



BVI Financial Services Focus Group Discussion

A deep and informative dive into the current state of doing business in the BVI and the global challenges and trends that are impacting the jurisdiction in what is clearly a sustained period of global uncertainty economically and geopolitically.

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For our focus group on financial services, we partnered with BVI Finance and its CEO Elise Donovan, with whom we have done similar roundtables, while she served as Director of BVI House Asia in Hong Kong. Together, we were able to gather an eminent panel of the leading senior minds in the sector, who looked into their impressive crystal balls and helped us to suss out what they see as the key challenges, areas of opportunity and trends facing the jurisdiction in 2023 and beyond. What is projected to be a sustained period of global uncertainty economically and geopolitically.

As a guide to steering and managing the conversation, while ensuring that we covered the dominant areas most worthy of inclusion in the focus group, we structured the conversation with the 8 following broad areas in mind:

- i. The future of globalisation
- ii. The new cold war alignment
- iii. What does the BVI Government need to do
- iv. Market drivers
- v. BVI strengths
- vi. Our digital assets sweet spot
- vii. The sector's biggest threats
- viii. Pivoting to opportunities and what's next.

As you will see, this was a most engaging and serious discussion about what will be, another most trying and testing period for the financial services sector in the BVI. A period where globalisation is clearly on an evolutionary retreat of sorts with real implications for the BVI, a jurisdiction which has been at the forefront of its facilitation and which for its labour in the process, accrued significant economic growth. We at Business BVI believe that this period will be defined by a significant decoupling of the US and China, Europe and Russia as they seek to secure better control of supply chains, significantly driven by national security concerns. This process has been burning high octane over the last year, a result of Putin's attempted Putsch in the Ukraine.

Without venturing too deep into the weeds, what follows is a glimpse into some of the highlights of the issues flagged up in the discussion:

- The cold war response to the deepening China/Russia alliance and the implications for the BVI
- The introduction of the concept of a Registered Agent in the UK - is this and opportunity for the BVI to monetise its deep knowhow in the area
- What will be the impact on the BVI financial services sector should China cross the Taiwan Strait
- The need for a strategic alignment between the public and private sectors in the BVI
- The need for the client facing private sector to drive idea generation in the space
- Does the government have the capacity bandwidth to drive innovation
- The need to focus on an economic growth strategy for the territory
- Is it now time for the separation of the Registry from the regulator with the registry focused on selling companies
- Time for satellite driven high speed internet services in the territory
- Time to move up the value food chain
- The need to grapple with having a smaller portfolio of registered companies offering a broader range of more sophisticated services
- Time to pivot to quality over quantity
- The need for a government revenue model based on quality instead of quantity
- A recent area of growth for the BVI has been digital assets
- The FSC deserves credit for the way they have handled digital assets
- And the need for a dynamic banking sector and the need to make it easy to build substance in the jurisdiction.

The Future of Globalisation

Q1. Elise Donovan : *One of the hot topics at the 2022 World Economic Forum was the future of globalisation. The pandemic, the war in Ukraine, the rise in energy prices, food prices, supply chain disruptions, and the various challenges, that will destabilise globalisation. In your view, what does the future look like for globalisation, and where do International Finance Centres (IFCs) like the BVI fit?*

Vanessa King: The uncertainty in the world we've seen in the past two years, has created a greater interest in people protecting their affairs. In the private client trust arena, we've seen more people than usual interested in creating succession planning tools in structures that protect their interests and the interests of future generations. So, we've seen a peak in that as a result of the uncertainty in the world.

Robert Briant: I can offer a less optimistic view. I do so reluctantly, however. If the world divides into different zones or areas, we'll have a new cold war, particularly with Russia and China. We've seen what's happened with Russia, the freezing of assets, including those owned by BVI companies. I fear that the use of BVI companies by people in Russia and China (China is watching this as well and is becoming more hostile to the West), I'm querying whether the BVI, and overseas territories generally, will be as desirable for people in those jurisdictions. Russia is relatively small; China is not, in terms of consumers of BVI companies. That's my fear. And where that takes us, in my view, is diversification.

Matthew Cowman: There is a trust issue there. Can I trust my assets to a BVI vehicle in the future, in an environment where I don't trust my government and how it's going to behave on a world stage?

Jeffrey Kirk: That is also leading to greater competition for the BVI as an IFC. Russia, we've seen it launch its own international financial centre. We will see more of the competing jurisdictions.

Robert Briant: There is the DIFC, Dubai, and whether that will become more competitive, or whether there'll be more users of those products from Russia than would otherwise be the case. China is less clear, frankly, where they would go. Hong Kong, perhaps that's a fear. It's not scary times, but it's a good time to have this conversation.

Q2. Russell Harrigan: *Does anyone else wish to weigh in at this point? Well, what does globalisation look like? Is there globalisation 2.0?*

George Weston: You can't put the cork back in the bottle on globalisation. The level of interconnectedness within the world economy and politically as well, you're going to see a partial reversal of that. You will probably see governments looking much more at supply chain issues and political, neo-protectionist policies to ensure that strategically, in relation to the key sectors of the economy, they're not as dependent on other places, in other parts of the world. One of the interesting things for the BVI is, that in a world that is becoming slightly more difficult to trade globally, the role of the BVI as a facilitator and not as a way around boundaries, but as a place that's more open than other places to doing things internationally.

Q3. Russell Harrigan: *What do we need to do to move in that direction?*

Jeffrey Kirk: Ease of operation is crucial. We need to make it as attractive as possible for businesses. We've spoken about these and geopolitical challenges, a lot of which are driven by the governments. Those in finance, corporate and the business world are still looking at opportunities around the world. Those are the entities and the individuals we want to try and attract, because those are the ones that will drive that international trade.

Elizabeth Killeen: We might also see the world split in a Cold War, and to some extent; we might need to assess and decide which side we would like to be on. It's going to be fairly clear what side the BVI should be on and will be on.

