

BVI Hedge Fund Services 2016

New fund products set to attract start-up managers

Popularity of Approved Fund beyond expectation

Cost-efficiencies for start-ups & family offices

In this issue...

03 Popularity of Approved Fund surpasses initial expectations

By James Williams

06 Enhancing support of start-ups with new fund products

BVI Finance review

08 Untangling the Gordian Knot

Interview with Calum McKenzie, Folio Group

11 Ability to support managers in different growth stages

Interview with Mara Spencer, ACE Fund Services

13 ATU enjoys organic growth on the back of restructuring

Interview with Niels Herbold, ATU Fund Administrators

14 Fund administrators look to broaden value-added services

By James Williams

17 BVI's M&A environment still as buoyant as ever

By Rachael McDonald, Mourant Ozannes

21 Cost-efficiencies for start-ups and family offices

Interview with David Payne, Circle Partners

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Popularity of Approved Fund surpasses initial expectations

By James Williams

The challenge for any aspiring hedge fund start-up has been well documented in recent times. Year after year, the barriers to entry rise. Five years ago, the onset of global regulation prompted industry commentators to suggest that the break-even point of a hedge fund was USD100 million. One could argue that on an annualised basis, that break-even figure has risen by USD100 million. Not all will agree, but there is a growing consensus that to cope with the sheer breadth of regulation, today's start-up manager needs to be targeting Day 1 AUM of around USD500 million.

That's a scary figure, even for a Goldman Sachs alumnus with a trading pedigree.

A couple of years back, the BVI Investment Funds Association sat down and between them, ruminated over how the BVI could alleviate the problem facing start-ups. The fruits of those discussions culminated last June in the unveiling of two new funds designed specifically to give managers, and family office groups, a viable alternative that avoided the costs involved of establishing a BVI professional fund.

"The BVI Investment Funds Association felt that it was important for the BVI to offer a fund that complemented the Approved Manager regime. The incubator fund is receiving great interest at the moment and is already proving to be as successful as we

hoped it would be,” comments Oliver Bell, Senior Associate at Harneys, the largest law firm in the BVI.

“It used to be possible to break-even with an AUM of USD20-30 million,” says Simon Schilder, Partner at Ogier (Jersey), who relocated to Europe last year but who was integral to getting the incubator and approved funds off the mark.

“There’s no way on earth that is possible today. So, for those types of managers, what happens to them? Do they disappear into the distance or do they still try something? This is what the incubator fund is designed to do: to give start-up managers the chance to establish a fund platform and gain some traction with their investment strategy and if it takes off, they have the chance to raise assets and cope with the demands of running a fully-fledged hedge fund. Equally, if it doesn’t take off, they’re not going to spend the rest of their lives licking their wounds, having spent a significant amount of money launching a hedge fund which failed.”

The difference between the two products is that the approved fund still requires an administrator for third party oversight. The incubator fund does not have this requirement, but this only applies to a finite period of two years (with the possibility of a one-year extension).

The incubator fund is known colloquially as a ‘20-20-20’ fund. This relates to the thresholds involved: a maximum of 20 investors, each investor must allocate a minimum of USD20,000, and the fund has an AUM threshold of USD20 million; once it exceeds this threshold it is required to be re-registered with the FSC as a professional fund.

The threshold for an approved fund is USD100 million. The fund is limited to 20 investors, but this is rarely an issue given that most approved funds typically only have a handful of HNW investors.

When it comes to choosing between an incubator and approved fund, it ultimately comes down to the manager’s future aspirations: if they want to launch a fund with a view to building a track record and eventually attracting a wider number of investors, they would choose the incubator fund. If they intend to run a strategy with a small number of investors, and not market it



“The incubator fund is receiving great interest at the moment and is already proving to be as successful as we hoped it would be.”

Oliver Bell, Harneys

to external investors, then the approved fund route would be taken.

“There is certainly market interest in the two new fund products but as with all things new, it takes time for that interest to transfer into numbers,” says Schilder. “Interestingly, so far the one that has proved of particular interest is not the incubator fund, as many expected, but the approved fund structure.

“This is perhaps due to the fact that there are a lot of club deal-like structures around, which are only ever going to be used to facilitate a handful of investors to invest in particular assets or market opportunities. The approved fund is effectively a private fund vehicle that has the normal fund protections one would expect to see in a normal hedge fund, but where things like a year-end audit aren’t required,” says Schilder.

There are clear tax advantages to those going down the approved fund route for the club deals that Schilder refers to. This is because whereas establishing a company means that the investors are shareholders, with a fund structure, when it comes to taking money out at a later point, this will be received by investors as the proceeds of a redemption rather than a dividend.

Family offices are a classic example of the type of investor who might look to take advantage of the approved fund and who wish to avoid the aggravations that come with running a regulated product.

“One of the things that has quite surprised me being back here in Europe is that we are seeing a lot of club deals. The key takeaway there is that the take-up in the approved fund is perhaps consistent with a wider trend in the global funds industry across jurisdictions,” adds Schilder.

Both Bell and Schilder confirm that the approved fund is generating interest in Latin America, specifically Brazil.



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Enhancing support of start-ups with new fund products

BVI Finance review

When the British Virgin Islands introduced the Approved Manager regime at the end of 2012 it was heralded as a significant step forward. With start-up managers facing dual pressures of investor preference for regulatory oversight, and higher barriers to entry (from a cost perspective), there was no satisfactory option. The new regime changed that. Managers suddenly had the ability to enjoy lighter touch regulatory oversight that was more in line with their needs, and had an alternative to becoming SIBA-licensed on day one.

