

# BUSINESS INSIGHT

QUARTERLY NEWSLETTER FROM BVI FINANCE

Corporate Business

Trust and Estate Planning

Investment Funds

Shipping Registration

Insurance



## FINANCIAL SERVICES REFORMS KICK INTO HIGH GEAR

### Special delivery

New unit gets to work  
Kedrick Malone details what the Financial Services Implementation Unit is doing to ensure the sector keeps growing

### Sector spotlight

BVI ship registration growing  
More than ever, the BVI is seeing increased interest from vessel owners looking for a safe, well-regulated jurisdiction to call home

### BVI talent

A conversation with Elise Donovan  
Here's what the executive director of BVI House Asia sees from her post in Hong Kong

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## EXECUTIVE DIRECTOR'S LETTER



*Julien Johnson*  
Executive Director

Dear readers:

Welcome. Some of you have heard the story but it's such a good one that it bears retelling. In 1961, researcher Carleen O'Loughlin visited the British Virgin Islands to assess the islands' economic potential. She didn't foresee much for the agricultural-based society she found and warned that a plan to evacuate residents and create a "bird sanctuary" bore consideration.

But Ms. O'Loughlin had no way of anticipating the rapid development that the BVI would experience following the passage of the International Business Companies Act, 1984. A cutting edge incorporations law backed up by an internationally respected regulatory and legal system as well as innovative pioneers in the private and public sectors set the stage for growth. A lot of growth. The BVI became and remains the leading international finance centre for incorporations as well as a major player in funds, insurance and other value-added services.

As the world economy continues to change, the BVI's role in facilitating global commerce is changing too. And just like in 1984, public and private sector leaders are adapting. That willingness to evolve is easily evidenced by the transformative financial sector reforms now occurring under the leadership of Premier Dr. Orlando Smith and his government. The past few months have seen the re-branding of the International Finance Centre as BVI Finance and the creation of the Financial Services Implementation Unit (FSIU) in the Premier's Office, which will spearhead the adoption of many other important reforms to come.

The BVI's story continues to evolve and at BVI Finance we hope to tell that story in many ways, beginning with this inaugural edition of our re-launched newsletter, *Business Insight*. Our cover story, "Special delivery" (page 4) details the goals and plans of the FSIU through an interview with its director, Kedrick Malone. In "Sector spotlight: Ship registration" (page 7), we look at advancements within this growing sector. Reflecting the BVI's traditional engagement with Asia, we feature an interview with BVI House Asia executive director, Elise Donovan, on page 10. Additionally, given BVI Finance's desire to collaborate more closely with the private sector, you will find contributions from experienced practitioners in our "Perspectives" section, which begins on page 12.

In the following pages you will read stories of the BVI's commitment to innovation, superior service and regulation; the embodiment of a modern financial services sector committed to continue facilitating global commerce. We invite you to learn more and welcome your feedback as we continue moving forward. Please contact me at [info@bvifinance.vg](mailto:info@bvifinance.vg) with your feedback or comments. Thank you.

Sincerely,



Julien Johnson  
Executive Director  
BVI Finance

## SPECIAL DELIVERY: NEW UNIT IMPLEMENTING FINANCIAL SERVICES REFORMS



*FSIU Unit with the Premier*

A hurricane was heading towards the British Virgin Islands on the mid-August afternoon that Kedrick Malone was scheduled to be interviewed by BVI Finance about government's new Financial Services Implementation Unit (FSIU). Hurricane Danny was expected to hit that day but it weakened and veered north. Three days later, Tropical Storm Erika was supposed to pass over as well, but it dissipated. Mr. Malone, the FSIU's new head and the former director of the BVI London Office, is used to storms; both real ones, and the metaphorical kind that international financial centres like the BVI frequently have to endure in an era of unending pressure from larger economies, international groups and other sources.

During the bad weather, Mr. Malone stayed in his office working to prepare the FSIU, or "delivery unit" as it's less formally known, for the official public launch of the BVI Forward campaign on 17 September (see related story on page 06). The unit is charged with implementing BVI Forward, a series of ten reforms designed to strengthen the financial services industry. The proposed reforms are the outcome of a consultancy which was facilitated by international consulting firm McKinsey & Company and are seen as vital to the future of the financial services sector and the wider BVI. Mr. Malone told BVI Finance that he and his five member team are acutely aware that time is of the essence to implement reforms.

**(Q) The delivery unit's creation was one of the recommendations outlined in the report of the consultancy to study the financial services sector. Why was McKinsey & Company hired?**

**(A)** The actual idea behind the McKinsey study happened in early 2014. The BVI came to realisation that we had to re-invent ourselves, based on current developments in the industry. Given the number of companies registered here — we're the largest offshore domicile — we're under more pressure than anyone else.

The realisation came that we have to change the focus of our business. The Organisation for Economic Co-operation and Development (OECD) came out with their directive that countries will be forced to have more substantive activity to claim they are part of that organization.

There is a push for substance in the industry and a push for greater transparency. Even before the OECD principles came along, you had the United States Foreign Account Tax Compliance Act (FATCA) and a similar law in the United Kingdom. There was the move toward automatic exchange of information and the common reporting standard. That whole movement said to us that if the BVI continues as just an incorporations centre, we're going to continue to be under tremendous scrutiny and at some point we're going to lose business. The writing is on the wall that the rules are changing.

