

Meet the Regulator Forum

The Urgency *of* **NOW**

Prepared Remarks of
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Eileene L. Parsons Auditorium



Ladies and gentlemen,

I am grateful, as always, for the privilege of addressing you on the outlook for the BVI financial services industry. As I reflected on the best way of approaching today's meeting, my attention was drawn recently to a seldom-quoted 1967 speech by the late Dr. Martin Luther King Jr.

I would like to quote from this. It is quite a long quotation but I hope you will bear with me because I think it has a lot of meaning for us here today. Dr. King said:

“We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history there is such a thing as being too late. Procrastination is still the thief of time. Life often leaves us standing bare, naked and dejected with a lost opportunity....

“There is an invisible book of life that faithfully records our vigilance or our neglect.... We still have a choice today.... We must move past indecision to action.”

So today is about what Dr. King called “the urgency of now”.

Because now, more than ever, we are required to move urgently and decisively – and also, I would add, creatively, pragmatically and thoughtfully – to keep the BVI financial services industry moving forward.

The global financial crisis continues to spur financial regulatory reforms on an unprecedented scale and pace. A new financial landscape is emerging and its contours are still forming.

The regulatory environment is ever more demanding in terms of the numbers of cross-cutting initiatives being undertaken simultaneously and the details of what is demanded of us.

Criminal law enforcement, tax and regulatory officials are under ever-greater pressure to cooperate domestically and across borders to protect the global financial system.

Navigating this new regulatory landscape is a complex challenge for governments, industry participants and regulators alike.

By and large, the BVI has withstood well the storms affecting global economic prosperity and stability and the intense scrutiny under which small island international financial centres such as the BVI have had to operate.

Whilst we can all find comfort in Prime Minister Cameron's assertion that there is no basis for calling the BVI a tax haven because of our commitment to transparency and international cooperation, there have been some recent setbacks which, if not properly handled, could have a chilling effect on our long-term prospects as a sustainable financial centre.

Let me name a few of these:

- The jurisdiction has experienced challenges in navigating the OECD Peer Review Stage II process.
- The BVI has been painted in a bad light overseas because of the difficulties experienced by our International Tax Authority in responding to international requests following the tardiness, indifference and inertia of those from whom information was sought.
- The Government of the BVI is still engaging the French with a view to removing us from their blacklist of non-cooperative jurisdictions.
- International media exposés have revealed that some BVI corporate structures have been abused for fraud and other nefarious activities, including sanctions-busting.

- The recent US Department of Justice's International Narcotics Control Strategy Report has ranked the BVI as being of high money laundering concern – notwithstanding the fact that the BVI received one of the highest ratings for compliance with FATF standards.
- And we are still having to defend the probity of our modalities, protocols, and regulations in an effort to win acceptance that they qualify for equivalency status within the European Union and other markets of critical importance to us.

I could dwell on these setbacks. But it is more important to look to the future. Everyone, all of us, must share in the responsibility of learning from what they teach us and then putting them behind us.

The biggest learning is that we cannot continue to operate as we have in the past. That's what got us all in the threatened position we find ourselves in now.

And we have to realise that the changed environment is not temporary but here to stay. Only last week, I read a banker saying that he was amazed when he heard people saying, "When we get through this period", as if stricter enforcement of money laundering and other laws was a temporary thing when it so clearly isn't.

Heading our way are even stronger transformational and paradigm-shifting gale force headwinds. These must be navigated even more adroitly, pragmatically, effectively and efficiently than in the past if we are to survive and thrive as a premier international financial services centre.

The headwinds I am thinking of are:

- FATCA;
- Sons and daughters of FATCA;
- David Cameron's call for central and public registers of beneficial ownership;
- The new, revised FATF 40 Recommendations, including the requirement for comprehensive national risk assessment frameworks;

- The OECD's Base Erosion and Profit Shifting project; and
- The OECD's multilateral mechanism for the exchange of information.

The requirements placed on our industry can only get more intense as these and other measures demand enhanced and more robust risk management systems, protocols and practices.

