



5th March 2018

Written Evidence Submitted by the Government of the British Virgin Islands (Sanctions and Anti-Money Laundering Bill)

Summary

- The relationship between the British Virgin Islands (BVI) and the UK is based on mutual co-operation and respect. Financial services are devolved to the democratically elected government by formal letter of entrustment.
- To impose a register of beneficial ownership without consultation or consensus effectively disenfranchises the BVI legislature and its electorate creating resentment and damaging the historically strong relationship between the BVI and the UK.
- The BVI has been rated very favourably by global standard setter, the Financial Action Task Force, in the holding of beneficial ownership information (i.e. maintaining a verified register of beneficial ownership which is accessible to relevant law enforcement authorities).
- Should public registers become the standard the BVI will comply. It is the imposition of a public register in advance of any global standard which the BVI objects to.
- It is incorrect to state that there has been no progress since various initiatives in relation to beneficial ownership were announced.
- Following the Exchange of Letters in 2015 the BVI developed an innovative portal based platform. This provides direct and searchable access to the BVI competent authorities on all BVI active companies without the owners of the information being alerted. Launched in 2017 it is currently operational and already being utilized to respond to UK law enforcement queries.
- BVI is a reliable partner in the fight against financial crime. It is an active member of, and participant in, the global organisations engaged in these matters including the OECD and FATF.
- An assessment by Capital Economics estimates that the unilateral imposition of a public register of beneficial ownership in advance of any global standard would result in the loss of up to 2,300 jobs and a decline of gross value added of roughly \$250m.
- Given the BVI is already reeling from two devastating hurricanes, it would be unrealistic for the BVI to self-fund the additional costs and the UK Government would either have to foot the bill or see a crisis in the BVI's public services. Over the next 10 years this could result in an additional funding gap of \$1bn.

1. How financial services is treated from a constitutional basis

- 1.1 There has been much debate about the power of the UK to impose its will on the Overseas Territories. However, this ignores the day to day workings which are based on co-operation, consensus and mutual respect. For example, following the devastating hurricanes which ploughed into the BVI last year, the UK did not hesitate to send extensive support. The BVI

remains incredibly grateful for this as well as for the many individual contributions and offers of help from the people of the UK.

- 1.2 The operation of the business and financial services sector is further evidence of this model of co-operation. The entrustment letter accompanying the 2007 BVI Constitution states, “the UK Government will, whenever practicable, seek the fullest consultation with the Government of the [British] Virgin Islands, and will at all times have special regard to the wishes of the BVI.” During the debate on this bill in the House of Lords, Lord Ahmed, the Overseas Territories Minister, made it very clear that there is a ‘constitutional difference in the fact that domestic financial services are in an area devolved to the territory’s governments’.
- 1.3 The call for an Order in Council flies in the face of this principle and effectively disenfranchises the people of the BVI and their elected representatives.
- 1.4 The BVI and UK are meant to be partners, but this is a blunt and heavy handed move that threatens our relationship – in addition to the BVI’s long term economic sustainability.

2. The BVI complies with the requirements of the global standard setter, the Financial Action Task Force in the holding of beneficial ownership information

- 2.1 The BVI has 3 clear rules before a business company can be registered:
 - companies can only be registered by a licensed corporate services provider (CSP);
 - CSPs must verify the beneficial ownership information they hold which includes full name, date of birth, residential address and nationality of the ultimate beneficial owner; and
 - all CSPs are regulated by the BVI’s independent regulator, the Financial Services Commission.
- 2.2 Following an Exchange of Notes with the UK in 2015 the BVI committed to establish a central register or similarly effective system. Developed over the course of 2016, the Government announced the creation of the Beneficial Ownership Secure Search System (BOSSs). At the heart of this innovative digital platform is a searchable portal that provides the BVI’s competent authorities with direct and immediate access to the verified beneficial ownership information on any BVI Business Company. This information can also be made available to UK authorities within 24 hours or within 1 hour if urgent, without alerting the owners of the information.

3. The BVI is a reliable partner in the fight against financial crime

- 3.1 BVI is a respected and active participant in international bodies including the FATF and Financial Stability Board regional bodies, the global standard setter for the securities sector (IOSCO), and the Egmont Group of Financial Intelligence Units.
- 3.2 It is an early adopter of the OECD’s Common Reporting Standard (CRS) for the automatic exchange of tax information, and has joined the OECD’s BEPS Inclusive Framework (Base Erosion and Profit Shifting). It is listed as ‘largely compliant’ along with the UK and the US by the OECD Global Forum on Tax Transparency and Exchange of Information.

3.3 The BVI Financial Services Commission has a good record of cooperation with and providing assistance to its US and indeed global counterparts (the SEC and FIDIC in particular) where complaints arise in relation to BVI business entities. The BVI Attorney General's Chambers has a similar record and arrangement with the DOJ when criminality is alleged and mutual legal assistance sought. It is to be noted, however, that the establishment of a public register of beneficial ownership is not necessarily the answer to companies committing breaches of sanctions or other laws. Rather, the issue is whether companies breaching sanctions and other laws are properly dealt with and maximum cooperation engaged to facilitate investigations undertaken by law enforcement and other agencies.

4. The BVI is Tax Neutral – it is not a tax haven

4.1 BVI does not charge local taxes on transactions conducted or assets held in the BVI as they relate to economic activity elsewhere. This does not reduce or eliminate tax liabilities outside the BVI. Tax neutrality should be distinguished from low tax regimes such as Luxembourg where low rates or tax relief may be offered on specific categories of income.

5. BVI Business Companies are trusted across the world as facilitators of global trade and cross border investment

5.1 A report by Capital Economics (June 2017) showed that less than 12% of active BVI Business Companies are held by UK based beneficial owners with a significant number based in Asia. While Treaty arrangements, including with China, exist to enable the exchange of tax information between the relevant authorities, it should be noted that these countries have very different attitudes to public registers based on cultural and privacy norms and these should be respected until any global standard which they have contributed to is in place.

6. The BVI makes a significant contribution to the UK economy

6.1 The report showed the degree to which the BVI supports tax revenues and jobs in the UK. Given the level of investment mediated through the BVI, Capital Economics estimates that the UK receives roughly £3bn a year in tax. The BVI also supports 2.2 million jobs globally, 150,000 of which are in the UK.

7. The cost of imposing a public register on the BVI will outweigh any revenues which might accrue from preventing alleged tax leakage.

7.1 The BVI is already reeling from the impact of Hurricanes Irma and Maria with an estimated £3.6bn hit to the economy. Business and finance activity recommenced soon after and these revenues (from financial services activities) are providing essential public services including homes, health and education.

7.2 An assessment by Capital Economics suggests that imposing a public register in advance of a global standard would lead to a 45% decline in Government revenues, crippling an economy which is still in recovery mode as well as potentially adding roughly \$1bn to the already significant hurricane related debt.

7.3 Constitutionally, the UK is responsible for the BVI's safety and security. Adding this level of debt to an already difficult economic outlook could threaten these principles and cause a

crisis in public services. Given the history and relationship between the UK and BVI it would be unacceptable for the UK to push the BVI into such a situation and leave it to fend for itself, therefore landing the UK taxpayer with a significant bill.