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A World Apart: Separating Fact from Fiction post-Panama Papers

Thank you and good afternoon. Welcome everyone and thank you for chairing Dominic. It is good to see you again… and it's good to see a strong Bermuda contingent in the house!

It's always energising to cross the 'Pond,' to meet with our UK-based industry colleagues. It is a great opportunity for us to listen and learn. Simply being in Europe is kind of exciting for some of us. In fact, at five past eight, I need to find a decent pub just so I can watch the severe drubbing Liverpool will deliver to Villareal in tonight's Europa semi-final… Did I mention, I'm an optimist?!

The past few weeks haven't been so light-hearted, however—at least for some offshore financial centres. The saga of the Panama Papers has ignited a sensationalistic firestorm that threatens many reputations and, indeed, some livelihoods.

This is nothing new, mind you. The onshore Goliaths—hello, *London*?—have made no pretence of blunderbuss targeting offshore international financial centres and labelling us as the new *Axes of Evil*.

I'm sure anyone here from an offshore centre will agree we have all been the convenient whipping boys for hypocritical nations, self-serving politicians, and crusading NGOs for quite some time.

Let me be clear: If I'm going to hurl the "*hypocrisy*" grenade I need to keep this real. Some IFCs may actually deserve it. Many have ignored the evolving regulatory landscape of recent years. Amid the damning headlines, many have turned a blind eye to accommodate those who would use their domiciles to hide assets and evade legitimate taxes. Many continue to embrace environments that encourage anonymity; that allow banking secrecy. Several still resist tax-treaty partnerships or cooperation with international governments and global law-enforcement agencies. I'm talking about the type of locale Somerset Maugham once described as a "sunny place for shady people"—though, to be fair, at the time, he was actually writing about the very *onshore* Cote d'Azur!

Now the pin has been pulled on the grenade, we should also acknowledge that we recognise the spotlight is shone upon Bermuda, the Channel Islands and Cayman—because we're *successful*! It is rare to see a headline blasting Anguilla, Nevada, Naru…

But the real problem is, the super-powers' self-righteous and vociferous attacks are *indiscriminate*. They make no distinction between the Vanuatus, the Seychelles, the South Dakotas… the Panamas… and those *other* real offshore centres, that are, in a regulatory sense at least, a world apart.

Very often, this indifference is politically-motivated—on both sides of the Atlantic. As Richard Hay of Stikeman Elliott has pointed out: the esoteric intricacies of international finance are far trickier to explain in layman's terms than public-pleasing attacks on global corporations, wealthy individuals, or small island nations. Why let the facts get in the way of a good story?

One of the BBC's most telling interviews in recent weeks, for those that *were* listening, was with James Quarmby, a tax-planning specialist at Stephenson Harwood. James calmly, clearly and succinctly informed his combative but woefully unprepared breakfast TV anchor there are millions of people in Britain who invest in what he deemed "*mundane*" offshore funds. Millions of law-abiding citizens make investments to grow or preserve capital and, dare I say it, to gain tax efficiencies—and then declare the profit on their tax returns. In reference to the scandalous Cameron investment in a Barbados-domiciled distributor fund administered out of Ireland: As Quarmby put it, "I think the headline should be, 'Man Makes Modest Investment and Pays All His Tax.'"

The very frustrated interviewer—flapping for a story—badgered "well, if it is so mundane—why do it offshore???" And there lies the problem. We—and I'm talking to everyone in this room—we have not done a good enough job in explaining what we do—and why.

Let's just answer that question up front: A primary advantage to setting up offshore is tax neutrality. The real point is the avoidance of double taxation (particularly withholding tax). Upon redemption and receipt of proceeds, how you then sort out your own tax liability in your own jurisdiction is up to you.

Couple this neutrality with portfolio diversification, the offshore regulatory environment, the skill, knowledge, experience and agility of the regulator, the speed to market, the nexus of qualified service providers and the overall business friendly approach and you have the situation where it is easier to do business, where operating costs are reduced and management fees can be lowered.

If you haven't already seen it, there is an excellent note on the AIMA website to this effect. Their summary one-liner is: "What sets offshore apart is the combination of tax neutrality, investment flexibility and sophistication."

We need to be clear, direct and less convoluted when we deliver the message because we are facing a tsunami of fanaticism and misinformation.

I can tell you that Bermuda has seized on the Panama Papers as an opportunity—an opportunity to differentiate ourselves from those jurisdictions that can't claim our longstanding, blue-chip record of transparency and compliance. An opportunity to explain the basic economics of globalisation. An opportunity to clarify that our regulatory and business ecosystem is pragmatic and appropriate. An opportunity to remind the powers-that-be that just because we have palm trees, sonorous tree-frogs and a rather pleasant climate, not to mention our very own tax system, we are not degenerates engaged in the business of illicit, illegal, or even immoral, wrongdoings. Now, for obvious reasons, based on my background, I am using Bermuda as my example, but there is no reason why several of my jurisdictional cousins can't apply the same approach.

