

NARRATIVE REPORT ON BRITISH VIRGIN ISLANDS



PART 1: NARRATIVE REPORT

British Virgin Islands: history of a Caribbean tax haven

Overview and background

The British Virgin Islands (BVI) is ranked at 24th position in the 2015 Financial Index. It has a relatively high secrecy score of 60, though it accounts for only a small share of the global market for offshore financial services. Yet its relatively low ranking in our index seriously understates its true importance in the world of offshore secrecy, as this report explains¹.

The BVI is an archipelago of about 60 Caribbean islands with fewer than 23,000 inhabitants. It is a British Overseas Territory, substantially controlled and supported by Britain, but with a fair degree of political autonomy. The UK ultimately [has the power](#) to strike down BVI secrecy legislation, though it chooses not to. The BVI has long been linked to wave after wave of scandals; Lord Oakeshott, a former top UK politician, [said](#) in 2013 that the BVI “stains the face of Britain.” Nevertheless, it has made some significant improvements in transparency in recent years, improving its secrecy score, though secrecy remains a key hallmark of its offshore sector.

The secrecy here comes most importantly from the BVI’s lax, flexible, ask-no-questions, see-no-evil company incorporation regime, which allows owners of companies to hide behind ‘nominees’ to achieve strong secrecy², and to set up companies quickly and at low cost. This supposed ‘efficiency’ of incorporation has translated into *carte blanche* for BVI companies to hide and facilitate all manner of crimes and abuses, worldwide. This tiny state where financial services directly make up around half of government revenue ([p6](#)) is a quintessential example of a jurisdiction captured by offshore financial services, with almost no local dissent against offshore finance.

The BVI is now the world’s leading centre for company incorporation, with a thriving industry selling corporate secrecy and over a million shell companies incorporated since landmark legislation was introduced in 1984. Of these, 479,000 [were](#) still active in early 2015: 20 for each inhabitant. On paper, the BVI was the fourth largest recipient of Foreign Direct Investment (FDI) in 2013 ([p6](#)) and the world’s sixth largest source of outbound FDI ([p5](#)). In reality, the BVI is merely a conduit or ‘brass plate’ for licit and illicit financial flows between countries.

The IMF [in 2010 estimated](#), very conservatively, estimated that

Rank: 21

Chart 1 - How Secretive?

60
Secrecy Score

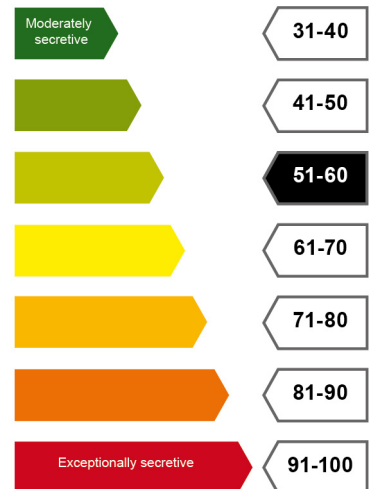
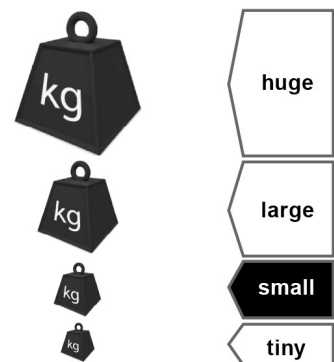


Chart 2 - How Big?



British Virgin Islands accounts for slightly under 0.3 per cent of the global market for offshore financial services, making it a small player compared with other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Read more
 → Full data
 → British Virgin Islands on TJN Blog
 → Full Methodology

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BVI companies held over \$600 billion in assets.³ The BVI has expanded its range of offshore offerings since the industry really took off in the 1980s, and today it is also a leading domicile for mutual funds, shipping registration, hedge funds, and captive insurance, many of which also use BVI companies and trusts.

The BVI has almost no taxes: no effective income tax, no capital gains tax, no inheritance taxes, no gift taxes, sales taxes or even value added taxes. It raises income mainly through payroll taxes, land taxes and various fees. This is a classic 'tax haven' pattern of creaming small amounts each time from a large numbers of transactions, and relying on locals to pay the bills.

How the BVI became a secrecy jurisdiction

The BVI's modern offshore sector was born in 1976 when Paul Butler, a lawyer from the Wall Street firm [Shearman and Sterling](#), called the only law office in Tortola, then staffed by two [Oxbridge](#)-educated British lawyers, Neville Westwood and Michael Riegels.

In those days U.S. multinationals were running lucrative tax avoidance schemes through the Netherlands Antilles (see box, and our [Curaçao report](#)).

Box 1: the Netherlands Antilles loophole.

