

PUTTING FRESH WIND IN OUR SAILS

Opening remarks at “Meet the Regulator” forum 2010

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Ladies and Gentlemen

I am grateful for this opportunity to deliver the second public address on the outlook for the BVI's local financial services industry. I prize this addition to the Commission's dialogue with you all and trust it will help to strengthen our ability jointly to address the numerous challenges and opportunities that lie before us. On behalf of the Board of Commissioners, the staff of the FSC, I wish to publicly express our sincere thanks and appreciation for the part played by the government, The House of Assembly, the Attorney General Chambers and by you, the industry in making this possible.

As we enter this new decade, now is an opportune time to pause, to reflect on our past accomplishments and to map out our first steps towards new endeavours.

When we met last year, we knew that a much tougher business and regulatory environment lay ahead. The world economy was in crisis and the climate against so-called tax havens was hardening. The spectre of blacklisting hung over the heads of the BVI and finance centres across the world, including many who had previously escaped being targeted.

I have to admit that 2009 was indeed as challenging a year as we expected. But I am also delighted to note that we have emerged from it stronger than most of our peers. This is because we acted together and acted responsibly.

Moving swiftly and decisively, we took the creative, pragmatic, measured and thoughtful steps needed to keep moving the BVI financial services industry forward.

While the global view of offshore finance centres (OFCs) is no more positive today than it was twelve months ago, the immediate threat of blacklisting has receded for the BVI. We have signed more than the requisite number of Tax Information Exchange Agreements (TIEAs) and are firmly on the white list of the Organisation for Economic Cooperation and Development (OECD).

However, it would be a mistake to think this means we are out of the woods. Far from it. Both on the regulatory and the business front, we continue to be beset with challenges.

Today, let us look at those challenges with a clear eye. Let us examine the action we need to take to ensure that our territory continues to offer well regulated services that respond competitively to client demands.

Yes, the past twelve months have not been plain sailing for the BVI, any more than they have been for most other countries. In such an environment, no-one should be surprised that we saw some fall-off in business across all sectors of the industry. Yet revenue collected by the Commission on behalf of the government met the projected targets.

What this all means is, the BVI is still very much in the game. How long we remain in it will, as ever, be a matter of what we do next. Being on the OECD white list gives us some time for reflection – let us use it well.

For it would be a mistake to think that being on the OECD white list means the worst is over. Those centres who refuse to accept that the world is no longer what it was may find that the worst is yet to come if their governments do not pass the necessary laws, if their industries comply poorly with international standards... and if they do not devise fresh ways of enhancing their competitiveness.

The global crisis that besets us still should not be seen as just a temporary blip in world affairs. It must be seen as what it is, a transformational and paradigm-shifting event.

It requires us in the BVI to take stock of our own immediate world. We must do the right things and do things right. We must look at the world as it now is, plan wisely and turn our plans into concrete action.

I am confident that if we make the right choices now, an exciting future lies ahead of us. We will be well positioned to capture the new streams of business opportunities that will emerge.

I firmly believe the best solution to our territory's challenges will come from within by all of us pulling together for a common goal. We must just have the courage to do what is right not what is expected, even if this means doing what is hard.

As a first step, we must all redouble our determination that the BVI will never be weighed in the balance and found wanting. Crucial to this will be maintaining our thriving partnership between government, industry and regulator. Each of us has a responsible role in sustaining this partnership for the economic wellbeing of the territory.

At the FSC, our task is to ensure that the BVI's regulatory laws, policies, codes and modalities meet the requirements of the international standards-setters. The government's task is to pass the requisite legislation in a timely fashion thereby creating a competitive environment for business. And the industry's task is to ensure that it complies fully with the rules. It must also seize the new competitive opportunities provided by enhancements to BVI laws and regulations.

As regards compliance, as I have said before, it must be clearly understood that non-compliance by one threatens the livelihoods of all.

- When the information needed to respond to international cooperation requests is not forthcoming, we all suffer.