Jeroen Hoogendijk: The proposition of the BVI is still very strong. We offer a less complex structure of legalisation than almost any other country. At least, that's what comes from our research. So, I'm pretty optimistic that the BVI still has a solution for a lot of people in the world.

Clarence Faulkner: The one word that you mentioned is 'research'. In our ability to get meaningful information and data, at PMI we started looking at what's going on with the Belt and Road Initiative, in terms of the impact. We recognise that there's a huge issue right now, as a result of the financing that the Chinese have done. Twenty three percent of the countries acquiring loans from China don't even have a credit rating. We want to find out what's happening with the Belt and Road Initiative; is it reaching economies and facilitating global trade the way we thought it would? So some analysis in terms of where that is and the appetite for vehicles to facilitate global trade is where the BVI can position itself.



Matthew Cowman. Matthew is a managing partner at Walkers, a corporate and litigation outfit.

Cold War Alignment

Q4. Elise Donovan: *Interesting Clarence and Liz, Liz you said that it's clear that if there's a Cold War, with whom will the BVI have to align? Can you amplify? Because if a Cold War ends up with China and Russia on one side, that's over 35 per cent of BVI business. Clarence was talking about the change in China's Belt and Road initiative and what's happening with that. So, where would the BVI align?*

Elizabeth Killeen: I want to think it wouldn't be on the same side as Russia. It depends on what happens with China. Many people in China will want to secure their assets. And if they're concerned about what the government's doing, they may be less concerned that the BVI might disclose some information or temporarily hold those assets. Whereas if you keep those assets in China and the government needs to obtain funds, what will they do? They have a history of just taking assets from individuals. It might be that, like, when Hong Kong was handed over, there was a fright in China that we needed to get assets out to somewhere that is trusted and independent. There will still be that drive, because it won't be everybody wanting to go along with whatever the government's doing. Some people disagree with them. Some people are just frightened of what's going to happen. And if their assets are frozen temporarily, that's better than just being handed over to a government they may not trust.

The fact is that we've got 30 years plus of trust from Hong Kong and China, particularly Hong Kong, as an established route. People are familiar with the BVI, and there are many service providers still pushing it in Asia. It'd be a hard sell to start a brand new trust company in another jurisdiction and have that faith and that trust. China is still so dependent on exports. People like buying their products. There's no point in having all these factories in China, and no one can buy their products. Russia was confident because of its oil; they knew people wanted oil, so they thought it would be a temporary restriction on people buying that commodity. And it's getting out through India, and there are other means of getting it out. If you're selling circuit boards and no one's buying them, that's more of a threat to the Chinese economy.

Q5. Russell Harrigan: *Well, let's complicate things a bit. Assume that the Chinese decide to go across the Taiwan Strait. What does the BVI do? And also assume that the Ukraine model, sanction-wise, is the model that the West decides to use as it relates to China.*

Elizabeth Killeen: Most of the people with a BVI company who have got Chinese names won't be sanctioned. Hopefully, most of the business here won't be subject to sanctions. It's only going to be the high-end, very rich, politically exposed Chinese individuals who would be subject to sanctions, which would impact our business. I'm sure there are also registered agents with Russian individuals who aren't sanctioned.

Robert Briant: Most wealthy Russians are sanctioned. In your example, Russell, the West would be sanctioning the power brokers in China, probably not those, who have created that wealth themselves, as opposed to Russia. But to what extent will there be pressure from the Chinese government to stop using Western vehicles? I mean, all Western vehicles stop entering contracts; stop dealing with the West. If that happens, then that will have a significant chilling effect on our business. Again, it will be so pessimistic, but I think we are on the possible cusp, of change to be determined by the scenario you provided. If that happens, that would be very bad for BVI business, frankly.

George Weston: If that happens, that's very bad for everyone.

Matthew Cowman: That's the doomsday scenario, though. Until that point, the BVI continues to walk the tightrope, and the larger nations can have angry words with each other, and we can continue to do business with all of them.

Robert Briant: I have a fairly provocative suggestion following on from that, which is, if the world does divide into China and Russia and the West, for lack of a better word, should we diversify to Africa, South America, the rest of Asia, Malaysia, Vietnam, et cetera? But at the end of the day, we are aligned with the West. You asked whether we should, but I don't think we have a question on that. We're a UK territory. But do we start to embrace some of these initiatives that were already far down the road, pushed by the West, by the EU (European Union) in particular, on transparency? We're getting financial records here. We have a framework now for transparency of UBOs (ultimate beneficial

ownership). There's not a lot left. The only thing left will be transparency of the financials. We should fight it all the way, don't get me wrong. We have done everything right. We continue fighting but also planning for when we say, hey, we're your buddies. Use us when you have people from different countries to structure your affairs. Heresy, I recognise that, but there's a point where you have to adopt it and then become more efficient. Get rid of some of these regulations. We have to verify the KYC (know your customer) that's provided in the UBOs at a 25 per cent level, but get rid of so much more that exists and is hamstringing the competitiveness of the BVI.

Elizabeth Killeen: One thing that we can look at, is the Economic Crime Bill that the UK has passed. Companies House is creating the concept of the registered agent for the first time. This is a brand-new concept in the UK. They're going to need help figuring out what to do. So, firms like TMF should be going there saying, we have systems ready to go. We have the expertise on whether or not the BVI can offer an equivalent model. The BVI is (perceived as) difficult because we have a registered agent. Companies House is going to be as difficult. Can we create a model which would compete with the UK? At the moment, in the UK, you go online (to incorporate a company), but you don't have to worry about KYC. You've got your companies registered in the UK, and the UK becomes as difficult. We're streamlined, we've been doing this for 20 years, and we know what we're doing. Is it something we can push in the UK?

Clarence Faulkner: Timing of it is critical, because right now in Europe, many will argue that Europe will probably experience an energy crisis, and what will happen there. Discussions like this can fly under the radar, because right now everyone is going to be so consumed by the whole matter of energy prices.