Here's what *we* say when we get labelled as one of the axes of offshore evil. We tell the world what Bermuda *is* and what it *isn't*. We put our value proposition into concrete terms whenever possible. We point out facts like: "Among our many tax information exchange agreements, we have a TIEA with Canada that allows Canadian companies to repatriate active business income via dividend. This way, the company with the offshore vehicle can reinvest in their home country—which means they can maintain and create jobs onshore by having a minimum of five people offshore."

We have to prove we are more than just low-tax jurisdictions. We need to illustrate the value we return to global economies, the tangible worth offshore finance centres deliver to larger nations around the world.

We have to combat this myth that all we do is deprive HMRC coffers of billions in taxes that are due to be rendered unto Caesar. Bermuda has spoken out strongly on this point, because we're proud of what we *give*, versus what others think we *take*.
Citing actual data helps our case. A study released last year found our little island supports an estimated half-million jobs worldwide, including 70,000 in the UK. Notably, Bermuda is a destination for financial investment by onshore pensions and governments amounting to more than $20 billion. Have a look at the Jersey Finance website and see the infographics that show Jersey's value to Britain. These are excellent.

This is the area where we need to focus. I call it the W-I-I-F-M Factor: *What's In It For Me*? Make it known to the ordinary person that if they actually want to have a pension available to them after 40-plus years on the docks, or in the manufacturing plant, or in the classroom, then there needs to be a Jersey or Cayman or Bermuda to make sure those pension fund investments have had a chance to survive and grow over the decades.

Now you've got a more compelling argument when your domicile is pilloried in *The Guardian* or by Christian Aid.

Bermuda's all-important reinsurance industry has some pretty eye-popping statistics. Bermuda is home to companies that bail out cities, countries and coastlines after disasters or natural catastrophes. Their claims-payment scorecard hits home hard. Examples read like this:

- 20% of December 2015 UK flood losses
- 62% of claims for the UK's largest peacetime fire and explosion—the Buncefield oil-terminal fires of 2005
- 9% of the World Trade Centre 9/11 claims
- 25% of US medical-liability re/insurance
- $22 billion to rebuild the US Gulf coast after Hurricanes Katrina, Rita and Wilma
- Over 50% of reported liabilities from the 2010 New Zealand earthquake
- And Bermuda provides more than a quarter of the capacity for Lloyd's of London

So—Britain, ask yourself: *W-I-I-F-M*? Well, if you want flood coverage, if you want excess liability capacity – if you want Lloyd's to survive and prosper… You need Bermuda.

So—United States, ask the people of Louisiana, New York and the oil refineries of the Texas Gulf if they think Bermuda is a giver or a taker.

The fact is, Bermuda *IS* very different than what scaremongers would like us all to believe. We have worked for nearly a century to maintain a quality jurisdiction, and we're not about to have it undermined by those who don't understand it.

Coincidentally, just 10 days before this month's release of the Panama Papers, the European Union provided a forceful endorsement of Bermuda's robust, mature, and proficient regulatory and legal environment. The EU awarded Bermuda full equivalency with its own Solvency II insurance regime—surely an undeniable vote of confidence in the way we handle our business? Bermuda and Switzerland are currently the only two non-EU countries to hold that distinction.

ESMA provided a similar vote of confidence to Guernsey and Jersey by recommending them for equivalency with the AIFMD. We congratulate our colleagues in the Channel Islands. Bermuda is currently in the next wave of assessments—along with Australia, Canada, Japan, the Cayman Islands and the Isle of Man.

In the United States, the National Association of Insurance Commissioners (NAIC) designated Bermuda a 'qualified' jurisdiction. Our Bermuda Stock Exchange is a full member of the World Federation of Exchanges.

Bermuda was the first offshore financial centre to qualify for the Organisation for Economic Cooperation and Development 'white list.'

Interestingly, the OECD did make it very clear who does and who doesn't qualify as a tax haven. You might be interested to know that in 1998, the OECD identified four factors that should ***ALL*** be met to earn the tax-haven title.

Do you know what they are?

1) lack of transparency
2) lack of information exchange
3) no substantial activity
4) no or nominal tax on income

Well, Bermuda may tick that latter box (though our 15.5% income tax on payroll is hardly nominal). How do those criteria line up for your jurisdictions?

Think about it—does this sound like a tax haven to you: a country that complies with global anti-money-laundering directives and anti-terrorist financing standards? That has had a beneficial ownership register in place for 70 years? Which holds 90-plus tax-transparency treaties with countries around the globe? And does not have laws that support bank secrecy?

Applying the OECD criteria quite clearly shows that Bermuda is *NOT* a tax haven.

These are Bermuda's bragging rights and I, for one, am proud to brag. We need to. We are under fire and in order to be heard, we have to loudly, strongly and definitively declare our value proposition to the world.