The Netherlands Antilles wheeze worked like this. If a U.S. corporation borrowed directly from overseas (most lending came from the unregulated, London-focused Eurodollar market; see our [UK report](#)) the foreign lender would pay a 30 percent U.S. withholding tax on the loan's interest income. But if they borrowed via a Netherlands Antilles company instead, the U.S.-Antilles Double Tax Agreement (DTA) exempted the lender from the withholding tax. The loophole worked well enough for a while, even if it wasn't clear whether it was technically legal or not. It was eventually closed down in 1987.

Yet many firms were unhappy about the Dutch language barrier and about the questionable legal basis for the Antilles loophole. Butler had become aware of similarly lenient DTAs between the U.S. and various Caribbean micro-

states, including the English-speaking BVI. Riegels quickly agreed to incorporate a BVI company for Butler. As his son Colin Riegels later [explained](#), this was the opening through which a whole new world of tax avoidance emerged. U.S. corporate business began to grow steadily and was soon producing modest fee income for the BVI (at vastly greater cost to the U.S. Treasury.)

But in 1981, disaster apparently struck, nipping this fledgling industry in the bud. The U.S. government produced a [hard-hitting report](#) on tax evasion and tax haven abuses, fingering the BVI in several instances, and voicing [emerging concerns](#) that it is generally a bad idea to sign DTAs with tax havens. The U.S. suddenly terminated its double tax agreement (DTA) with the BVI, among others.

It could have been the end for the fledgling BVI tax haven. Instead: it spurred a completely new way of doing business.

Lift off: the International Business Companies Act of 1984

Paul Butler suggested that the best way to respond to the U.S. treaty cancellation was to offer a completely new offshore "product" that was not designed to provoke corporate tax leakage in the United States (and thus defensive counter-measures from the world's most powerful country) but would instead target wealthy individuals in countries around the world, particularly vulnerable and corrupt developing countries that would not have the powers to defend themselves.

A so-called "gang of five" lawyers – Butler, Riegels and Westwood; the then Attorney General Lewis Hunte, and Richard Peters, a new partner at Harney, Westwood & Riegels – began searching for an alternative offshore model. The result was the **International Business Companies (IBC) Act**, a radical new libertarian, lax and permissive corporate regime that became law on August 15th, 1984, with almost no interference from London.

The IBC Act was a curious hybrid adapted from laws elsewhere. The strong initial U.S.

focus and Sherman & Sterling's role meant it was modelled strongly on Delaware law, but it incorporated many aspects of English common law too. Colin Riegels stressed that "it is easy to overlook how radical it was at the time."

The new IBCs were exempt from all BVI taxes and even stamp duty. But that was only the start of it.

Any company incorporated under the IBC Act was "ring fenced" – prohibited from trading or conducting business with residents of the British Virgin Islands – i.e. it was restricted to international business. 'Ring-fencing' is a classic 'offshore' approach – partly designed to protect one's own economy from the sector while also rejecting any effective regulatory responsibility for the activities of an IBC, it is a tacit recognition that the offshore sector is toxic.

The Act gave owners and controllers of BVI IBCs tremendous leeway to act as they pleased, unaccountable to anyone but themselves. For instance, it abolished the legal concept of *ultra vires* (under which companies are permitted to act only within their stated corporate objectives) – in fact, companies were no longer required to have any stated corporate objectives at all. It heavily curtailed normal requirements of corporate benefit, where directors are required to use their powers for the commercial benefit of the company and its members. It allowed corporate redomiciliation (that is, companies could rapidly change corporate domicile) allowing companies to disappear suddenly if, for example, tax or criminal authorities came looking.

IBCs were also only required to keep records "as the directors consider necessary." So BVI IBCs could serve as powerful secrecy vehicles, particularly by using 'nominee' directors (or [nominee shareholders](#)), typically BVI lawyers who might serve as directors for hundreds or thousands of sham companies, and who would act as the public face of the IBC. (Nominees could also be shell companies, deepening the secrecy). The nominees would be visible while the true owners – those with the power to control or enjoy the use of the assets or incomes

flowing from them - would remain firmly in the shadows.

Registered agents providing the nominees [could even claim](#) truthfully that they had no knowledge of the real buyer or owner of a company because they [took all their instructions](#) from a so-called 'introducer' based in another country – such as Panama, Nevis, Vanuatu or Dubai – where British courts have little reach. Often, BVI companies are owned by a trust in such locations, making secrecy even stronger. The IBC Act also allowed bearer shares, regarded as particularly pernicious because these shares are 'owned' by the person who literally holds them in his or her hands – and are therefore effectively untraceable. It was a free-for-all, attractive for libertarian business interests and criminals alike.