Jeffrey Kirk: To a large extent, the BVI is limited in its options, because of where it is in our structure. We use the US dollar as our currency of choice because of that, with the US, with the Green Back being the base currency of trade. In one sense, our hands are tied as to whom we align. It would be so difficult to look to change currencies. Do we look to digital currencies in the future and operate on that? That could be a possible route, but we need to tread very carefully, and I don't think necessarily we want to jump at taking sides. Obviously, the

territory should, and no doubt would, be on the side of democracy and human rights, and I think that would be an important part of it. But on the other side, we're talking about China invading Taiwan. Having lived in China for years, I'm optimistic that the Chinese Government would be very reluctant to do something like that. They would certainly take the long run to jump into that situation, which would cause chaos globally.

Jeroen Hoogendijk: Jeffrey, should we set up a central bank to become more flexible on currencies?

Jeffrey Kirk: Well, probably in the future, there won't be any central banks.

Jeroen Hoogendijk: I see Cayman and Curacao, and most jurisdictions have done it, and it gives flexibility. If you cut off the corresponding system in the US, then you have here a big problem.

What does the BVI Government Need to Do?

Q6. Russell Harrigan: *Are there some specific things that you think that the government of the BVI needs to be doing or to be at least thinking about at this point, other than just hoping for the best? Clearly, China and the rest of Asia have a significant pull on our quality of life. What is it that the government should be doing other than asking the FSC (Financial Services Commission) are we going to get \$150 million next year?*

Vanessa King: It has to become more business-friendly. It takes a lot of work to do business here on many different levels. If you need a trade license and work permit, the process is too difficult, and it becomes unattractive to someone looking to the BVI. That's on a very basic level. As you just discussed, the quality of life, and the basic infrastructure that supports society would need to be improved, from telecoms to the level of the internet that we have now, to basic infrastructure. Those things would need to be fixed on a very basic- foundation level.

Elizabeth Killeen: The next generation will come in and support the financial services sector. The schools need to be a priority, and scholarships for bright kids who want to study accounting or whatever should be free and available. They'll pay those scholarships back in five years of tax.



Jeffrey Kirk. Jeffrey is a managing partner at Appleby BVI. A law firm similar to Walkers, focused on corporate, dispute resolution, private clients and trusts.

It's money for nothing for the BVI Government, and they get successful BV-Islanders in the right industries.

Clarence Faulkner: There must be a strategic alignment between the private and public sectors. You can speak to any developed private outfit, and they can tell you the amount of work they've done to determine if the BVI is an opportunity for them, a base for their business. What seems to be lacking is that from the Government's perspective, it needs to be aligned with the collective voices from the private sector. And we talk about education; we talk about infrastructure. We need an informed databank that basically produces the information that supports the recommendations coming from the private sector that says if we're going to approach these different areas around the world for economic opportunities for the BVI, this data supports it. What is happening right now is that the private sector is simply driving the bus. And as a reaction supported obviously by the likes of BVI Finance, the Government begins to see the rewards. So it's a reactive versus a proactive approach, as it relates to targeted, specific areas around the world.

Market Drivers

Q7. Elise Donovan: *Based on my conversations with all of you, business is doing well. What are the market drivers? What makes your business and, specifically, what structures make you attractive in the global markets?*

Clarence Faulkner: The ability to respond - markets move, economies move, and there are dynamic shifts. Are you in a situation to make amendments and to be flexible within your product offering to capitalise on that opportunity? If you're waiting to say, all right, we're waiting on the government, waiting on that, you would miss the boat. So how flexible are we? How nimble are we to adjust to the environment to say, all right, we need to do this, we need to shift, we need to tweak to be able to capitalise in terms of what's going on around the world.

Robert Briant: Most of what we sell around the table is the BVI company and the legal rights around it. And frankly, that is by far the most efficient vehicle amongst our competitors and even, frankly, amongst most, if not all, onshore operations. Any changes to make it more efficient should be adopted. The FSC has focused, for good reason, the last ten years on regulation and making it more difficult, the KYC, all that good stuff, but maybe it's time that we look for opportunities for the private sector and the FSC and the Government to work more closely together, to think of how to introduce more efficiencies where they may exist. Again, FSC has done a good job. A four-hour turnaround on filings for \$500; Brilliant. But we need to see more of that to make our products even better.

Q8. Russell Harrigan: *Who's that burden on? Is it FSC, or is it Government? Does the government have the wherewithal capacity-wise within its structures and systems to know what is required and to focus on that for its obvious benefits?*

Robert Briant: It starts from the private sector with ideas. We're the client-facing ones; we see what the frustrations are and should be leading the ideas, then working closely with the FSC and the Government, which does the actual enactment and legislative process. We would certainly welcome the AG's (Attorney General) participation, as well as the actual drafting, whether it's a private sector or the FSC.

George Weston: Those three parts work together; it is with the private sector to come up with ideas to shout out what isn't working or what we think we need. We need the FSC to engage as they have done proactively. And there are, of course, real reasons why regulator needs to be independent and critical in terms of how they look at things from industry perspective. And we're not talking about them consulting with us and enforcement actions or anything else, but in terms of their legislative and policy roles, it's right. There is consultation there, and then fundamentally, a lot of this will require legislation, and some of it will require a budget. And ultimately, that comes from the Government as well. So that's why we need their buy-in for all of this.

Jeffrey Kirk: My experience has been over the last couple of years, those three different bodies or sectors have been working more productively together, and that's certainly development in the right direction. And likewise, Russell, you asked which has to push that agenda forward. Each comes with its own targets and aims, and therefore bodies like BVI Finance, where it's an organisation that both government and private sector support, and it's not seen to necessarily have that pure selfish viewpoint. So that's crucial. But as long as the three sectors can communicate with one another, the better for the jurisdiction, the more competitive we'll be.

