



Presentation by

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IS THERE A FUTURE FOR THE BVI FINANCIAL SERVICES INDUSTRY?

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I wish to thank Nadine Battle & staff and the other organizers of this event for this timely invitation and opportunity to speak on matters affecting the BVI Financial Services Industry.

I have been asked to speak about whether there is a future for the industry. This is a question that concerns many people in different walks of life here in the BVI. Parliamentarians, planners, businessmen, investors, shopkeepers, industry practitioners and common citizens are all asking wondering about it in light of the multitude of international initiatives that continue to focus on offshore financial centres everywhere.

At the risk of answering the question too quickly and have you switch off for the rest of my remarks, I would say “Yes, there is a future” if we can all work seriously together and no more than “perhaps” if we can’t.

What I hope to do in my time today is to set out the nature of the challenges facing us and show the need for close collaboration between the BVI government, industry practitioners and Financial Services Commission.

As you know, these are trying and challenging times for the BVI and offshore financial centres. Great changes are taking place in international perceptions and approaches. We have to be prepared for those changes. For the unprepared, the world has always been a surprising and potentially dangerous place. We must try and see it does not become that for us.

This means as a first step gaining a realistic perception of the new global economic landscape that is emerging. Financial markets are becoming globalized. Cross-border capital flows are getting ever larger and faster. Financial institutions are consolidating and restructuring on a massive scale. New and complex financial products are emerging, driven by technology and market-processes.

Meanwhile, the very nature of corporations is in question. High-profile corporate financial scandals involving blue-chip household names such as Enron, Arthur Anderson and WorldCom are depressing market sentiment. Stock and equity markets are experiencing record losses, with disastrous effects on pensions and retirement planning.

As a result of globalisation, of course, offshore financial centres have become highly successful. Yet this very success, coupled with the recent serious corporate scandals, has created its own problems.

The international financial community and its supra-national bodies have placed offshore financial centres under intense scrutiny. Indeed, some international officials have effectively declared war on them. We are now in a climate of repeated and sustained rhetorical attacks against offshore financial centres, offshore products and offshore practitioners.

At the most basic level, these attacks appear to be aimed at the following:

- (a) Polarizing onshore opinions about offshore, forcing people to declare simple views about whether they think offshore is a good or bad thing, rather than the more nuanced views that previously existed; and
- (b) Trying to make the “offshore bad” view prevail by demonizing offshore financial centres and the people who use them, the result being that the centres become less attractive and their continued existence more uncertain.

I mentioned the success that globalization has brought to offshore finance centres (or OFCs). In particular, global communications technology has enabled offshore centers, which are less costly and thus more economically efficient; to compete successfully with more established onshore centres in certain niche or boutique sectors. It has also eroded traditional international barriers to financial flows, piercing jurisdictional boundaries.

Unfortunately, the same technology has also facilitated illicit cross-border activities, including money laundering, drug trafficking, terrorist financing and concealment of the proceeds of crime. A number of offshore financial centres or the products of these centres have been used and abused to perpetrate nefarious schemes.

A further concern of the onshore world is the impact that OFCs have on their own tax bases. They fear that offshore centres undermine the integrity and fairness of taxation structures and discourage tax compliance; and that OFCs cause undesirable shifts of the tax burden to less mobile tax bases, including manufacturing, labour, property and consumption.

Developed countries have also accused offshore centres of distorting financial and investment flows. And they have suggested that the lack of financial regulation and supervision in OFCs could be a threat to the stability of the global financial markets. Fortunately, the latter claim is unsupported by the facts and even the institutions of the developed world now agree to this fact.

As a result of all these concerns, offshore financial centres everywhere are under attack from politicians and officials in the onshore world. These attacks are usually supported by the media. And all OFCs are being tarred by the same brush that smears the lowest denominator. Indeed, who would have thought a year ago that Bermuda – which, as we know, prides itself on being a cut above the average – would become a byword for offshore iniquity in large parts of US public life? All because of Stanley works- and Corporate inversion.