This was the first sign of the BVI actively responding to meet a genuine need of start-up and emerging managers; the lifeblood of the industry.

“The BVI funds community is looking to assist at every rung on the ladder to ensure that a manager not only has a firm and reliable base upon which to start, but also minimises some of the many difficulties the emerging manager faces,” says Philip Graham, Partner at law firm Harneys.

The second, more recent development in May 2015, was the introduction of two new fund products to sit alongside the Approved Manager regime: the BVI Approved Fund and the BVI Incubator Fund.

The incubator fund is aimed at managers who do not necessarily have the benefit of seed investor capital but who wish to set up quickly and establish a track record with minimal set-up costs and without having to comply with onerous regulatory obligations. The product is therefore expected to be attractive to start-up managers who are seeking the best environment to grow their AUM in the most cost-efficient manner.

“The incubator fund is permitted to operate for two years (with the possibility of one additional year) with no mandatory



Philip Graham, partner,
Harneys

requirement to appoint functionaries (i.e. administrator, custodian or manager) and no requirement to appoint an auditor and therefore is free to appoint any of these that the manager actually feels he needs to get off the ground,” explains Graham.

This high degree of flexibility is contingent upon the fund remaining within the relevant thresholds applicable to the fund at all times. These thresholds are:

- a maximum of 20 investors;
- a minimum initial investment of USD20,000 by each investor; and
- a cap of USD20 million on the value of the net assets of the fund.

The approved fund is aimed at managers who wish to establish a fund for a longer term, but on the basis of a more private investor offering, which may appeal to family offices or an investor base of close connections.

It too has relevant thresholds:

- a maximum of 20 investors at any one time; and
- a cap of USD100 million on the value of the net assets of the fund.

“The approved fund has similar characteristics to the long-standing private fund recognised under the Securities and Investment Business Act, 2010 including no minimum initial investment for the investors. However, unlike the private fund, the approved fund is not required to appoint an auditor, a manager or a custodian. To ensure there is some suitable oversight of the operations of the fund, it is required to appoint an administrator which will be reassuring to potential investors,” says Graham.

Unlike the incubator fund, the approved fund does not have a restricted validity period and can continue to operate as

an approved fund for the full duration of its lifetime, unless:

- a decision is made to voluntarily apply to the Commission to recognise the fund as a private or professional fund;
- it is required to convert into a private or professional fund upon exceeding one of the relevant thresholds; or
- it elects to wind up its operations.

If the BVI is going to become the home of the emerging manager, it has to acknowledge some of the key requirements for that segment of the market. One of those is the importance of speed, with both new fund products being able to commence trading within two business days of lodging a completed application for approval with the Commission.

"It is anticipated that the legal costs will be lower than those associated with setting up a private or professional fund in the BVI, largely because the mandatory information to be contained in the offering documents of these funds is greatly reduced, thereby allowing these funds to use short-form term sheets where appropriate.

"When you combine this cost saving, together with the option to only appoint the service providers that the manager believes the fund requires, the new regime will provide significant cost savings to an investment manager of one of these funds. When coupled with the 'light touch' approved manager product, the British Virgin Islands now offers an emerging manager everything they might need to launch as quickly and prudently as possible," says Graham.

The BVI Company

Part of the BVI's popularity is that the BVI fund is such a well recognised product among the global investment community. For private equity managers, the BVI has a good corporate statute in the BVI Business Companies Act 2004 (the "BC Act").

Nevertheless, partnerships are also increasing in popularity and this is set to continue in 2016 when the new Partnership Act will be introduced.

Many of the BVI's advantages are common to numerous other jurisdictions (English language, absence of currency exchange controls, US dollar as a currency, stable democracy, common law legal system with final appeal to the Privy Council in London), but a number of other advantages are not:

Taxation – BVI has no income tax, corporation tax, capital gains tax, wealth tax or similar fiscal laws. Whilst companies will normally pay taxation in the usual way in countries where they engage in business, using a BVI company as a fund vehicle can create a tax neutral layer in the overall fund structure thereby streamlining and simplifying the taxation involved to the relevant domicile of each individual investor.

Speed – Subject to satisfying relevant KYC requirements, companies can be incorporated quickly by licensed registered agents via the BVI's online electronic interface, usually within 24 hours.

Names – BVI companies may be incorporated with foreign character names (e.g. a Chinese name) in addition to their English name.

Cost – BVI companies are still comparatively inexpensive compared to other premium jurisdictions such as Cayman and Bermuda, and most mid-shores such as Hong Kong or Singapore. The regulatory fees, both on formation and on an annual basis therefore are also competitive.

Confidentiality – Although safeguards exist to prevent abuse of corporate confidentiality in relation to money laundering and international crime, law abiding companies can exist with the confidence of privacy.

Corporate flexibility – Company law in the BVI is designed to provide the maximum flexibility consistent with common law legal systems. Companies are permitted to undertake any lawful act or activity, and there are no strictures relating to corporate benefit. This allows asset managers to get extremely creative with their product in certain circumstances, to ensure that the needs of investors can be met.

With all of the regulatory obligations that surround the global investment funds industry right now, the barrier to entry for emerging managers is only getting higher. More managers are simply unable to find the capital to make it financially worthwhile putting a vehicle together.

