

# Transparency International UK submission to the British Virgin Island Commission of Inquiry

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## Introduction

This inquiry offers an opportunity to reflect on possible corruption in the British Virgin Islands (BVI) and address any conditions which may allow it to arise. At Transparency International we define corruption as the abuse of entrusted power for private gain. This includes a range of activity including bribery, embezzlement of public funds, abuse of functions, cronyism and nepotism.<sup>1</sup>

There are several factors that make the BVI vulnerable to corruption.

The islands' heavy dependence on the financial services industry will inevitably have an impact on its domestic political culture. Although the interests of this sector and the population's will intersect – for example, in the provision of jobs and essential revenue for public services – this is not always the case, and when they do not it is challenging for politicians to go against the powerful vested interests of this industry.

Furthermore, weak anti-money laundering checks by company formation agents and lawyers, poor oversight by supervisory bodies, and a lack of effective accountability measures have allowed the island to be flooded with money of questionable origin, attested to by numerous cases which we list below. This suggests that not only are the islands heavily dependent on a single industry, but that industry's success is predicated on turning a blind eye to criminality, which may permeate into the domestic political sphere. Better legislation and enforcement – not least a publicly available register of beneficial ownership – could help address these issues. After years of very public opposition the BVI has followed the Cayman Islands, other Overseas Territories and Crown Dependencies in agreeing to these changes which we have welcomed.<sup>2</sup>

To compound the above, the small size of the jurisdiction makes it difficult to manage complex conflicts of interest or call-out wrongdoing. When politics can be easily entwined with the interests of family and associates, the usual safeguards against impropriety, provided by more heterogeneous populations with more established independent media and civil society, does not exist in the same way as in larger democracies. It is for this reason that BVI should be extra vigilant about the threat of corruption and the factors that can give rise to it.

The fate of other small jurisdictions provide a cautionary tale; Malta and Cyprus are case studies in how the malign influence of corrupt actors can go beyond economic crimes to the point of state capture. Avoiding such a situation will require not just a thorough inquiry, but the robust legislation and proper enforcement needed to create strong safeguards against dirty money and its corrupting influences on local democratic institutions.

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<sup>1</sup> <https://www.transparency.org.uk/publications/corruption-laws-non-lawyers-guide-laws-and-offences-uk-relating-corruption-behaviour>

<sup>2</sup> <https://www.transparency.org.uk/british-virgin-islands-join-uk-overseas-jurisdictions-public-company-ownership-commitment>

## Responses to questions

- 1. The general background as to what makes the BVI attractive for criminal enterprises such as laundering the proceeds of crime/corruption? Other than the secrecy of beneficial holdings, are there any other factors that contribute to the BVI being attractive for criminal enterprises?**

There are a number of factors that increase the risks of corruption in BVI and make it attractive for criminal enterprises such as laundering the proceeds of crime. In part this is the nature of small jurisdictions where conflicts of interest are much more likely to occur but there are also specific issues relating to BVI which we outline below.

### Corruption and intimidation risks in small jurisdictions

The reality of small jurisdictions is that everyone knows each other and this creates complex conflicts of interest. It can also create a culture where these conflicts are accepted as a normal part of life rather than recognised as a corruption risk that needs to be managed. It is also particularly difficult for individuals to speak out about practices. In BVI, this is arguably compounded by the lack of Freedom of Information legislation or meaningful measures to protect whistleblowers, both of which are key elements of any robust accountability system.

Catherine Turner had worked in the financial services sector in the Isle of Man before going on to work in regulation and then the charity sector. When she explained to small businesses how big chains used the Isle of Man to avoid paying tax in a BBC documentary, she was denounced by the Isle of Man First Minister and political establishment as well as attacked online for having put jobs in the community at risk. The environmental charity for which she worked also had its government contract withdrawn.

Robert Paterson had a seat in the upper chamber of the Manx Parliament in his role as bishop of Sodor and Man. He describes how whenever he spoke about the need for transparency in the financial services sector he was invited for coffee by government officials to remind him why they felt transparency was not necessary and that the existing system worked well.<sup>3</sup>

There are similar challenges in Jersey. John Christensen, formerly economic adviser to the island's government from 1987 to 1998, describes how he felt compelled to leave Jersey in order to speak out about the jurisdiction's financial sector.