- When a lack of practitioner oversight means that a BVI entity is abused by criminals, we all suffer.
- When negative stories are written about unethical behaviour in our jurisdiction, we all suffer.

Today more than ever, being seen to be compliant is an essential part of staying competitive. Retaining and winning business depends on clients having confidence that the BVI enjoys a good reputation and is not likely to be subject to international sanctions.

In what may very well be a harbinger of things to come; only this week, France issued its own blacklist of 18 jurisdictions. The BVI is not on the list. Companies using the 18 will face punitive tax rates and other counter measures. And when G20 finance ministers next meet in April, wider sanctions may be on the table.

While this does not affect us as matters stand, it would be a grave error to assume that getting on the OECD's white list is the end of the BVI's worries. For all the 62 countries on the white list, implementation is now what counts.

Operating through a peer review process, the OECD intends to confirm that jurisdictions have the legal and regulatory framework in place to implement their TIEAs. It will then assess actual implementation in practice. The BVI's framework is due to be reviewed in the first half of 2011.

France has already said it will add any jurisdiction to its sanctions blacklist list that signs TIEAs but fails on implementation. We can expect other countries to follow suit.

When the moment of truth comes, therefore, each and every BVI service provider will need to be absolutely sure they can make available the information sought pursuant to relevant BVI laws, whether for law enforcement, regulatory or tax information purposes.

Time and time again you have heard me say, it is never enough just to talk the talk. We must walk it as well. We cannot afford for the good reputation of the many firms in our jurisdiction to be sullied by the inaction of a few.

We must also ensure that we tell a positive story about BVI regulation. Not only are we on the OECD's white list, but:

- Our last report by the CFATF was excellent;
- BVI companies have achieved a long-sought listing on the Hong Kong Stock Exchange;
- The Foot Review of British OFCs was largely positive for the BVI;
- Our high standards against money laundering and the financing of terrorism have been confirmed by the FATF's International Co-operation Review Group process; and

- The BVI was the only OFC to rise in the most recent ranking of jurisdictions by the Global Finance Centres Index.

We have a good story to tell and tell it we must. But we must also remember that we are not the only ones with a good story. To remain competitive requires more of us. It requires us to do no less than seize this opportunity to review and renew the BVI's value proposition.

The competitive environment in which BVI practitioners compete is changing. Even in the developed world, people are trying to win business from the very markets that we seek to serve.

Just before Christmas, for example, Ireland introduced new legislation to allow an offshore fund to re-register there while keeping the same legal personality and avoiding certain tax liabilities. They already claim to be taking business from BVI and Cayman.

In today's world, any OFC that thinks it's business as usual will be left behind. Instead of giving out the same message to the world, they should be conducting a critical analysis of their industry to put them in position to fight off new threats and exploit new opportunities.

One only has to take a cursory glance at what is happening in Cayman, Bermuda and the Channel Islands to see that our competitor jurisdictions have not been standing still. Guernsey last year commissioned former UK minister Lord Hunt to conduct a strategic review of its banking industry. Cayman Finance is making major changes to improve its ability to represent the financial services industry.

The BVI finance sector, too, has to sharpen its competitiveness in markets where it is already a major player and look strategically at how it can access nascent markets.

Even more than before, we have to leverage our strengths. We have to do some clear and honest thinking about how to gain more business from the people who have used us in the past and to win new business from those whom we would like to use us in the future

Increasing the attractiveness of the BVI's value proposition for current and potential users will require each and every firm to take a fresh, realistic and holistic look at how it develops and presents the benefits, costs and value to clients of using that firm to achieve their business aims.

Some of you will know the book *Who Moved My Cheese?*, which espouses the benefits of dealing successfully with change. For all offshore centres, the cheese is moving. The question is: who will stay still or who will move with it?

