COLLAS CRILL

The "BVI Advantage": A 2024 perspective

APRIL 2024

Once upon a time, half way across the world and well over a decade ago, I gave my first client presentation on the merits of the BVI for cross border structuring to a roomful of bankers and onshore lawyers in Hong Kong. Various key factors had positioned the BVI as the world's offshore jurisdiction of choice driving tens of thousands of incorporations every year. Remarkably, whilst I have seen the legal and regulatory landscape shift considerably during my decade and a half of offshore practice, many of the old adages remain true and all remain as relevant today.

What perhaps merits deeper reflection, and what prompted me to revisit the ten things I love about the BVI in this article, is how the BVI Advantage has stood up to change in global regulatory norms, politics, policies and attitudes – as well as the ever-increasing roster of competitor offshore and midshore jurisdictions. Accordingly, it seemed an opportune time to reflect on what exactly the "BVI Advantage" means today.

Vital Statistics

From: Beyond globalisation: The British Virgin Islands' contribution to global prosperity in an uncertain world published by Pragmatix Advisory, 29 March 2023.

Number of active BVI companies	400,000
Assets held in BVI companies	US$1.4 trillion in assets, held by 375,000 companies
Jobs generated around the world	2,291,000
Global tax revenues generated by business mediated by BVI companies	US$13.8 billion
Sharing of information under tax information exchange agreements	395 requests for information received and processed; 530 outgoing requests for information sent in 2020
United Nations foreign direct investment (FD) inward flows	The BVI is the world's seventh biggest contributor (after China, Hong Kong, Singapore, Canada, Brazil and India).

Flexible, modern and evolving corporate laws

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The BVI's popularity as offshore jurisdiction of choice for inbound investment into emerging markets is driven by our flexible and modern corporate laws, which draw from English company law as well as Canadian and Delaware examples. Our legislation is plain English and common sense, with various features – for example the ability for directors of a joint venture to exercise their fiduciary duties in the best interests of their appointing shareholder – designed to facilitate cross border corporate transactions. As our clients in Jordan and Saudi note, BVI companies are needed to successful structure corporate transactions. As emerging markets develop, so naturally follows wealth, and we have in recent times observed an increase in enquiries about the use of BVI structures for wealth management and estate planning. Exciting developments are currently in the pipeline for a new wealth holding structure to meet this increasing demand.

Legal certainty

The BVI enjoys a common law foundation, strong rule of law and deep bench* of experienced and respected judges (a terrible pun, but a critical point of differentiation for the BVI: we do not have just one commercial court judge, with justice shutting down during golf trips). Again, this is hugely advantageous in emerging market transactions where our clients choose to structure investment through the BVI to avoiding enduing up litigating in the local courts. We do not have foreign exchange controls or expropriation laws that put assets at risk. Neither do we have issues around judicial corruption or bribery. The BVI provides a secure, reliable and efficient jurisdiction to allow investors to mitigate the risks and barriers to investing in developing countries where local banks and governments may be too risky for investor appetite.

Creditor-friendly legislation

From the ease of creating off-balance sheet structures, to the ability to obviate insolvency risk through freedom of contract and the use of sophisticated vehicles such as restricted purpose companies (I advised Danone on the use of such for a listed bond issuance), the phrase "creditor-friendly" has become synonymous with the BVI. Our jurisdiction also has a cheap and efficient statutory regime for security registration, praised by Phillip Wood K.C. as the best of its kind in the world.

Light but effective and stable regulation

There is an increased regulatory burden of owning and operating a BVI company. I'm not inclined to write an article welcoming changes that make it harder to do business, and neither am I going to try to put a positive spin on any of the increased reporting obligations - such as director register filings - that have been introduced in the BVI (and, whilst introduced for good reasons do not make it easier to do business). It is probably true we have lost business to jurisdictions for whom keeping pace with rapid advancement in global regulatory standards isn't a priority. But at the end of the day, the – still modest – regulatory burden in the BVI is something that is eventually going to bite everywhere. It's only a matter of time. Those who don't follow suit won't be doing global business for very long.

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One of the key regulatory changes has been the economic substance regime. In a nutshell, this requires BVI companies that are not tax resident elsewhere in the world to demonstrate adequate "substance" in the BVI: it's a measure designed to curb satellite companies orbiting the globe without a concrete (tax remitting) nexus anywhere. By and large, based on the clients we assist with classifications and establishing substance, it hasn't caused much of a headache, because the vast majority of BVI entities are used as equity holding entities, and the substance requirements for such are generally met without any additional effort That is not to say that the economic substance regime is toothless: intellectual property holding – considered by some as tax avoidance - is no longer really possible. But rather, for investors using the BVI for legitimate reasons – for our clients – it is very much business as usual.

