

International Cooperation

Presentation by Mr. Alcedo Fahie, Acting Director (Interim) of the Financial Investigation Agency of the British Virgin Islands

Good morning to everyone. My job this morning is to provide you with an in-depth look at International Cooperation in the Virgin Islands. This presentation will focus on the functions of the Financial Investigation Agency also referred to as the Agency and its role in International Cooperation matters. It will indicate how the Agency and other key players can assist with the provision of information as it relates to International Cooperation thereby reducing the challenges that may arise.

I will also provide a summary on other key players as they relate to International Cooperation. I will begin with a brief background on the Agency and continue to speak about the powers and the primary functions. I will also tell you how to access information from the Agency. I think this is necessary as it attempts to remove any ambiguities or misconceptions that one may have regarding the issue of International Cooperation.

International Cooperation in the Virgin Islands, is a tricky subject that is sometimes misunderstood. For all intents and purposes, it is directly related to the number of BVI registered companies that exist globally. These companies are most times only registered in the territory and has no other connections save for the registered office and registered agents. For this reason, the sharing of information regarding these companies and their trading practices and purposes poses significant challenges.

Notwithstanding the perceived challenges, the territory has been able to produce information as requested on the whereabouts of these companies, when requested to do so. There are two main agencies with the responsibility for the exchange of information regarding financial crimes. These are the Attorney General's Chambers and the Financial Investigation Agency (the Agency). The Attorney General is the Central Authority of the Virgin Islands and the Agency is the Financial Intelligence Unit (FIU).

As stated before, the Agency is the official FIU of the Virgin Islands. It is an autonomous body having been established in 2004, by the Financial Investigation Agency Act 2003, (FIA Act) as amended. Section 4 (1) of the FIA Act gives the Agency the responsibility for *"... receiving, obtaining, investigating analyzing and disseminating information which may relate to:*

- a) a financial offence or the proceeds of a financial offence; or*

b) a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests."

In this regard, the Agency has been designated as an FIU with the additional responsibility for the execution of formal requests received via the Attorney General.

As an FIU, the Agency is also mandated to exchange information on financial crimes in accordance with Section 4 (2) (g) of the Financial Investigation Agency Act 2003, as amended. The section provides the Agency with the authority that it *"may provide information relating to the commission of a financial offence to any foreign financial investigation agency, subject to such conditions as may be considered appropriate by the Attorney General"*.

Additionally, the Agency is a member of the Egmont Group of Financial Intelligence Units. As a member of the Egmont Group, the Agency is a party to the group's Principles for Information Exchange. These principles allow the Agency along with other Egmont Members to overcome any obstacles concerning cross border information sharing. The principles are binding on all members of the Egmont Group. Under Section 11 of the Principles for Information Exchange: *"FIUs should exchange information freely, spontaneously and upon request, on the basis of reciprocity. FIUs should ensure that they can rapidly, constructively and effectively provide the widest range of international-cooperation to counter money laundering, associated predicate offences and the financing of terrorism. FIUs should do so both spontaneously and upon request, and there should be a lawful basis for providing co-operation"*. Therefore, the Agency of which I am currently in charge, is mandated by both the FIA Act and the Egmont Principles to ensure that International Cooperation exists.

In addition to Egmont members, the Agency exchanges with other law enforcement authorities and FIUs as necessary. This exchange of information is also based on reciprocity and trust. However, this process is referred to as the informal process. The use of the informal process allows the requesting agency/authority to seek information for intelligence purposes. To facilitate this process, the Agency is authorised under Section 4 (2)(d) of the FIA Act to *"... require the production of such information, excluding information subject to legal professional privilege, that the Agency considers relevant to the performance of its functions"*. Under Section 4 2 (A) *"Any entity or individual, required to provide the Agency with information under subsection (2)(d), shall do so within five working days of receiving a written request."* Section 4 (4) of the FIA Act states that *"Any person failing or refusing to provide the information required under subsection (2) (d) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both"*. The

other known process is the one wherein information is requested via diplomatic channels to the Attorney General for use in court proceedings. Both processes are detailed as follows:

INFORMAL PROCESS

A law enforcement agency or FIU may contact the Financial Investigation Agency directly, to request information for intelligence purposes. The Agency will only deal with law enforcement authorities and FIUs. If you are unable to identify yourself as a law enforcement agency or an FIU, you may find it difficult to access the required information.

In order to access information from the Agency in relation to a BVI registered entity or individual you must first indicate to the Agency that an alleged offence has been committed or is about to be committed. To illustrate this, a summary of the facts should be provided. The summary should indicate the entity/individual's role in the commission of the alleged offence. In the absence of a short but detailed summary, only basic public information will be provided. However, if a summary is provided showing the alleged involvement, the Agency will use its powers to obtain the information requested. The information will be provided in a timely basis generally within 21 days.

The information that the Agency will provide is to be used for intelligence purposes only. In order to access the information, for evidence, the requester must follow the rules mentioned in the formal process. Furthermore, the Agency's reply to your request will include a reminder that the information is provided for intelligence purposes only.

Additionally, the information is provided to the requesting agency for the use of that particular agency. The information should not be shared with a third party (ies) without the prior written permission of the Director of the Financial Investigation Agency. However, in some instances permission is granted to share the information with domestic law enforcement agencies as part of the reply.

FORMAL PROCESS

During the formal process information can be requested for evidence or investigative purposes through the formal diplomatic process.

In the case of the USA, a Mutual Legal Assistance Treaty (MLAT) currently exists between the USA and the United Kingdom of Great Britain and Northern Ireland concerning the Cayman Islands. This treaty was extended to the Virgin Islands in 1990. Under this Act, known as the Mutual Legal Assistance (United States of America) Act, 1990, the prosecuting agency or Attorney General makes a formal request to the Attorney General

of the Virgin Islands for the information requested. The Treaty stipulates how the information is to be supplied/granted.

In the absence of MLATs, a request should be sent to the Attorney General requesting information on the entity. These requests are authorized under the Criminal Justice (International Co-Operation Act) 1993 as amended. Under Section 5 of this Act the requirement is that the request must come from the recognized Central Authority, court or tribunal of a foreign jurisdiction with the authority to make such a request.

The jurisdiction from which the request emanates would generally determine the manner in which it is processed in relation to the issue of dual criminality. However, there may still be limited circumstances where assistance may not be granted. These would be where the offence is not one which is similar to that of a Virgin Islands offence, in that there is no dual criminality and that there is not in force a Treaty between the jurisdiction and the Virgin Islands, which eliminates the need for such. Furthermore, within the request there must be an extract from the relevant statute, law or code. Unfortunately, a quote of the law will not suffice, it must be an extract.

The following requirements must be met to ensure compliance with the laws of the Virgin Islands:

- Substantive offence must be criminal in nature.
- The request must establish grounds for believing that the offence in question has been committed (as opposed to a fishing expedition) this would be done within the body of the request which should set out the factual background of the information possessed by the foreign authority which led to the belief.
- The request must show again via the facts as set out, why the foreign authority believes the information is present in the Virgin Islands.
- In relation to the offence, criminal proceedings must have either been instituted or that an investigation is being carried out.

Having provided this information to you, the Agency is of the view that the informal process should be considered prior to invoking the formal process. Our view relates to the following:

- The informal process saves time
- The Intelligence provided can assist in building your case(s)
- Intelligence provided can fill intelligence gaps and may be able to point you in the right direction especially regarding non-resident individuals or entities.
- You can always ask for additional information as required.
- We can readily confirm whether it is a BVI registered entity or not, etc.