*“On a small island, you can't go against the establishment, particularly very senior politicians, without having to leave. If you do, the atmosphere immediately becomes toxic for your job, family, and children.”<sup>4</sup>*

The Paradise Papers also demonstrated how in small jurisdictions it can be difficult to have the necessary distance between regulators and those they are regulating. In the Isle of Man there were situations where regulators effectively outsourced policy making on tax law to

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<sup>3</sup> <https://www.theguardian.com/news/2017/nov/14/after-successive-offshore-scandals-are-there-signs-of-change-in-isle-of-man> [accessed 31 March 2021]

<sup>4</sup> <https://www.institutionalinvestor.com/article/b1qwpmk6j1zv70/The-Heiress-the-Queen-and-the-Trillion-Dollar-Tax-Shelter> [accessed 30 April 2021]

accounting firms.<sup>5</sup> In another case regulators colluded with a legal firm developing a new tax evasion scheme to create the necessary legal framework to allow it to happen.<sup>6</sup>

A large finance sector can also create a “finance curse”<sup>7</sup> where the impact of the financial services sector can cease to be a benefit and starts to distort and undermine the economy. Christensen argues that,

“An oversized financial sector can kill the rest of the economy. We saw it with housing prices and inflation across Jersey. It’s a process known as the ‘financial curse.’”

### **Formation agents and lawyers on the Islands with weak anti-money laundering procedures**

The BVI’s national money laundering risk assessment finds the islands’ company formation sector to be at a high risk of being used to form and administer companies which go on to be used in moving or concealing illicit funds.<sup>8</sup>

*“The TCSP (trust and company service provider) sector is the primary gateway to the Virgin Islands’ international financial services sector. TCSPs international client base, the corporate and legal structures facilitated by TCSPs, as well as the other services provided, are attractive to international criminals who wish to obscure ownership of property, evade foreign taxes or obscure the criminal origins of the property”*

*“Between 2015 and 2019 TCSPs filed 1,636 SARs [suspicious activity reports],<sup>9</sup> or roughly 68% of total SARs received. The transactions identified in these SARs were valued at \$187 billion and accounted for 99% of the value of all reported SARs.”*

*“While the control measures currently in place within the sector have helped to somewhat mitigate the overall risk, the inherent vulnerabilities within this sector remain high.”*

In the BVI’s 2017 national risk assessment (NRA) for money laundering it was noted that “High-risk areas for improvement are TCSPs’ over-reliance on third parties to obtain relevant client information and ensuring accessibility of records. As regards client verification, BO [beneficial ownership] and CDD/ECDD [customer due diligence/enhanced customer due diligence], TCSPs could be more effective in applying risk assessments and more proactive in filing SARs/STRs.”<sup>10</sup>

Numerous investigations by journalists have highlighted weak anti-money laundering (AML) procedures of TCSPs. In 2013, the International Consortium of Investigative Journalists (ICIJ) identified Commonwealth Trust Limited as having weak AML procedures which

<sup>5</sup> <https://www.theguardian.com/news/2017/nov/06/isle-of-man-refunds-super-rich-private-jets-paradise-papers> [accessed 16 April 2021]

<sup>6</sup> <https://www.bbc.co.uk/news/world-europe-41888613> [accessed 16 April 2021]

<sup>7</sup> [https://research-api.cbs.dk/ws/files/44583915/duncan\\_wigan\\_the\\_finance\\_curse\\_postprint.pdf](https://research-api.cbs.dk/ws/files/44583915/duncan_wigan_the_finance_curse_postprint.pdf)

<sup>8</sup> [https://www.bvifsc.vg/sites/default/files/money\\_laundering\\_risk\\_assessment\\_2020\\_report\\_final.pdf](https://www.bvifsc.vg/sites/default/files/money_laundering_risk_assessment_2020_report_final.pdf)

<sup>9</sup> Filings by regulated businesses to law enforcement where they think a transaction involves the proceeds of crime.