Tax neutrality

The BVI remains tax neutral and tax neutrality means precisely that: our jurisdiction does not add an additional layer of tax burden into international cross border structures. Taxes are paid and remain paid outside of the BVI, in very large sums (see the table, attached). Our financial services industry has demonstrated through independently commissioned research that finance galvanised through BVI entities boosted developing countries' gross domestic product by $400 billion and tax revenues by $100 billion during the 2007-2014 period alone. The BVI is not a tax haven: it is a jurisdiction that works transparently with international partners to tackle financial crime, and has more tax information exchange agreements in force than the UK does : it's time to change the narrative.

Access to legitimate privacy

With wealth comes a natural need for security, and by extension, privacy (ask any ultra-high net worth individual whose home has been ransacked or children kidnapped due to excessive personal information being in the public domain). The BVI retains a level of legitimate protection for investor privacy. The arguments for publicly accessible beneficial ownership registers are well rehearsed, and the status quo in the BVI remains: we will not introduce them until they become a globally accepted norm. This would seem increasingly unlikely following last year's finding by the European Court of Human Rights that such registers breach the fundamental rights to privacy and data protection.

Superior corporate services infrastructure

What the BVI lacks in smoothly paved roads and skyscrapers, it makes up for in superior corporate services infrastructure, with representation from legal, accounting and trust administration professionals on the ground, in the jurisdiction, speaking to the registry and the regulator. Imitation is the greatest form of flattery and many offshore and midshore jurisdictions have sprung up in competition with the BVI. The traditional cautionary note was "beware of cheap imitations": you might save $250 on an incorporation, but wait until you need to litigate in the jurisdiction and cannot find a lawyer. (Memorably, I recall a client being unable to continue an entity out of a Pacific island jurisdiction owing to the companies registry being permanently closed).

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Ease and speed of incorporation and competitive set-up and annual costs

No change here: the BVI remains competitively priced among its peers in the premier tier of international finance centres. Indeed, only following 2017's devastating Hurricane Irma, which wreaked $3.6 billion damage in the Territory, did the BVI Registry modestly raise fees. The filing fee for a security registration is now still just $200: less than a third of the equivalent filing in Bermuda. Incorporation and annual running costs amount to about 60% of the equivalent costs in Cayman.

Jurisdictional neutrality and stability

In Asia, I used to advise regularly on Taiwanese listings, where a jurisdictionally neutral vehicle was critical to attract Chinese investment. Jurisdictional neutrality remains important, especially in light of recent global geopolitical events. In this respect, the BVI is truly offshore, isolated somewhat from global turmoil by not being part of any major political or economic dependency. Furthermore, and notwithstanding the domestic scandal involving the disgraced former Premier of the BVI, the BVI enjoys political and economic stability with a fiscal position that the G7 would envy.

A dependence on offshore business that renders material adverse change in tax and law almost unthinkable

The BVI has a much more balanced economy than most other small international finance centres. Financial services contributes to a smaller share (some 30-35%), of total GDP than in Bermuda, Jersey, the Cayman Islands, Isle of Man and Guernsey. However, this is driven by less than 10% of the working population; making financial services an incredibly profitable business for the Territory and rendering any material adverse change in tax and law almost unthinkable. And this is what we hear from clients who compare our jurisdiction to some of the midshore alternatives: our laws are not likely to change, and critically, they are certainly not susceptible to being changed on a unilateral whim. Indeed, most changes in BVI financial services law are driven by and made in consultation with the industry (the Restructuring and Insolvency Specialists Association has recently been consulting on changes to the Insolvency Act, for example).

Finally, no reflection on the BVI Advantage would be complete without crediting local government, the registry and our regulators for their continued capacity to listen, through local professionals, to what clients need and want from the BVI. The fact that our jurisdiction now has a government minister dedicated to financial services, speaks volumes about the Territory's continued commitment to excellence as far as the BVI product is concerned.

Six and a half years ago, when Category 5 Hurricane Irma ripped through the Virgin Islands, my impression of the islands (advising on BVI law from afar, and managing successfully to incorporate a new company for a client just days after a natural disaster), was one of remarkable resilience. This manifested during the COVID-19 pandemic when the BVI was able seamlessly to implement virtual hearings, having had to do so in the

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immediate aftermath of that storm, and be one of the first countries in the world to offer fully remote court hearings, thereby avoiding any real disruption to the Court lists as coronavirus raged. The Virgin Islands culture of dynamism and resilience in the face of change is precisely what keeps the BVI Advantage alive and well today.

Sources:

- The annual government fiscal deficit as share of GDP and annual general government net debt as a share pf GDP stands at a micro-fraction of the same figures in the US, UK and Japan
- Pragmatix report

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