Matthew Cowman: Does the government have the bandwidth to concentrate on innovation at the moment now, though? Because it doesn't feel like they do, because there's already a very big agenda. There are opportunities in the market where we could innovate around products. The government's got its hands full with other things, with other legislature changes. Are other opportunities there to carve out a niche that focuses on growth and innovation, that don't get caught up with implementing international standards and things like that?

Robert Briant: Another controversial suggestion - is whether the Registry should

be separated from the Regulator. Objectively, the answer is clear. Practically, it's more nuanced, I understand that, but are we not now more mature in the jurisdiction? Can we set up structures to make it independent? So the Registry sells companies, that's all they do, and that's all they think about, and they're measured by their success.

Clarence Faulkner: Robert, I had a conversation with TRC (Telecommunications Regulatory Commission), and my question to them was, are you a regulator or service provider? Because we run an international trading floor here, and we are currently utilising bandwidth from all providers simply because we can't afford for it to be down. If one's down, the next provider needs to take it seamlessly. We require that bandwidth. I started reviewing satellite and what's stopping us from having a satellite feed over the BVI, which has become a big issue. Who's going to issue it, TRC? Who's going to regulate, TRC? So, what are we, a regulator or a service provider? Once you determine which hat you're wearing, it provides the impetus to push it for the significance of the jurisdiction. Other than that, you're simply wearing a hat that suits the environment for the moment.

Vanessa King. Vanessa is a managing partner of O'Neal Webster, focused on a corporate, trusts and a lot of inward investment work.



BVI Strengths

Q9. Elise Donovan: *Let's move the conversation back to the value of the BVI. Why is the BVI at the forefront of these multibillion-dollar, high-value, complex transactions? Is the BVI moving up the value chain from just being a holding company to a listing company?*

George Weston: The fundamental strengths of the BVI and the corporate vehicle have mostly stayed the same over the years. It's still a flexible corporate law that Robert and others have been talking about. It's still the quality of the judges and the courts here. It's the quality of the service providers, generally a business-friendly attitude, even though there are obviously things we can do to improve ease of business. One of the reasons why you see transactional values consistently improve, is simply that the BVI companies themselves are growing up. Many of them were formed years ago and weren't worth very much to start with, but the companies themselves are growing. They do bigger transactions; they get involved in more interesting things. And the BVI's jurisdiction has grown with and has to grow with the companies.

Jeroen Hoogendijk: But that's a danger to the jurisdiction because the portfolio will get smaller. That's what you see at the moment, that the volume of BVI companies is what drives the income of the local government. We have to look at that and maybe against extreme price increases and do it with a smaller portfolio where we do more complicated services.

Jeffrey Kirk: There's a risk aspect as well. You're absolutely right; 375,000 active companies that are declining, and it's without a shadow of a doubt will continue to decline. Liz has mentioned the Channel Islands, but equally, you look at Cayman and Bermuda, numbers-wise, far less. If we become fixated on pure numbers, we don't necessarily recognise the risks. One of those individual asset-holding companies where the Government gets \$450 a year could theoretically contain or cause the risk that causes the whole system to collapse. So why are we so worried about the pure volume of companies when that increases our risks much more than if we have fewer companies, corporate governance over each is far stricter and better, reducing our risks.

Elizabeth Killeen: You look at Jersey and Guernsey; they've got 20,000 companies and have a perfectly operational financial services sector booming. We can get rid of like 80 per cent of our book of business and still have a profitable financial services sector here. A lot of the work we did initially was lots of smaller companies and individuals running it. They're not high-net-worth individuals; they're not big companies. Whereas if you look at the Channel Islands, 20,000 entities, and they've got two very successful jurisdictions. So we don't necessarily have to keep punching for 300/400,000 companies.

Robert Briant: The corollary to that comment is, what percentage of companies do you think the UBOs care about privacy and confidentiality? I know there are wealthy kidnapping victims, and there are other reasons, but what percentage do you think care? This is a slightly different question from what percentage we would lose if we had publicly accessible registers of beneficial ownership.

George Weston: But there's another question, which is a good one. But the other question is if you say X per cent cares about privacy confidentiality, but if you also say X per cent is the high-value piece Jeff is talking about, to what extent are they in the same Venn diagram?

Q10. Elise Donovan: *George, you said that companies have grown and that the BVI has grown with them. We take companies through the whole life cycle from birth (incorporation) to insolvency. What are we seeing in terms of all of these life cycles of a company? What is happening that places the BVI on the map?*

Clarence Faulkner: If you go back to the opening comment, what's number one in terms of meaningful data, whether there's some cost-benefit analysis to determine

the value of our book of business, that's one thing. The Belt and Road Initiative, China's policy in the embryonic stages of any development is that we will fund it and recognise that in five to seven years, we'll see something coming out of it. In 35 countries, 17 new ports have been built by them. What are they hoping to gain? More importantly, from which sectors? How many of those companies own these facilities which they started with literally nothing, and they're now beginning to blossom? They're now beginning to reap the rewards from the avenues open for global trade. That's what we need to know to be able to capitalise on how many of those companies are there; how many more are likely to develop, based on the channels that have been opened for global trade?

Robert Briant: The analysis has stayed the same. Companies are the most efficient vehicle to set up businesses. BVI is one of the most efficient jurisdictions for setting up vehicles. Particularly when you have people from different jurisdictions, they will use the BVI for that or if the rule of law is weak. The BVI has been remarkably successful because of the incredibly efficient, innovative IBC Act (International Business Companies) in 1984 and continues to keep up-to-date with its legislative changes in the IBC Act and the BVI BC Act. It has very effectively, and Robert Mathavious played a huge role in this, been rolling out the regulatory regime in a relatively smooth and balanced way that didn't have to jump too much at any one time. People who went through it may object or disagree, but looking back now, after 20-odd years, it's a very smooth process, and there's no reason for that to change in the future. So BVI companies are incredible, and the BVI is very good at selling that.