Underpinning the whole game, however, was the BVI's reassuringly umbilical relationship with the United Kingdom, the "mother country" that underwrote its laws and courts, and even made available a court of appeal at the Privy Council in London. As with other British Overseas Territories such as the Cayman Islands or Bermuda, this link provided the constitutional and legal bedrock to reassure investors that their money was safe and governed by a predictable legal system – while at the same time still permitting them to get away with whatever they pleased. This role is often wheeled out by tax havens to defend their roles as legitimate - but of course this begs the question of why those people do not hold those assets via a mainland UK company, where those benefits are arguably stronger. The answer, of course, is BVI's zero-tax secrecy and lax corporate legislation and oversight.

The overall approach of reassuring investors about stability and legal safety while failing to oversee or regulate or police their behaviour was a classic tax haven offering to the world's hot money, which can be roughly summarised:

"we won't steal your money – but we'll turn a blind eye if you steal someone else's."

The late 1980s: a sudden explosion

Despite the high hopes, the BVI IBC got off to a pretty slow start, as Colin Riegels [explains](#):

“At first it was slow. Very slow. Very few new companies were incorporated under the Act. People were tempted to write the whole endeavour off as a failure.

As the 1980s wore on, however, two new trends emerged, changing the picture quickly. The first was Asian: more specifically, Hong Kong Chinese.

In the late 1980s a Hong Kong business mogul, Sir Li Kai-Shing, was reorganising his shipping business Hutchison Whampoa, and decided to use a new BVI IBC as his holding companies. Li Kai-Shing, whom Forbes ranked Asia’s richest man in 2014, was an inspiration to many other Hong Kong business figures, and others began to follow in his wake. This tale has a peculiar little sub-story too, in the tale of a Liverpool-born Hong Kong businessman named Ted Powell:

“Powell recognised the talismanic power of the number eight in Chinese culture. Being in the business of selling offshore companies, Mr Powell thought that there would be a huge demand in Hong Kong for companies which had the unfathomably lucky providence of being incorporated on 8 August 1988, or 8/8/88 if you prefer – the luckiest day of the Chinese century. And so he set about trying to organise the incorporation of a large number of IBCs on that day.

However there was a serious problem. In the BVI, the first Monday, Tuesday and Wednesday of August are public holidays, celebrating the emancipation of slavery in 1834. All Government offices would be closed on the fateful day, including the Companies Registry.

A lesser man may have given up, but not Ted Powell. He enlisted the support

of a highly capable local lawyer named Richard Parsons and between them they begged, bullied or cajoled (history does not record which) the Registrar of Companies to prepare all of the relevant company incorporations ahead of time, and then briefly to open the Registry for a limited period on that special day to officially incorporate the companies on that date.

Those lucky companies proved to be just as popular as Mr Powell had predicted.”

Around the same time, the IBC business got a second major boost when Panama, hitherto the market leader in secretive offshore companies in the sub-region, descended into political crisis in 1985, culminating in an invasion by the United States in 1990. Owners of Panamanian offshore companies, mostly Latin Americans (many involving drugs wealth) began to flock to the more stable, reassuringly British BVI nearby.⁴

Riegels summarised how these factors came together to create an offshore explosion.

“All of a sudden, like a desert after the rains come, it all started to bloom. From about 1989 to about 1997 the incorporation numbers exploded, growing exponentially at the almost unmanageable rate of nearly 50% growth year-on-year.”

The IBC Act was so successful that other offshore jurisdictions began to copy it: according to [Wikipedia](#), the IBC Acts of Anguilla, the Bahamas and Belize were almost word-for-word copies of the BVI’s 1984 IBC Act.

Yet the BVI had gained first-mover advantage: today it benefits from a ‘cluster effect’ that brings together a well-developed cadre of law firms and other expertise, a sophisticated court system, and a well-resourced company registry.

Box 2: BVI emerges as a classic captured state

The IBC Act of 1984 went through the legislature in just one day after no public discussion ([p19 of the 2009 Hedge Funds Review BVI Supplement.](#))

The BVI's Premier at the time, Ralph O'Neal, declared:

"I have read this Bill and cannot even see a misplaced comma. **I do not see the need for any debate.**"

Our emphasis is added here, to highlight BVI's status as a '[captured state](#)': a pattern common to most secrecy jurisdictions. Crucial, transformative legislation is discussed only by a small coterie of financial insiders, with no genuine democratic participation either by locals or (of course) by those foreigners who are likely to be most impacted by such legislation – such as the citizens of developing countries whose leaders and their cronies loot their countries using BVI companies to hide it. Small-island politics, which makes it easy to build a 'finance consensus' means that serious criticism of the offshore sector inside the BVI is almost non-existent. With financial services [accounting for](#) around half of government revenues, the pattern of a 'captured' state has continued until the present day. As *The Guardian* [put it](#):

"Injections of offshore cash have become a drug on which the BVI is hooked."

