



The BVI - Asian Relationship



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THE BRITISH VIRGIN ISLANDS HAS WITNESSED impressive growth over the past few decades, which has resulted in it becoming the leading offshore jurisdiction for company incorporation. At the same time, the nations of Asia have experienced spectacular financial success and consistent economic growth.

An interesting question therefore arises as to why, at a time when many of the world's developed economies have been in flux or decline, the BVI and Asia have managed to achieve continuous economic growth? Another question arises as to why, at a time when many Western countries are binding themselves with oppressive regulation and becoming unfriendly towards international finance centres, the BVI is still embraced as a jurisdiction of choice in Asia?

To a great extent, the answer is rooted in the shared historic and cultural backgrounds between the BVI and Asia and, fundamentally, in the fact that BVI companies, partnerships and trusts are some of the most innovative, flexible and commercially successful investment vehicles in the world.

Culture and History

In a sense, there is a shared heritage between the BVI and Asia. The BVI, together with many Asian nations were, and still are, developing economies that have emerged from their colonial past and have had to find a role in the international marketplace and develop a better future for their populations.

What links Asia and the BVI is that they have managed to find success. These nations have earned their success through

ensuring the free flow of international finance, in creating permissive business environments, in developing their skill bases and in embracing international trade. It is not coincidental that, like the BVI, Asia has some of the world's most dynamic international finance centres, with Singapore and Hong Kong as notable examples. Like the BVI, these jurisdictions also found success through low taxation, minimal regulatory interference and legal certainty. It is also notable that the development of the BVI as an international finance centre in the late 1970s and early 1980s mirrored the transition by Hong Kong and Singapore to service based economies and the parallel 'opening up' and development by China of its special economic zones.

Investment Vehicles of Choice

BVI companies are the investment vehicle of choice for international business activity. This is well illustrated by the sheer number of BVI vehicles as of 31 March 2013, with over 480,000 active companies, 565 limited partnerships and 1,016 private trust companies in the BVI, of which 233 were licenced entities and 2,303 were mutual funds¹. In fact, the BVI is the second most popular offshore fund domicile.

In addition, the use of BVI companies is so popular with investors that they are frequently the most significant contributors to foreign direct investment (FDI) in Asian countries. For example, in 2010, BVI companies were responsible for approximately US\$111

¹ *Statistical Bulletin, Q1 2013, Vol. 30, March 2013, British Virgin Islands Financial Services Commission.*

billion of FDI into the People's Republic of China (representing about 10 per cent of overall FDI into the PRC)² and involved with approximately US\$1 billion of FDI into Taiwan (representing about 25 per cent of overall FDI into Taiwan)³.

To take another example, in the first quarter of 2011, investment into Indonesia through the BVI amounted to US\$200m in respect of 30 different projects⁴. Similarly, of a total of the US\$210 billion in FDI invested into Vietnam from 1988 to 2012, approximately US\$15 billion has been invested through BVI companies, representing investments into more than 510 projects⁵. What is clear, from this small sample, is that BVI companies are involved in large scale, tangible and valuable projects in Asia and therefore directly contribute to Asian economic development. It is not at all certain, that without the ability to structure FDI through the BVI, such FDI would occur.

However, BVI companies are not only used to structure the efficient use of investment into Asia but are also used by Asian clients to structure their outward investment into developed economies. To take one example, in 2010 Chinese firms invested approximately US\$69 billion overseas and,

² *Chinese Ministry of Commerce, www.fdi.gov.cn.*

³ *Taiwan Investment Commission, www.moeaic.gov.tw.*

⁴ *Domestic and Foreign Direct Investment Realisation, Q1 Results 2011, Indonesia Investment Coordinating Board, 20 April 2011.*

⁵ *British Virgin Islands faces FDI block by Nguyen Dinh Nha and Bao Tri, Vietnam Investment Review, 19 August 2013.*



of this amount, BVI companies, together with Hong Kong and the Cayman Islands, accounted for roughly 75 per cent of such investment flows⁶. It is therefore clear that BVI companies are not only the vehicle of choice for structuring investments into Asia, but are also a preferred vehicle in structuring investments out of Asia.