The situation today is that the larger and more powerful economics are unwilling to tolerate any leakages, real or imaginary, from their fiscal base. They are placing increasingly strong emphasis on transparency and the efficient and effective exchange of information, using the war on terrorism as both a reason and an excuse.

The one ray of sunshine in the midst of all this antagonism is that sufficient numbers of important opinion-formers and policy-makers still understand there is a useful role to be

performed by well regulated OFCs who operate in accordance with internationally accepted standards.

The reality is, that whatever their base motives, Officials and Politicians in the developed world are gearing their efforts towards ensuring that all offshore centers meet international, regulatory, supervisory and conduct of business standards. Those OFCs that don't would have a prolonged future.

In this regard, over the last few years, no less than thirteen initiatives have targeted OFCs, including the BVI. A raft of international acronyms, including the OECD, FATF, G-7, FSF, EU, FCO, HMT, USA, UN and now the IMF have been engaging with matters of key importance to us here in the BVI.

We have been analyzed, reviewed, evaluated, re-analyzed, re-evaluated and re-reviewed ad nauseum. The organizations have brought out reports or are in the process of doing so, and they have expressed pungent opinions and made strong recommendations to deal with perceived problems.

Although it is true that thus far the BVI has emerged relatively well from these taxing and daunting evaluations and has escaped being put on any negative and non-cooperating lists, I must confess to suffering from initiative fatigue. I'm getting more than a little tired of being evaluated, re-evaluated, analyzed, re-analyzed, etc. I sometimes feel like going to the top of Sage Mountain and shouting "Stop the world, I want to get off!".

The only comfort lies in knowing that we are not alone in having to plough this furrow to improve our regulatory, supervisory and industry practices, and our programmes, policies and legislation. [maybe it is true that misery like company]

I would like to turn now to some of the specific and pressing initiatives that have confronted and will be confronting the BVI, and then talk about how we can deal with them together.

- Everyone here knows the saga of the **OECD Harmful Tax Practices Project**. Like most other OFCs, the BVI discussed, negotiated and finally committed to the project, albeit with important level playing field caveats.

It would be wrong, however, to assume that with our commitment the exercise is complete. No-one should be under any illusion that the battle has already been won. We have to watch carefully to ensure that both non-OECD members and OECD members alike agree to introduce the same measures. As full members of the OECD's Global Forum we will insist on a level playing field being evenly applied across the board to all jurisdictions irrespective of size and location.

- Alongside the OECD process, the BVI signed a **Tax Information Exchange Agreement with the USA** which will facilitate the exchange of information in tax matters on request once the US satisfies the BVI authorities that there is a bonafide reason to share the relevant information, assuming it exists in the BVI.

I am aware that there has been anxiety in some quarters over the signing of this tax information exchange treaty. I therefore wish to assure everyone here present that the Government was already seized of their concerns when the treaty was entered into and that every caution was made to protect the integrity of legitimate business, and to safeguard against fishing expeditions. The treaty will operate much along the lines of the MLAT and the US Authorities will have to satisfy a means test threshold in all cases before any information is shared.

Industry practitioners will be aware that already the information to be shared under this treaty is accessible in Fraud and Criminal cases under the Criminal Justice International Cooperation Act and the MLAT. Greater transparency is now the order of the day. Now that we have committed to the OECD Initiative I will not be at all surprised if other OECD countries seek to enter into similar treaties with the BVI.

- All UK Caribbean Overseas Territories and Crown Dependencies have been required to pay special attention to the proposals contained in the so-called EU “**tax package**” as a result of arrangements made between the UK and The EU. Special arrangements originally intended for relationships between EU countries are now being extended to the Territories.

The BVI was the only Caribbean Overseas Territory caught by the EU Code of Conduct on Business Taxation for the ring-fencing aspects of our IBC regime. Necessity is the mother of invention and I am glad to say that we have now satisfied both the EU and the UK that we will not remain offensive to the code. This will be achieved by combining the IBC Act and the Local Companies Act into a single statute by the end of 2003, and by the proposal to move to a zero rate of income taxation by 2005.