Elizabeth Killeen: One of the other things is that it doesn't have to necessarily come from the BVI. So when I got here 15 years ago, there were not as many law firms, and the law firms were making money here. All the other law firms in the offshore world were looking around, saying, oh, we'll have a piece of that pie. And so everyone's gone to expand their BVI book of business. So it's more than just BVI necessarily changing things. It's lots of people acknowledging that this is a good model. And Carey Olsen was a Channel Islands firm, and it came to the BVI like Mourant and Ogier did, under ten years ago. Before, the Caribbean law firms were here, and now the Channel Islands ones have moved in, and we're even getting the onshore ones here with Dentons, Withers, et cetera. So it's also that natural marketing of people in the private sector saying, this is a good model; we can make money on it. And that's what I have to sell it as well. There's organic growth.

Q11. Elise Donovan: *Is the pie getting bigger? Is it providing more business opportunities? Most of you are doing transactions that are doing relatively well. So what is it that you're doing in terms of business? How is the pie growing?*

Jeffrey Kirk: The big growth area of the BVI has been digital assets. And as much as we as service providers would like to claim some credit for that, I don't think we can. That has been driven by the entrepreneurs and pioneers in the sector. And they've done their homework looking at various jurisdictions, and to a large extent, they've identified the BVI as a jurisdiction they can work with. And for the last five years, we've seen that growth. So then the question is, how do we facilitate that, and how do we grow that part? As Vanessa said, it's creating a better environment. It's the trade licenses, the work permits, the accommodation, the transportation, and very much infrastructure. And what we could do there is build the business, build the international business, but at the same time look to transform the jurisdiction so that we have those entities, where beforehand they would never open offices in the BVI. Now they're looking to do so.

Matthew Cowman: They do actually want to come. We have those conversations all the time. And the experience for them, the BVI as an international product versus the BVI as a domestic product, is quite different and jarring.



Jeroen Hoogendijk.

Jeroen is the managing director of TMF in the BVI. TMF is a multinational professional services firm with offices in 85 jurisdictions.

Digital Assets Sweet Spot

Q12. Elise Donovan: *You said the digital asset space is one of the growth areas; we've heard that the BVI is in a sweet spot. How long is that going to remain? And what will it take for us to remain in this position, other than growing the internet infrastructure? Why are we in the sweet spot?*

Elizabeth Killeen: We are in the sweet spot because we don't have VASP (virtual assets service provider). We won't be in a sweet spot at the beginning of December. But, equally, we need to be seen to be regulating it. We need to be seen as a jurisdiction at the forefront of virtual assets, not just building a business because we're the only one that isn't regulated. That is going to have an impact.

Q13. Elise Donovan: *But have you been preparing your clients for the coming regulation? Have you been telling them to put measures in place to anticipate what will be in the virtual asset service providers' legislation?*

Jeffrey Kirk: One of the shining lights of the BVI service providers, is that they were doing this five years ago. They recognise the need for KYC might not have been formalistic legal requirements at the time, but where do you go where there is no KYC?

And failure to raise that with your clients, we knew would leave them in a very difficult position once that law and regulation came into play. They would then be in a position where it would be impossible for them to comply. To be fair to the clients, they accepted that and agreed with it. The will is there in terms of other aspects. For digital assets, it's a competitive world out there, not just in the larger financial centres but also here in the Caribbean. We have to make it easier for the business. The Bahamas has a number of banks that trade and work in digital assets. That's an area that we can improve. There are exchanges as well; there's much debate about that. But strictly speaking, if we want to become a real hub for that in the long run, we need exchanges.

Matthew Cowman: There are gaps in our products right now. So often, you'll get somebody who will come to the BVI who wants a BVI company as a token issue. They also want a foundation to go with it, and we don't offer a foundation, so often, they'll go elsewhere for that aspect.

George Weston: I think that there is a sweet spot that you can have as a jurisdiction that has sensible regulation. Regulation, that's as light as can be justified by reference to the risks. With a regulator that understands these products, with the government and an industry that's not hostile to the same. And it might be a smaller sweet spot than the open-the-floodgates approach. As Jeffrey says, that's never really been where we are. That will be a difficult sweet spot to find from 1 January 2023, but we can hopefully find it.

Elizabeth Killeen: We need to make sure we don't make the same mistake that Cayman did when it introduced VASP, and regulators were very uncomfortable with virtual assets. It was taking a year for things to get approved. When it is introduced, it's important that the people who are processing the applications are familiar with the terminology. But just knowing what that is and getting those smooth applications in quickly, because we've got so much business from, even referred from our Cayman office. Clients are prepared to be regulated, and they're happy to move to us knowing that VASP is coming in, but they can't get it done in Cayman because the last year has just been a complete handbrake. We need to make sure we don't go down that same route. That brought business to us because they've seen the Guidance Notes and said, you're a jurisdiction that knows about virtual assets. Just the fact that the BVI produced those, has brought in work.

Robert Briant: That's a great light, though, that my experience as the regulators here at the FSC do want to know and are learning and are keen to learn and understand it. They're cautious, no doubt, as they should be, but they're not cautious through lack of knowledge, but cautious because it's an industry where it is necessary.

Jeffrey Kirk: The FSC deserves credit for the way they've dealt with digital assets. They've been careful, they've been watchful, they've gathered information where they can, they haven't been reactionary, they've been proactive to it. That is a credit to their approach.

Clarence Faulkner: That's the essence of the precautionary approach, because if you look on the global scale, there's a big argument in terms of whether or not what's going on with virtual currencies and cryptos is in the bank right now. It's the modern-day version of the dot.com era, from 2001/2002 when that bubble burst. What happened is that the quality companies stuck around, generated cash flow, and became viable business models. They're now the largest companies around the world. What you're beginning to see now is that jurisdictions, such as the BVI, are being that much more cautious. I mean, we see what's going on in the markets right now. \$10 trillion was wiped off the crypto market. So people have been very cautious. They are aware of what's going on. Many questions are being asked, especially from a regulatory perspective, because the last thing a jurisdiction wants to be painted as, is the jurisdiction where many of the frauds have been committed. It is not what we want.