BVI vehicles are also used in a wide array of different structures. For example, both BVI companies and partnerships are popular among investors as joint venture vehicles, funds or holding structures. BVI companies are also increasingly used as listing vehicles on international stock exchanges, such as the Hong Kong Stock Exchange and the Singapore Stock Exchange. However, the use of BVI structures is not solely confined to the industrial and commercial sphere as BVI companies and trusts are frequently used as family and personal wealth management tools.

Reasons for Using BVI Companies and Partnerships

The simple reason for using BVI companies and partnerships is that both the BVI business environment and its dynamic corporate legislation ensure that BVI companies are the most efficient vehicle for international investment and commercial activity. To take a few examples:

Tax: BVI companies are tax neutral. A BVI company does not pay tax in the British Virgin Islands nor are there any foreign exchange controls or regulations in the BVI. Consequently, BVI companies can be used in international investment planning without fear that an additional layer of tax will fall within the structure.

Flexibility: Most activities conducted by BVI companies do not require regulation, save for a narrow set of activities such as insurance business, banking or acting as a mutual fund. Therefore a BVI company can conduct its activities with minimal obstacles.

Innovative legislation: BVI companies are incorporated under the BVI Business Companies Act, which is an innovative piece of legislation designed to facilitate the efficient incorporation and administration of companies. Companies can be operated

⁶ *Chinese Overseas Direct Investment in the European Union* by Jeremy Clegg and Hinrich Voss, *Europe China Research and Advice Network*.

with ease: there is no concept of share capital, no requirement for annual shareholder meetings, no requirement to file audited accounts, no requirement for BVI resident directors and corporate transactions, such as mergers, migrations and the acquisition or disposal of assets, can be effected simply and quickly.

Legal certainty: The BVI is a common law jurisdiction with legal principles that are easily understood by lawyers trained in other common law jurisdictions, such as Hong Kong or Singapore. The BVI has a dedicated commercial court with a resident judge and the ultimate court of appeal is the Privy Council in London. As a result, the BVI offers commercial certainty as the legal framework is familiar, solid and predictable.

Stability: The BVI is a British Overseas Territory and offers a stable political environment. In addition, the BVI is on the OECD White List on meeting international taxation standards.

Inexpensive: The BVI offers a cost-effective jurisdiction in which to do business. The set up fees for a company, partnership, fund or trust arrangement are significantly lower than other jurisdictions. In addition, the ease of administration of BVI vehicles ensures that ongoing operating costs are minimal.

These are just a few of the many benefits of using the BVI for investment but what is clear from these examples is that the BVI provides an innovative business environment which is designed to meet the needs of cross-border investment and capital raising.

Indirect Benefits

Aside from the direct advantages of using BVI companies to structure investments into and out of Asia, the BVI has also brought significant benefits to Asian economies. BVI companies are flexible, tax neutral and secure investment vehicles, and by using such companies in transactions, many Asian countries have gained access to capital and a pool of sophisticated international investors that they may not otherwise have had exposure to. In addition, through the use of the BVI's pool of highly qualified and experienced professionals, Asian countries have received access to professional services and institutional support that has historically been unavailable.

In addition, the BVI continues to act as a partner with Asian countries and directly invest in those countries, whether by sharing talent and know-how or by directly creating employment opportunities in such jurisdictions. For example, by virtue of the successful growth of the offshore industry, many law firms, trust companies and accounting firms have opened offices in Asian jurisdictions.

The opening of such offices has led to a growth in employment, increased local tax revenues, and the sharing of knowledge and talent in local jurisdictions. This investment can only contribute to the skills base of Asian nations, and has a knock on effect by increasing wider economic activity as local lawyers and accountants become involved in structuring investments.

It is therefore clear that the BVI has had a long and mutually beneficial involvement with Asia. The widespread use of BVI companies has allowed the efficient allocation of capital into developing nations, unencumbered by regulation or unnecessary taxation, and the engagement by the BVI with Asia has increased the commercial options available to Asian nations. One cannot stress enough, that without the ability to structure investments in this fashion, investors may not be willing to take on the additional risk required with direct investment. In a sense, the success of the BVI and Asia mirror and support each other and it is hoped that the mutual beneficial development of such nations will continue. ■

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