BVI, THE INDISPENSABLE IFC *TOO LEGIT TO QUIT*

By **JEROME RUBIN-DELANCHY**

It was almost 20 years ago when I first set foot in the then so-called “offshore financial world”. Coming out of the French schooling system, I had basically zero knowledge of this industry. I had been offered a job by a recruitment agency in Switzerland. Honestly, even after my first interview with the company, I was skeptical about the position and what was actually expected of me. When you come from a background completely unrelated to the traditional fiduciary world, it’s hard to appreciate what “company administration” means, and it is somehow even more puzzling when exotic countries like the British Virgin Islands are thrown in the mix. Eventually though, I was offered the job. Still doubtful about the legitimacy of the company (more than its integrity), I accepted the offer. After all, I was in my early 20s, it was my first job, and more importantly, the compensation was attractive. That company I am referring to, you may have heard of it, was Mossack Fonseca.

Within the two years I spent with the Company, I learnt a lot about the industry on many different levels. I also gained exposure to the world of wealth management; even more since I was in Geneva, a leading Financial Centre.

But back in the early 2000's, the rules did not look anything like today. The firm was operating within a group, with front offices located in financial hubs and back offices in Panama, BVI and other jurisdictions. In Geneva, we worked with intermediaries like law firms, banks, trust companies. They would order companies, request "local directors" and coordinate their clients' operations. Of course transactions were conducted daily, which meant getting documents signed by the directors. But time was of the essence, and we had to go above and beyond to assist our partners. Original documents often had to be delivered the same day, meaning there was no time for a cross Atlantic trip. But thankfully, we had stacks of blank pre-signed paper. This is when I understood why my lack of knowledge of the offshore world was irrelevant. My most important skills needed, were computer science and customer service. Today, this sounds a bit outrageous, doesn't it? But this was the reality of the time, and a reality that was shared amongst many other players in the field. Those intermediaries I referred to earlier, they were not only in Geneva, but also in France, the UK, etc. It doesn't mean the business was illegitimate though; it just means there was less control and transparency, everywhere!

If you read the 2002 International Monetary Fund's working paper on Offshore Financial Centres ("OFCs"), you will get a clear understanding of why smaller jurisdictions developed their legal and economic systems with the aim of becoming OFCs. That industry facilitated the creation of employment and revenues for the respective governments, therefore boosting the growth of their economies. OFCs provided important and legitimate services for private investments, asset protection and estate planning. Are those not objectives we are ultimately all seeking?

But with increased globalisation, the threat of money laundering and transnational organised crime became more and more visible. The terrorist attacks of 2001 largely contributed to an intensification of international efforts to combat criminality. Transparency became the KEY word. But let's also not forget the financial crisis of 2008 which left many large nations facing challenges, with rising debts putting pressure on government finances across the globe. In 2000, government debt averaged 66 percent of gross domestic product across all major advanced economies. By 2015, debt had risen to 84 percent. Financing the debt through fiscal austerity became all governments' top priority and countries with a low tax regime became target number one. "Criminality" "tax evasion" "terrorism financing" became an easy pretext for both governments and Non-Governmental Organisations ("NGOs") to increase pressure to achieve those objectives. Let's tax more to finance our debts!

There is no denial of the risk that OFCs represented, and it would be naïve to assert that OFCs were always used for legitimate motives. But it is now time to realise that there is water under the bridge and the industry has changed. Here I am, almost 20 years later, based in the BVI with an executive role for a successful company that provides a broad range of fiduciary, wealth management, and investment services. I think I am in a good position to testify and demonstrate that the offshore business has changed entirely. And by the way, we no longer talk about OFCs, but International Financial Centres (IFCs). BVI is one of them, and a successful one.

Unlike any other OECD countries, the BVI, and IFCs in general, had to go the extra mile to demonstrate their active role in the fight against criminality. Everyone must appreciate the high level of regulations and transparency which the jurisdiction implemented to prove its legitimacy. Unfortunately, the public perception got somehow stuck in the 2000s - BVI is still often called a tax haven. Why? Because some NGOs, like the Tax Justice Network and others that were set up over a decade ago, grew so big that they have to continue advocating for their cause. They can't just admit their purpose has become obsolete, so they continue using sensational journalism to influence public opinion. They might be right, just preaching to the wrong choir. The BVI is a sound and reliable centre which had to work harder than many other nations to demonstrate it meets all international standards. Foreign investors who use the BVI as part of their financial planning or international operational strategies do have a legitimate reason to do so. As a matter of fact, the level of control is so high that criminals dare not even think about using the BVI to facilitate money laundering or tax evasion. Instead they are going to much larger, bureaucratic, less Anti-Money Laundering ("AML") educated countries. Some of those countries are OECD members. I often wonder if people do appreciate that every single person working in the BVI Financial Services Industry has to undertake regular AML training. Is that the case in all G20 countries?

