



BVI ROUND TABLE

Hedge Fund Manager finds out how the BVI is shaping up as a hedge fund destination and how it sees itself compared with its competition

HFM: How does the BVI stack up against rival jurisdictions in attracting hedge funds?

SP: A significant number of the top 100 hedge funds are BVI-domiciled and experienced managers continue to form new funds here. It is confidence in the infrastructure and the jurisdiction as a whole that continues to attract business to the BVI – not simply costs.

RC: The BVI is comparable with the Cayman Islands in all respects bar the number of funds. It continues to attract hedge funds thanks to its regulatory regime. Many hedge funds use the BVI international business company (IBC) as their legal structure. This successful corporate structure, together with the robust yet flexible and differentiated approach to regulation, has encouraged the establishment of hedge funds in the BVI.

service providers know the identity of their clients and, with respect to those funds administered in the BVI, the identity of their investors. As such, while the ESD may have an impact upon business in the BVI, we don't expect any adverse consequences to the funds industry.

RC: The BVI has no fear of losing funds. The ESD applies only to individual bank accounts and should have no impact at all on corporate structures. The BVI is predominantly a corporate domicile. Funds are not clandestine vehicles and the BVI's regulations ensure tax evaders are minimised.

PR: The BVI is third behind the Cayman Islands and Dublin for new incorporations. The legal framework of the BVI emphasises flexibility and a light regulatory approach.

HFM: One benefit of using the BVI is its strict confidentiality of client records. Is that set to change with the adoption of the European Savings Directive (ESD) and do you fear a flight of funds?

PR: The ESD requires jurisdictions to provide details of EU residents' accounts. It covers only the tax affairs of individuals and not those of companies.

This does not directly affect mutual funds' shareholders investing in funds. In addition, the BVI has opted to introduce the transitional regime of a withholding tax, instead of direct exchange of information.

However, the introduction of a withholding tax for EU

SP: The BVI has no confidentiality statute. It is a misconception to say the BVI is used partly for reasons of confidentiality. BVI has adopted robust regulations designed to ensure local

AT THE TABLE



RUTH CHADWICK (RC) HAS BEEN DIRECTOR OF INVESTMENT BUSINESS AT THE BVI FINANCIAL SERVICES COMMISSION SINCE JUNE 2002. SHE SITS ON THE BVI MUTUAL FUNDS ADVISORY COMMITTEE AND CHAIRS THE OFFSHORE GROUP OF COLLECTIVE INVESTMENT SCHEMES SUPERVISORS.



SIMON PASCOE (SP) QUALIFIED AS AN ENGLISH SOLICITOR IN 1988. HE MOVED TO THE CAYMAN ISLANDS IN 1998 AND, FOLLOWING SUCCESS THERE, HE JOINED WALKERS IN 2002 WHERE HE IS RESPONSIBLE FOR HEADING UP THE FIRM'S OPERATIONS IN THE BVI.



DR PETER REICHENSTEIN (PR) IS MANAGING DIRECTOR OF ATU FUND ADMINISTRATORS (BVI) LIMITED. HE HOLDS A DOCTORATE IN ECONOMICS FROM THE UNIVERSITY OF ST GALL, SWITZERLAND. HE ENTERED BANKING IN 1987 AND HAS HELD VARIOUS MANAGEMENT POSITIONS WITH SWISS BANK CORPORATION AND, AFTER ITS MERGER, WITH UBS.

nationals will still have an impact on the perception of the BVI as a financial centre.

HFM: The Maxwell Stamp Report predicts as much as 20% of the jurisdiction's economy could disappear through the financial sector's adoption of the ESD. How do you propose to combat this?

SP: The ESD will apply to all UK overseas territories equally and is not expected to have an impact on the funds sector.

PR: The most important measure to combat the negative effects is educating potential clients who may have flawed perceptions about the impact and consequences of the ESD.

HFM: How does the BVI compare cost-wise with other jurisdictions when it comes to establishing a hedge fund?

SP: BVI is a lower cost jurisdiction, however, we would always stress to anyone looking to set up a fund here that costs should not be the sole or determining factor when considering jurisdictions.

PR: The BVI compares favourably cost-wise with other jurisdictions when it comes to establishing hedge funds and is in the position to offer more cost-effective solutions compared to many of the others.

HFM: Bermuda has boasted it is the 'sophisticated' domicile for hedge funds through having higher standards. How do you respond to this?

RC: The BVI has always aspired to attaining the highest of international standards of regulation, and boasts the fact that it has never been blacklisted. The

standards maintained in the BVI are directly comparable to those in both the Cayman Islands and Bermuda.

PR: In general, we would argue that higher standards are a result of the quality of people, the infrastructure available and the legislative framework within which work is operated.

When it comes to the quality of practitioners and infrastructure, we would argue that the BVI can effectively compete with a jurisdiction like Bermuda.

HFM: With a general move in the industry toward daily, or at least weekly, NAV pricing, does the BVI have the infrastructure in place to meet this requirement?

SP: While the BVI undoubtedly has fewer administrators than, say, the Cayman Islands, I would say from our experiences that the BVI has the necessary infrastructure and the local administrators have the capabilities to service all current requirements.

