

DOING BUSINESS IN ASIA

Team BVI Roundtable Discussion



Doing Business In Asia: Team BVI Roundtable Discussion

BVI House Asia convened a panel of Team BVI Asia practitioners late spring at its offices in Hong Kong for a roundtable discussion on the regional issues and trends impacting the BVI in 2017 under the theme “Doing Business in Asia.” The panelists discussed trends driving the markets, which jurisdictions hold the most promise, business opportunities afforded by Belt and Road, and forces shaping personal finance in Asia in 2017.

Market Drivers

Q: *What are the factors and trends driving the Asian financial services industry today?*

Aisling Dwyer: I suppose the important things to look at, at the moment, would include a weakening renminbi, particularly from my perspective on the restructuring and insolvency front, the nonperforming loans coming out of China and the effect of that on the market, the Belt and Road initiative - there is a lot of talk

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in the industry on how that is going to shape the Asian financial industry going forward, the rise of ASEAN and the amount of trade that can be done out of that, the growth of Singapore as a financial hub for Southeast Asia.

Ellie Crespi: I guess there are two main trends from my perspective in the corporate finance space. One is the defaults coming out of China, and, given that institutions are strengthening their distressed debt teams, what that's going to mean for opportunities in the restructuring space, and the other is the rise of the Chinese banks, and how different that's made the corporate finance landscape over the last 18 to 24 months for our traditional client base, Hong Kong banks included, and how they have had to deploy their resources to make money.

Frances Woo: I think more on the macro level, over the past five years we've seen a lot of outbound investment by Chinese businesses as well as private organizations, and we anticipate that that's going to continue. I think you're going to see China rise more on the political stage, particularly given political events. You've seen the US ceding its role on the international stage, and also events in the UK and the EU. So, I think that although China historically has been going softly, softly, you're going to see them rise more prominently and therefore Asia as well, and that's going to drive the Asian financial services industry from here, in terms of their outbound investments and the use of their clout on the world stage.

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From Analog to Digital - 25 Years in Offshore Finance

Frances Woo's aha moment came when she became antsy after spending more than 10 consecutive days in Hong Kong. She had gotten so used to her routine of constant travel and being jetlagged, that being in one place for 10 days just seemed abnormal. Happy with what she had accomplished in her 30 years in the legal sector and having done every conceivable role in her 25 year career leading up to being Group Chairman at the offshore law



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None of it was planned. Very much is made of the saying, "If you're given lemons, make lemonade." It really was that, going with the flow, and adapt and change.

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firm of Appleby, the goal-oriented Frances was itching for the next thing to grow. Plus, with her eldest son heading off to college in the coming months, she wanted to dedicate more time to family and explore her creative side. In March at the young age of 50 plus, Frances decided to retire from her professional career as a lawyer and leap into the daunting unknown.

Recently she sat down with Director of BVI House Asia Elise Donovan and gave her insights from 25 years in the offshore financial services industry.

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Launching an ICO In the British Virgin Islands

Interest in the setting up and distribution of initial coin offerings (ICOs) in the BVI and other offshore locations has mushroomed during 2017; we expect this to continue going forward. We set out below a summary guide of key BVI issues for parties to consider.

What are ICOs?

For present purposes we view ICOs as, typically, a means of raising third party capital through the issue of cryptocurrencies, termed 'tokens', on a blockchain network. The fundraising is coordinated by the individuals or establishments sponsoring the ICO, termed 'founders'. Once sufficient funds are raised they are invested by the issuing company in a project which is set out in further detail in the ICO's business plan, known as a 'white paper'.

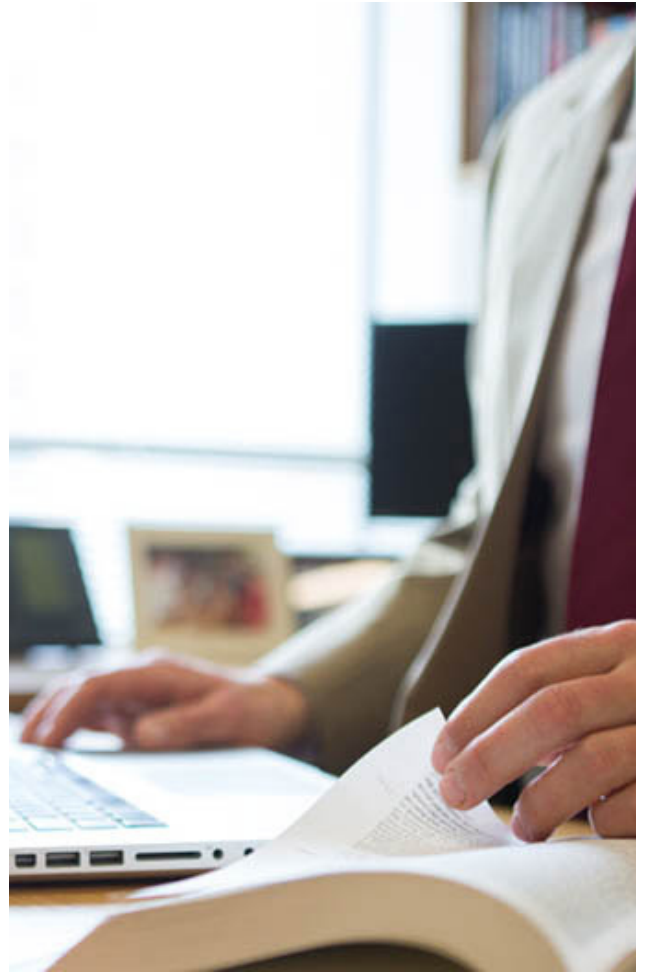
The position of ICOs in the BVI

We set out below a high level summary of the relevant considerations when launching an ICO through a BVI company. For the purposes of this note, we assume that the ICO will be structured through a BVI business company, the current vehicle of choice for ICOs in the BVI.

Perhaps the most important point is that, at present, there are no ICO or blockchain specific rules or guidance yet issued by the government or regulator. At this stage the BVI is keen to take a 'wait and see' approach to ICO regulation which seems at present to be broadly in line with the position in the United Kingdom and across pan-EU law. As such we are left to considering the impact of the 'pre-existing' legislative and regulatory framework in the BVI.

Primary legal and regulatory considerations

The following laws are the most relevant to structuring an ICO through the BVI:



- The Securities and Investment Business Act 2010 (SIBA)
- The Proceeds of Criminal Conduct Act 1997 and its subsidiary legislation the Anti-Money Laundering Regulations 2008 and the Anti-Money Laundering and Terrorist Financing Code of Practice 2008 (together referred to as the AML Regime)
- The Financing and Money Services Act 2009 (the FMSA)
- The Beneficial Ownership Secure Search System Act 2017 (the Beneficial Ownership Regime)
- Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)
- The Electronic Transactions Act 2001

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