Biggest Threats

Q14. Russell Harrigan: What are the biggest threats? What's keeping you up at night?

Robert Briant: Two things. China is very cautious; they see what's happening to Russia and recognise it could happen to them. And then, two, I totally agree that it's a very different model. The rich wealthy there, and the users are very different, but many users are state-owned companies. But even beyond that, the chilling effect of the Chinese Government, if they choose not to use the BVI, that would wipe off 50 per cent of our business within months. So that's what keeps me up at night.

Jeroen Hoogendijk: You're probably right; in a number of entities, China is really big. If I look more at the monetary side and revenues, et cetera, it's less big. People are always surprised if I tell them within our company that we're doing pretty well in Europe because everyone expects Europe to be so much more regulated, that the BVI company can't survive there. It is, of course, a lot through law firms and vehicles that service out of Europe. I appreciate that, but still, it's an important place to be. So, yes, China falling away will hit us. There's no doubt about that. But how big it is, I don't know yet. And what I also see

Clarence Faulkner. Clarence is the managing director of the PMI Group of Companies, focusing specifically on investment management, pensions and private wealth management.



is that there are a lot of state-owned companies that use our products. I'm interested to see what they're going to do with those. They're not going to liquidate them immediately because that's just assets, and in the world they have to deal with, which is us, it's a bit difficult to start liquidating, so it might not be that bad. I don't see that happening. I think the Chinese are too clever to do so.

Clarence Faulkner: The big concern for me is two-fold: Debt crisis - the Chinese have put out quite a bit of money into infrastructure development with the Belt and Road Initiative because quite a few governments do not have good financials. And what is happening is you have to now lease the very asset back to China, which leads to the next problem, which is national security. We've seen in the US that they passed the CHIPS ACT, and we all know that's a direct linkage with Taiwan in terms of the development of chips in the US versus relying on Taiwan's semiconductors. The reality is that if many of these countries do not have the wherewithal and have to give these assets or sell them back to the Chinese, then it's going to become a national security issue with the US and its allies. And that's where we have to be very cautious, because the reality is that the US will continue to support its interests, but China is going to do the same.

George Weston: Although I'd agree, the US-Chinese relationship is probably the biggest thing that keeps me up at night. In the interest of variety, I would say the global minimum tax.

Robert Briant: Jeroen was saying how much business he does out of Europe. Europe has been hostile to the BVI. The opportunity is, can we pivot that relationship?

Pivoting to Opportunities

Q15. Elise Donovan: *We're still determining where we will stand with the OECD and the EU initiatives. Can we pivot that relationship? Can we transform it from what it is now?*

Jeroen Hoogendijk: Our good initiative for the economic substance has yet to really take off here. And that is partly because maybe more fines have to be issued, so we have to scare off the clients a bit. But it's also an opportunity for the Government to open up society a bit more. Because for substance, you would need specialists coming into the island, living here, probably spending a lot of money and making this a very good place to be. And I don't want to compare constantly to other jurisdictions, but that would help a lot. I saw this with Elizabeth Killeen, interestingly enough, a Dutch company coming in. In Holland, it's been a big business substance for years and years and years, but it's getting more and more difficult because of the public opinions against it. So you see a movement, and it would be nice if the movement were to the BVI. There might be more jurisdictions, but we're getting better and better. We're getting more sophisticated. That's exactly what these clients are looking for. But you have to receive them with open arms. Otherwise, they go somewhere else. That has the best system around it. Can we really compare ourselves to a jurisdiction like Luxembourg? I think we have to. If I look at the table, we're all very eloquent lawyers and practitioners. We have to be proud of ourselves. This is a really solid jurisdiction. It's a solid product, better than many other places in the world.

Q16. Elise Donovan: *How do we pivot to Europe? Why do your European clients pick the BVI?*

Jeroen Hoogendijk: It has a lot to do with our network. We are in 80 countries and have even more offices. This business comes to us through our global sales network and our relationship with law firms, tax advisors, and auditors.

Clarence Faulkner: The whole matter of economic substance, especially on the investment side, is why we have the trading floor here. And I can tell you that when we ran the advertisement for equity analysts to move to the BVI, we got 78



Robert Briant. Robert is a partner of Conyers Dill and Pearman and Head of Corporate Practice. A full-service firm.

applications from London, Wall Street, you name it, we got it. And to now have a full-fledged trading floor here, with real equity analysts, people are like, well, is that really in the BVI? And when you really start promoting economic substance in terms of yes, we sell the companies with this product. But then what is that client utilising that product for? And how much of that business can we continue to manufacture here in the BVI? They offer that exact service. And I can say to you it's been well-received. We're still positioned out there, but the reality is that you're absolutely right. Persons want to know what additional services can be added to that product offering for us. We look at someone's wallet and determine how much of that we can manage and go after it. And I think to be a bit more proactive, that's what we need to do as a jurisdiction, supported by the government that says yes, we've done well with this sort of business for the last 25 years. What do we need to do now to build and leverage on top of what we have, that provides better opportunities?



George Weston. George is a partner at Harneys. His practice is focused on corporate transactions, M&A (mergers and acquisitions), equity and capital markets.

Q17. Elise Donovan: *Investment business is growing; why is that, and where are the opportunities there?*

Clarence Faulkner: When we look at the Asia, that's where we started building our database, and you recognise how many millennials have generated wealth over the last 10/15 years; what are they doing with their assets? How are they securing their assets? Then you begin to find out exactly how you can help manage those assets. Because many of them will tell you "we're not putting our money in the US." Go around the world. And if there is an opportunity to continue utilising a BVI Business Company looking for economic substance and the BVI now offers the service, the chances are they will register, and they will do the management administration here as well.