As we well know, there are many completely legal and legitimate reasons for going offshore:

- Convenience, for starters. Millions of Britons, Americans and others live abroad and want access to local banks to deposit paycheques, pay bills or get cash. Business owners, especially those involved in e-commerce, who have customers around the world, often prefer to incorporate in a jurisdiction where it's easier to process payments from a host of varied sources.

- Asset protection. We were fortunate enough to host the Legal Week Private Client Forum Americas in Bermuda last February and I can tell you what we learned was enlightening. For genuine safety reasons, preserving personal privacy and avoiding dangerous or unstable political or financial regimes is a highly valid reason for seeking a safe harbour for the protection of generational wealth.

- Privacy. And there's a big difference between privacy and secrecy. Clients from around the world prefer to put their faith—and their money—in jurisdictions that will respect their privacy while acknowledging their application must go through a robust vetting procedure. They lean towards domiciles that are backed by progressive judicial systems with expert courts and modern legislation. They take comfort from the knowledge that there is recourse to appeal and the jurisdiction is not corrupt. The best of *these* jurisdictions happen to be offshore.

We need to help people understand that offshore business is not solely about tax. Nowadays, client focus is much more on the business environment and pragmatic, respected and effective regulation.

Cross-border trade via multi-national enterprises is the fuel that keeps global financial systems running smoothly. Offshore financial centres pave the way for growth in both developed and emerging markets and are vital for economic development around the world.

That's the wide-angle, macro view. But again I return to the fact that we must address the answer to "*what's-in-it-for-me*?" Our narrative should be as compelling to the man on the high street as it is to the man on Wall Street.

As one Bloomberg news story put it last week: More than a third of the UK's local government pension plans allocate money to hedge funds. The same goes for the private sector—where an estimated 64 percent of the top UK corporate pension plans invest in hedge funds, most of which are based offshore.

The value of offshore investing should not be stereotyped as solely the bastion of the rich and famous. It touches everyone, including hard-working families and regular employees of large companies, government bureaucracies and trade unions.

This is the reality so few seem to grasp in the rush to condemn domiciles that facilitate international transactions.

Without offshore centres, the onshore snapshot for average citizens could be crippling. Thousands of jobs could be lost, money markets could slump, workplace pension returns could be far lower. Indeed, it is highly probable that world GDP has doubled over the last generation thanks to globalisation facilitated by offshore financial centres.

Most in this room know that if you're looking for a place to engage in tax evasion. It is not going to be in one of the well-respected offshore centres. It is far more likely to be in one of the many US states that don't ask many questions. If you are actually looking to launder money, you're going to find it much easier to do that right here in London. Launderers and evaders tend to find it easier to hide in large, bureaucratic centres whose focus seems to be on deflection and scapegoating.

It is incumbent on us to take leadership roles in this sphere. We have embraced the fact that life's not fair. We know we have to be better than onshore, quite simply because we are small and dependent. We must, however, educate them as to why they need us.

This pressure isn't going to go away. It is only going to increase. As long as offshore exists, the finger-pointing will continue. Our challenge, then, has to be this: to get those fingers pointing elsewhere.

There are currently—and there will continue to be—places and people who are willing to facilitate shady dealings. We just need to clarify that they are not us. Differentiation is key.

Our Forum today is titled: “Funds in flux: the changing dynamic of the offshore world.” So, what do I see for the future of offshore funds? Increased regulation. Increased compliance. Increased transparency.

The regulatory tide turned a long time ago, and there’s no going back. We have to look forward. Inevitably, the offshore funds industry is going to become more expensive as a result. If you want the cheaper option, more than ever you will be getting what you pay for.

There will be a flight to quality. And quality over quantity is a core differentiation Bermuda has leveraged for many decades. If you want serious longevity in the 21st century, you might as well invest now in a jurisdiction that’s going to be part of the long-term economic landscape. The easier, cheaper, faster options are going to have short lifespans. If this is what you want, you’re going to have to hop from jurisdiction to jurisdiction as the net widens.

The Bermuda government just announced this month it has signed up to the OECD’s Country-by-Country Reporting regime so that Bermuda group-headquartered multinational companies will uphold international best practice—as I know many of you are also doing.

These changes are truly global and they’re accelerating. And whether we like it or not, we must find our niche. We must evolve—in the interest of economic security and stability. Collaboration and transparency on compliance will be the hallmark of offshore survivors.

We are well positioned and bullish about the future. We feel we can emerge stronger from such challenges. I invite our Offshore IFC colleagues and friends to join us in this endeavour:

- Differentiate yourselves
- Make necessary changes a selling point, not a handicap

And most importantly:

- Make your voices heard

But whether it’s Jersey’s Geoff Cooke, Guernsey’s Dominic Wheatley, or me—we can’t do it alone. This is a task for all of us. And that includes all of you here and your colleagues in the City. If you believe in this and want to continue to have jurisdictions like ours, we need your help to educate politicians, decision-makers, the public, the NGOs, the media—indeed, anyone who will listen—about the value of legitimate, clean, compliant and transparent offshore centres.

So, I implore you—don’t be shy.

Speak up.

Thank you.