So you may ask why would someone use the BVI if it's not to engage in tax evasion or other illicit purposes? Well, there are many reasons.

First, obviously, BVI companies are widely used to hold private wealth. An individual who has assets he wishes to invest and grow for the benefit of his heirs, while at the same retaining control of management and distribution, may opt for a BVI personal investment company ("PIC"). It offers a lot of benefits in terms of wealth accumulation, continuation, succession planning, liability protection, etc. Similar to an investment fund which is pooling assets from different investors, a PIC is the perfect vehicle to consolidate the holding of personal wealth.

But there are other important benefits on a larger scale. One of the main benefits of the BVI's legal system is the fact that it has flexible corporate legislation, ideal to facilitate cross-border trades, investments and businesses. The capital structure of a BVI company is simple. There is no concept of share capital and no requirement for par value shares. In an Initial Public Offering ("IPO") context, this provides a great advantage when it comes to offering or marketing the shares. Those features combined with others have made the BVI one of the leading jurisdictions to establish a SPAC (Special Purpose Acquisition Company). A SPAC is a simple company specifically created to raise capital through an IPO, which then goes on to use the cash raised to make strategic acquisitions. In 2017, SPACs actually made up nearly 20% of all IPOs recorded that year. A SPAC will typically partner with the CEO of a private equity firm or an investment bank to pursue acquisitions, with a sector-specific focus. Together, they issue shares through the IPO, with an institutionally backed SPAC usually raising between $200-$600 million. Once the IPO is successfully completed, the CEO and his team have two years to find an appropriate acquisition target which is then merged into the SPAC to create a newly formed publicly listed company.

BVI companies are also used by large cap companies to manage their cross-border activities, including in the context of joint-ventures and acquisitions, and particularly where it involves parties from different countries. Rather than selecting the home jurisdiction of any of the partners, or the jurisdiction where the business is located, a neutral and safe platform that provides a level playing field, neutrality, and corporate governance benefits is often the preferred option.

BVI is also the ideal jurisdiction for investment funds, investment managers, and other investment activities, thanks to its legal and regulatory regime. At the end of 2018, approximately 2,000 investment funds and investment business license holders were registered with the BVI Financial Services Commission.

There are many more advantages of using BVI structures. I would recommend the reader to take a peek at the 132 page summary published by Capital Economics in June 2017 entitled "Creating Value: the BVI's Global Contribution".

Looking at the global picture, what (if anything) does the BVI bring to the world in terms of value? Well, the reason why the economic growth of the poorest nations in the world is held back is because they lack financing. Without money, there is no development. Mobilising international funding is therefore crucial for these economies, but international private investors are very hesitant to do so for obvious reasons. The political and macroeconomic instability, which includes corrupt judicial systems, lengthy unpredictable legal processes, and possibly political interference in private property rights, create a risk which is too high when compared to the potential return. By investing through IFCs, investors mitigate those risks since IFCs are subject to the legal jurisdiction of strong economies like the US and the UK, which are fair, impartial, and predictable.

Additionally, the same investment funds I referred to earlier, are often used as collective schemes to invest in developing countries. By pooling funds from a number of sources to facilitate diversified investments, the risk is mitigated and the potential return becomes greater. The credit for the increased mobilisation of finance in developing countries is already highly recognised by development banks. The CDC Group in the UK for example, which invests exclusively in low income countries, organises more than USD 1 billion of private co-financing annually. They recognise that intermediate jurisdictions are necessary to provide straightforward and stable financial, judiciary and legal systems for investments. They also confirmed their use of IFCs as neutral jurisdictions to provide legal certainty since some of the assets they invest in are not sufficiently protected by the legal systems of the developing countries.

Whether or not you already have an opinion on the topic, have you considered why it is important for IFCs not to give in to the pressure of international tax policy? Well, it is a fact that many developed economies and emerging countries are suffering from over-bureaucratisation. If those countries did not have to compete with IFCs, they would not be pushed to modernise their financial laws and regulations. With a lack of competition, there would be no drive to optimise outdated laws that are poorly adapted to the international market, hence limiting a flow of trade to the lowest level required to subsist. Mr. Citizen, a small investor or even just a customer, would probably be suffering the most from those policies if there was no global competition driven by IFCs.

To recap, the BVI is an International Financial Centre. As a matter of fact, it is growing at a fast pace because it is able to quickly adapt and comply with new global standards and because it doesn't have over-bureaucratised complex systems. The downside, which is slowing the growth of the country as a financial hub, is its accessibility. But as everyone knows, mobility is on the rise and foreign policies like BEPS initiatives which may feel like a threat to sovereignty are actually benefiting the country. Bring it on! | BB