<sup>10</sup> [https://www.bvifsc.vg/sites/default/files/nra\\_report.pdf](https://www.bvifsc.vg/sites/default/files/nra_report.pdf)

enabled criminals to use BVI companies registered by the firms' clients to steal funds from the hedge fund, Hermitage Capital.<sup>11</sup>

The ICIJ's subsequent Panama Papers investigation, published in April 2016, gave insights into another BVI TCSP, Mossack Fonseca, and the weak procedures within their company and those of their partners.<sup>12</sup> One leaked memorandum from a partner of Mossack Fonseca said: "Ninety-five per cent of our work coincidentally consists in selling vehicles to avoid taxes."<sup>13</sup>

A follow-up investigation in June 2016, based on further leaked correspondence after the initial Panama Papers exposé, showed consistently poor AML practice by Mossack Fonseca and its partners. Emails showed the firm did not know who owned companies they had helped form, highlighting lax due diligence and monitoring procedures.<sup>14</sup> For example, in 2017, Mossack Fonseca's BVI office decided to continue offering services to the daughter of a Latvian politician who is under currently under criminal investigation and on a US sanctions list for corruption offences.<sup>15</sup>

In 2020, the Organised Crime and Corruption Reporting Project (OCCRP) revealed how Mossack Fonseca had backdated documents in order to help a client and associate of Belarusian President Alexander Lukashenko avoid EU sanctions.<sup>16</sup>

Whilst these firms might be cast as 'rotten apples' in the BVI, the frequency with which shell companies registered on the islands appear in money laundering cases indicates that weak procedures to detect and deter financial crime are persistent problems with formation agents based there. Consequently, the island has developed an extremely poor reputation internationally, becoming increasingly synonymous with serious financial crime.

### **Weak oversight over the TCSP sector**

Poor AML defences shown by BVI TCSPs can be in part attributed to weak oversight and regulation by the BVI's Financial Services Commission (FSC). In 2019, only three assessments of TCSPs were carried out by the FSC, whilst in 2018 there were only two reviews despite there being a population of 258 TCSPs and the Government recognising they present a high money laundering risk in its NRA. These present a marked decrease from the 11 full reviews carried out in 2016. The FSC has not carried out a thematic review on a TCSP since 2015.

There are also concerns over the capacity of the FSC to carry out its role effectively. The BVI Government's 2017 NRA noted that in 2016, the FSC's AML enforcement division only had four members of staff. The same assessment noted the following threats to the BVI relating to inadequate AML supervision:

*"Having inadequate staff to perform inspections and supervisory activities could open the Territory to reputational damage by leading both to ML/TF or other financial*

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<sup>11</sup> <https://www.icij.org/investigations/offshore/caribbean-go-between-provided-shelter-far-away-frauds-documents-show/> [accessed 30 April 2021]

<sup>12</sup> <https://www.icij.org/investigations/panama-papers/>

<sup>13</sup> <https://www.theguardian.com/news/2016/apr/03/the-panama-papers-how-the-worlds-rich-and-famous-hide-their-money-offshore>

<sup>14</sup> <https://www.icij.org/investigations/panama-papers/new-panama-papers-leak-reveals-mossack-fonseca-chaotic-scramble/>

<sup>15</sup> <https://en.rebaltica.lv/2018/07/new-panama-leak-sheds-light-on-the-wealth-of-a-latvian-oligarchs-daughter/>

<sup>16</sup> <https://www.occrp.org/en/investigations/tycoon-with-close-ties-to-belarus-dictator-used-time-travel-to-evade-sanctions>

*crimes going undetected, and to a failure to monitor regularly the activities of BVI companies operating outside the Territory and take appropriate action, including assisting counterparts and law enforcement agencies”*

*“Inadequate or lax policing of the financial perimeter could lead to ML/TF abuse of the BVI financial services regime”*