For example, undertaking a critical analysis of its current situation could enhance the competitiveness of the BVI's insurance sector. A global recovery could mean new opportunities for captives – why should we not plan to seize them? So Insurance Managers, let's cast our nets on the sea. If there are big, better and more numerous fish out there, why stay fishing in the shallows?

The FSC and the BVI government are committed to facilitating innovative, relevant and attractive solutions to clients' needs. Working in close partnership with you, the private sector, we will seek continually to strengthen BVI legislation and keep it compliant, up to date and responsive to market demands.

In 2009, the Commission worked closely with the Attorney General's Chambers on developing an improved suite of financial services legislation. Most of this has either been enacted or is in the process of being enacted. The Commission's consultative and collaborative mechanisms have also been enhanced as we seek to work ever closer with the industry.

Our legislative improvements have been designed to ensure that the jurisdiction meets international requirements and complies with the recommendations of the BVI's 2008 mutual evaluation by the Caribbean Financial Action Task Force.

At the same time, they provide the BVI industry with new opportunities by introducing the superior, streamlined regulation and supervision that today's clients require. They put us in a position to re-energise, revamp, re-engineer and rebrand the national proposition.

With your help, our territory has to become a centre of excellence in other niche areas: not just corporate domicile but funds and insurance, too. The FSC is seeking to provide the best possible platform. It is up to you, the industry, to make the most of this.

Our new Insurance Act, for example, does not just ensure full compliance with the International Association of Insurance Supervisors' Core Principles. It also makes the BVI's insurance regime simpler and more transparent, flexible and cost-effective. This gives the industry a renewed vehicle with which to build a stronger and more competitive edge by encouraging new and more sophisticated types of insurance companies to use the BVI.

In the hedge funds arena, I have every hope that the proposed Securities and Investment Business Act (SIBA) will be enacted shortly. SIBA responds to the requirements of IOSCO and will enhance the BVI's attractiveness by plugging gaps in our legal and regulatory framework and creating the fund platform that institutions, managers and investors tell us they want.

Once SIBA is enacted, the Commission looks forward to preparing and enacting new Mutual Funds Regulations and a Public Issuers Code.

Meanwhile, our new Regulatory Code 2009 also became operational on 1 February. Further work on provisions relating to investment business work will be finalised once SIBA is passed by the House of Assembly. A further streamlining of the Code should be expected but that will not affect how it operates now.

The Commission expects to issue consolidated approved forms to complement the Code as soon as the relevant regulations – the Financial Services (Approved Forms Publication) Regulations – which are also before the Government, are approved by Cabinet. We expect this to happen soon.

Looking at other legislation, the Financing and Money Services Act is due to become operational on 31 March. The Proceeds of Criminal Conduct (Amendment) Act was enacted by the House of Assembly a fortnight ago.

The Commission has also issued guidelines on the approved persons regime and has completely revised the guidelines and operating procedures of its Licensing and Supervisory Committee to streamline its processes and procedures and make it more responsive.

The FSC has further issued guidelines on prudential and statistical returns. We expect industry to adhere to the requirements so as to comply fully with the obligations in the Financial Services Commission Act.

The FSC is also working on new amendments to the Banks and Trust Companies Act and Company Management Act to streamline these and update some of their provisions.

A particularly promising new area of work is being led by a recently-formed focus group of public and private sector experts on intellectual and industrial property law. The aim is to ensure that BVI follows best modern day practice and that the intellectual property arm of the Registry of Corporate Affairs is developed.

I trust that this major undertaking will be fully supported by the industry and that any call for further private sector input will be responded to in a generous spirit.

During the course of this year, we also expect to bring to fruition outstanding measures to comply fully with the CFATF recommendations.

At the FSC, we have always maintained that strong and appropriate regulation is the cornerstone of a diversified and effective financial services industry that is capable of sustaining growth. The nature of this regulation is also a determining factor in stimulating or hindering the growth of the industry.

Accordingly, the Commission strives to achieve pragmatic and progressive regulatory oversight, taking into account the dynamic nature of the sector being regulated, the developmental stage it has reached and appropriate international standards.

