulated by the BVI. The change essentially requires closed ended funds to be regulated by the Commission in the same way that open ended funds have been. There are no additional or onerous requirements.

The purpose of this regulation was to satisfy the EU’s requirements on economic

substance and to not allow entities to benefit from profit shifting. However, such entities are rarely, if ever, used for profit shifting and in any event, the activities of investment funds do not fall within the nine “relevant activities” under ESA.

OTHER TOPICAL FINANCIAL SERVICES PRODUCTS:

CRYPTOCURRENCIES AND INITIAL COIN OFFERINGS (ICOS)

While the BVI does not have any specific legislation dealing with cryptocurrencies and ICOs, BVI companies play a significant part in the cryptocurrency markets in the world. The future seems to be where cryptocurrencies lie and the BVI is embarking on carefully launching its own digital currency in order to diversify and keep modern its financial services.

FINANCIAL TECHNOLOGY

The Financial Services Commission is aware of the rise in FinTech globally and will be offering the use of regulatory sandboxes to provide a defined test environment for regulation and innovation of business models.

CONCLUSION

Over the last 35 years of participating in the financial services industry, the BVI has demonstrated that it has the skill and readiness to develop innovative financial services products to respond to the challenges and needs of the evolving times.

The BVI is acutely aware of, and is vigilant, in its role and ethical duty in the fight against money laundering and terrorist financing and has put in place the legislation to strengthen its fight.

It is also aware of the honest and innovative ways in which its products may be used and is primed to facilitate and encourage such use of its financial services. ■

SAFE PRACTICES AND ADVICE TO WORKING REMOTELY

By **EHAB TARABAY**
BVI Chapter of the Information Systems Security Association (ISSA)

Reviewed by **RYAN GELUK**
Deputy Managing Director
BDO

We live in times where connectivity, mobility, and agility at work are paramount. Employees can be 40,000 feet up in the sky, visiting a client, working from home, or meeting a business opportunity at a coffee shop, and they are expected to have access to all their company resources to give timely service or update certain data. Global pandemics are added to the list of reasons for modern technology to be added to the workplace to ensure that work is not disrupted by the movement of employees to different and safer locations.

Information Technology has disrupted most businesses and it is no longer just a business enabler; it adds value and provides a competitive advantage: (1) improving visibility for clients by being client-facing; and (2) mobility for the business users to avoid unwanted forceful disconnection of business resources and capabilities due to the physical locality of the employees. To achieve the latter businesses must find the balance between the three pillars of technology solutions: Productivity, Security, and Cost.

Undoubtedly, security (and by extension, protection of the company's digital resources) is a major concern when remote work is offered. The more technology is implemented, the more assets and resources to monitor and secure, and the more business data travels over the internet, and many times through real estate of physically less secure spaces. All of this would offer a larger attack vector (virtual and physical) for hacking, and data privacy unconformities.

In this article, we will explore the security considerations and safe practices of working remotely.



PROBLEM DEFINITION:

In the face of an increasing concern for a coronavirus pandemic, the concepts of working remotely must be explored; however along with that comes the need to explore how that can be done securely.

When we talk about remote work, we are talking about the ability of employees to work outside of the physical premise of the office, with connectivity to some or all resources they usually have access to when in the office.

This is a perfect scenario for “pretenders” to pretend being our remote users; eavesdroppers to eavesdrop on our communication; thieves to walk away with company assets (laptops, phones and data); wandering eyes to spy on our screens; and loss of data residing on a damaged physical machine.

Many companies may allow personal devices to connect to their network with BYOD (Bring Your Own Device) policies, although this is not the main point of this paper, this will be addressed briefly, but for the rest of the paper, we are talking about company owned and controlled devices.

And now, if we still have your attention, let's proceed to the heart of the matter and discuss six (6) considerations for working remotely.

1. PHYSICAL SECURITY

No matter how big your IT department is, how great your information security (infosec) team is; if physical security is compromised so is your data. With remote work, we may not have security cameras, nor access control doors - we must depend solely on the vigilance of the employees. This starts with having a physical security policy in place and appropriate training (this is a word you will see often in this paper) on the importance of physical security. Below are some of the numerous points physical security considerations employees should abide by:

- Never leave devices hosting corporate data, or used to connect to corporate data, unattended in a public place.
- Avoid leaving corporate devices in a car or exposed to theft or tampering.