## **2. Are you able to point us to any published material indicating resistance to beneficial ownership in the BVI?**

In a statement to the House of Assembly on 26 April 2017 the then BVI Premier Dr D Orlando Smith opposed beneficial ownership registers being imposed on BVI. He argued that BVI already had systems in place to fight financial crime and that the territory will lose its competitive edge as a financial services jurisdiction if it starts revealing the names of beneficial owners who decide to register their companies there.<sup>17</sup>

In an interview on BBC Radio 4’s Today programme, Lorna Smith, who was at that time serving as the executive director of the islands’ financial services trade body, BVI Finance, argued that proposals to implement a public register of beneficial ownership was undemocratic and undermined the people of the BVI.<sup>18</sup> At the same time as she headed BVI Finance, Lorna Smith’s husband, Orlando Smith was serving as the Premier of the BVI.

This aggressive anti-transparency sentiment reflects voices from within the BVI’s TCSP and legal community. For example, a solicitor based in BVI asked “Why should a businessperson conducting perfectly legitimate business be denied the right to privacy in order to do so?” and claimed that transparency campaigners were “NGO trophy hunters” that wanted to see “the BVI’s head mounted above their doorway”.<sup>19</sup>

The Caribbean Council described there being “extensive lobbying by the Overseas Territories against the amendment” to the Sanctions and Anti-Money Laundering Bill, which requires the UK Government to provide all reasonable assistance to these jurisdictions in developing open beneficial ownership registers, and compelling them to introduce them via an Order in Council if they do not do so voluntarily.<sup>20</sup> The Cayman Islands Premier, Alden McLaughlin said:

*“unless such registers become the new global standard and are being used by all major players –including the UK – then neither we nor any other Overseas Territory or Crown Dependency intend to go first and have our economies experimented with and potentially damaged”. He added that the overseas territories “stand united on this issue”.<sup>21</sup>*

More broadly, the BVI has sought to oppose public beneficial ownership transparency through multilateral initiatives. For example, CARICOM, of which BVI is an associate member, opposed the proposal and argued that “we are deeply concerned about the

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<sup>17</sup> <https://bvinews.com/uk-targets-bvi-on-beneficial-ownership-register-again/> [Accessed 31 March 2021]

<sup>18</sup> <https://bvifinance.vg/News-Resources/ArticleID/1975/BVI-Finance-Executive-Director-slams-MPs%E2%80%99-public-registers-stance-as-%E2%80%9Csmacking-of-colonialism%E2%80%9D> [Accessed 31 March 2021]

<sup>19</sup> <https://fcablog.com/2018/5/7/martin-kenney-open-company-ubo-registers-are-not-the-panacea/> [Accessed 31 March 2021]

<sup>20</sup> <https://www.caribbean-council.org/uk-territories-must-reveal-beneficial-ownership-offshore-companies-2021/>

<sup>21</sup> <https://www.caribbean-council.org/beneficial-ownership-causing-rift-overseas-territories/> [Accessed 31 March 2021]

potential impact on (OTs) economies by any impositions that would go against the spirit of democracy and diminish their standard of living”.<sup>22</sup>

- 3. Your report recommends the establishment of best-practice beneficial ownership registers. We note that following the 2018 Act, the BVI Government are committed to having open registers by 2023. Do you know of any international parameters against which “best practice” should be measured?**

Open Ownership, a non-profit focused on helping countries implement beneficial ownership transparency, have set out ‘gold standard’ for effective beneficial ownership disclosure.<sup>23</sup>

In 2020, the UK achieved a Grade B when assessed against these principles, with lack of verification of beneficial ownership information being identified as a key weakness.<sup>24</sup> This would be addressed by proposals published by the Department of Business, Energy and Industrial Strategy (BEIS), to require verification of identities of those controlling companies and the data submitted to the UK company register.<sup>25</sup> The UK Government has confirmed its intention to legislate for this as soon as parliamentary time allows.