We have always aimed at striking the correct balance between regulation, the commercial viability of the activities supervised and safeguarding the reputation of the BVI as a situs for the conduct of legitimate cross-border business activities.

I would commend the Commission's Strategic Work Plan for 2010 to all practitioners and all with an interest in the sustained well being of the sector. In particular, I want to draw your attention to the priority issues identified in the plan for action in 2010 and beyond. The plan, which can be found on the FSC website at www.bvifsc.vg, sets out the activities, projects and measures the Commission hopes to undertake in close collaboration with all stakeholders in the government and industry.

As the plan shows, the FSC has integrated a more business-friendly approach into its regulatory framework, nurturing an open business culture that is underpinned by high standards of business conduct and by compliance with domestic and international norms and practices.

Implementing this business-friendly approach relies on maintaining an ongoing dialogue with all stakeholders; enhancing and strengthening industry/ FSC/ government consultation; ensuring collaboration and feedback mechanisms; and issuing greater guidance on how the FSC works, carries out its mandate and interprets regulatory laws, regulation and codes.

As an example of how the Commission is endeavouring to be more responsive to the needs of the BVI's financial services industry, in January we issued a new complaints handling policy. This is designed to ensure prompt and effective resolution of any complaints from the public about the actions of the Commission or its employees. In this regard, we also published the service standards to which the industry can hold the Commission accountable in order to facilitate a more predictable, efficient responsive regulatory process.

It is in this vein that we have also continued to build up the Commission's own numbers and the skills set of its dedicated staff to enable the FSC to service more efficiently the needs of the industry.

Internationally, the Commission continues to use every opportunity to influence the debate so as to maintain the BVI's international competitiveness. We monitor global developments around the regulation and supervision of financial services and, as necessary, we devise appropriate policies and advise the government so as to safeguard the territory's industry.

Ladies and gentlemen, these new laws and regulations represent a tremendous opportunity for the go-getting of new business.

They will also require a renewed commitment to compliance. No jurisdiction can win business by extolling the excellence of rules and regulations that its own practitioners do not observe. Remember – walk the talk.

It is no longer acceptable – if it ever was – for any jurisdiction simply to state that it is well regulated. The constant reviews to which OFCs are subjected require us to prove it time and time again. In today's more exposed world, you simply cannot afford not to be what you say you are.

So you must ensure that you have all the systems in place to ensure full compliance with regulatory standards. It will help you to do so if you make every effort to understand the new world in which we are all operating. The more you appreciate the developing regulatory framework, the better you can anticipate and respond effectively to it.

This means taking a global view and a long-term perspective. It means understanding the geopolitics so that you can foresee developments rather than run the danger of a belated and panicky over-reaction.

You can't leave it just to the regulators to understand the standard-setters. Everyone in the industry needs to take control of their own destiny, to know where the international community is going and what it is planning. Together, they need to devise how the BVI's financial sector can comply without killing the goose that lays the golden eggs.

For example, I would expect mutual fund practitioners to keep abreast of the fast-moving developments in hedge fund regulation. Despite the widely accepted view that they did not play a major role in the global crisis, hedge funds are felt to pose a risk to the global financial system as a result of their perceived opacity, significant leverage and risk profile.

IOSCO, the IMF, the European Union (EU) and the US have proposed new or enhanced rules for the authorisation, supervision, disclosure, transparency, governance, risk management, prudential standards and licensing of fund service providers.

As a major centre for hedge funds, the BVI is engaging in the necessary dialogue to make sure that our position is factored into the process. As you know, the FSC has long engaged actively and successfully with IOSCO. We have now teamed up with Bermuda and Cayman to develop a regional position that will ensure our views inform IOSCO's Hedge Funds Working Group.

The European Union's growing presence in the regulatory arena requires active monitoring. Only yesterday, the EU announced that its priorities for the coming year would include driving forward its hedge fund proposals, launching a review of corporate governance practice in financial firms, forging a policy on resolving financial sector crises and developing international supervision of derivatives markets.