Developing and emerging countries

Beyond the Panama and Hong Kong feeders, other sources of business began to emerge from turmoil elsewhere in the world.

The collapse of the former Soviet Union in 1989, and particularly the rush of subsequent corrupt privatisations in Russia and other former Soviet Republics from the mid-1990s, further fed the BVI corporate registry and trusts sector⁵. India has also been another important source of business: [in 2012](#), for example, the BVI was the sixth largest recipient of outbound capital from India.

Typically, the assets themselves – for example,

an expensive apartment located in fashionable Chelsea, owned by an Indian businesswoman – are owned by a BVI IBC, whose true ownership is extremely hard to penetrate, whether by (say) India's criminal authorities or anyone else.

An [investigation in 2013 for Vanity Fair](#) of the London apartment complex One Hyde Park, billed as the most expensive piece of real estate ever built anywhere on earth, revealed that 32 of the building's 86 apartments were owned by anonymous BVI corporations; most of the rest were owned via other tax havens. Those owners whose identity was known tended to come from commodity-rich countries, which typically combine instability and corruption with extraordinary concentrations of wealth.

This focus on emerging and developing countries has not just been passive: BVI officials have aggressively courted them. By 1994, as *Euromoney* magazine [hailed](#) the BVI as "the world's pre-eminent offshore corporate domicile" the government hired a New York public relations firm to market its offshore sector.

In the late 1990s, amid fears of confiscation after the looming handover of Hong Kong from British to Chinese rule in 1997, wealthy Chinese were shifting money and ownership of assets out to a wide array of secretive tax havens -- but it was the visit of a high-profile BVI business delegation to Hong Kong in 1996 that really seems to have cemented the islands' status as the offshore jurisdiction of choice. As Naomi Rovnick reported for the *South China Morning Post* in 2011:

"A so-called satellite companies registry, replete with Chinese-language services, was temporarily established to help people set up BVI companies without leaving Hong Kong. As they have grown richer, people on the mainland seem to have caught the BVI bug from their Hong Kong cousins."

The tradition of focusing on vulnerable and corrupt developing countries continues to the present day.

A BVI official told us by phone in 2012:

“I would imagine that U.S. business is round about 10 per cent, not more than 20. The U.S. and the U.K. are much smaller players. Latin America is coming to life, and the Far East are the big players now.”⁶

Since 2006 the BVI has ranked as the second largest foreign investor in mainland China after Hong Kong: according to official data ([p16](#)), the BVI accounted for nearly 10 per cent, or over US\$110 billion, of the cumulative foreign direct investment in China from 1979-2010. In 2010 it accounted for about US\$10.5 billion of new foreign direct investment in China; more than the U.S., Britain, France and Canada combined.

A large share of this ‘foreign’ money is known to be round-tripped Chinese money, where local Chinese send their wealth offshore (often using ‘trade mispricing’ tricks), dress up that wealth in offshore secrecy, then return it to China illegally disguised as foreign investment, partly in order to be able to access special tax and other privileges that are available to foreign investors, and partly for general anonymity. Rovnick’s article reported:

“Mainland China has been a massive boost to our business,’ says a British tax lawyer based on Tortola. ‘Our [Chinese] clients say that you haven’t really arrived if you don’t have at least one BVI company to your name.’

Steve Dickinson, Qingdao-based head of the China practice at American law firm Harris & Moure, said: ‘The reason for this strong link between China and the BVI is a very simple form of tax avoidance.

‘If you take the money straight back into China you pay capital gains [or income] tax. If you leave it in the BVI, wait a while then send it back, it can be made to look to the authorities like it is a foreign investment, and you don’t pay tax on that’ . . . in practice, says Dickinson, ‘it’s pretty impossible for the

Chinese government to tell whether a BVI company is a Chinese-controlled entity or a true foreign investor.’ . . .

Peter Gallo, a former Hong Kong-based fraud investigator who specialised in tracing funds missing from Chinese companies, contends it is ‘entirely common’ for mainlanders seeking to launder the proceeds of corruption or attempting to subvert the mainland’s currency controls to use vehicles in places with strict secrecy laws, such as the BVI.

“‘Finance’, in the current era, is not just a sector of the economy; it is at the core of a new social settlement in which the fabric of our society and economy has been reworked.”

The BVI Business Companies Act (2004)

By the late 1990s the OECD and other international institutions were [beginning to put](#) a little pressure on tax havens, targeting jurisdictions like the BVI that had ‘ring-fenced’ their offshore sectors from damaging the rest of their economy.