**(Q) Why is the BVI a natural candidate for more substance-based activities?**

**(A)** The good thing about BVI is that it has so many companies and these, are set up for business in all of the other sub-sectors. The company can be for insurance, a trust, a fund or so many of the sub-sectors which haven't been as developed. That gives us a tremendous opportunity to leverage the brand, leverage the incorporations sector into other activities. We already have a strong global brand; we have experienced practitioners who are very familiar with the other types of structures so it puts us in a good position to leverage our way in to other sub-sectors. You might have someone with a BVI company who owns a yacht or a private aircraft. Well that aircraft and yacht can be registered here. If the person has a trust, then you can register the trust in the BVI rather than just have the company that holds the trust registered here. I think that's a big advantage for us.

**(Q) How will the delivery unit plan to go about its task?**

**(A)** Firstly, you had the report, which was completed at the end of last year, and has since been approved by both Cabinet and the legislature. There are ten key recommendations, one of which is to establish the delivery unit, and that has been done. Each of the recommendations has a sponsor whose job it is to convene an Initiative Working Team and the team following its deliberations, makes recommendations.

Those recommendations are passed on to my unit which does the heavy lifting in terms of qualifying them, looking at the legislation and the policies, figuring out if amendments to the legislation are needed and getting those done where necessary. Whatever needs to be done for the recommendations coming out of the sponsor's initiative team; my unit crosses all the t's, dots all the i's. For example, if the committee on immigration and labour recommends that there be a one-stop shop set up for immigration in labour, the unit determines how that can be done. Once Cabinet gives the green light, we implement it and execute it. It's a very efficient, quick process.

**(Q) As leader of this unit, how much urgency do you feel is needed to implement these recommendations?**

(A) It's urgent. I came in with a broad view sitting in London for five years and seeing all that is going on, what's coming out of the European Union, the OECD. You have all of these agreements that are going to kick in 2016, 2017 and it's going to be a very different landscape for financial services. And when that happens the BVI must be in a position to be able to ride that next wave of growth in the industry. I feel a very strong sense of urgency given that the Honourable Premier and, Minister of Finance, heads up the steering committee on these matters and then these things go directly to Cabinet. With that kind of machinery in place you know there's a strong expectation that things have to happen, and they have to happen quickly.

**(Q) Can you speak a bit about the team you've put in place at the delivery unit?**

(A) The team is now fully in place. It's exactly as recommended by McKinsey, which consisted of five persons and myself. There's an Administrator who is responsible for making the unit work. Then we have a Communications Specialist. We have an extensive communications programme that is geared toward engaging the population as well as ensuring that the communication around all of the other initiatives supports the execution of those initiatives. Then you have two key persons, the Delivery Specialists. If the recommendation is to integrate labour and immigration processes, the specialist looks at the labour and immigration legislation, sits down with the department heads, they look at all of the recommendations, and put together how the recommendation will be executed. Then they go back in and they execute it to make sure it gets done. The sixth member of the team is a Data Analyst who looks at all the data requirements which will help to institutionalise some of the things that we are trying to change.

**(Q) How did you go about choosing people to fill these roles?**

(A) We've recruited people from both here and internationally to fill those roles. They must be leaders within their respective areas. For the data analyst position, we found a lady from the United States who is a physicist by training, but she has worked in the State of Oregon doing exactly what we are trying to do. The delivery specialist, is Monique Hodge-Bell who worked at the Complaints Commission. She has a lot of experience looking at how things go wrong in government and we thought she would be a good match to help us figure out what some of the issues are and how to fix them. We have Philomena Robertson as our communications specialist who has government and private sector experience. The Administrator is a BVI Islander who has been away for 18 years, just came back, highly experienced in administration and has the work temperament that you need to have a high-energy, fast paced unit. The Senior Delivery Specialist, we hired is from Jersey. He actually implemented and executed recommendations from a similar McKinsey study for the Jersey government.

**(Q) What progress has been made to date?**

(A) The initiative committees have been meeting to determine what recommendations are needed and are now working on their reports. The immigration and labour team, the engaging the population team, the building capabilities team, the BVI Finance team, those are fairly advanced initiatives in terms of crafting the recommendations. The infrastructure team is the one I've been asked to head up and I'm going to work on that one. The value-added services team is sponsored by the Financial Secretary and we're about to accelerate that one as well. So the teams have been working to get the reports ready so that my unit, can start sifting through them and get some recommendations to Cabinet.

**(Q) Reform is hard. It's hard within industry. It's hard within government, especially when you're dealing with something as complicated and scrutinized as financial services. What assurances can you provide that the reforms being proposed will be permanently adopted and represents more than just 'business as usual'?**

(A) The main aim of the communications programme is to really hammer home to the public what this industry means



to the BVI. We want them to really understand that without this, the BVI would be pulled back 50 years. It's 60 percent of government revenue — your roads, your infrastructure, your schools, your hospital. Everything that you depend on is dependent on this industry. We've said that before but we're going to break it down a bit more so people really get it. I think many people know what's going on in the world with respect to financial services and the external pressures that are there. They see it in the news all of the time. Government has spent a significant amount of money, to commission this study and set up this unit. I think people know that this is more than government has ever done to really try and move this sector on the scale that we are trying to move it. I think people understand that.

**(Q) The delivery unit is working against a clock. What is your timeline to get everything done?**

**(A)** We're looking at about a two-year window. We will do a substantial amount during 2016 and leading into 2017, which will be the tail end of this initiative.



*Kedrick Malone  
Director of Financial Services  
Implementation Unit*

## BVI FORWARD: NEW CAMPAIGN STRESSES FINANCIAL SERVICES' IMPORTANCE

As Premier Dr. Orlando Smith stood before the crowd gathered at the Eileene L. Parsons auditorium at H. Lavity Stoutt Community College, he compared the debut of government's financial reforms initiative as a major movie that was about to debut.