If we are going to live up to the expectations that people have of us – both those here in the BVI and people in the international community – we will have to work together to up our game to meet this changing dynamic.

As a first step, we must recognise that there are still fractures in the strong foundation we have built over the years. If we do not attend to these with immediate dispatch and with all our energies, they will reverse the dramatic progress we have made as a top international financial centre.

Yes, you may think that the cumulative effect of the international initiatives is simply to create a powerful cocktail of prejudice, hypocrisy and ignorance – one which puts the BVI financial services business model at risk.

But that's not how those outside our jurisdiction see it. They think their actions are eminently reasonable in the face of the global crisis.

Urgent action is therefore needed not only to retool the model but more so to ensure that the BVI model evolves, adapts and adjusts to capture new opportunities.

The urgency now is to ensure by our collective resolve that the BVI remains a compliant, transparent, cooperative, competitive, vibrant and clean financial services centre.

We find ourselves now at what Dr. King called the “fork in the road”. We can look down at the path we have been on for so long. This may seem the easier option – but let us not fool ourselves into thinking it is the only option.

The other option is to take the other road, the road less travelled, where the challenge is bigger but the results are greater. The reality is that what we have to do for a better future is what we have often – but not always – done in the past: be part of the solution, not part of the problem, and come up with new ideas and new ways to solve legitimate business needs.

It was when we took bold steps that we came up with the IBC Act, the immobilisation of bearer shares, the enactment of the BVI Business Companies Act, regulations for trust and corporate services providers and the establishment of the IFC and the Financial Services Commission (FSC) when we faced earlier crises.

Today as always, the challenge we face as a jurisdiction is to assess the issues and consider the appropriateness of our response – to prepare thoroughly. We do not want the greatest threat to our long-term success to be our own failure to prepare properly for the future.

In other jurisdictions, the industry is playing a full role in making these preparations, with consultants reviewing the financial services industry and identifying key priorities for the future which are then acted on by the government, regulator and industry working together.

These are the jurisdictions that feel optimistic. The IFCs that expect more new business, profitability, capacity utilisation and jobs.

To reach this stage, we must work together in an honest and open dialogue about finding practical solutions to address the challenges. This may require tough choices. There will be times when reaching a consensus on the way forward will seem difficult, if not impossible.

Working together will have to mean more than cooperating just for the good of our own interests. It will also have to mean cooperating for the common good and the common goal (which, of course, also serve individual interests).

We may not always agree on the means or the route, but we can share a common vision for the destination – more opportunity, more business and more prosperity.

This vision will mean more good jobs here in the BVI, not the outsourcing of these jobs overseas. It will require substance over form, with beneficial ownership information being securely held at the registered agents' offices as required by the new FATF standards. It will mean an enhanced ability to live up to our international obligations.

So are we as an industry ready and willing to plant and replant the seeds of prosperity and growth? If we are, what can each of us do?

Each of us – the industry, the government and the regulator – has a role in preserving and safeguarding the competitiveness of the BVI financial services sector. We must stand together to safeguard and secure the sectors' reputation, products and offerings. And together we must foster a climate that cultivates market development.

Each of us must look into the mirror and ask ourselves, “What am I willing to do to build a stronger, more resilient and more vibrant industry, an industry better prepared to compete, to prosper and prevail in the years ahead?”

The BVI government and the FSC are committed to helping you, the private sector, devise innovative, relevant and attractive solutions to clients' needs. Working in close partnership with you, we aim continually to strengthen the BVI's value proposition to keep it competitive, up-to-date and responsive to market demands.

- At the FSC, our task is to ensure that BVI regulatory laws, policies, codes and modalities are fit for purpose and meet the requirements of relevant international standard setters.

- The government's task is to pass the requisite legislation in a timely manner, thereby creating a competitive environment for business. It has to live up to its commitments to the international community.
- And the industry's task is to ensure that it complies fully with the rules whilst exploiting the business opportunities that are constantly being created within a changing global landscape.

