

Eastern promises: Dr Mathavious - a key progenitor of Sino-BVI relations

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On 17 and 18 November of this year, the British Virgin Islands financial services community gathered to give tribute to Dr Robert Mathavious OBE, the man responsible for building the BVI into an international finance centre that now contributes more than 60% of the Territory's GDP and supports the livelihoods of so many residents of, and visiting professionals to, the BVI.

We counted among our esteemed guest speakers at the Global Currents Conference Mr Eli Han, leading capital markets and structured finance partner from the New York office of China's largest law firm, King & Wood Mallesons. Mr Han addressed delegates on the topic of the variable interest entity (**VIE**) structure, a topic that brings together the US and China, through the use of the BVI as a preferred jurisdiction for establishing affiliate entities to take advantage of this structure - the "BVI Advantage" as the financial services industry calls it. The choice of a speaker representing an Asia-Pacific powerhouse was quite deliberate, for no celebration of the ascent of the BVI financial services sector to the place it now occupies on the world stage would be complete without giving due consideration to China.

This article reflects on some of the key milestones in the Sino-BVI partnership.

The staggering ascent of China to global economic superpower can be fairly accurately traced back to the opening up and reformation of its economy in 1978. Around the same time, some eight and a half thousand miles away on an island roughly ten miles long by two miles wide, occurred the inception of the International Business Companies Act 1984 (the **IBC Act**), the BVI legislation credited with transforming the Territory into the world's leading international finance centre^[1]. It is tempting to reflect that the largest annual percentage increase in GDP in the half century since 1970 occurred in China in 1984^[2], the very same year that the IBC Act passed into law. However, whilst the IBC Act might quite accurately be described as the darling of the BVI statute book – many have written of its significance in framing the fortunes of BVI financial services and 2019 even saw the inception of "BVI Financial Services Week", an annual financial services festival conceived in honour of its 35 year anniversary - it would be gross overstatement to credit the IBC Act with creating a global superpower. What we can say is that any correlation in fortune is the result of the BVI, steered in its policy-making and legislative reform by the vision of Dr Mathavious, actively courting Greater China as a region with which it wanted to do business.

The financial services sector posits various explanations for the explosion of BVI incorporations in the 1990s. Some credit it to the fall of Panamanian military leader Noriega, others to the functionality of the IBC Act itself, and some think the BVI just got lucky when Hong Kong billionaire Li Ka-Shing selected it as jurisdiction of choice for restructuring Hutchison Whampoa group. In all likelihood, the pre-Millennium surge is probably a combination of all three factors, and this author will simply note the timeliness of Dr Mathavious' appointment as Director of Financial Services in 1993.

The international business company was eventually replaced by the BVI business company (**BC**) when the BVI Business Companies Act 2004 came into force in 2007. The BC proved just as popular as its predecessor. Today, the BVI enjoys the lion's share of all global offshore incorporations (current estimates are around 50%) and the reasons for its popularity are well documented: gold-standard cooperation with global calls to transparency and regulation; light but effective regulation; flexible, modern and highly codified corporate laws; strong rule of law; creditor-friendly enforcement procedures; tax and political neutrality; a deep bench of seasoned practitioners; efficiency of incorporation; low cost of use. The flexibility of the corporate regime contemplates statutory merger and consolidation; corporate migration; the ability to give financial assistance; the ability to hold shares in treasury; schemes and plans of arrangement and company creditors' agreements – many of which concepts are not available in many onshore jurisdictions...

Again, however, just like during the 1990s, the Far East has proven itself to be the biggest market for BVI financial services. The statistics are staggering. One of the most oft quoted is the BVI's spot as the second largest source of foreign direct investment (**FDI**) into China between 2006 and 2012 (trailing only Hong Kong). In 2012, the BVI contributed US\$7.772 billion of FDI and it was the fifth largest recipient of China's considerable outward FDI^[3]. By 2017, 40 per cent. of all BVI business companies were located in China and 75 per cent. of Hong Kong's Hang Seng Index was made up of companies with direct linkages to the BVI^[4]. I was living in Hong Kong at the time and when I went to visit law firms, financial institutions and corporates to tell them about the BVI, I used to invite my audience to look out of the window and pick a skyscraper that wasn't owned by a BVI company.