"The script is written! The world is waiting and watching! The curtain is opening today! And, now it is time to perform," he said in preparation to officially launch the BVI Forward campaign.

The campaign, which represents a series of financial services reforms designed to prepare the sector and the British Virgin Islands to thrive for decades to come, was formally introduced to the public during a 17<sup>th</sup> September ceremony.

The reforms focus on ten initiatives, each adopted by a sponsor and a committee that will craft recommendations on how to move forward. The Financial Services Implementation Unit, the members of which were introduced at the ceremony, has a two-year deadline to make sure the recommendations take effect. Among one of the most important initiatives, Dr. Smith said, is the effort to engage the population and make everyone fully aware of the sector's importance to the BVI's economy and society.

"This is not a one man show, it is not a government show, it is not a financial sector show," he said. "It is a show for all of us: government and private sector, industry and non-industry, BVI Islander/Belonger and expatriate, adults and children, local and international; everyone in the BVI moving forward together."



*Premier giving remarks at the  
launch of BVI Forward  
17<sup>th</sup> September, 2015*

## SECTOR SPOTLIGHT: VI SHIPPING REGISTRY ACHIEVES MAJOR STATUS UPGRADE

The tugboat Svitzer Hanne spends its days doing what tugboats do: towing in larger ships or helping out on a salvage job. The grey-hulled vessel usually sails in Bahamian waters but its home port, Road Harbour, is emblazoned on its stern. The tug's new flag features a red background with the United Kingdom's Union Jack in the top left corner and the image of Saint Ursula, the coat of arms of the British Virgin Islands, in the center. The tug's placement on the VI Shipping Register only became official a few weeks ago, but the Denmark headquartered marine towing and salvage company Svitzer —part of the shipping giant Maersk Group —has big plans for expansion.

In the near future the company plans to register 15 to 20 of its tugs in the BVI, all of the vessels in the company's Americas division that aren't registered in other jurisdictions will eventually fly the BVI flag, Albert Snoei, the head of marine standards for Svitzer Americas said.

"We stand for quality. We think we are a recognised leader in the industry with the highest standards in the industry and registering in the BVI suits us perfectly," he said.

### Future growth

While Svitzer prefers to register vessels within each of the jurisdictions that it operates in, not every country has a well developed shipping registration system with a reputation for high quality and safety standards. That's why the company came to the BVI in May, even going as far as to open an office in Road Town to facilitate the registration process.

"We're growing pretty fast. We're building boats, buying boats," Mr. Snoei said. We have to register them somewhere and said "why not in the BVI?" because that's one of the few Category One registries in the Caribbean." He was referring to Category One of the Red Ensign Group, a group of UK-affiliated jurisdictions whose maritime administration regimes meet strict standards for enforcing international laws on maritime safety, pollution, oil spill prevention and related issues. With the news that on 18th September the BVI's registry has been granted Category One status by the UK's Maritime and Coast Guard Agency, the BVI's ship registration business is poised for future growth, industry observers said.

The new status means that the BVI Shipping Registry, which only a few years ago was limited to registering yachts and smaller vessels, has a lot more flexibility, according to Captain Raman Bala, acting director of the BVI Shipping Registry.

"We wanted permission to register anything that floats and we got it," he said.



*Yacht Club Costa Smeralda, North Sound*

### Registration opportunities

For years, BVI leaders have hoped to marry the territory's well established positions in financial services and marine tourism to increase the number of vessels registered in the jurisdiction. BVI registered vessels can operate anywhere in the world while still being regulated from Road Town to ensure they meet internationally recognised marine standards. BVI trust companies and law firms offer vessel owners registration services as well as legal advice with acquiring, financing and operating in the tax-neutral jurisdiction.

For Johann Henry, a partner at Harney's who advised Svitzer on its BVI registration, the company's trust in the BVI is a sign that other vessel owners will follow suit.

"The establishment of an office in the BVI by Svitzer is further evidence of the BVI's move to more substantive offerings in the financial services space and its ability to attract significant business," he said.

### Registration Benefits

A large part of the BVI's attractiveness as a place for vessel registration stems from having a strong reputation for quality regulation. Ships around the world generally have to follow the same rules — United Nations conventions such as MARPOL, the International Convention for the Prevention of Pollution from Ships, and SOLAS, the International Convention for the Safety of Lives at Sea. But some countries offer "flags of convenience" that feature almost no oversight.

However, vessel owners who register in the BVI choose the jurisdiction because they want approval from a well regarded jurisdiction. The yachts, megayachts, tugboats, cargo vessels and other craft regulated by the BVI Shipping Registry have to undergo thorough inspections either by the agency's own marine surveyors or those hired by "classification societies," firms that the registry hires to carry out inspections on its behalf to ensure they are seaworthy.

### Getting the words out

Now that the BVI has achieved Category One status, the VISR wants to get the world out about the benefits of registering in the territory.

"We are going to market this capability throughout the world and tell them how advantageous it is to work with us," Captain Bala said.

He noted that registry personnel recently attended the Monaco Yacht Show, which was held beginning on Sept. 28. The BVI has had increasing success with registering luxury megayachts in the territory, Captain Bala said, adding that his agency has the capability of moving quickly to meet owners' needs.

"Since we are small we'll be able to offer exclusive service. If you have a question we'll be able to answer it within the same day or may be able to sort it out over the phone," he said.