PR: The BVI has the telecoms infrastructure in place to meet the need for weekly, or even daily, fund valuations.

Administration depends a lot on being able to source the information on time.

The issue with a lot of hedge funds and fund of hedge funds is that they frequently invest in illiquid investments, which can't be valued on a daily or weekly basis.

RC: It should be noted that many BVI funds are calculating daily NAVs already, particularly those traded on the most popular fund exchanges.

HFM: Does the lack of the larger hedge fund administration outfits impede on the development of the mutual funds sector?

SP: BVI funds can be, and often are, administered outside the territory, provided the administrator is located in what the FSC considers to be a recognised jurisdiction. So the lack of larger administrators in the BVI has been no impediment to the growth of the mutual funds industry.

RC: The mutual fund administration industry and associated service providers in the BVI are continually increasing. A number of major law firms have recognised the significance of the BVI financial market and have established a presence here.

PR: The arrival of one or more of the larger hedge fund administrators would certainly add considerable credibility to the jurisdiction as a valid and significant participant in the global mutual funds industry.

Another factor is the lack of larger, globally-renowned banks to offer the financing and banking services many larger funds may require.

HFM: What changes to fund legislation have occurred to encourage hedge funds to choose BVI as a domicile?

SP: There have been no changes to the mutual funds legislation. To a degree, it is the consistency in approach and practice and the stability of the territory that have encouraged the development of the BVI market.

The IBC is universally accepted as a robust and flexible corporate model familiar to managers and professional advisers worldwide. That said, the introduction of a new Companies Act toward the end of this year will permit the creation of segregated portfolio companies as mutual funds, which is expected to be popular.

RC: The continual updating



and development of legislation in the BVI have contributed to the increasing competitiveness of the BVI as a mutual funds' jurisdiction. Insolvency legislation and updating of the Companies Act, together with forthcoming amendments to

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the Mutual Funds Act, 1996 will all benefit the mutual funds industry.

PR: The Mutual Funds Act, enacted in 1998, created the current regulatory regime and placed the BVI firmly in the upper tier of regulated jurisdictions. We think the measured approach to regulation by distinguishing between private, professional and public funds has contributed significantly to this success.

We think the regulator's list of *a priori* recognised jurisdictions for investment management companies has been facilitating the establishment of funds in the BVI.

HFM: A report from the Caribbean Development Bank says the economic outlook for the BVI is optimistic in the medium term, despite a drop in revenues from the financial services sector. Do you agree with the assessment?

SP: While the number of incorporations may be down on previous years, the number of new funds recognised with the FSC is certainly up. If the introduction of restrictions on bearer share companies and greater regulation have had an

effect on the high-volume, low-cost end of the spectrum, we are not unduly concerned.

PR: As a consequence of the decrease in worldwide economic activity since 2000 there has been a slowdown in the incorporation of IBCs. The sharp increase in the costs of compliance had to be absorbed by the industry. We would agree with the Caribbean Development Bank that there is no reason not to be optimistic about the jurisdiction's economic outlook.

HFM: What effect has the recent de-listing by the OECD had on the potential to attract mutual fund business to the island?

SP: The BVI only appeared for a short time as a so-called 'unco-operative' jurisdiction and I am not aware of any impact the OECD's listing has had on the BVI funds sector except for the need, on occasion, to correct any misunderstandings which prevail in certain countries.

RC: The BVI remains one of the top jurisdictions of choice for mutual fund businesses. This is predominantly due to the ease with which a mutual fund business can be incorporated and subsequently authorised in the BVI.

PR: We are not aware of any 'de-listing' of the jurisdiction by the OECD. What we do know is the fact that the BVI in cooperation with other smaller jurisdictions have been successful in promoting the organisation's acknowledgement of the necessity of a level playing field when harmonising internationally standards of regulation.

What certainly has been beneficial for the BVI is the fact that the territory has never been on the so-called black list of the FATF.

HFM: The BVI has recently

introduced an insolvency regime. Why was this drafted and what effect has it had?

SP: The new Insolvency Act, which came into force in August, provides a statutory basis for many areas in practice that had previously been uncertain and removes much of the uncertainty from insolvency law and practice in the BVI. The new law has certainly attracted the attention of professionals in other jurisdictions and we anticipate a number of law firms and accountants from other jurisdictions will look to set up offices in the BVI.

PR: As an important global player in the field of company formation, it certainly is a highly-positive feature to have a state-of-the-art insolvency legislation in place in the BVI. The Act may encourage a number of new law firms to establish themselves here.

HFM: Has the US Virgin Islands Economic Development Programme and the arrival of several fund managers had much of an impact on the BVI funds industry?

SP: We gather the EDP has proved popular with a number of US managers who traditionally manage both offshore and onshore money. As such, we would expect any managers looking to relocate to the US Virgin Islands to consider the BVI as a jurisdiction for any products they want to launch in the future.

RC: If anything, it has focused attention on this part of the Caribbean and has enabled the forging of a relationship between businesses in the US Virgin Islands and the BVI.

PR: As this is a fairly recent phenomenon it certainly presents the jurisdiction with a good opportunity to promote itself to these fund managers and their industry peers.