- 4. Do you have any examples of proven money laundering through BVI companies, or further examples of money laundering using BVI companies other than those referred to in your report?**

Companies incorporated in the BVI are almost omnipresent in corruption and money laundering cases. Our report *The cost of secrecy*<sup>26</sup> found BVI companies used in 90 per cent (213) corruption and money laundering cases involving legal entities formed in the British Overseas Territories. Given high-level corruption is notoriously difficult to uncover, this represents just the tip of the iceberg of a far greater problem. Corruption, money laundering and broader financial crime represent an under-detected and under-enforced type of crime, with some estimates suggesting only 1 per cent of illicit funds are detected.<sup>27</sup> This means that it is probable that thousands of firms registered on the islands have been used for illicit purposes, whilst remaining totally undetected.

Below we outline some major corruption and money laundering cases where court proceedings have identified BVI companies playing a key role in these crimes.

### **“Operation Car Wash”**

Executives at Odebrecht were found to have bribed employees of Brazil’s national oil company using BVI firms Smith & Nash Engineering Company, and Golac Projects and Construction Corporation.<sup>28</sup>

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<sup>22</sup> <https://www.caribbean-council.org/uk-territories-must-reveal-beneficial-ownership-offshore-companies-2021/> [Accessed 31 March 2021]

<sup>23</sup> <https://www.openownership.org/principles/>

<sup>24</sup> <https://www.openownership.org/uploads/Rapid%20assessment%20of%20UK%20performance%20against%20the%20OO%20Principles%20.pdf>

<sup>25</sup> <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>

<sup>26</sup> <https://www.transparency.org.uk/publications/cost-of-secrecy>

<sup>27</sup> UNODC Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes (Oct 2011, UNODC) [http://www.unodc.org/documents/data-and-analysis/Studies/Illicit\\_financial\\_flows\\_2011\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf)

<sup>28</sup> <https://www.justice.gov/opa/press-release/file/919911/download>

## **1MDB**

The US Department of Justice identified numerous BVI firms used to steal money from the Malaysian Sovereign Wealth Fund, 1MDB. This included \$1.367 billion which was sent to BVI firm Aabar Investments PJS Limited.<sup>29</sup>

## **North Korean Sanctions Violations**

In 2020, Yang Ban Corporation, a company established in the BVI in 2014 that operated in South East Asia pleaded guilty to conspiring to launder money in connection with evading sanctions on North Korea and deceiving correspondent banks into processing U.S. dollar transactions..<sup>30</sup>

## **PrivatBank**

The former owners of Ukrainian bank Privatbank have been taken to court in Cyprus, the United States and the UK for the alleged embezzlement of billions of pounds and subsequent laundering of these funds. BVI firms are referenced in the US complaint<sup>31</sup> as well as the UK court case.<sup>32</sup>

## **BTA Bank Fraud**

BTA Bank, a Kazakh financial institution, has taken its former owner, Mukhtar Ablyazov, to court in London relating to the alleged theft of billions of pounds during his tenure as its owner. The court heard how Ablyazov had transferred significant sums of this money into BVI companies.<sup>33</sup>

## **Victor Yanukovych**

Ukrainian court documents show how the country's former President, Victor Yanukovych, used a network of shell companies, including those based in the BVI, to take \$1.5 billion out of Ukraine illegally.<sup>34</sup>

## **Azerbaijani Unexplained Wealth**

The UK's first use of Unexplained Wealth Orders – a tool for investigating suspected proceeds of corruption – involved two BVI companies holding £22 million worth of property.<sup>35</sup> These properties were ultimately owned by the wife of an Azerbaijani state banker who was jailed for his role in embezzling money from the bank he chaired.

We can provide details of hundreds of other cases where BVI companies were used to extract, move or invest the proceeds of corruption globally.

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<sup>29</sup> <https://www.justice.gov/opa/press-release/file/973671/download>

<sup>30</sup> <https://www.justice.gov/opa/pr/company-pleads-guilty-money-laundering-violation-part-scheme-circumvent-north-korean>

<sup>31</sup> <https://www.justice.gov/opa/press-release/file/1349786/download>

<sup>32</sup> <https://cn.reuters.com/article/us-ukraine-privatbank-insight-idUSKBN1FD0G5>

<sup>33</sup> <https://www.bailii.org/ew/cases/EWHC/Comm/2010/1779.html>

<sup>34</sup> [https://www.aljazeera.com/mitems/Documents/2018/1/10/f33608170ade4b18a32e023b62a11663\\_100.pdf](https://www.aljazeera.com/mitems/Documents/2018/1/10/f33608170ade4b18a32e023b62a11663_100.pdf)

<sup>35</sup> [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2020/108.html&query=\(hajiyeva\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2020/108.html&query=(hajiyeva))

## 5. Are you able to point us to any evidence of corruption within the BVI to facilitate money laundering there?

TI-UK has not conducted forensic investigations into corruption in the BVI. However, reports we have published on other financial centres in small jurisdictions point to a risk of corruption and criminality growing in places that are a magnet for illicit finance.