*BVI Registered tugboat, Svitzer Hanne*



## INDUSTRY NEWS

### Longstanding ties: Conference forges even closer links to Asian markets



*Justice Leon and James Noble  
at the Business BVI Asia Conference*

Several hundred lawyers, businesspeople and other professionals gathered in the conference room at Hong Kong's Grand Hyatt Hotel on 23<sup>rd</sup> September, ready to learn more about the latest developments in BVI financial services. The Business BVI Asia Conference, now in its second year, brought together many of the top decision-makers in financial services from both the public and private sectors. There were over a dozen speakers including Premier Dr. Orlando Smith, Justice Barry Leon of the High Court of the Virgin Islands (Commercial Division), OIL Group Managing Director Jonathon Clifton, and Dr. Qian Liu, Deputy Director of the Economist Intelligence Unit's China Service. The topics focused on the Chinese government's economic development strategy, the implications of a potential economic slowdown in China, opportunities to provide services to China's ultra high net worth individuals, and how two new BVI funds products can be used in Asian markets.

### OECD praises BVI's commitment to tax transparency

Another global standard setting organisation has praised the British Virgin Islands for its compliance with tax transparency and information exchange rules. The Global Forum on Transparency and Exchange of Information for Tax Purposes, a Paris-based body of the Organisation for Economic Cooperation and Development, announced in August that the BVI's regulatory framework was "largely compliant" with the organisation's rules.

The Global Forum's findings were announced in a "Supplementary Peer Review" report that commended the quality of the BVI's responses to exchange of information requests, as well as the timeliness of responses in relation to the number of requests received.

Premier Dr. Orlando Smith said that the seal of approval from the OECD is only the latest recognition that the BVI has received in recent years for the quality of its financial services regulatory regime.

"The BVI has a long track-record of meeting and exceeding the highest international regulatory and transparency standards and we continue to do so today. We are very pleased that this has been recognised by the OECD," he said. Dr. Smith added that meeting high international regulatory standards had been a key ingredient to the BVI's financial services growth since the passage of the International Business Companies Act, 1984.

"The BVI has been a pioneering global financial centre for over 30 years and this latest endorsement demonstrates how the jurisdiction continues to evolve and maintain its competitive advantage," he said. "We remain committed to engaging the OECD and our other international partners to help exceed and enhance international standards of tax transparency and regulation."

In addition to the OECD, the BVI's regulatory system has been reviewed in recent years by groups such as the International Monetary Fund, the Caribbean Financial Action Task Force and its parent, the Financial Action Task Force, as well as the United Kingdom government. All of those groups have commended the BVI for its compliance with international regulatory standards.

## BVI TALENT

### *A conversation with Elise Donovan, director of BVI House Asia*

According to the latest trade statistics from the United Nation's UNCTAD, the BVI is China's second-largest source of inward foreign investment. From BVI House Asia's 51<sup>st</sup> floor offices in Hong Kong's Central Plaza the organisation's director, Elise Donovan, has a pretty good view of the busy streets below. While there's been some concern circulating in recent months about a possible slowdown in the Chinese economy, it hasn't thusfar translated direct investment flows and the fifth largest recipient of outward flows. BVI Finance recently sat down with Ms. Donovan to discuss BVI's role in the Asian market, the Business BVI Asia conference, and her organisation's plans for 2016. To investors and individuals looking for a well-regulated and reliable place to structure their business, the BVI remains a jurisdiction of choice.

#### **(Q) How have you seen the use of BVI structures changing in Asia?**

**(A)** Because of the use of BVI structures, BVI is the most important offshore jurisdiction in the region, according to the Offshore 2020 report produced by Offshore Incorporations Limited (OIL) . Every year they perform market research into trends in the industry and where they're projected to go for the next five years. They asked practitioners in the field: What type of business is being done? Where do you see the jurisdictions faring in the next five years? And since they started their research the BVI has been seen as the most important offshore jurisdiction. There were predictions when OIL started with these reports five years ago that the BVI's role would have diminished and that other jurisdictions were going to be more important but those predictions have not borne out. The BVI is still the foremost important offshore jurisdiction and its status hasn't diminished.

#### **(Q) Why is that?**

**(A)** One of the things that comes out in the Offshore 2020 report is that there was a perception that offshore jurisdictions were just being used for tax planning but when the research was done it showed that wealth planning and succession planning were seeing growth and the use of tax planning was declining. You're seeing an increase in the use of trusts and other structures, joint ventures, initial public offerings and pre-IPOs.

Because most of the companies across the Asia region would have a BVI company — BVI is the most popular business company — I think there's a natural transition to using BVI structures for growth when those companies grow and create wealth and expand overseas.

The Chinese government has an initiative to go global and the One Belt, One Road initiative. You're going to see an increase in terms of outward FDI flows from China and they will be using BVI companies.

*Elise Donovan, Director, of BVI House Asia*



#### **(Q) What perspective do you bring to the role of director of BVI House Asia?**

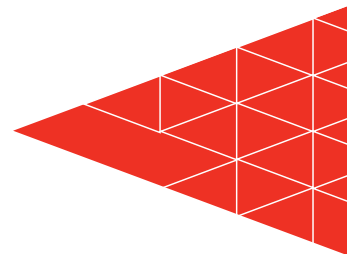
**(A)** My training is in international affairs. My master's degree is in that field. In this office I would say we are a consulate without the official status because we're a non-independent country. So I see myself as the representative for the BVI to the entire region. When I was working in the International Affairs Secretariat we used to do a lot of TIEAs (tax information exchange agreements). I was involved in the negotiations we had with China, France, the UK, Canada, and Nordic countries. I also worked with the committee that drafted the BVI's 2007 Constitution and have worked with the Financial Services Commission. Also, by being executive director of (BVI Finance forerunner) the International Finance Centre I became more integrally involved working with the financial services sector.