When one considers all of the advantages that the BVI offers as the leading jurisdiction for offshore incorporations, along with the fact that the vast cost-savings that can be made by using a BVI fund will be directly attributable to the fund, "we genuinely believe that one of the standard questions in a prudent investor's due diligence questionnaire should actually be turned on its head from 'Why have you chosen a BVI fund vehicle?' to 'Why haven't you chosen a BVI fund vehicle?'," concludes Graham. ■

Untangling the Gordian Knot

Interview with Calum McKenzie

Regulatory and investor pressure have drastically altered the hedge fund industry in recent years. With managers increasingly looking for fund administrators to provide more middle-office and value-added services, whilst at the same time squeezing them on fees, the situation has become a Gordian Knot. Administrators must find ways to remain relevant, attract new clients, and continue to build revenues at a time when everyone is adjusting to FATCA, AIFMD, and shortly Common Reporting Standards.

Folio is one of the BVI's most recognised independent fund administrators and whilst the group is glad that the BVI is evolving its fund product range, it is cognisant of the fact that regulatory and cost pressures are holding people back from launching funds.

"I don't think it's any different in any other offshore jurisdiction," says Calum McKenzie, Director, Folio Corporate Services Limited. "Our large clients are still happy with the situation here in the BVI, but what is more challenging is getting new managers to launch fund products.

"The Approved Manager has been the biggest success story of the last few years. Statistics would show that it has proven popular in terms of the number of registrations. The question mark that goes against that is how many of those were full licensed investment managers that decided to switch to take advantage of the more regulatory appropriate structure for their offering."

Introducing the BVI Approved Manager regime, and more recently the BVI Incubator and Approved Fund products, is evidence that the BVI, at a jurisdictional level, is attempting to "think outside the box" and untangle the Gordian Knot.

"Previously, we had limited alternative products to offer clients: they either had a



**Calum McKenzie, Director,
Folio Corporate Services
Limited**

BVI private or professional fund or a closed-ended vehicle. The incubator and approved fund provide a more regulatory appropriate product for start-up managers.

"Also, with the ability to offer the Approved Manager, we are now starting to reclaim that space," says McKenzie.

"Despite having almost 2,000 funds registered in BVI I believe the BVI still needs to address the perception issue that we are essentially an M&A domicile. We need to shout loudly that BVI is an excellent funds domicile and explain more clearly to people why BVI should be foremost in their minds. For example, people can realise significant cost savings, relative to competitor jurisdictions, by establishing their structure in the BVI. We need more investors to understand the virtues of the BVI, which in turn might help to attract more managers," notes McKenzie.

In other words, when managers speak to prospective investors, the question put to them shouldn't be, 'Why are you choosing the BVI?' but rather 'Why aren't you choosing the BVI?'

McKenzie is a Team Leader for Team BVI, part of the marketing machine at BVI Finance. Team BVI is conducting a lot of planning into how the jurisdiction can further enhance its funds industry. He confirms that the BVI is hoping to introduce a new Limited Partnership Act at the end of Q1 or early Q2.

"The Partnership Act in the BVI is in need of an overhaul. A lot of US managers structure their offshore funds as LPs, and we aim to have state-of-the-art partnership legislation that will allow us to appeal even more to US managers," concludes McKenzie.

If this happens, it will further loosen the Gordian Knot and help the BVI's fund administration community expand its client base. ■

- 4 ► “Brazil-based family offices have predominantly, in the past, used the Bahamian SMART fund; the BVI approved fund is now the first genuine contender to the SMART fund.

“At Harneys we run something called ‘The Offshore Funds Blog’ (offshorefundsblog.com) and we are getting some interesting bites from that. The interest is global; one was a Latvian manager based in Norway saying he needed to set a fund and that the incubator looked like a good option,” says Bell.

With the Approved Manager regime, the BVI is uniquely positioned with three products that offer a complete package for the emerging manager; no other offshore jurisdiction can offer this. “They’ve all got elements of it; the Bahamas has the SMART fund, Cayman has got the exempted manager, but no other jurisdiction has the complete package,” states Bell.

“The BVI Approved Manager – and I don’t think we thought this would happen – is actually proving extremely popular with managers running Cayman vehicles, not just BVI vehicles. A growing number of managers are coming to us looking to set up a Cayman fund but when it comes to the manager vehicle, they are enquiring about a BVI Approved Manager.”

Glenford Malone is Acting Director, Investment Business Division at the BVI Financial Services Commission. He says that the BVI has always prided itself on operating a regulatory regime that develops “on the strength of an effective public/private partnership”.



“The Approved Manager regime provides the right mix of regulation, supervision and a flexible business structure, which allows for start-up managers to easily test their investment philosophy.”

Glenford Malone, BVI Financial Services Commission

“The collaboration between the public and private sectors to get the Incubator and Approved Funds Regime up and running demonstrates the commitment to having a thriving fund sector in the BVI which meets the needs of the hedge fund industry. The BVI Government continues to be responsive to the needs of the industry, while ensuring that relevant steps are taken to enact appropriate legislation for the risks posed,” Malone tells *Hedgeweek*.

With respect to the Approved Manager regime, Malone confirms that there is growing and continued interest: “It provides the right mix of regulation, supervision and a flexible business structure, which allows for start-up managers to easily test their investment philosophy.”

According to the FSC’s latest statistical bulletin, during Q3 a total of 15 Approved Manager licenses were granted, compared to 7 in Q3, 2014. In total, the FSC had granted 101 Approved Manager licenses through September, 2015.