We still have a way to go with regard to the EU savings directive and its automatic and spontaneous information exchange mechanisms. Our concern here – as with the OECD – has been to ensure that the BVI does not have to move until the EU countries themselves and our main competitors do so. To do otherwise could damage our economy. Accordingly, we have been working with the other Overseas Territories and have fashioned a collective robust position on the matter.

I need not reassure you that the BVI authorities will do everything to avoid making these islands unattractive to legitimate business entities that prize privacy, confidentiality, and efficiency. We realize that to do otherwise runs the risk of forcing good business to move to other competing jurisdictions. This the BVI is not prepared to do.

- Moving from taxation matters to issues of transparency and regulatory and supervisory oversight, I presume you are all aware of the report the OECD issued in 2001 on the **Misuse of Corporate Vehicles for Illicit Purposes**. If not, I would urge you to become familiar with it without delay. This report which unfairly attacks offshore structures while being silent on similar onshore structures lumps trusts, foundations, and limited partnerships together with companies as corporate vehicles and presents a number of options to eliminate

abuse by making such vehicles more transparent. It is particularly critical of IBC's, and bearer shares.

- The OECD report followed one issued in 2000 by the Research Centre on **Transnational Crime of the University of Trento** in Italy. This report, entitled "Protecting the EU financial system from the exploitation of financial centres and offshore facilities by organised crime" was undertaken with **European Commission** funding. It recommends the establishment of minimum transparency criteria for various types of legal entities, including trusts, for the purpose of identifying so-called beneficial owners more easily.
- More recently, the **FATF** has been reviewing its **40 Recommendations** with a view to extending anti-money laundering measures to counter the financing of terrorism. The FATF set up three working groups to consider various issues, including extending anti-money laundering mechanisms to cover lawyers, accountants, dealers in high value goods, real estate agents and the like.

I was pleased to be a member of the working group considering issues such as the transparency of trusts and other legal structures, and the problems posed by bearer shares, issues which are of special concern to the BVI financial services. The FAF has now issued a consultative paper outlining options which the Financial Services Commission has circulated to the local industry for comments.

- In 2001, the Basel Committee on Banking Supervision issued an influential paper on "**Customer Due Diligence for Banks and Fiduciaries**". Although originally intended for Banks this paper is now regarded as the industry Bible on know your customer and other due diligence matters. It should be requisite reading for compliance officers throughout the industry.
- And only recently this year, the OECD published a draft paper on **auditing and filing requirements**. This paper, which seeks to establish new filing and auditing standards in respect of companies and other corporate vehicles, will be the focal point for discussions next month during the first meeting of the Ad Hoc Group of Accounts under the auspices of the Global Forum. Already we have issued a preliminary critical response to the OECD on the report which if implemented in its present form could have deleterious consequences for all offshore centres. The report contains a number of unworkable and impractical suggestions and would require offshore centres to do more than is being done in the developed world. The Ad Hoc Group will be meeting in the Cayman Islands next month. I strongly commend the paper for the consideration of all industry associations. Any comments received will be factored into the final BVI response.

All of these initiatives have a certain dynamic of their own. None should be ignored. Taken together, they represent a sea change as to what will be tolerated and what will be pursued on a concerted international basis. As the FATF non-cooperating territory exercise so vividly illustrates, perpetrators of unacceptable business practices, including rogue and unregulated jurisdictions, will be soundly punished and sanctioned. This will undoubtedly involve being denied access to legitimate international banking and other cross-border services.

What must we do to safeguard our industry? We have to keep demonstrating to the international community, the supra-national bodies, the international media, politicians, regulators and other law enforcement agencies and commentators that we are, quite simply, a well regulated jurisdiction.

This mean showing clearly:

- That we apply international standards of regulatory and supervisory oversight to the affairs of the industry.
- That we have zero tolerance for anything not compatible with being a well respected and well regulated jurisdiction; and
- That we will continue to do all we can to prevent abuse of our industry and its products, and that if ever such abuse occurs we will deal with it swiftly and firmly.

All this is epitomized in the motto of the Financial Services Commission: “**Vigilance, Integrity, and Accountability**”.