Robert Briant: What's so remarkable, is these types of conversations I've sat around these tables for years, and lawyers have always had to see the table. We've been pushing lawyer products because that's all we know, frankly. But it has something like this, an equity trading platform; I would never

offer that; I don't know anything about it. But that shows me, that you need a variety of diversification beyond legal products and the BVI BC Act. But the add-ons to that, that I can't talk about, not even people on the table can talk about, because that's not in our bailiwick.

Jeffrey Kirk: The location of the assets is a big part of it. And this is about getting back to the point that we discussed continuously year after year, but as controversial as ever. And it's what we need. It's the banking sector. We need a dynamic banking sector with the appetite to take these assets.

Q18. Elise Donovan: *Is it going to be traditional banking? Isn't traditional banking on the way out?*

Clarence Faulkner: I think we have gone away from that, to be honest with you. We said to the client; we'll connect you with a platform, you retain the ownership of your assets and eliminate most KYC and AML issues, because they continue to hold their assets. We're doing a fundamental equity analysis, with a recommendation on where they will buy or sell. So you've basically moved the administration from where they're located and brought it to the jurisdiction where they're not only registered, but also managed and administered. And instead of you simply signing a declaration in the BVI as the director of this fund or these assets, they're doing that, but you're doing the work. What you've done, is you've swung the pendulum as it relates to what is the incremental value of the services that you're being offered. Do you want a director fee of \$5,000 or a management administration fee of \$150,000? That's what it's going to boil down to.

Vanessa King: The banking service still has to come in. This is a major part of the equation; that's always a huge missing piece of the puzzle.

Clarence Faulkner: You need the banking service, but it's not the end-all and be-all. That's been there. For them, historically, that's always been there. And that's why I'm saying we're going to move. We have to move in such a way that the world knows there is more substance in the BVI than legal services and setting up companies.

Jeffrey Kirk: Right. It's not the end-all and be-all, but the one thing that does strike me in terms of jurisdictions that have grown and some of the leading jurisdictions, is that they have a very strong banking sector. The form of that will probably be very different. It won't be the traditional model, but I think any sort of future model that facilitates our clients, facilitates the jurisdiction, will be welcome.

George Weston: When you come across a client with a potential economic substance issue, or a requirement for economic substance in the BVI, you basically have three things you look at. First, can you structure around this so that the issue doesn't arise? The second is, do they abandon BVI in the structure, that is not what we want, or third, do they build substance here? We have to make the third piece of that easy and attractive relative to those other two options.

Jeroen Hoogendijk: Absolutely. You need specialists on each and every type of business that we carry here, and you have to be realistic with a population of 30,000.

Clarence Faulkner: I may add a fourth one to that, George, as it relates to regulatory adherence. Not only in the BVI jurisdiction, because once they come out of Hong Kong, their regulator will also want to ensure that that company has genuine substance in this jurisdiction. For your regulator, we stand that as proof and that's economic substance, but does it also meet the test on that side as well?

George Weston: I've seen an increasing number of clients who don't need substance from a BVI economic substance perspective, but want to create it for another reason.

Jeroen Hoogendijk: It took me a lot of effort here to explain to people that if the ultimate beneficial owner lives in Egypt, you have to understand what his situation is there. We can become really good at that and take pieces of the cake from Europe.

Vanessa King: On that point, though, what Matthew mentioned previously is what's

important. That part of government that is focused on that and facilitating that kind of enterprise and initiative.

Jeffrey Kirk: Government has a lot on its plate and operates with restricted resources; how can we work with the government and the regulator to help them? What assistance can we, the private sector, give?

Robert Briant: I don't think the EU passes these regulations just to hurt the BVI or the Overseas Territories. It's because they perceive the Overseas Territories and the BVI in particular, as tools to hide assets and evade taxes or aggressively avoid taxes - their buzzword now. How to become allies of the EU, is to say we're not about that. Say more than we've said before; we are going to have transparency and we're your allies. Then they'll stop passing legislation to punish us, because I don't think that's their intention.

Q19. Elise Donovan: *But will they? Because we've been going through the transparency initiatives for 20 years. We signed onto the OECD Global Forum in 2002, and there have been so many tax initiatives, the CRS, the BEPS, we've all signed up to all of these initiatives, tax information exchange agreements but the goalpost keeps shifting*

Jeroen Hoogendijk: In the Netherlands, you see already movement back. There's a public register, finances are public, but you can nowadays ask for all kinds of exceptions, because the criminal part of a society, with a couple of bits of brains, can look into the systems, and everyone starts to understand how that can be quite dangerous. So, you can apply for exceptions. I think the movement is already back, so they'll be closing.

Jeffrey Kirk: Robert, you ask, what's the final hurdle there? And I suppose there would be a global minimum tax record being introduced. But then again, we're talking about what's being introduced, and all these measures are invariably being introduced and driven by governments. And we need to recognise that our clients are not European governments or the EU. They're the business people and individuals within the EU. And likewise, I'm sure we've had conversations with individuals in Canada, the UK, and elsewhere where they say, I'm tired of this; I'm tired of the tax situation. 'Yeah, I'm being taxed to death; what can I do to structure something to deal with it?'

Elizabeth Killeen: The global tax plan, I mean the 15% proposed, is not going to come in quickly. There are problems within Europe and problems with the Republicans in America. So even if it could be agreed at the moment, it's not everyone, it's only like mega rich, and that's really what Europe is focusing on. They don't want Amazon to operate and make billions and billions and not pay taxes, and I don't think anyone around the table disagrees with that. They're not trying to get your average Joe Blog, who's effectively managing their assets. But what they do want to stop, is the big entities which are profit-shifting, so they close the economic substance gap to close down IP. And there wasn't a huge amount of that's in the BVI anyway, so it didn't really affect us. It was just an admin version for us. So what they're trying to do is go after the big end, the big ones who are dodging taxes. There's no question that's what they're trying to focus on and they're going to keep chasing their tails because these guys have got the best minds behind them.