When it comes to determining where best to establish the management entity versus the fund entity, there are a lot more variables involved with the latter. Generally speaking, investors are less concerned over where the manager vehicle is based and are more concerned about the fund jurisdiction and its reputation.

Therefore, the manager has entirely free reign over where to locate the manager vehicle depending on where it can be established in the most cost-efficient manner. That is why Bell welcomes the fact that more Approved Managers are being incorporated; nobody is pushing the manager, they are doing so because they clearly see the benefits on offer.



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Ability to support managers in different growth stages

Interview with Mara Spencer

Currently, there are 101 Approved Investment Managers licensed in the BVI, based on figures published by the Islands' financial regulator, the BVI Financial Services Commission (as of 30 September 2015).

Factor in that the BVI now has two new fund products (the BVI Incubator Fund and BVI Approved Fund) and these are positive times.

"It's exciting to be able to provide something new to clients. It shows that the jurisdiction is working to support fund managers in different ways," says Mara Spencer, Managing Director of ACE Fund Services, an independent BVI fund administrator. "The Approved and Incubator funds had long been talked about. That they have now come into effect represents a steady move forward."

In many respects, it follows the approach that ACE Fund Services has to business. When the firm was established it understood that not all funds are equal; different stages of funds need to be taken into account, which have different requirements as managers become more established and build their AUM.

"From day one we acknowledged that the first two years after launching a fund are the most challenging. Our fees and support package are always reflective of this fact, the idea being that over the long term, if a fund does well it will increase its assets, the number of investors, and become a stable business.

"Establishing that relationship early on, and setting the costs accordingly, ends up becoming mutually beneficial to both parties. With the introduction of the incubator and approved fund, the FSC is likewise acknowledging that there are different



Mara Spencer, Managing Director, ACE Fund Services

fund stages and objectives that need to be met with different fund structures," explains Spencer.

Spencer observes that managers of all shapes and sizes now have a wider menu of solutions to potentially choose from; a critical feature for any competitive fund jurisdiction.

"Historically, we have had managers come to us and say that they are trying to get an incubator fund with a closed portfolio to offer to friends and family, the idea being that after building a track record they would then look to offer the strategy to external investors using a BVI private, professional, public fund or SPC. Up until last year, that option didn't exist. As an administrator, it is advantageous to say to clients that they have different options available.

"In particular, it helps to support start-up managers who need to maintain costs and build a track record. The incubator fund also has a simplified licensing process and a fast-track time to market," says Spencer.

Not that an incubator fund is for everyone. For the first two years it does not require any appointed representatives (administrator, custodian, manager, auditor) but thereafter it must convert to a BVI approved fund or a recognised or registered fund.

"We have funds that have been with us since day one and have since gone on to expand offering investment into different portfolios by using multiple share classes and SPCs. The incubator and approved funds will work for some, but not all, managers.

"We envisage there will continue to be demand for our turnkey solution. It will remain part of our overall solution set. The incubator and approved funds are welcome additions to that solution set," concludes Spencer. ■

9 ▶ “In terms of the costs between the Cayman exempted manager and the BVI Approved Manager you’re looking at probably USD12,000 versus USD10,000 for establishment, and USD8,000 versus USD3,000 on an ongoing annualised basis. So on an ongoing basis, you’re looking at an extra USD5,000 a year to maintain the investment management vehicle in Cayman. That explains to some extent why start-up managers are showing a preference for the BVI Approved Manager,” observes Bell.

One of the subtle differences between the Cayman exempted manager and the BVI Approved Manager is that the latter is regulated by the FSC, albeit in a light touch way: another factor that could potentially explain its growing popularity as it reassures prospective investors.

“In addition, the scope of funds that can be managed by an Approved Manager is broader,” says Bell. “A Cayman exempted manager is limited to managing funds that are aimed at sophisticated, HNW investors whereas the Approved Manager can manage funds globally that are akin to a BVI private fund, which itself is not limited to the type of investors it attracts.

“I therefore think we could see more entrepreneurial managers use the incubator fund to take advantage of the 2-year window to test their investment strategy. Once they’ve got the track record they can convert it to a professional or private fund and then market it to a wider audience of investors. This avoids having to set up a managed account, which doesn’t provide the manager with a track record.”

One issue that could prove critical to the BVI is getting on ESMA’s approved list of third countries to avail of the AIFMD passport. Back at the end of July, of the six countries ESMA had assessed, Jersey, Guernsey had no barriers with ESMA confirming that the passport would be extended to them. Switzerland is also well on its way.

In 2016, ESMA will extend the scope of its exercise to a broader swathe of jurisdictions and as Malone confirms: “The BVI continues to dialogue with ESMA and has a firm understanding of its criteria. Whilst we believe we meet the criteria, we are taking steps to make legislative reforms that shore



“The BVI continues to dialogue with ESMA and has a firm understanding of its criteria. Whilst we believe we meet the criteria, we are taking steps to make legislative reforms that shore up our position and enable us to include an opt-in for EU-compliant funds.”

Simon Schilder, Ogieer

up our position and enable us to include an opt-in for EU-compliant funds.”

Schilder thinks it is unlikely that ESMA will extend the passport to non-EU countries in 2016. ESMA has stated that it wants to avoid market disruption in introducing third country passporting, which would happen if the passport is not made available to certain jurisdictions where there are lots of funds.