I firmly believe that no person, profession or party, including the FSC, has a monopoly on good ideas. So I make a commitment to you here today that we will continue to keep open clear lines of communication.

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

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

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

Today more than ever, being seen as compliant is an essential part of staying competitive.

Some firms are even using their compliance functions creatively. While much compliance relates to "know your client" rules and anti-money laundering, it can also operate at a higher, strategic level.

The forward-thinking firms are not just asking compliance officers for their views after decisions have been made. No, they are now involving compliance officers from the start in developing products and services, and even in advising on direction and business development.

Ladies and gentlemen, winning and retaining business depends on clients having confidence that the BVI enjoys a good reputation and is not likely to be subject to international sanctions.

- So when the information needed from the BVI to respond to international cooperation requests is not forthcoming, we all suffer.
- When a lack of practitioner oversight means that a BVI entity is abused by criminals, we all suffer.
- And when negative stories are written about unethical behaviour in our jurisdiction, we all suffer.

Yet these things happen. Sadly, they happen far too often.

When they do, and when the ethically challenged – the kleptocrats and the politically exposed persons – are able to abuse our structures for nefarious activities, the unfortunate impression can be left that we are more concerned about talk than action.

When we persistently fail to meet universally agreed standards of regulation...

And **when** our international cooperation modalities do not meet international exchange of information requirements for criminal, law enforcement, regulatory or tax purposes...

When we fail to develop the relevant legislation or to devote enough regulatory risk management and compliance resources to safeguarding our financial system...

...And **when** we fail to honour United Nations and other international sanctions against countries or individuals and end up being called sanctions-busting pariahs...

We are simply empowering our critics, our detractors and those who wish us ill.

Ladies and gentlemen, whether through indifference, inertia or incompetence...

When we drop our guard...

When we turn a blind eye...

When we fail to demonstrate zero tolerance for anything that would tarnish our reputation...

We do ourselves no favours at all.

Instead, we find the outrage in onshore jurisdictions directed at international financial centres. We find our business practices and our finance centre understandably in the dock of world opinion.

Every time our jurisdiction hits the headlines due to abuse of its systems, it damages our reputation.

Equally, when we fail to analyse collectively the global environment within which we are now operating...

When we fail to develop and resource our risk mitigation and risk management systems...

When we choose not to develop common positions in the fora where matters affecting us are decided...

When we fail to engage constructively with those NGOs who are spurring on the international initiatives....

Then who else are we harming but ourselves?

The financial services world is changing at breakneck speed everywhere. Practitioners and CSPs must keep pace or be left behind. This means staying up-to-date with all standard setters, international organisations, regulators, competitor jurisdictions, etc.

Professionals also need to read all that is published, commenting on proposals that can affect their business, publishing their own thoughts and doing their own research.

It is urgent that the whole world and in particular the communities in which we do business understand the significance of financial services to the management of global wealth.

It is important that we move the rest of the world beyond thinking that financial services is about tax evasion or even tax avoidance or tax planning. We must demystify financial services or constantly face criticism and derision.

We must also be prepared to argue our corner with facts. For example, one British territory has made a case against establishing a centralised register of beneficial ownership. They say they can already collect data and verify client identity and that their practices are superior to the UK's.

It is urgent that you as CSPs disabuse your mind of the view that "Well, if it does not work out here or if my company is not allowed to do what we want here, we can just move to another jurisdiction". You see, the whole world is changing, so there is nowhere to take bad practices. You might be left alone for a year or two but it won't be for much longer.

At the Commission, we see ourselves as fostering, facilitating and helping the BVI comply with international standards – because with compliance comes international respectability, and with respectability comes opportunities for the financial sector to trade, source and do business with persons outside of the BVI.

Our risk-based supervision seeks to embed formal quality control processes and risk mitigation in all our licensees. In the future, as we engage with regulated entities, we will increasingly focus on governance and seek to gain a better understanding of different business models. We will want to get a better idea of how licensed firms make their operating profits and what risks they take to make that profit.

We will also want directors and senior officers to be comfortable telling us about issues which they discover or are confronting so that there is no “surprise culture”.