George Weston: Is there a future for the BVI as a regime whatever the global minimum is? That's where we're going to be. But if we're at that global minimum and then we're offering a pro-business environment, if we're offering low regulation and the most flexible corporate law anywhere in the world, there's still a future for us in that space.

Robert Briant: There's also the extent to which the global minimum tax will affect the BVI. What I mean by that is, you have obtained 15% at that level. BVI companies in the middle and top companies are just paying 10%. Top companies pay the extra five. So BVI companies within a holding structure, wholly-owned or whatever. I never say never, but not affected. A BVI company owned by a Chinese guy carrying



Elizabeth Killeen. Elizabeth is a partner at Carey Olsen. Specialising in corporate finance and regulatory.

out business somewhere in the world that's not paying tax. We have to pay tax, but that's a fairly narrow taxpayer.

Q20. Elise Donovan: *Where do Asia, Latin America and all our markets stand on public registers?*

Matthew Cowman: It's been discussed for so long; it's probably shaken out already. I don't feel our clients are here for privacy necessarily. There is probably a real segment in the BVI market that is, but our client base is becoming more institutional. They're not here for that reason.

Jeffrey Kirk: I agree with Matthew. It's becoming less material. However, I think it is somewhat grating that we are being forced into a system, where we will have to apply gold-plating where many jurisdictions don't.

Jeroen Hoogendijk: Except for Hong Kong -- my feedback is that clients there find it really good that there's not a public register here (in the BVI). It will be less of an issue than we saw a couple of years ago. And also because all the jurisdictions where the UBOs are located have it already. So you

start to get used to it, that everyone knows everything about everybody. That's how it is. It's social media. What kind of privacy do you have anyway? And the younger generation, certainly, that's to be proven.

Q21. Elise Donovan: *Can we attract the banks that you were talking about earlier? As you said, how we attracted the other firms from the Channel Islands, etc.*

Clarence Faulkner: I spent five years trying to get a correspondent bank and got Bank of America here. They left it two years for any other major international bank that wanted to come into the Caribbean region. Not just that, you're talking about a \$5 billion minimum, and there were only two companies in the entire Caribbean, one in Jamaica, and one in Trinidad that were able to foot that bill. The governments across the Caribbean have been lobbying with Washington even to consider making ECCB (Eastern Caribbean Central Bank), the Caribbean regional correspondent bank from Washington. And that discussion is ongoing, but it will come down to an analysis of whether it's worth the risks in that jurisdiction. And the one thing American banks are very aware of right now is headline risks. No one wants to think of the Wall Street Journal and see that this company was involved with this bank in the Virgin Islands. That's one of the biggest risks.

Elizabeth Killeen: Jeffrey also said earlier that it might be different from the traditional banks we want going forward. That might not be the model that people are using. So it might be better to start looking at more modern banking methods with the idea that in a few years, that's what we would have. Rather than traditional banking methods, it might be, let's be innovative, let's go talk to people. Let's look at having cryptocurrency and digital banking here. Look at that side of things rather than the traditional banking model. Be one of the first that can do that. If we can have a focus group on that, that would be brilliant for this jurisdiction.

What's Next?

Q22. Russell Harrigan: *Okay, final word. What's next?*

Robert Briant: The BVI is on the cusp of the rest of its future. All I mean by that is we've changed so much from 20 years ago.



Russell Harrigan, George Weston, Robert Briant, Elizabeth Killeen, Jeffrey Kirk, Clarence Faulkner, Vanessa King, Jeroen Hoogendijk, Matthew Cowman, Elise Donovan.

The changes will stop soon and allow us to focus on the product and no longer on the regulation. Because I think we are at the end of the regulatory burdens, let's get back to being more efficient and just focus on the positivity of the product and sell that. So the next 20 years are fantastic for the BVI.

Clarence Faulkner: We've done well for the last 30 years. We need to leverage that and add substance to what we've done well. That's where the next drive is for the BVI because it feeds into everything. It feeds into genuine substance, education and advancement. It feeds into the government recognising that the BVI can in fact do a lot more. Technology as well. And if we can at least move somewhat in that direction, we will begin to see the benefit.

Vanessa King: I agree. We talked about the companies that mature in the jurisdiction. We've kind of packaged ourselves for a long time as being a company incorporation jurisdiction. We could be so much more. It's the next stage in development that we're at.

Jeffrey Kirk: It's almost a unique point in development where I suppose, in the past, it's always been sort of international business versus the domestic situation, and they've been two very different things. Everybody's been focused on international business. It's now those two areas are emerging, and they're going to drive one another. All of a sudden the domestic situation, building infrastructure, building bandwidth, building roads, building airports, that sort of thing, will help drive international business. So those interests are combined.

Jeroen Hoogendijk: As a sector, it's

extremely important that we get buy-in from the full population here. That's probably preaching to the converted, but I was wondering if the immigration officials that let me into this island really understand what this business contributes to society, and they don't have to be thankful for it. Still, everyone here must understand it. And that also, you know, what comes out of the business is channelled back, at least partly to society, and we start to appreciate it all.

Vanessa King: That was one of the recommendations from the McKinsey Report, that we did a lot of work on.

Elizabeth Killeen: The BVI has changed so much in the last 20 years. We haven't had a stagnant industry, where we're just used to turning things out. We are used to adapting, so when things do change, the BVI is pretty quick. But I think some of the other jurisdictions have had the fortune of being able to just plod on and do what they're doing. And the ability to change is quite the same with the BVI.

Q23. Your one word to close.

Elizabeth Killeen: Banks

Matthew Cowman: Service

Robert Briant: Diversify

Jeffrey Kirk: Infrastructure

Jeroen Hoogendijk: Optimistic

George Weston: Innovation

Clarence Faulkner: Substance

Vanessa King: Optimistic wins. **BB**