- Whenever possible, ensure your screen that is displaying confidential data is not viewable to the public, by either facing a wall or using a privacy screen. And always remember, not to face your screen against a camera.
- Avoid business audio conversations when in public, including phone calls.

Remember, some data might not seem relevant to you, but they may be very relevant for a malicious hacker in the first hacking step (reconnaissance stage).

2. CONNECTIVITY AND PUBLIC WIFI'S

Avoid public WIFI's, especially the unsecure ones or the ones which you don't know who they are owned and managed by. More importantly, if the previous two conditions are combined (unsecure and unknown owner), you should avoid them completely.

If you know the owner of the WIFI (a coffee shop you are visiting, or a client you are visiting, or at home) then the chances of compromise are less, but not nil. The use of virtual private network (VPN) apps or software can create a virtual “tunnel” (yes, just picture a tunnel, but this one is just for virtual electronic traffic) between your remote device and your company's servers, and encrypt all traffic in that tunnel. This method is very helpful but doesn't completely secure you on a public WIFI.

We would highly recommend that if the above two precautions are in use, use those secure known WIFI's for work. Over public WIFI's, we recommend to avoid accessing public known websites like your bank, your email (via a browser) and avoid putting your credentials anywhere that is unexpected (like popups pretending to be your bank, or your email, or PayPal, etc....).

3. ENCRYPTION OF REMOTE DEVICES

Encryption attempts to protect your data from unauthorized access by rendering your data useless to anyone who doesn't have the decryption key. There are a lot of encryption methods and solutions

available, however, the ‘go to’ solution in most environments would be with the use of Bitlocker encryption. Bitlocker encryption is built into most Windows operating systems, and it can be easily enabled on most business laptops with a few clicks of the mouse. Once your laptop hard drive is protected with Bitlocker, a decryption key must be presented on every boot. Data, which is accessible, is decrypted as you use it on the fly. If your computer is stolen, access to the data without the decryption key is almost impossible. Ensuring the loss is only the material cost of the hardware lost. This is an easy (and free) way to protect any data on your computer.

It is important to note, company portable storage media such as hard drives and flash drives, are also a very common way of data leakage and loss, hence encrypting them as mentioned above is extremely important. This can be done within the Windows settings as well when enabling Bitlocker.

4. DATA STORAGE ON REMOTE MACHINES

As you enjoy the convenience of working on the go, your data is being stored and processed on the machine you are using. If the data is stored on your physical machine on the hopes to have it synced to your servers or backed-up at a later time, this will have you always open to the risk of data loss during that period. In the case of remote work, this can be a lengthy period of days, and sometimes weeks.

During this period, the idea of your computer crashing, stolen, lost, or falling off a boat and sinking into the middle of the ocean (trust me, you would be surprised how often we have heard this happen) are all possible scenarios. If you have not saved the information somewhere else remotely, then that important document you saved in “My Documents” or on “My Desktop” (yes, you know who you are with a desktop full of important documents) is now lost forever.

There are many technologies and services to protect you from such incidents where your files can sync with your remote server back in the office which is being

protected by the best infrastructure team, security professionals and two samurai warriors; or to sync to the cloud using cloud technologies like (to name a few) OneDrive (which comes standard as part of Office365, but is also a free service for anyone who signs up), Box, Dropbox, or iCloud (for you Apple/Mac lovers).

5. USING YOUR OWN DEVICES

Corporate devices, whether it is a laptop, phone, tablet, or other such devices usually have a certain set of policies and limitations applied to them. In most cases, the employee (end user) has user access abilities, and in most cases unable to run programs or access certain websites and open certain ports and firewall changes on the machine. Those policies usually not and should not be enforced by corporates on personal devices.