In cases of serious misconduct or repeated failings, including failure to take prescribed corrective measures, we will, of course, reserve the right to take enforcement action and to post such action on our website – but we are not, and have never intended to be, an enforcement-led regulator.

We see those responsible for the governance of regulated entities as natural partners with the Commission, helping to ensure our licensees are properly run.

We also want our licensees to be transparent in their dealings with us and to work with us to resolve issues which they encounter.

Every licensee should be concerned about its reputation and the reputation of its clients. This means that licensees need to better assess their risk tolerance, risk appetite and the risk that any particular client or line of business may pose.

That’s their obligation – it’s what we expect of them.

Ladies and gentlemen, a BVI licence is a great bestowal of trust which enables firms to be part of both the local industry and the global financial services system. It carries with it the obligation of responsibility to put effective controls in place so that the ethically challenged are not able to use and abuse BVI corporate structures or operate with impunity.

The BVI cannot afford to be seen as a weak link in the chain of international efforts to tackle money laundering, the financing of terrorism, tax evasion and other white collar crimes.

Global businesses are becoming more aware of, and more prepared to address, the international reputation of jurisdictions with which they do business.

An unfavourable independent assessment would mean that BVI businesses could face greater costs, delays and other barriers when doing business with overseas trading partners and businesses.

Consequently, we all have a strong incentive to ensure that our regime is compliant with international standards, thus allowing us to retain and attract good business.

To forge our way beyond 2014, we must act decisively. Our voices must crescendo from silence to a thundering presence. But in order to speak with authority, we must educate ourselves more thoroughly.

A deep and intuitive knowledge of the constantly evolving regulatory standards, the standard setters, and of the initiatives, largely IFCs, has to be part of the DNA of the financial services industry. This knowledge must exist not just within the government or the regulator. It must also be characteristic of industry practitioners, industry organisations and associations who must engage all stakeholders, local and international, to ensure their voices are factored into the decision making process if we are to continue to bring trust value to clients.

To prepare for future challenges, we must understand our challengers. In order to be ready for future tests, we must test ourselves. In order for the BVI to have another successful 20 years, we must act now!

So that we remain a qualitative jurisdiction of eminence, we must all embrace international standards and best practices – now! So that the playing field is truly levelled, we must speak – now!

It is certain that unless we address vulnerabilities head on, the adverse effects of globalisation will continue to be a tremendous challenge; that instability and the inability to adapt will put the survival of our industry at risk.

Our long walk together is not yet ended. This is, and will be, a continuous journey. As we embark on this journey, it will be imperative that we constantly check that we stay on course. That the companies that we are home to and those we host have our best interest at heart, and thus are capable of adapting to strengthen our value proposition.

The BVI remains fully committed to working with the international community to fight transnational crime. Like any other responsive and reputable international financial centre, we must all recognise that the BVI and BVI corporate structures are vulnerable to being used as conduits for illicit flows. That the BVI is not for everyone and therefore will not and must not provide safe harbour for the good, the bad and the ugly. That is why we have painstakingly and proactively managed this risk by instilling robust fit for purpose AML/CFT and international cooperation regimes.

The BVI will always act in its best interests. While we continue to support the objectives of regulatory reforms championed by the UK, G8, etc., it is also important that the reforms be implemented in a manner that is impact sensitive, risk appropriate and outcome focused, in a manner that makes business sense. These have been the core principles which have and which will continue to be in the basis of the Commission's approach to regulation.

But we must have the courage to do what is right, not what is expedient, even if this means doing what is hard or what may seem counter intuitive.

The Urgency of Now - Delivered by Robert A. Mathavious
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There is an urgency driving us all on like never before. The urgent need of now is to lay the foundation for strengthened stability and our industry's future – a future of greater opportunities. It is time for all of us to recognise the urgency of **now**! Failing this, we risk being studied in years to come as an extinct finance centre that was unable to adapt.

It will not be easy but we cannot wilt under pressure, nor can we back away from the challenge.

Thank you.