In the early 2000s, partly as a result of the BVI’s response to this, its incorporation business began to plateau. In a reminder of the Wild West regulatory laxity of age, Riegel comments:

“Cynics like to suggest that the end of the period of growth coincided exactly with the creation a new regulator for the industry, the Financial Services Commission.”

The new regulator began to focus on creating new, higher-value industries beyond simple lax company incorporation. Trusts were well established by this time (see below), and the BVI had already started creating other offshore

legislation, perhaps most notably its Mutual Funds Act of 1996, again combining Delaware and British offshore legislation in a unique BVI-styled hybrid, whose relative ‘flexibility’ (or laxity) brought many mutual and other funds to incorporate on the islands, raising some eyebrows at the IMF at least.⁷ Weak supervision again helps explain the sector’s success: as of January 2015, [the BVI had](#) some 2,100 registered mutual funds (though this was down from 2,500 or so four years earlier.)

The BVI responded to growing outside pressures on its free-for-all incorporation regime by replacing the venerable IBC Act of 1984 with the BVI Business Companies Act, 2004, which came into full force in January 2007 and has been amended [several times](#) since. Most of the permissive aspects of the original legislation remained in place: for example, there is still no requirement for companies to publicise their incorporation, no regulatory pre-approval is required, and nominees are still central to the business model. The register of directors and register of members is not publicly available, and there is no requirement to file public accounts. The regime continues to offer, [according to](#) Audrey Robertson of Conyers, Dill & Pearman, “a high degree of commercial confidentiality,” and the U.S. State Department noted bluntly in 2011:

“there appears to be no effective mechanism to ensure compliance with [money laundering] requirements”

After the global financial crisis, however, pressure began to emerge from Chinese and Hong Kong authorities to crack down on the BVI free-for-all. A *Financial Times* investigation in September 2014 reports:

“The Caribbean haven is facing pressure in Hong Kong from a global push to tackle money laundering. HSBC and Standard Chartered, two international banks with a significant Hong Kong presence, have made it very difficult for BVI companies to open bank accounts in the Chinese territory over the past two years, according to lawyers involved in

setting up companies in the offshore financial centre...”

Christopher Bickley, a partner at the law firm Conyers Dill & Pearman, said banks were now making it “torturous” to open BVI accounts, spurring companies to incorporate in Samoa and the Seychelles.

New incorporations had plummeted as a result, it added, quoting Jonathon Clifton, Asia managing director at Offshore Incorporations, who said the BVI’s share of the market for Chinese incorporations had fallen from 80 per cent to 60-65 per cent since 2012.

Trusts

The BVI is also an important jurisdiction for trusts (see our primer on trusts, [here](#)).

Trusts are flexible instruments and are often at the top of an ownership ‘tree’, with a trust used to own companies (typically BVI registered) which in turn own assets such as ships, artwork, residential property, cash in Swiss bank accounts, and more⁸.

The best-known BVI trust vehicle is the VISTA trust, which emerged under the *Virgin Islands Special Trusts Act, 2003* (which came into force in March 2004). VISTA trusts enable deep secrecy: there is no need to have a physical presence in the BVI. In the same spirit as the *laissez-faire* corporate regime, VISTA trusts give [wide powers](#) to the settlor (the initial contributor of assets), and the trustee has relatively few obligations to monitor the affairs of companies the trust owns. This allows settlors to have their cake and eat it: they can separate themselves legally from the assets (and thus can shield themselves from related taxes and scrutiny) yet they still exert a significant measure of control and power to enjoy the trust’s assets. It is impossible to know the value of assets held in BVI trusts, but according to a [September 2014 article](#) by Chris Mackenzie, Head of Trusts and Estate Planning at BVI law firm O’Neal Webster, there are “probably at least 5,000 and possibly more than 10,000” VISTA trusts alone:

“I myself have been involved in the establishment of around half a dozen structures in each of which the value of the underlying assets exceeded \$1 billion. On this basis I do not think it would be wildly off the mark to speculate that assets worth dozens (or possibly hundreds) of billions of dollars are held in VISTA trust structures.”

Scandal after scandal but the ‘captured state’ endures

Given this history and wide range of potentially abusive facilities offered out of the BVI, it is hardly surprising that the islands have been linked to scandal after scandal. There is no space to do anything but scratch the surface here, but a few salient examples should suffice.