“What will be the trigger? Will it be when 10,000 Cayman funds wish to be passported? I don’t think so. I think it will happen when the United States gets approved for a third country passport. It seems to me very unlikely that ESMA would open up the third country passporting regime until such time that the US has been approved. Jurisdictions like the BVI and Cayman are obviously keen to be assessed for third country passporting but how high up the list of priorities is this likely to be in the US with the SEC?

“My view is that the third country passporting regime won’t be switched on until the US gets approved,” says Schilder.

In conclusion, Malone confirms that for the year ahead, the Commission expects to introduce a number of measures to streamline the application process for funds, to ensure efficiency and to speed up the review and approval process.

“For example, the Commission will bring online a revised platform which will enable funds to more easily file annual returns. Additionally, we will make the application and other approval processes for funds more seamless by facilitating electronic submissions.” ■

ATU enjoys organic growth on the back of restructuring

Interview with Niels Herbold

ATU Fund Administrators (BVI) Limited was the first fund administrator to receive a license from the Financial Services Commission in the BVI on 30th December, 1997. By the early 2000s it had grown to become the largest fund administrator on the islands.

The firm grew steadily until the financial crisis struck in 2008 and in the aftermath, it was decided that the company, which was part of a joint venture with Liechtenstein-based VP Bank and Allgemeines Treuunternehmen (ATU), would be acquired by ATU in full. During the same period, its sister company, ATU General Trust (BVI) Limited, was experiencing very positive growth and it was this strong reputation, characterised by excellence of service that the Group's board wanted to bring to ATU Fund Administrators.

This ushered in a period of restructuring, with Niels Herbold being appointed Manager in July 2014 to bring the firm up to modern day standards. ATU Fund Administrators entered into cooperation with ATU General Trust to capitalise upon synergies that existed between their respective business lines and so far, it appears to be bearing fruit.

"When I joined, the firm's AuA was around USD400 million. It is now approximately USD1.4 billion. We support all types of funds requiring daily, weekly, and monthly NAVs but much of the growth has come from PE-like funds and real estate funds that tend to rely less on frequent valuation and pricing data. They tend to be used by small groups of investors with a specific investment objective, in a particular framework, to facilitate a corporate or tax benefit.

"Going forward, we want to pierce the glass ceiling and start to bring in more traditional hedge funds, that require periodic



Niels Herbold, Manager, ATU Fund Administrators (BVI) Limited

(i.e. daily, weekly, monthly or quarterly) NAVs, onto our client list," says Herbold.

Much of the growth has been organic, thanks in part to its close relationship with ATU General Trust. The synergies allow them to collectively offer a full and integrated suite of funds services; from the establishment of different types of investment funds to providing ongoing administration services. "In the old structure the available synergies were not being utilised, whilst now we can offer our clients a full scope of services, tailored to their professional needs, from one centralised location in the BVI," explains Herbold.

Not that ATU is looking to get ahead of itself. Whilst there is a clear blueprint for growth, the goal is to onboard a steady number of appropriate clients. The clientele that ATU Fund Administrators is aiming to support are those managers running anything less than USD300-500 million, which increasingly are being overlooked by larger administrators. "It has to be sustainable, gradual growth," emphasises Herbold.

Herbold concludes that a big focus will be on providing clients with tailored services.

"We utilise a state-of-the-art accounting system (PFS PAXUS), and we can facilitate all the usual back- and middle-office requirements of funds. Another important point for us is to make sure we get to know our clients. Wherever they are in the world, we want to meet them personally to better understand their needs and limitations so that they get exactly what they require, at very competitive prices. Also, the personal relationship fosters a better working relationship; something that is highly appreciated by our clients and benefits everyone in the long term." ■



Fund administrators look to broaden value-added services

By James Williams

Since the BVI introduced the Approved Manager regime at the end of 2012 demand has been encouraging, but it has taken time to build. Currently, there are 101 Approved Investment Managers licensed in the BVI, based on figures published by the Islands' financial regulator, the BVI Financial Services Commission (as of 30 September 2015).

That the BVI now has a set of funds – the Incubator Fund and Approved Fund – to complement this lighter touch regulated fund manager regime augurs well for the future. But like the Approved Manager, it will take time for fund numbers to pick up.

“The BVI professional fund is still widely favoured, partly because the compliance teams at service providers, in Europe for example, are familiar and more comfortable with the structure. Some service providers won't support a fund unless it has a certain amount of assets under management; so an incubator fund wouldn't work in that respect,” says David Payne, Director, Circle Partners (BVI) – a Dutch financial services specialist

with a BVI-based fund administration offering – and Business Development Manager of AMS Financial Group, an affiliate of Circle Partners.

BVI's fund administrators are quite limited in number. Over the last year or two, many have chosen to consolidate their position in light of the fact that BVI fund launches, whilst steady, have hardly hit the heights. Indeed, back in 2014, Circle Partners acquired Caledonian Global Fund Services. The deal meant that it was able to not only acquire new clients but extend its services to the US marketplace through its Orlando-based office.

“Last year, the fund market was broadly flat. We had some subscriptions, some new fund incorporations, mainly with respect to segregated portfolio companies. It was a stable year with steady growth; a trend that has been seen across the funds industry, not just in the BVI,” states Payne.

This sentiment is shared by Mara Spencer, Managing Director of ACE Fund Services Incorporated.

"We saw new share classes launch last year and new projects have continued in the first few weeks of 2016. Hopefully we'll continue to see more steady growth in 2016. Despite early concerns over market performance, I don't think we'll see a drop off in demand for fund launches," suggests Spencer.