**(Q) How does sponsoring conferences like Business BVI Asia, which took place in Hong Kong on 23<sup>rd</sup> September, help get the word out about the BVI's financial services offerings?**

(A) It provides the primary platform where we can showcase the products and services that the BVI has to offer. We can showcase the practitioners, the experts, the innovation and creativity they have to offer and the advantages of using BVI. It brings it to the market in a package. Conferences are a big thing in Hong Kong so it raises our profile and gives us that stature.

**(Q) As we approach the end of 2015 and look to 2016, what does BVI House Asia have planned for the coming year?**

(A) Our mandate is the whole Asia Pacific region, which is a very wide mandate. So we've established our presence in Hong Kong and we've built relationships with practitioners in Hong Kong. We need now to move out to mainland China whether its the Yangtze and Pearl River Deltas or other markets and trying to see how we can build relationships in those markets. Yes, traditionally Hong Kong has been the conduit for business coming out of China. But these Chinese cities are maturing and having their own identity. You can now go into these cities and establish relationships directly. We've been doing that by working with Shenzhen and Qianhai Authority, and now we're looking at Guangzhou and Tianjin. We've been a major sponsor of the China Offshore Summit so we've maintained those relationships with Beijing and Shanghai. But now I think we'll go and build relationships with other toptier cities that have wealth and growth. I think next year we'll have a major mainland focus. And, of course, we won't forget the other places that fall within our mandate as well.



# PERSPECTIVES: SPACS ARE BACK, AND THE BVI IS POISED TO BENEFIT

*By Michael Killourhy*  
*Partner, Ogier BVI*



Special Purpose Acquisition Companies (SPACs) have re-emerged as a popular alternative investment vehicle to facilitate the participation of institutional investors and hedge funds in private equity investment opportunities. The British Virgin Islands (BVI) is very much a beneficiary of this new wave of activity. The SPAC concept first emerged during the 1980s. While at first popular amongst certain investor groups as an alternative to traditional “penny stocks”, SPACs had all but disappeared by the early 1990s amidst abuse, poor press and, inevitably, tougher regulation. However, by the first decade of the 21<sup>st</sup> century SPACs were back, and between 2005 and 2008 almost 150 SPACs completed initial public offerings (IPOs) in the United States, raising over US\$ 20 billion. Indeed the level of SPAC activity became so high that in 2007, immediately before the onset of the credit crisis, SPAC IPOs represented 20 percent of all US IPO activity for the year. This second wave of SPAC activity ended abruptly in the wreckage of world equity markets of 2008. Whereas in 2007 there were 66 SPAC IPOs in the US, in 2009 there was just one. But now the SPAC is back again, and since 2013 SPACs globally have raised almost US\$ 5 billion in gross proceeds, with a significant number of BVI incorporated issuers amongst their number.

## What is a SPAC?

A SPAC, as the name suggests, is a newly incorporated company established solely for the purpose of acquiring or merging with an existing business within a prescribed period of time. SPACs are established by one or more individuals or entities (known as sponsors) with experience in acquisitions or company management (typically persons with a private equity background). Funds for the proposed acquisition are raised from investors by way of an IPO of the SPAC. Since 2008, SPAC IPOs have taken place on most of the major world exchanges, including the New York Stock Exchange, NASDAQ, the London Stock

Exchange (main market), AIM and, most recently, the Toronto Stock Exchange.

Following the SPAC's IPO, a significant portion of the funds raised, net of the underwriters' compensation, will be placed in an escrow account to fund the eventual acquisition when the time comes, until then the SPAC's activities are limited to identifying a suitable target for acquisition. Although a SPAC is established for the sole purpose of acquiring a business, the identity of that business will not be known at the time of IPO. A target sector or region may have been identified in the prospectus, but not the target itself. Indeed, some recent SPACs have not even identified a target region or sector, but have instead allowed management global discretion when seeking out an acquisition target. While on one hand this feature allows capital to be raised without it being tied to a particular acquisition or investment, on the other however it means that investors, in deciding whether to invest, must place great faith in SPAC management team's track record and their ability to identify a suitable target.

## SPAC's management

A SPAC's management team will usually comprise the principal sponsors (or their representatives), and most of the team will also sit as directors of the listed SPAC, together with a number of independent directors. The management will often be incentivised by way of an equity stake in the SPAC. A typical incentive structure would see the management team holding around 20 percent of the SPAC's intended post-IPO equity. In addition, management may also be awarded warrants or other rights to acquire or receive additional shares in the SPAC in or simultaneous with the IPO.

The escrowed proceeds of the IPO will be released upon the earlier of: (i) the consummation of an acquisition; and (ii) the liquidation of the SPAC in the event that no acquisition is consummated before the expiration of a prescribed period of time. The market standard for this period is usually between 18 and 24 months post-IPO and reflects the desire of investors to not have their investment tied up indefinitely (although, in some cases, limits are also prescribed by the applicable listing rules, e.g. AIM Rules require investor consent for any period beyond 18 months). If a suitable target is identified within the period, then the acquisition may require shareholder approval either under



the contractual terms of offering (as reflected in the SPAC's constitutional documents) or under the rules of the relevant exchange. However, shareholder approval may not always be required and the rules of the relevant exchange around the need for shareholder approval can sometimes be an influencing factor for a SPAC determining where to list. Where shareholder approval is not required, shareholders will typically instead be entitled to redeem their shares (at or around initial cost) prior to consummation of the acquisition pursuant to a mandatory tender offer. If shareholders elect to redeem more than a particular percentage of shares under the mandatory tender offer (usually around 30 percent), then the SPAC will be prohibited from proceeding with the acquisition.