One of the biggest in recent years is the so-called “[Offshore Leaks](#)” scandal, where the U.S.-based International Consortium of Investigative Journalists (ICIJ) obtained a computer hard drive holding 260 gigabits of data containing about 2.5 million files originating in 10 offshore jurisdictions, including the BVI, the Cook Islands, Cyprus and Singapore. It included details of more than 122,000 offshore companies or trusts, nearly 12,000 intermediaries (agents or ‘introducers’), and about 130,000 records on the people and agents who run, own, benefit from or hide behind offshore companies. The largest number of ‘clients’ were from China, Taiwan and Hong Kong, followed by the former Soviet republics. The ICIJ collaborated with over 80 journalists from 46 countries to analyse the data. Much of ICIJ’s data involved [two offshore firms](#), Singapore-based Portcullis TrustNet and BVI-based Commonwealth Trust Limited (CTL), which had helped tens of thousands of people set up offshore companies and trusts and hard-to-trace bank accounts. Orlando Smith, BVI Premier and Finance Minister, [said](#) that the ICIJ data was “a small fraction” of the total number of BVI firms, and was quoted in the *South China Morning Post* as saying:

“We want to reassure clients in Hong Kong and the region that this is an

isolated incident. We remain committed to clients’ privacy and confidentiality.”

In the world-famous Magnitsky case, in which BVI companies were heavily implicated, [another ICIJ report](#) notes of a BVI Trust Company, Commonwealth Trust Limited (CTL):

“CTL often failed to check who its real clients were and what they were up to. . . The documents show authorities in the British Virgin Islands failed for years to take aggressive action against CTL, even after they concluded the firm was violating the islands’ anti-money-laundering laws.”

CTL got much of its business from “master clients” — lawyers, accountants and other middlemen in Russia, Cyprus and elsewhere, handing over its ‘due diligence’ checks to them, thus providing an open door for money laundering, hardly policed by the BVI authorities. Under strong international pressure, in 2008 the BVI regulator ordered CTL to stop taking on new clients – and in 2009 CTL sold itself to a Dutch company, which [prompted](#) the BVI’s Financial Services Commission to lift the ban. BVI vehicles were also heavily implicated in the collapse of Bernard L Madoff Investment Securities LLC, a fraudulent Ponzi scheme that lost its investors billions. Russian oligarchs, an especially litigious crowd, have extensively used the BVI (and British) courts to settle disputes.

No island is an island: international pressures intrude

Since the global financial crisis that erupted in 2008 new pressures have emerged for transparency, from citizens and governments around the world to find new sources of revenue, and to crack down on financial malfeasance. Global banks, themselves facing these pressures, have [become more reluctant](#) to open accounts for BVI companies. The BVI has responded somewhat positively to outside pressures in several areas:

- The U.S. Foreign Account Tax Compliance Act (FATCA: see our [USA narrative report](#): this

is primarily about the U.S. seeking information about its own taxpayers. The BVI is among 94 jurisdictions that [have engaged](#) on this, signing an Intergovernmental Agreement (for which it has got credit on the 2015 FSI).

- The European Union Savings Tax Directive, a mechanism for automatic information exchange among European and affiliated countries, including the BVI which opted in 2012 for the “automatic information exchange” option, giving it further transparency credits in 2012⁹. The EU STD is currently being replaced by the CRS: see below.

- The OECD’s [Common Reporting Standards \(CRS\)](#), the emerging global standard of automatic information exchange. As of July 2015 the BVI was, to its credit, one of only 14 jurisdictions that had signed the agreement committing it to the initiative, with implementation due to begin in 2017. Information will only be exchanged with selected jurisdictions, however.

Yet alongside these broadly positive moves the BVI has been involved in several retrograde steps too.

First, the BVI has a long record of noncompliance with its own laws, and of putting up hurdles in the way of information exchange, as various examples in this report attest. Obtaining information often requires hefty work in BVI courts, and the BVI has tended to respond favourably only when the country requesting information is powerful, and when relatively small fry clients are involved. Given that most clients are from developing countries, this suggests that the BVI will continue to shut them out.

Second, the BVI has reacted negatively to some initiatives. Notably, the United Kingdom from [June 2013](#) began politely requesting its Overseas Territories and Crown Dependencies to create an open register of beneficial ownership for companies. This would profoundly affect BVI, which in response publicly and repeatedly [rejected](#) the concept of a public registry. By August 2015 the British government [had backtracked](#) on its demands for a public

registry.

Further negative reactions came as a result of the giant global “Offshore Leaks” scandal in which the BVI was heavily implicated (see above.) Instead of reacting positively, the BVI responded with a crackdown that was remarkable in its ferocity and depth. Among widespread finger-pointing and blame, the BVI also introduced the astonishing [“Computer Misuse and Cybercrime Act”](#) passed in July 2014, which mandates prison sentences of up to 20 years for data whistleblowers, and sentences of up to 15 years for anyone who publishes the data that “he or she knows ought reasonably to have known was obtained without lawful authority.” It [was leavened](#) only by an extremely narrowly defined ‘public interest’ defence, which was next to useless.¹⁰

More profoundly, perhaps, the Offshore Leaks provoked the ‘captured state’ into a deliberate and systematic effort to prevent introspection – as evidenced by [this report](#) from a Tortola schoolroom:

“The Virgin Islands have survived a terrible hurricane. And that hurricane’s name is I-C-I-J!” the teacher cries, carefully spelling out the initials of the International Consortium of Investigative Journalists, the U.S.-based news organization that has been working with Le Monde and other media partners to expose [the shadowy use of front companies in offshore havens](#).