Calum McKenzie is a Director at Folio Corporate Services Limited. Although he says Folio Group is "guardedly optimistic" for 2016, he is quick to stress that further development needs to take place within the BVI's fund services infrastructure: "We would like to see one or two big-name global administrators coming to the islands. There is potentially going to be a new bank opening up here later in the year, and that's going to add to the jurisdiction, but we would like to see more administrators locating here."

This is an interesting point as it chimes somewhat with a recent McKinsey report into what the BVI needs to do from a restructuring perspective. The report, entitled *Building on a thriving and sustainable Financial Services sector in the British Virgin Islands*, looked not only at the BVI's financial services industry but the overall economic fabric of the jurisdiction (including telecoms, infrastructure, education).

On the back of this, a delivery team has been established, sitting between the BVI Premier's office and the islands' regulator, the Financial Services Commission, to help improve efficiency and steer initiatives going forward.

There is something of a chicken and egg situation facing the BVI. If it is to attract bigger tier-one administrators, it needs to increase both the size and the number of funds established there. It also, by extension, needs fund managers to start availing more of in situ services: not just fund administration services and auditing services, but directorship services; something that the Cayman Islands has seen flourish.

McKenzie makes the point that a hedge fund manager based in New York might have US legal counsel, possibly one or two independent directors based in New York, and do all of the fund's trade execution and clearing in the US. At the same time, that manager tells investors that they have an offshore hedge fund.



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David Payne, Circle Partners

"I think it becomes a moot point. Are they actually availing of a structure that is set-up offshore? That's one of the points we've been making for a while now. It's much better to have your administrator, your auditor, and indeed one or two independent board directors, physically based in the BVI. That is why the BVI's fund administration community needs to further expand," argues McKenzie.

Directorship services is one area that the islands' administrators could potentially tap in to, whilst fund launches remain slow and steady, as a way to drive revenues.

This will require a lot of work educating the fund management community that such services can be utilised out of the BVI. Over the long term, this could attract bigger, established managers as they seek to strengthen their corporate governance. As everything in this industry is based on trust, the more faith established managers have in BVI-based directors, the more they might seek to establish fund products.

"Having Circle Partners (BVI) as a licensed administrator in the BVI does help (in terms of building our business)," says Payne. "Often there is a perception among clients that if they deal with a local administrator things will be done better or more cost-efficiently. We work with our colleagues in the US, Europe and Asia. Depending on where the client request is coming from, we take the lead and then put them in touch with the relevant business development team. It is something that has helped us to consolidate our position."

If you're planning to structure offshore, talk to the experts on the legal landscape



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MOURANT OZANNES

BVI's M&A environment still as buoyant as ever

Interview with Rachael McDonald

Despite being a relatively new entrant to the BVI, global law firm Mourant Ozannes is fielding its fair share of enquiries in relation to fund formation. The firm established its BVI office with Corporate, Finance and Litigation practices in 2012, followed 18 months later by its investment funds practice.

Rachael McDonald, Managing Partner, Mourant Ozannes (BVI) believes that the recent introduction of the approved and incubator funds will prove to be a great addition to the BVI's funds armoury: "We're seeing our fair share of enquiries and new instructions with respect to these funds. Both products are being well received by investment managers," says McDonald.

Historically, the BVI has always been thought of as the world's leading offshore corporate domicile and M&A centre. Its funds industry has tended to play second fiddle: one only has to refer to the numbers to appreciate this - there were over 475,000 active BVI companies as of Q3, 2015. By comparison, there were just over 1,460 professional funds.

Hopefully, the recent fund evolution will allow BVI to further appeal to emerging managers, but its funds industry is unlikely to achieve parity with its corporate appeal.

"We are all working hard to promote its virtues, and that was really the point of introducing the two fund products. But it's worth pointing out that there are cultural differences between users of BVI products. In Asia, we don't see a BVI fund product being used too often. For example, in the private equity space an Asia-based asset manager will tend to use a Cayman fund with a number of investments in BVI companies. So we do see that downstream work involving BVI in a fund product. By comparison, in Latin America we see more start-up fund managers considering the BVI as a viable option for an incubator fund, or



Rachael McDonald, managing partner, Mourant Ozannes BVI

an approved fund. They are comfortable and prefer to have a BVI fund," explains McDonald.

On the corporate side of things, McDonald is encouraged by more North American private equity work involving BVI companies. One particular transaction was for Peppertree Capital, who entered into a joint venture arrangement to invest in a number of telecommunication towers across Latin America. A BVI company was used to structure the joint venture. Part of the decision making, says McDonald, was ease of use and a preference for the way the BVI's companies law works. "There was also some historical comfort among Peppertree's investors with using BVI companies. One of the reasons why BVI is so well favoured is because its companies law is clear and flexible for use by international participants.

"Our final court of appeal is the Judicial Committee of the Privy Council of the United Kingdom. This gives investors a lot of comfort that any disputes they hear will be done through a reputable judicial system. Also, the BVI has a specialist commercial court, which has a formidable reputation for being very efficient and handing down sensible decisions."

One of the BVI's biggest markets is Asia Pacific. It is estimated that Asia is home to approximately 50 per cent of all companies incorporated in the BVI, with McDonald confirming that in China, it remains the preferred corporate vehicle of choice. For Asian private equity groups, or multinational corporations looking to acquire companies with a view to structuring a future IPO, the BVI appeals because BVI companies are eligible to list on many of the world's leading stock markets: from the London Stock Exchange and the New York Stock Exchange, through to the Singapore Stock Exchange and Hong Kong Stock Exchange.