## Current SPAC Activity

The resurgence of SPAC activity since 2012 is of course largely down to improved market conditions. There are, though, a number of other factors that have added additional strength to that resurgence, and help to explain the current strength of the market. In particular, in December 2010 NASDAQ changed its listing rules to remove the requirement for SPAC acquisitions to be subject to prior shareholder approval (provided however that the SPAC would still offer to redeem the shares of any shareholder who did not wish to participate in an announced acquisition). Removing the uncertainty of the outcome of the shareholder vote, and the fact that certain investor groups had previously used the requirement to hold SPACs hostage so as to engineer a more favourable return than that available to other shareholders, made SPACs, or at least NASDAQ listed SPACs, a far more attractive proposition for sponsors, promoters and investors alike. This change, combined with other structural changes introduced since 2010, has contributed to the current strength of the SPAC market.

## BVI Companies as SPACs

BVI companies are well represented amongst recent SPACs. Arguably, the highest profile BVI incorporated SPAC of recent years has been Justice Holdings Limited, which listed on the main market of the London Stock Exchange in 2011 and acquired 29 percent of Burger King Worldwide, Inc. in 2012 for approximately US\$ 1.4 billion in cash. On a slightly smaller scale, 2012 also saw the IPO of Infinity Cross Border Acquisition Corporation on NASDAQ, followed in 2014 by Infinity's successful acquisition of Glory Energy Inc. Following on, the latter half of 2014 and the first half of 2015 saw a number of BVI SPAC listings in quick succession, of which we as a firm advised upon three successful BVI SPAC IPOs on NASDAQ in a five

month period, including the June 2015 US\$ 200 million IPO of Electrum Special Acquisition Corporation.

Much of the BVI's current success in the SPAC arena is due to the legal attributes of BVI companies. Using a BVI company as a SPAC entity provides a number of advantages. The company laws of the BVI as set out in the BVI Business Companies Act, 2004 (the BCA) are flexible and adaptable not only to market custom and investor needs but also to the rules of those stock exchanges on which SPACs list, enabling the evolution of market trends in SPAC structuring to be easily accommodated within a BVI company.

(Sources for figures quoted in the text: <http://www.spacanalytics.com>, and Liz Enochs, Year in Review: Insiders Expect Revival after 2009 SPAC Drought, The SPAC Report, May 27, 2010.)

## PERSPECTIVES: BVI INTRODUCES INNOVATIVE NEW FUNDS

*By Philip Graham,  
Partner and head of funds at Harneys*



The British Virgin Islands, in continuing to establish itself as a premier offshore financial services jurisdiction, launched two new fund products on June 1<sup>st</sup>, 2015. The aim is to complement its very popular existing funds offering with the bold intention of remaining on the cutting edge of the financial services market. The "incubator fund" and the "approved fund" are both lightly regulated fund products which are primarily aimed at start-up and emerging managers, as well as those managing funds for smaller groups of closely connected investors.

These types of managers face an increasingly hostile environment to get their fund vehicles to market; the regulatory outlook is ever demanding as this only leads to an enormous amount of up-front cost before the manager can even begin to contemplate their marketing campaign. Our aim is for the BVI to therefore provide a trusted and welcoming environment with the most appropriate level of regulatory requirements which will very much enhance a smaller fund manager's ability to plant their metaphorical acorns and hopefully grow some magnificent oak trees that stay within our jurisdiction for years to come.

The new legislation which governs these products is the Securities and Investment Business (Incubator and Approved Funds) Regulations 2015. The regulations are made pursuant to the Securities and Investment Business (Amendment) Act 2015 which amends the Securities and Investment Business Act, 2010 (SIBA) and are also supplemented by guidelines published by the Financial Services Commission (FSC) on 4 June 2015. These guidelines include the forms that must be completed and filed with the FSC to obtain incubator and approved fund status.

### **The 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. In accordance with the regulations, the incubator fund is permitted to operate for two years (with the possibility of one additional year extension), which is described as the "validity period", without a mandatory requirement to appoint the typical functionaries (i.e. administrator, custodian or manager) and there is equally no requirement to appoint an auditor. The only mandatory appointments therefore are the registered agent and authorised representative in the BVI.

However, this level of flexibility is contingent upon the fund remaining within the relevant thresholds applicable to the fund during its validity period. These thresholds are:

- A maximum of 20 "sophisticated private investors";
- A minimum initial investment of US\$20,000 by each investor and
- A cap of US\$20 million on the value of the net assets of the fund.

Prior to the end of the two-year or three-year term (as applicable) or upon exceeding any of the specified thresholds, the fund must elect one of the following options:

- Apply for recognition of the fund as a private fund or professional fund by preparing, amongst other things, an audit demonstrating its current financial position and compliance with the regulations and submitting the application to the FSC;
- Apply to the FSC for approval as an approved fund; or
- Winding up its operations as a regulated fund

This therefore allows a smaller manager to dip their toe in the investment funds water and either decide at the end of the validity period to completely submerge themselves with the straight-forward transition to a more regulated fund vehicle or, instead, easily and cost-effectively remove that toe, wind-up that particular fund, and come up with a new plan.