Infected personal devices may have malware with admin-privilege and secret tunnels and backdoors for data leakage. Accordingly, there is always a risk when using those personal devices to expose company data to undue risks. Although some restrictions and policies can be enforced to protect company data and ensure no communication between company data and the rest of the computer, this is a process known as “sandboxing” (just picture it like the sandbox you played in as a child, but where your computer can isolate your data from the rest of the computer to protect it from security risks). Furthermore, terminal services such as Citrix can be used to allow remote access securely to company resources via a virtual desktop, however, whenever personal devices can be avoided, this should be the way to go.

It is also important to remember to NEVER use personal devices or personal emails to handle, even if temporary or a one time, company data, no matter how legitimate or secure you think that is. Always remember, data privacy is different than data security. Although this might not (although it will) generate a data security risk, it might invoke a data privacy risk, which can penalize the company for mishandling client data.



6. MULTI-FACTOR AUTHENTICATION (MFA)

Always remember “The three factors of authentications”

- Something that you are (fingerprint, facial recognition)
- Something that you have (your phone, hardware token)
- Something that you know (username and password)

The more you can add of those three, the better it is. For remote authentication and remote access to resources, we would advise for a minimum of any two of the above.

Phone authentication is an easy one, as many MFA providers would allow using text, voice calls, or smart phone apps. We do highly recommend the latter but would say using text or voice would still be better than none.

FINAL WORDS

Business’ demands of Information technology are ever increasing, it’s crucial for your business to remain agile in such a competitive and demanding landscape and working remotely is definitely a necessary step. It is important to put the policies and technologies in place before the inexorable need to enforce you to step unprepared for this.

For any cyber security advice or aid, please reach to us via our website www.bvi.issa.org

ABOUT THE ISSA

The Information Systems Security Association (ISSA) is the community of choice of international cybersecurity professionals dedicated to advancing individual growth, managing technology risk and protecting critical information and infrastructure. The ISSA is an international not-for-profit organization of information security professionals and practitioners. It provides educational forums, publications and peer interaction opportunities that enhance the knowledge skill, and professional growth of its members. Its core purpose is to promote a secure digital world and its mission is the following:

- Being a respected forum for networking and collaboration.
- providing education and knowledge sharing at all career lifecycle stages; and
- Being a highly regarded voice of information security that influences public opinion government legislation, education and technology with objective expertise that supports sound decision making.

The BVI Chapter of the ISSA was formed in 2015 and is a BVI-based group of information security professionals and technology-minded individuals whose aim to serve the BVI as a respected and trusted source and advisor on information security-related technology, education, standards, and legislation as well as international best-practices.

For more information on the ISSA, please visit www.issa.org or visit us at www.bvi.issa.org



BVI CELEBRATES 35 YEARS OF INNOVATION

Financial Services Awards Night

A black-tie gala was hosted at the Scrub Island Resort, with 18 awards presented to recognise and celebrate the contributors building the future of the BVI's financial services industry and those who have paved the way for all!







History Night: JEOPARDY

Participants tested their knowledge of the BVI and the financial services industry in the form of the popular game show, Jeopardy. Hosted by Gareth Thomas at the BVI International Arbitration Centre, the night featured good food, good teamwork & a few winners!





Game Night: BINGO

Playing the all-time classic game of "Bingo", participants were able to compete, while also enjoying an evening of fun with their co-workers, families and friends.





Debate Night: INDUSTRY vs. HLSCC

A debate held between Hamilton Lavity Stoutt Community College students and members of the BVI financial services industry under the topic of *"Financial Services is the sustainable economic sector for the development and prosperity of the BVI economy"* was the highlight of the week for many! The students defeated the industry practitioners with their knowledge and enthusiasm. Industry, we think it's time you practice for the next competition as the students clearly came to battle prepared!