Back in June 2014, Tianhe Chemicals Group Ltd listed on the Hong Kong Stock Exchange. Raising USD654 million, it became the largest listing of a BVI company in Hong Kong.

That said, there is plenty of M&A activity coming out of Europe at present, especially as fund managers and institutional investors look to acquire real estate assets.

"Talking to my other corporate and finance partners, we are feeling fairly positive that M&A activity will be strong in 2016, not just in the UK but across European real estate, on the financing and refinancing side as well as the acquisition side," says McDonald.

Utter the words 'UK real estate' and there's every chance Mourant Ozannes will be involved in some capacity. "We are doing a lot of work with our Jersey and Guernsey partners in Mourant Ozanne's corporate and finance practice on acquisitions of commercial and residential real estate in the UK, and refinancings of debt on the assets of property in the UK and, to a lesser extent, across Europe," confirms McDonald.

Mourant Ozannes counts a large number of sovereign wealth funds and pension funds among its clients, in addition to fund management groups and corporates. Again, the interest tends to be among Asia-based

investors, although McDonald adds that the team has recently been working with a couple of Canadian pension plans to acquire European real estate.

"The BVI companies are already in existence, either within the purchaser's structure or as part of the acquisition that is about to be made. We therefore get involved on the due diligence side, and on the financing side, with the BVI companies. Sometimes we might get involved on both sides of the deal if both the purchaser and the seller have a BVI company; it varies on a case-by-case basis.

"Last year, we worked on a large deal with a Canadian pension plan whereby they acquired a portfolio of properties in the UK. The acquisition comprised of approximately 30 separate BVI companies and totalled in excess of GBP1 billion so it was quite a significant deal.

"We also act for members of various royal families around the world who use BVI companies as part of their family office to acquire, for example, London residential properties," states McDonald.

Aside from real estate, McDonald anticipates that infrastructure could prove to be of real interest to investors in 2016; in particular, Latin American infrastructure assets. In Mexico, for example, the privatisation of some of its infrastructure assets is already in train such as its state-owned oil and electricity companies, who are fast in need of outside investment.

"The overall situation in Latin America is quite exciting from an offshore perspective. We should see more joint venture vehicles being established and I wouldn't be surprised if there are offshore entities already involved in terms of owning those assets. There will be opportunities to be advising on financing of these acquisitions also," suggests McDonald.

Barring any significant natural disaster, serious stock market crash or major currency correction that impacts investments, the offshore markets should hopefully remain buoyant in 2016. Jurisdictions like the BVI are a vital cog that keeps the wheels of the global economy turning.

"We facilitate global business, at the end of the day, and make investment as efficient as possible," concludes McDonald. ■

- 15 ► Payne confirms that under Circle Trust Services (BVI) Limited it has a corporate directorship offering, which has long been used by BVI clients. In the last two or three years, however, it has started to see more demand for individual directors.

"I am based in the BVI and provide directorship to a limited number of funds along with other directors also based in the BVI; we also offer directorship services out of our other global offices.

"I choose to sit primarily on the boards of hedge funds, including long/short equity, distressed debt and fund-of-hedge-funds. We don't want to have too many active directorships because you need the time to properly review the fund's operations and activities. And, importantly, we have to be careful about the amount of exposure that Circle Partners has to any one fund; if we are providing turnkey services to a fund, it might not be advisable to provide directorship services as well because it could lead to conflicts of interest," explains Payne.

McKenzie says that Folio Group has chosen to build out its directorship service in order to generate an alternative revenue stream.

"We don't have any grand designs on becoming as big as DMS Offshore Group in Cayman, but if we can find the right clients that are looking to put governance structures



"We are ultimately partners to our clients so we want to help our clients be more proactive when it comes to ticking the boxes and running the fund correctly, and in compliance. That's where we think we can add value to our clients."

Mara Spencer, ACE Fund Services

in place, and make sure they are keeping an eye on regulation, updating their PPMs etc, then it's an area of the business we hope will grow in the next few years.

"We are very committed to supporting our core market, which is start-up and emerging managers, from a fund administration perspective, but director services could be an important value-add. Obviously the BVI has a less developed directorship market than Cayman so there is plenty that we, and other fund administrators, can do to get the message out there that they can use experienced, independent directors that reside in the BVI," comments McKenzie.

Over at ACE Fund Services, Spencer says that one key role that the firm has been playing to support the challenges its clients face is keeping on top of the continuous stream of global regulatory developments, and making sure that operational issues, regulatory filings and so on, are closely observed.

"The more that the appointed fund administrator can help in this respect, the more time managers have to focus on running the investment strategy and delivering the best performance to investors.

"One of the things we are looking to do is to make our internal processes more streamlined. With all of the regulatory changes coming into play, it's important to make sure that, even though it is not our responsibility, a fund's AML checks and processes are in place and working properly, that funds are sticking to their operational guidelines; a kind of operational compliance framework that allows us to better monitor the fund's operations.





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Cost-efficiencies for start-ups and family offices

Interview with David Payne

For many start-up fund managers, the prospect of setting up a hedge fund in today's regulatory climate can feel like swimming upstream. That is why the turnkey solution offered by fund administrators, which allows managers to work with one service provider to get all aspects of their fund up and running, is still so appealing.