## The approved fund

The approved fund is aimed at managers who wish to establish a fund for a longer and unencumbered 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 also has relevant thresholds:

- a maximum of 20 investors at any one time; and
- a cap of US\$100 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 SIBA including no minimum initial investment for the investors. But 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 throughout its much longer lifetime, the approved fund is required to appoint an administrator (along with the registered agent and authorised representative) which will be reassuring to potential investors.

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

- a decision is made to voluntarily apply to the FSC 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.

We are seeing an enormous amount of interest in this product from a number of the emerging markets where high net worth individuals are often looking for a lightly regulated, low-cost fund vehicle incorporated in a well-respected funds domicile which will provide them with a number of distinct benefits within their home jurisdiction. We absolutely believe, over time, and with the right level of marketing, the approved fund could become the global market leader in this regard.

## Time to market and reduced costs

Recognising the importance of time to market, both of these new fund products have been provided the further flexibility of being able to commence trading within two business days of lodging a completed application for approval with the FSC.

It is anticipated that the legal costs will be lower than those associated with setting up a private or professional fund, largely because the mandatory information to be contained in the offering documents of these funds, as specified by the Regulations, 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 strictly believes the fund requires, the new regime will provide significant cost savings to an investment manager of one of these funds.

## Conclusion

The new products and the regulations are a welcome addition to the BVI investment funds landscape and will further refine the BVIs' reputation as a flexible, innovative, attractive and cost-effective jurisdiction for new fund launches. Coupled with the highly regarded approved manager product which is now truly blossoming since its introduction in 2012, the BVI is very much part of the next frontier in the investment funds market.

The key challenge left for both BVI Finance and the private sector is to market all of these products effectively, efficiently and accurately across as wide a spectrum of potential clients across the globe as possible. When that marketing presence is combined with the highly efficient and well-respected regulator in the BVI, we will truly become a formidable team

# PERSPECTIVES: THE NEW BVI TRADE MARKS ACT READY FOR THE DIGITAL AGE AND BEYOND

*By Jamal S. Smith,  
Founder of Thornton Smith*



On 1<sup>st</sup> September, 2015, the British Virgin Islands unveiled a comprehensive overhaul of the territory's trade mark laws that will benefit residents and businesses for years to come. The Trade Marks Act, 2013, the Trade Marks Rules, 2015, and the Trade Marks (Amendment) Rules, 2015, marked the start of a new age for trade mark protection in the BVI. The new legislation replaced a prior regulatory regime that dated back to the late 1800s.

## The past

This previous regime was outdated in several ways. It only allowed for registration of goods unless you re-registered a United Kingdom trade mark where the registrar would allow the registration of service marks. That process required applicants to obtain a power of attorney or the execution of a similar document that authorised the appointment of a local agent. The original had to be submitted to the registrar, which would extend the time within which a trade mark application could be processed. The registration would be in effect for 14 years unless it was a re-registration of a UK registration, in which case it would remain in effect as long as it was in effect in the UK, subject to the payment of a renewal fee. The change of ownership procedure was cumbersome, and it was not possible for co-existence agreements to enable honest concurrent use without some form of judicial intervention. This detracted from the private sphere of trade mark exploitation.

## The present

The new trade mark regime provides for:

(a) **International compliance**

The new regime complies with the Agreement on Trade-Related

Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods of 1993, commonly known as "TRIPs." It implements many aspects of the European Community First Council Directive of 21 December, 1988 to approximate the laws of member states relating to trade marks, (the "EC Directive").

(b) **Well-known marks**

Although the BVI has not yet had the Paris Convention extended to it, the new regime now provides protection for well-known marks.

(c) **Priority applications**

Priority applications can be filed within six months of the first application in a Paris Convention country or a WTO member state.

(d) **Simplified registration process**

A simple registration process that eliminates the need for foreign trade mark owners to provide a power of attorney or other document authorising an agent in the BVI. All trade marks must be registered, and otherwise dealt with, through a registered trade mark agent in the BVI and the relationship between the agent and the trade mark owner is one of agreement. No other formalities are required and the trade mark agent will file Form TM1 within 24 hours of receiving instructions. The entire registration process, up to receipt of the certificate of incorporation will only take about four months provided there are no administrative actions or oppositions.

(e) **Non-traditional marks**

As a condition of registration trade marks must be visually perceptible. This allows for the registration of alphanumeric marks, color marks, packaging and 3-D marks, but it also allows protection for sound, smell or taste marks where they can be represented graphically.

f) **Absolute grounds for refusal**

The EC Directive is considered to be the best statement of current norms for determining the unregistrability of a trade mark and the BVI has followed suit with an extensive list of absolute grounds for refusal of registration by the registrar.



(g) **Invalidity proceedings**

A trade mark registration can be declared incontestable as to its validity by the registrar or the court following an unsuccessful challenge to the trade mark's validity. Where a trade mark has been declared invalid, notwithstanding any commercial transaction as a result of the registration, the trade mark is to be treated as having never been registered. This requires that any lending institution that wishes to take security over a trade mark in the BVI that has been registered for fewer than five years should obtain appropriate legal advice to protect its interests.

(h) **Designation as a registered trade mark**

It is not mandatory to represent that a trade mark is registered in the BVI, but the ® symbol is one of the legally permissible designations to indicate that a trade mark is registered. It is an offence, punishable with a maximum fine of US \$8,000.00, to use the ® symbol in the BVI or otherwise represent that the trade mark is registered when the trade mark is not actually registered in the BVI, unless the owner makes it clear that the use of the ® symbol or other designation only relates to a particular country where the trade mark is actually registered. Therefore, the sale in the BVI of products or services using a trade mark that is not registered but actually uses a designation to suggest registration would cause the trade mark owner to be liable to the fine. Care should also be taken where products and service are offered in the BVI over the internet.