“ICIJ has caused us a lot of harm,” she continues. “We have to defend ourselves. Otherwise we will lose our jobs and our income. You know that?”

“Yes, ma’am!” the class responds in unison.

“Do we want dirty money and corruption here?”

“No! The Virgin Islands aim to protect the secrecy and assets of investors who base their companies here,” the students chant with one voice.

“Who collects taxes?” Scatliffe-Edwards asks. “Governments, isn’t that right?”

“Yes!”
“Do people like paying taxes?”
“No!”
“So don’t they have the right to choose to pay their taxes wherever they’re lowest?”
“Yes!”
“Freedom of choice is a citizen’s fundamental right,” she concludes professorially. “And they’re right to choose the Virgin Islands.”

This small state captured by offshore financial services will doubtless continue to adapt to changing international pressures while finding new ways to offer services to the world’s wealthiest citizens – particularly from developing countries – to escape tax, regulation and disclosure.

Web links and further reading

- [Full data for British Virgin Islands](#)
- [British Virgin Islands on TJN Blog](#)
- [Full Methodology](#)
- Harneys Partner Colin Riegels tells the story of the development of the BVI’s landmark IBC Act of 1984. <http://www.harneys.com/files/the-ibc-act-the-building-of-a-nation-%282%29.pdf>
- <http://star.worldbank.org/star/publication/puppet-masters> (06.09.2013).
- <http://www.bvifsc.vg/Portals/2/2012%20Stats%20Bulletin%20Qtr%204%20Final.pdf> (06.09.2013).
- <http://www.imf.org/external/pubs/ft/scr/2010/cr10323.pdf> (06.09.2013).
- <http://www.imf.org/external/pubs/ft/scr/2010/cr10324.pdf> (06.09.2013).

Sources

- BVI International Financial Centre Report (2013), available at <http://www.bviifc.gov.vg/newsletter/BVIFinance2013Jan.pdf> (06.09.2013).
- Congressional Research Service Paper (2013), available at <http://www.fas.org/sgp/crs/row/RL33534.pdf> (06.09.2013).
- Hedge Funds Review BVI Supplement (2009), available at <http://www.bviifc.gov.vg/LinkClick.aspx?fileticket=WxdpqUEgoE8=> (06.09.2013).

- ICIJ Offshore Leaks, available at <http://www.icij.org/offshore> (06.09.2013)
- SCMP, available at <http://rovnickwriting.com/2011/05/19/sun-sand-and-lots-of-hot-money/> (06.09.2013).
- Shaxson, N, ‘One Hyde Park’ Investigation for Vanity Fair, available at <http://www.vanityfair.com/society/2013/04/mysterious-residents-one-hyde-park-london> (06.09.2013).
- TJN on trusts, available at <http://taxjustice.blogspot.ch/2009/07/in-trusts-we-trust.html> (06.09.2013).

¹ The fact that the BVI is not ranked higher in the Financial Secrecy Index substantially reflects the fact that – unlike the US or Switzerland, for instance – it is not a banking centre (it had just \$2.5 billion in banking assets in 2010, according to the IMF) and so it is not very effectively captured in the banking data we use as a pillar of our index. BVI shell companies nearly always hold their bank accounts elsewhere, and their secretive economic activities aren’t effectively captured in any international economic datasets anywhere.

² According [to the UK government](#), the BVI had a dominant 45 percent share of the global market for company incorporations in 2000; the share is believed to have recently fallen to around [40 percent](#).

³ Given that a single apartment building in London, One Hyde Park, contains sales of \$775 million worth of apartments registered in the name of BVI companies (plus others held by companies incorporated elsewhere and owned by BVI companies) – combined with the fact that UK users are a small minority of the overall pie – this particular fact suggests that the true figure is likely to be far higher than the IMF’s estimate: quite possibly in the trillions. (Calculations provided for the FSI by Nicholas Shaxson, author of [Vanity Fair investigation into One, Hyde Park](#), based on published UK land registry data.)

⁴ According to one estimate ([p17 of the 2013 BVI International Finance Centre Report](#)), 60 to 70 per cent of the incorporation business in the BVI can be traced back to the political disruptions in Hong Kong and Panama in the 1980s.

⁵ Very often, a BVI holding company established on behalf of a Russian oligarch would own subsidiaries in Cyprus, which had a special tax treaty with Russia

enabling them to get money in and out of the country, helping them escape tax – and scrutiny.