China's highest annual GDP growth^[5] since 1984 (and the inception of the IBC) was achieved in 2007 (the year of inception of the BC). It makes perfect sense that, having benefitted from Asia's equivalent of the "Warren Buffett Effect" back in the 90s, the fortunes of the BVI would track the fortunes of China, but it doesn't really explain why the BVI remains so popular for new incorporations in the Far East some four decades later. To unravel that, one needs to turn from events of the global stage and look to what the BVI has done to retain its competitive edge as China's leading investment partner.

The BVI BCA envisaged that all BVI BCs could have a foreign character name. In 2012, amendment legislation was passed to provide the detailed framework to implement the concept, meaning that investors in China could incorporate BVI companies with Chinese character names for the first time. It was a relatively small legislative change but it had a huge impact in a nation where the names are imbued with such deep cultural significance that feng shui masters are routinely consulted by persons choosing them.

In 2013, the Virgin Islands Government established BVI House Asia with the objective of conducting diplomatic and business promotional activities in the interest of the BVI as a jurisdiction. The office is committed to expanding, strengthening and deepening the BVI's footprint in Asia with a focus on the Financial Services industry. Considered by many as an "economic embassy", BVI House Asia has been staffed over the years by some of the finest minds in BVI financial services and has hosted regular delegations from the BVI paying court to the Asia market.

Indeed, when Hurricane Irma ravaged the BVI in 2017, BVI House Asia was one of the first respondents, working with BVI practitioners in Hong Kong to ensure "business as usual" could be delivered to the hungry Chinese market. I recall in the immediate aftermath – at a time when colleagues of mine were literally waiting for their loved ones to be reported safe – the BVI Registry managed remotely to incorporate a company. If a lack of empathy was perceived from China (and empathy was certainly not lacking), it was only because the BVI proved itself so remarkably resilient that to outsiders, the extent of the damage was impossible to imagine. It was perhaps the success of the pop-up court established in St Lucia in the aftermath of the Storm that enabled the BVI to adapt so easily to the challenges of displacement and remote working necessitated by the covid-19 pandemic: it was not the first rodeo for our barristers and judges in court-by-zoom.

Post-Storm, 2018 saw the Bank of Asia open for business in the BVI, and the popularity of the BVI in Chinese structures has only continued since then: Mainland Chinese and Hong Kong-based companies now account for more than 40 per cent. of the \$1.5 trillion in assets mediated through the BVI, according to the Vistra 2020 report *The Disruption Advantage*. In the past few weeks, BVI Finance has commissioned a follow up report to *Creating Value: The BVI's Global Contribution*, and the financial services industry widely expects to see the same trends identified in relation to China.

Three things have happened in the past forty years: the rise of China, the development of the BVI financial services sector, and the esteemed career of Dr Robert Mathavious. I have had the pleasure of hearing Dr Mathavious recount some of his experiences in the Far East, and he speaks with great fondness of his gastronomic adventures on punishing travel schedules packed with industry meetings, but he also remembers what the skyline of Victoria Harbour looked like before China became a global superpower. Here is man who saw an opportunity and grabbed it with both hands. That the fortunes of the BVI and China are aligned is due in no small part to Dr Mathavious.

[1] This observation was made by Colin Riegels, *The BVI IBC Act and the Building of a Nation*, IFC Economic Report, Spring 2014.

[2] According to statistics published by The World Bank, China's GDP per capita grew by 15.192 per cent in 1984.

[3] According to UNCTAD World Investment Reports.

[4] Capital Economics, *Creating Value: The BVI's Global Contribution*, June 2017.

[5] 14.231 per cent.

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