(i) **Registrable transactions**

It is not mandatory to register security interests and licenses. But, where the value of trade marks is critical to many commercial transactions, the system of registering various interests in trade marks is important. However, it is no longer necessary to have a deed of assignment and a notarised declaration to accompany the deed simply to assign a trade mark in the BVI. All that is required is that the trade mark agent submit a copy of the agreement and file Form TM13 which can be done within 24 hours of receiving instructions.

(j) **Infringement proceedings**

The BVI now has comprehensive infringement provisions which implements Articles 6 and 9 of the EC Directive as well as Articles 16.1 and 17 of TRIPs.

(k) **Parallel imports and counterfeit products**

With the implementation of Article 7 of the EC Directive as it relates to international exhaustion, a trade mark owner can prevent the importation of trade-marked goods from outside the BVI and a notice can be issued to the commissioner of Customs to stop the importation of any specific consignment of

goods. Therefore, it would now be more difficult for persons to sell counterfeit products in the BVI once trade mark owners enforce their rights.

A few things have remained the same with a few minor modifications, such as:

(a) **Use**

"Intent to use" applications are still permissible and there is no need to prove use as a precondition to renewal or at any other stage. However, it has moved the bar for cancellation applications from its previous five years to the international minimum standard of three years after registration. There is also not yet any procedure to remove "deadwood" marks from the register by an administrative procedure similar to the Canadian Section 45 Proceedings under the Canadian Trade Marks Act (RSC 1985). The registrar can only remove a trade mark by application from either an aggrieved person, or by the trade mark owner surrendering the trade mark certificate.

(b) **Co-existence agreements**

Removing the absolute bar to registration of unregistered marks used in good faith by two different owners by extending the concept of honest concurrent user without the need for judicial intervention. Therefore, a co-existence agreement is all that is necessary where the owner of an earlier trade mark consents to the use of the trade mark, although acquiescence can be inferred if the owner of the earlier right does nothing.

(c) **Renewal**

The initial registration and each renewal of a registration will now be for a period of 10 years. However, those trade marks that were registered prior to 1<sup>st</sup> September, 2015 will still continue to have their renewal period of 14 years until their next renewal date expires and they will then be renewed for 10 years. All that is required is that the trade mark agent file Form TM11 which can be done within 24 hours of receiving instructions.

## **Conclusion**

The new trade mark regime has been longtime coming, but it was well worth the wait. It complements the BVI as a leading international finance centre that will provide an even greater opportunity for consumer protection and the management of intellectual property assets.

## OFF THE CLOCK

*Passions outside of work: Jacqueline Daley-Aspinall, attorney and dancer*  
*By Jason Smith*



*Jacqueline Daley-Aspinall*

Like a lot of the professionals in the British Virgin Island's financial services sector, Jacqueline Daley has a lot going on. She's a partner at Harney's with a busy practice in corporate law, a mother of a 7-year-old, and the recently-elected president of the BVI Bar Association. But for two hours a week she gets to pursue a passion she's had since childhood. She goes to dance. "I get to clear my mind entirely for an hour, get a really good sweat on, and explore my creative side," she says.

Since 2014, Ms. Daley has participated in a series of dance classes run by the Tortola Dance Project. The adult dance group, led by Diandra Jones of the BVI Dance School, features 10 classes of dance fitness over five weeks with instruction in a new dance style, and ample practice, followed by a performance.

Ms. Daley has enjoyed dancing all her life but when she came to the BVI she found that most dance groups required significant time commitments, which her schedule didn't allow for. But the Dance Project allows her some flexibility. Thusfar, she's been able to participate in the group's cabaret, carnival, belly dance and 80's-themed performances.

"It's great exercise and a wonderful way of reducing tension and stress. Every new set of classes allows me to meet new people and we all work together to avoid complete embarrassment on performance night. Every class has a lot of laughter and camaraderie," she says.

Most of her workday is spent advising BVI-registered firms which are listed on foreign stock markets or providing clients with advice on corporate governance procedures. That seems like a far cry from dancing but it stresses some of the same skills that lawyers need to be successful such as discipline, focus, creativity and a willingness to push boundaries, she says. That last element can be particularly rewarding.

"She'll come into the class and she'll say, 'let's do this with our legs', and we'll look at her and think - she has got to be kidding," Ms. Daley said of Ms. Jones, her instructor. But with practice and determination, the performers always manage to get their bodies to move as envisioned when it comes time to perform. "Somehow Diandra gets you to do things you never thought you could do," she says



*Standing second from left in the back row, Ms. Daley-Aspinall, and members of the Tortola Dance Project pose for a photo after a Carnival-themed performance earlier this year*

## UPCOMING EVENTS AND CONFERENCES

- ▶ **OCT. 18 - 21**  
The American Society of Healthcare Risk Management (ASHRM)  
Indianapolis, Indiana, USA
- ▶ **OCT. 20**  
Private Wealth Latin America & The Caribbean Forum  
Miami, Florida, USA
- ▶ **OCT. 22 - 23**  
STEP LATAM (The Society of Trust and Estate Practitioners - Latin America)  
Sao Paulo, Brazil
- ▶ **OCT. 30**  
Ft. Lauderdale Boat Show  
Ft. Lauderdale, Florida, USA
- ▶ **NOV. 4-5**  
China Offshore Summit  
Hong Kong, China

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