⁶ Nicholas Shaxson’s interview with a veteran BVI official, who wished to remain anonymous.

⁷ Commenting on the BVI’s mutual funds sector, the IMF [said](#) a pressing issue was:

“the need to implement an effective system of supervision of mutual funds and their functionaries and to add resources to carry out enforcement activities. . . . [as well as] strengthening business conduct rules, and books and records, internal controls, and risk management systems requirements.”




⁸ Most BVI trusts are [discretionary trusts](#), according to local practitioners, but the sector also includes charitable trusts, non-charitable purpose trusts and others. Until 1993 trust deeds and subsidiary documents had to be registered and filed - but the 1993 Trustee Amendment Act created a wide variety of exemptions ([p1 of the Act](#)) to that, deepening secrecy.

⁹ The EU STD has had little impact since it has primarily been about transparency on bank deposit interest: however the BVI is not a banking centre but primarily a company incorporation centre.




¹⁰ The public interest defence is available where “the person publishing the information can establish that the publication is in the public interest **of the Virgin Islands**.” Our emphasis added. The public interest of the BVI is widely equated there with offshore incorporation revenues: this excludes any genuine public-interest whistleblowing.

PART 2: BRITISH VIRGIN ISLANDS'S SECRECY SCORE





TRANSPARENCY OF BENEFICIAL OWNERSHIP – British Virgin Islands

- 1  *Banking Secrecy: Does the jurisdiction have banking secrecy?
British Virgin Islands partly curtails banking secrecy*
- 2  *Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented?
British Virgin Islands partly discloses or prevents trusts and private foundations*
- 3  *Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies?
British Virgin Islands does not maintain company ownership details in official records*





KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – British Virgin Islands

- 4  *Public Company Ownership: Does the relevant authority make details of ownership of companies available on public record online for free, or for less than US\$10/€10?
British Virgin Islands does not require that company ownership details are publicly available online*
- 5  *Public Company Accounts: Does the relevant authority require that company accounts are made available for inspection by anyone for free, or for less than US\$10/€10?
British Virgin Islands does not require that company accounts be available on public record*
- 6  *Country-by-Country Reporting: Are all companies required to publish country-by-country financial reports?
British Virgin Islands does not require public country-by-country financial reporting by companies*

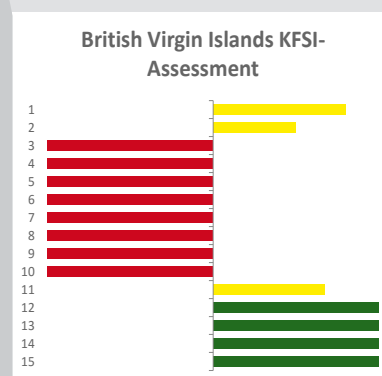
EFFICIENCY OF TAX AND FINANCIAL REGULATION – British Virgin Islands

- 7  *Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents?
British Virgin Islands does not require resident paying agents to tell the domestic tax authorities about payments to non-residents*
- 8  *Efficiency of Tax Administration: Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit?
British Virgin Islands does not use appropriate tools for efficiently analysing tax related information*
- 9  *Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments?
British Virgin Islands does not avoid promoting tax evasion via a tax credit system*
- 10  *Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses?
British Virgin Islands does allow harmful legal vehicles*

INTERNATIONAL STANDARDS AND COOPERATION – British Virgin Islands

- 11  *Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations?
British Virgin Islands partly complies with international anti-money laundering standards*
- 12  *Automatic Information Exchange: Does the jurisdiction participate fully in multilateral Automatic Information Exchange via the Common Reporting Standard?
British Virgin Islands participates fully in Automatic Information Exchange*
- 13  *Bilateral Treaties: Does the jurisdiction have at least 53 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention?
As of 31 May, 2015, British Virgin Islands had at least 53 bilateral tax information sharing agreements complying with basic OECD requirements*
- 14  *International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency?
British Virgin Islands has ratified the five most relevant international treaties relating to financial transparency*
- 15  *International Judicial Cooperation: Does the jurisdiction cooperate with other states on money laundering and other criminal issues?
British Virgin Islands cooperates with other states on money laundering and other criminal issues*

Secrecy Score



Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click [here](#) to see our full methodology).

The secrecy score of 60 per cent for British Virgin Islands has been computed by assessing its performance on 15 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail, [here](#).

Green indicates full compliance on the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); and yellow indicates partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 31.12.2014 (with the exception of KFSI 13 for which the cut-off date is 31.05.2015).

Full data on British Virgin Islands is available here: <http://www.financialsecrecyindex.com/database/menu.xml>

All background data for all countries can be found on the Financial Secrecy Index website: <http://www.financialsecrecyindex.com>