An immediate opportunity – and challenge – to demonstrate that we are a well-regulated jurisdiction will be when the **IMF** visits the BVI from 11-22 November to assess our financial services sector programmes, practices, policies and regulatory regimes. This visit sets down an extremely important marker for the BVI. Through it, we can show the world that we truly comply with established international standards.

I should mention that this is part of an ongoing exercise by the IMF and that most of our international competitors will be undergoing a similar exercise shortly.

The IMF will be assessing us against various international standards in the area of banking, investment (including mutual funds and fund management and administration), insurance, fighting economic crime (including anti-money laundering and combating the financing of terrorism) and international cooperation.

In the area of company management and fiduciary services, established international regulatory standards do not exist. Accordingly, the IMF will be assessing our practice against best business practice. Here we should be well placed as the BVI is at the forefront of jurisdictions regulating corporate service providers. I was also a member of a special technical committee set up to establish standards concerning the regulation of fiduciary services.

Work on the IMF review has already begun. We have almost completed the details of five self assessment questions and should be forwarding to the IMF later this month. This has not been an easy exercise and it promises to become even more challenging. They will be looking at not only our laws and regulations but also how we implement day to day supervision, how independent from government control and private sector influence is the regulatory regime and what is the compliance culture here in the BVI.

In this regard, we anticipate that the IMF team will choose to visit some industry associations and a few firms. We solicit your fullest cooperation, as you will appreciate it will be important to make sure that the IMF assessors go away knowing there is a real commitment to compliance here in the BVI.

The IMF Report is expected to be published worldwide. It is important therefore that all stakeholders in the industry get the message loud and clear. It is absolutely essential that we all – government-industry and Commission – get our houses in order. And this will require a series of amendments to existing legislation.

Whether we like it or not we must all realize that the international community is getting its act together. The scope, span and pace of the many initiatives cannot be ignored. If they are ignored, decisions will undoubtedly be made by others to our detriment, our clients will be put off, our businesses and the economy will suffer, public revenues will decline, jobs will be lost and the standards of living that BVI islanders have come to enjoy will suffer. This we cannot allow to happen.

That fact that a clear international consensus on these issues is still being crystallized presents us with a real opportunity. The BVI must engage constructively in dialogue with the formulators of these initiatives and must work with other like-minded jurisdictions similarly affected. This is why we co-founded and have been actively involved in the affairs of the International Tax and Investment Organisation (ITIO), which has recently co-sponsored with STEP a major report, “**Towards a Level Playing Field**”, as a response to the OECD’s misuse of corporate vehicles report. I strongly commend this report to the attention of everyone.

I also believe we must be actively involved in international deliberations that materially affect us wherever and whenever we are permitted and that we must seek to inform all debate affecting us so that any discussions are based on a proper appreciation of BVI reality, not on popularly held myths or political or regional prejudices.

These beliefs have underpinned BVI approach not in dealing with the initiatives. I also believe that as a result of our involvement and engagement in these international initiatives the Commission is in a very good position to see where things are going, and I believe it is part of our job to advise the industry and government accordingly so that together we make the right moves to ensure the long term viability of our Financial Services Industry.

The Industry is indeed living through a trying and extremely challenging environment which requires professionalism, adaptability, compliance with international standards and a joined up approach involving all stakeholders in insulating the jurisdiction from anything that could threaten our hard earned reputation as a situs for legitimate business.

This has to be a shared responsibility between the Government, the Industry and the Commission. Progress can only be achieved by our collaboration, our actions and strategies must be attuned to practical realities of market conditions. We must be pragmatic.

Markets everywhere are on the verge of change and we cannot continue doing things in the same sweet old way pretending that the world has not changed. The reality is that it has, and significantly so. But change brings opportunities for those who are enterprising, innovative, insightful and daring.

The challenge of globalization is to discover new opportunities that are being opened up. As with these new challenges come opportunities and rewards to be reaped. How we live in the future therefore depends on how much effort we make today to take on the odds in the globalized economy. The future can be bright if we continue to work together to our mutual advantage.

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