It is important to recognise that individuals and organisational cultures can either turn a blind eye or even facilitate money laundering without necessarily being corrupt. The challenge is that, once corrupt actors become reliant on a jurisdiction to launder money, there is an exposure to corrupt practices and incentives to help them grow. In small jurisdictions like BVI where the level of conflicts of interests are inevitably higher and where there is less separation between the regulators and those being regulated, good governance and strong anti-corruption safeguards are essential. Without strong leadership and proactively putting safeguards in place, there is a very strong risk of a slide into criminality and even state capture. We have already seen how this can happen in Malta and Cyprus.

Both Cyprus and Malta are heavily involved in golden visa cash for residency and citizenship schemes, which give rise to the potential for the corrupt to enjoy a life of impunity on European shores. Golden visas schemes are attractive to criminals in many ways. They allow laundering large amounts of money at once while providing free access to Europe. Through the sale of citizenship, Cyprus raised €4.8 billion between 2013 and 2018, while Malta gained about €718 million in foreign direct investment between 2014-2018.<sup>36</sup>

Malta serves as a gateway to the EU for non-EU financial services firms and industries, particularly those from the Arab world. However, its reliance on corrupt capital has opened it to corruption threats at home as well. Notable integrity challenges include procurement irregularities, unresolved conflicts of interest among serving government ministers, and the revolving door between the island state's close-knit political and business class<sup>37</sup>. Malta was also the only country in the EU to have an incumbent minister named in the Panama Papers revelations in 2016<sup>38</sup>. Malta has been rocked with a number of corruption scandals in the recent years, in particular the assassination of the investigative journalist Daphne Caruana Galizia and the subsequent resignation of the Prime Minister<sup>39</sup>.

Malta's score on the Corruption Perceptions Index (CPI) has been getting worse for several years, reflecting serious corruption challenges that have not been adequately addressed. With a score of 53 out of 100 on the 2020 CPI, Malta hits an all-time low, well below the Western European average. Cyprus has also continued its decline in the CPI, dropping nine places since 2012 among continued scandals linked to the golden passports scheme. Given the CPI is a survey of business elites and country experts, this shows that a slipping of standards can lead to declining confidence in a jurisdiction within the commercial world. If BVI was assessed separately from the UK in this index, we would expect to see similar conclusions.

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<sup>36</sup> [http://transparency.eu/wp-content/uploads/2018/10/REPORT-European-Getaway-Inside-the-Murky-World-of-Golden-Visas\\_web.pdf](http://transparency.eu/wp-content/uploads/2018/10/REPORT-European-Getaway-Inside-the-Murky-World-of-Golden-Visas_web.pdf)

<sup>37</sup> Transparency International Anti-Corruption Helpdesk Malta: Overview of Corruption and Anticorruption [https://transparency.eu/wp-content/uploads/2017/10/Country\\_profile\\_Malta\\_2016.pdf](https://transparency.eu/wp-content/uploads/2017/10/Country_profile_Malta_2016.pdf)

<sup>38</sup> Transparency International Anti-Corruption Helpdesk Malta: Overview of Corruption and Anticorruption [https://transparency.eu/wp-content/uploads/2017/10/Country\\_profile\\_Malta\\_2016.pdf](https://transparency.eu/wp-content/uploads/2017/10/Country_profile_Malta_2016.pdf)

<sup>39</sup> <https://www.independent.co.uk/news/world/europe/malta-prime-minister-robert-abela-joseph-muscat-journalist-murder-a9280616.html>