We must also be aware that policymakers are showing a growing interest in claims by anti-offshore NGOs that TIEAs are ineffective and that automatic exchange of information is needed. Furthermore, NGOs are building support in France, Britain and the OECD for country-by-country reporting, which would require multinationals to break down their financial statements by individual country.

It is notable that the UK is considerably less willing these days to go into bat for those of its territories with finance centres – particularly, it sometimes seems, the ones in the Caribbean.

Nor is the UK slow to spot commercial opportunities for its native industry in response to international concerns about OFCs – concerns, of course, that the UK itself helps to foster.

Last October, for example, it was instructive to see Treasury minister Lord Myners telling fund administrators, custodians and registrars in the City of London that they should be *“champing at the bit to pursue the opportunity to onshore money which is currently offshore.”*

This brings me back to the commercial imperative, to the need for all parts of our financial services industry to ensure that BVI's product offering becomes more responsive, competitive and enduring.

I do not propose to itemise every action you could take here.

But questions you might ask yourselves could include whether you are getting sufficiently under your clients' skin and ensuring you really understand their requirements. Are you benchmarking what other countries and some organizations are doing?

Also, have you fully considered the impact that the business practices of some BVI firms may be having on our territory's reputation among existing and potential users of your services?

I wonder, too, whether BVI industry practitioners are taking every opportunity to influence the people whose opinion matters. We must make no less effort than our competitors to galvanise our industry to build positive awareness of the BVI.

In this context, I mentioned the City of London Global Financial Centres Index (GFCI). Every six months, this ranks OFCs largely according to a survey of industry perceptions from around the world. In the most recent GFCI, last September, the BVI was the only offshore centre to rise in the rankings. However, our standing was still below that of Jersey, Guernsey, the Isle of Man, Cayman and Bermuda.

I believe this was partly due to a shortage of responses from practitioners outside the BVI and others knowledgeable about the BVI and its service offerings. So besides doing the survey yourself, you need to get your contacts outside the BVI to do so, too. Any practitioner from any jurisdiction can take part simply by clicking on www.zyen.com.

Ladies and gentlemen, the way we perform our respective duties today must mean more than just muddling through the short term better than the next OFC. It has to be about strengthening and lengthening our competitive advantage or economic edge.

The Commission is well seized of what is needed to sustain development of the local sector and foster and promote BVI as a convenient, compliant and competitive financial centre. However, we can none of us be complacent.

It is not enough merely to stay off the reefs. The opportunities are before us and the mantle of responsibility for realising these has been passed to us all. Together we now need to chart the course ahead.

It is our duty and our golden opportunity to set our sails and to man the helm in a way guaranteed to separate the sprightly BVI financial services industry from the slower-moving fleet and carry her fastest and first to the sunnier seas ahead.

Ladies and gentlemen, our territory and our industry face many tests. And yet that is nothing new. The BVI has a track record of dealing persistently, strategically and successfully with the numerous challenges thrown at us. A track record that is based, as I have said, on a thriving partnership between government, industry and regulator.

It seems to me that it may be time for this partnership to come together with the specific purpose of undertaking new strategic thinking about where we are now, where we want to be in this rapidly changing world and how we can reach the sunnier seas.

It is perhaps time to take a fresh look at the strengths and weaknesses of our industry as a whole and of the external opportunities and threats facing us. Individual firms, too, need to undertake their own SWOT analysis.

The outcome should be new strategies for our industry in the round and for each practitioner. A macro and micro road map for the journey ahead.

As a first step, I would propose that the senior stakeholders from each branch of the BVI's financial services sector – from government, industry and the regulator – come together in a colloquium or retreat to begin to chart the course ahead. I would welcome your views on this.

Times such as these require new thinking and a new impetus. Let us, industry, government and regulator, together put fresh wind in our sails.

Thank you.