"We are able to offer a one-stop-shop solution and take care of everything when it comes to setting up a fund," says David Payne, Director of Circle Partners BVI, an independent BVI-licensed global fund administrator, and Business Development Manager of AMS Financial Group, an affiliate of Circle Partners. "One can think of it as the spider web principal, with all the different strands involved at the pre- and post-launch phase managed under one roof."

"This option is highly attractive to start-ups because not only is it more cost-efficient, it also reduces the operational complexity of starting a hedge fund by avoiding multiple service provider relationships," adds Peter Jakubicka, business development at Circle Partners.

Payne says that the first team that a client engages with at Circle is the business development team. Using a detailed questionnaire, the team collects all the relevant fund information, which could relate to any one of the BVI's various fund structures: an incubator fund, approved fund, private or professional fund, or a BVI public fund.

"Usually clients opt for a BVI private or professional fund but we are starting to field increased interest in the incubator and approved fund products because there are fewer regulatory requirements and subscription requirements," observes Payne.

Once the questionnaire has been completed, Circle's legal team prepares the prospectus, the memorandum and articles



David Payne, Director, Circle Partners BVI

of association, and assists with the opening of bank accounts (both operational accounts and brokerage/custody accounts) in close cooperation with BVI-based lawyers.

The fund is then incorporated in the BVI with Circle Trust Services (BVI) Ltd., after which all the relevant fund documentation is submitted to the regulator on the client's behalf.

At the same time, Circle Partners will act as the authorised representative, acting as the liaison between the fund and the FSC.

"Once the fund is approved, we can act as the fund administrator and transfer agent across a number of jurisdictions. We have offices in the Caribbean, the US, Europe and Asia so clients know they will always have a local point of contact to deal with. Also, Circle takes care of the annual filings with the FSC and offers an auditing service where we prepare financial statements for submission to the manager's appointed audit firm.

"We also provide AIFMD, Common Reporting Standard and FATCA services, where we act as the FATCA Responsible Officer for BVI funds and take care of the various filings with the BVI International Tax Authority (ITA)," notes Payne.

That ability to work with one party, removing the administrative burden on the manager, also means that they can focus on the core tasks of creating a successful fund management business: namely, asset raising and marketing the fund.

"In general we see interest from start-ups and family offices across central and eastern Europe, as well as Hong Kong. We have also started marketing our turnkey solution in the US. Start-up managers have limited assets and need cost-efficient solutions. We believe we can offer just that, and at the same time provide a personal, high-touch service," concludes Payne. ■

19 ► “We are ultimately partners to our clients so we want to help our clients be more proactive when it comes to ticking the boxes and running the fund correctly, and in compliance. That’s where we think we can add value to our clients,” states Spencer.

Payne adds that Circle Partners is busy implementing new investor services software called MANTRA to further enhance its client offering: “We are always looking to develop our middle-office services as well as support clients on the custody/depositary side for FoHFs; although this will be done out of the Dutch office.”

Niels Herbold is Manager, ATU Fund Administrators (BVI) Limited. As the BVI’s first ever licensed fund administration group, with its origination dating back to 1997, the administrator has seen a lot of change over the years; both internally and externally.

Herbold is hoping that fund structuring services with ATU will help the group build out its client base and attract a wider number of hedge fund and private equity managers, in addition to referrals it gets from ATU General Trust. As such, he is not resting on his laurels with respect to the incubator and approved fund products.

“Managers are able to find more cost reductions more on the structuring side. Operational costs are not necessarily going to be discounted because they decide to establish an approved fund, for example. If appointed, fund administrators still have the same professional and corporate responsibilities to this structure, just as much as they do with a BVI professional fund.

“So from an administrator’s perspective, it’s difficult to explain to managers why a potential administrator’s fees are not lower for a BVI incubator or approved fund than they would be for a traditional BVI professional fund set-up.

“Many funds administrators, however, provide corporate and legal services. That opens up the route to talking to more potential managers and outlining how we can support various different fund structures. That is helping expand the role of BVI fund administrators, but from an operational perspective, I don’t think the BVI approved and incubator funds will have any material impact on costs: as a result, the corporate and legal side of things could become a



“It’s all about bringing the value back to the BVI. We all want more people doing business here, and that is really the purpose of the McKinsey report.”

Calum McKenzie, Folio Group

more obvious revenue driver, at least in the near-term,” explains Herbold.

Increasingly, fund managers want to increase the partnership with their appointed fund administrator to develop a structured approach that supports them – beyond merely providing independent pricing and valuations, striking the NAV, etc – throughout the fund’s lifecycle. Part of that partnership is providing managers with practical advice at the pre-launch stage.

“Oftentimes, what we find is that if a manager is looking for a more structured long-term approach to their business they run into limitations with the BVI approved or incubator fund. We always advise clients not to be distracted by what they hear in the market on what they can or can’t do, and instead be driven by what their investors want,” adds Herbold.

There is, it seems, a lot for the BVI’s fund administrator community to feel positive about. And if, as is hoped, the McKinsey report results in the BVI introducing changes to improve the value-add of its financial services industry, the jurisdiction could start to see more administrators, and more expert personnel, arriving over the next few years.

“It’s all about bringing the value back to the BVI. We all want more people doing business here, and that is really the purpose of the McKinsey report. One immediate outcome of this is that we hope to have direct flights from Miami to the BVI in place later this year. The Government is also committed to improving the labour and immigration system to make it easier for people to come and work here and do business here. These are all positive developments,” concludes McKenzie. ■