

A tough Act to follow

In August the British Virgin Islands will celebrate the 30th anniversary of its landmark International Business Companies Act, which gave rise to the islands' finance industry, transformed their economy and has since been emulated elsewhere. Colin Riegels recalls the Act's development in which his father, Michael Riegels – Harney Westwood & Riegels' founding partner – played a key role



Although nobody knew it at the time, the inception of the British Virgin Islands' (BVI) International Business Companies (IBC) Act occurred at some point in 1976. Nobody recalls the exact date, except that it was during the summer. Back then no one could have foreseen the dramatic positive effect the IBC Act would have, not only on the economy of the BVI, but also on the growth of the offshore sector elsewhere.

There was only one law practice there at the time, Harney Westwood & Riegels, and just two lawyers: Neville Westwood, a veteran of the Second World War, and Michael Riegels, who had recently come to the BVI with his family from Tanzania after a period of civil unrest. Harold Harney had by this time passed away. On this otherwise unremarkable day,

the rotary telephone rang with a deafening jangle. On the line was a Wall Street lawyer named Paul Butler from renowned New York law firm Shearman & Sterling. He was a highly

astute businessman who possessed characteristic American charm. He explained to Riegels that there were double-taxation treaties between the USA and various 'micro states' in the Caribbean, which offered the potential for generous US tax relief for his clients. He had been dealing with lawyers in the Netherlands Antilles, but because of the language barrier he wanted to use the BVI. Riegels said they would be happy to assist. The transaction went well. It was followed by another transaction, and another, until there was a steady stream of US tax-related work going through Tortola. Shortly thereafter the Harneys partners hired Richard Peters, a brilliant tax barrister from London. The future seemed bright.

But even in the days before Edward Snowden had been born, the all-seeing eye of the American government fell upon the BVI. The success of the double-tax treaty was causing concern in Washington, and the American authorities summoned a BVI delegation. It was led by McWelling Todman QC – 'Mac' to his friends – a native Tortolan lawyer of exceptional ability. The delegation was not especially successful. Todman would later joke grimly that their meetings had been not so much a case of "negotiation" as "plea-gotiation". The US cancelled the double-taxation treaty in 1982.

Making history

The situation looked bleak. Up until the mid-1970s the BVI had been an economic backwater. There was little infrastructure or industry, but the increasing traction that the incorporation work had brought had injected a certain degree of prosperity. People wanted the momentum to continue. The Attorney General was Lewis Hunt. A man of infectious charm and good humour, he was a native of Barbados who had proved to be a skilled draftsman of BVI legislation.

Butler suggested that the best way to respond to the cancellation of the double-tax treaty was to offer a new corporate product. Instead of promoting a structure that would create tax leakage in powerful states such as the US, the BVI should seek to create a tax-neutral company using up-to-date legislation that would provide a user-friendly, flexible corporate vehicle for multiple commercial purposes. The idea was supported by Ken Bain, the BVI's financial secretary.

Butler, Hunt, Peters, Riegels and Westwood were given the task of developing legislation to create this new type of corporate vehicle. The



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draft was written and reviewed section by section with Hunte in the Attorney General’s chambers, to work it into suitable BVI legislative format. Although later they would sometimes be referred to as the ‘gang of five’ responsible for the drafting, most of the work was done by Peters, the youngest member.

Butler recommended that the legislation be based on Delaware corporation law, the most modern in the world at the time, but it incorporated additions from innovative company legislation elsewhere too. This led to some grating jurisprudence – using American legal terminology within an English common law system – but after 18 months it was complete and on 15 August 1984 the BVI’s Legislative Council passed the new act into law. Chief minister Cyril Romney proclaimed it the most important law of the decade. In fact, it would transpire to be probably the most important piece of legislation in BVI history since the emancipation.

Growth spurt

Looking back at the Act now, it is easy to overlook how radical it was at the time. It streamlined the incorporation procedure, removed the requirement of corporate capacity, abolished the need for corporate benefit, recognised that companies could exist without members and permitted companies to provide financial assistance for the acquisition of their own shares. It provided for true statutory mergers, and created new statutory tools for restructuring and reorganisation. Most of these innovations would not appear in English company law until the Companies Act 1986, and some did not appear until the Companies Act 2006.

It is not hyperbole to say that the IBC Act was ahead of its time.

At first it was slow; few new companies were incorporated and people were tempted to write it off as a failure. Then suddenly it all started to bloom. From about 1989 to around 1997 incorporation numbers exploded, growing exponentially at the almost unmanageable rate of nearly 50% a year. The infrastructure at the Companies Registry struggled to keep pace with the volume. Lawyers, accountants and trust companies poured into Road Town like miners in the California gold rush. New offices were built. House prices surged. Infrastructure was upgraded. For better or worse the BVI experienced

rapid economic growth on a scale it had not foreseen. In 1999, after a study on behalf of the UK, accountancy firm KPMG estimated that the BVI had amassed a 41% global market share for offshore vehicles. By 2004 the BVI would have the 12th highest GDP per head of population in the entire world.

Eventually incorporation numbers stabilised. Cynics suggest that the end of the growth spurt coincided with the creation a new regulator, the Financial Services Commission. This was probably just a coincidence. Like any industry, there is a stage where further growth is not really possible, and the objective is then to consolidate the gains. By the new millennium the BVI was coming under external pressure to change its company legislation. The IBC Act had been predicated on ‘ring fencing’. Broadly speaking, so long as the company did not conduct any business in the BVI, then it was treated as tax exempt for BVI purposes. This was seen as creating “unfair tax competition” by the OECD. The process of replacing the IBC Act with a modern statute began and it was repealed on 31 December 2006.

Influence on the Caribbean and beyond

The tall steel and glass offices in modern Road Town seem a million miles away from the old offices with ceiling fans. The prosperity to this island nation brought about by the Act is evident. In fact, the IBC Act proved to be such a boost to the BVI’s economy that it was copied and implemented by other countries seeking to introduce new business from the finance sector. News of its success as model legislation for kick-starting the influx of wealth spread across the Caribbean and beyond, resulting in subsequent similar legislation in several jurisdictions.

In 1990 the Bahamas and Belize created their own international business companies legislation. They used the IBC Act as a template and the resulting legislation was almost word-for-word the same as the BVI’s.

The Act was also copied nearly verbatim in the drafting of Anguilla’s International Business Companies Act in 1994 (amended in 1998 and 2000). St Kitts and St Lucia also enacted similar legislation to the BVI’s, and the IBC Act of St Vincent and the Grenadines was heavily influenced by it.

This August the BVI will mark the 30th anniversary of its seminal IBC Act. You have to wonder when those five men sat down in the Attorney General’s chambers and began drafting, whether they had any idea that what they were about to do would transform a nation and influence a global industry.

Colin Riegels is a partner and global head of banking and finance at Harney Westwood & Riegels.