The nominees and winners from the
FINANCIAL SERVICES GALA AWARDS DINNER

BEST CORPORATE SOCIAL RESPONSIBILITY

Nominees

| | |
|-------------------------|----------------|
| Mourant | Grant Thornton |
| Harneys - winner | BDO |
| Ogier | Deloitte |

REGULATOR OF THE YEAR

Nominee

BVI Financial Services Commission – winner

TECH SAVVY FIRM OF THE YEAR

Nominees

| | |
|-------------------------|-------|
| Harneys - winner | Ching |
| Fresh Mango | BDO |

BANK OF THE YEAR

Nominees

VP Bank
Banco Popular - winner
 National Bank of the Virgin Islands
 FirstBank
 FirstCaribbean International Bank
 Scotiabank

INSURANCE AGENCY OF THE YEAR

Nominees

Caribbean Insurers Limited
 Colonial Insurance Limited
Nagico Insurance - winner
 Alphonso Warner Insurance Agency

AUDITOR OF THE YEAR

Nominees

| | |
|----------|---------------------|
| KPMG | BDO - winner |
| Deloitte | Baker Tilly |

LITIGATION PRACTICE OF THE YEAR

Nominees

| | |
|-------------------------|----------------|
| Appleby | Collas Crill |
| Harneys – winner | Ogier |
| Conyers | O’Neal Webster |

ACCOUNTING FIRM OF THE YEAR

Nominees

| | |
|---------------|---------------------|
| KPMG | Deloitte |
| Ernst & Young | BDO - winner |

INSOLVENCY PRACTICE OF THE YEAR

Nominees

| | |
|----------------------|-------------|
| Ernst & Young | KRyS Global |
| KPMG – winner | FFP |

FUTURE LEADERS AWARD

Nominees

Rebecca Jack, Appleby
 Rhonda Brown, Walkers
 Sanchia Thompson, Geneva Management Group
 Anna Silver, Kalo
 Philip Graham, Harneys
 Ronan Kuczaj, SHRM
T’sa James-Hodge, Ogier - winner

COMPLIANCE OFFICER OF THE YEAR

Nominees

Julia Shamini Chase, Gold Leaf Consulting
 Marlon Marquis, Osiris
 Alphonso Warner, Alphonso Warner Insurance Agency
 Blondell Challenger, Aleman, Cordero, Galindo & Lee
 Casey Gumbs, Portcullis
 Rita Hawkins, Independent Consultant
 Shane Rhymer, Harneys - winner
T’sa James-Hodge, Ogier – winner

LAWYER OF THE YEAR

Nominees

Jonathan Addo, Harneys
 Patrick Thompson, PST Law
 Rhonda Brown, Walkers
 Jude Indra Hodge, Walkers
 Jerry Samuel, Conyers
 Ian Montgomery, Collas Crill
 Philip Graham, Harneys
 Nelson Samuel, N.R. Samuel & Co
Dr. Benedicta Samuels, SR Corporate Services – winner

CORPORATE SERVICE PROVIDER OF THE YEAR

Nominees

| | |
|-----------------------------|-------------------------------------|
| Clermont Corporate Services | |
| TMF | ATU |
| CISA Trust | FFP |
| ILS Fiduciary | Harneys - winner |
| Vistra | SHRM |
| Portcullis | Alfaro Ferrer & Ramirez |
| OMC Group | Hamilton Trust & Management (ARIFA) |

SPECIAL HONOREES

Presentations were also made to special honourees to the architects of the IBC Act **Lewis Hunte, QC** of Hunte & Co., who was the Attorney General in 1984, and the Harneys team of **Neville Westwood, Michael Riegels and Richard Peters**.

Premier Fahie also presented the Financial Services Lifetime Achievement Award to **Dr. Robert Mathavious**. **Lorna Smith, OBE** received the Lifetime Defender Award and the **Department of Information and Public Relations** the Unsung Heroes Award for that office’s continued hard work and support of BVI Finance and the industry.

Barry Goodman of Trident Trust, who served as that company’s Managing Director for 30 years and **the late Harriet Skelton**, the founder of the Compliance Association, were also recognized for their contributions.

JURISDICTION OF CHOICE

WHY BVI?

- ▶ Compliance with international regulatory standards
- ▶ Competitive start-up costs
- ▶ Innovative legislation
- ▶ Internationally renowned commercial court
- ▶ No currency controls
- ▶ Qualified professional pool of practitioners
- ▶ Strong partnership between public and private sectors

BRITISH VIRGIN ISLANDS

Pioneering, innovative and leading the way in global business solutions, the **British Virgin Islands (BVI)** is an internationally respected business and finance centre with a proven commitment to connect markets, empower clients and facilitate investment, trade and capital flow.

