

BUSINESS INSIGHT



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By Ayana Hull

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THE
STANDARD
SETTERS

BUSINESS INSIGHT

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BUSINESS INSIGHT

NOTE FROM THE EXECUTIVE DIRECTOR



Lorna Smith, OBE
Interim Executive Director

It is with great pleasure that I welcome you all to the latest edition of BVI Finance's Business Insight.

As I begin writing this note, I am reminded of my colleague Elise Donovan's apt comparison of this jurisdiction with the well known fairy tale – 'The Little Engine That Could'. In recent times our challenges have been many including the Panama Papers, Paradise Papers, two Category 5 hurricanes and now the United Kingdom's decision to implement public registers on all British Overseas Territories. Yet we continue to move forward with a sense of optimism and hope.

Themed "The Standard Setters", this edition of Business Insight further illustrates the role the British Virgin Islands (BVI) plays in the global economy. The contributions really establish how we have evolved as a world class international business and finance centre.

Articles 3 and 4, on the new Limited Partnership Act (page 7) and the technology driven Micro Business Companies Act (page 8), show the BVI's commitment to being an innovative, pioneering and forward looking jurisdiction. Ryan Geluk's article on (page 10) about our Beneficial Ownership Secure Search system (BOSSs) speaks to the BVI's innovative and state of the art response to improving transparency and tackle financial crime.

Despite the many hurdles and obstacles placed in our path over the years, we have managed to jump over them with the class and sophistication for which we are known. The goal has and will always be to provide the best in class service to our clients, no matter the hurdle. According to the Capital Economics report published last year, Creating Value: The BVI's Global Contribution, the BVI is a sound and reliable centre which has worked harder than many bigger nations to meet international standards. If that doesn't scream out "standard setters", I don't know what will!

I invite you to immerse yourself in the articles on the following pages. We welcome all feedback as we continue to move forward. You can contact the team at info@bvifinance.vg with all your questions, comments, or suggestions.

Best,



Lorna Smith, OBE
Interim Executive Director, BVI Finance



Embracing the Shift:

BVI AND THE DIGITAL MOVEMENT

By Ayana Hull, Counsel, Harneys

In establishing itself as a leader in offshore financial services, the British Virgin Islands continues to trail blaze the path of innovation by persistently examining trends which are developing over time. It continues to introduce new financial services products to meet customer needs whilst balancing its international obligations to maintain its integrity as a world-class offshore jurisdiction.

THE DIGITAL FINANCIAL SERVICES ERA

The use of computer programs and other technology to support or enable financial services is now one of the fastest growing industries in the world. As online financial transactions occur more quickly, more efficiently and more cost effectively, more and more clients are readily embracing these on-line based products. Further, as cryptocurrencies and digital tokens continue their energetic movement through the world's investment markets and as the FinTech world continues to explode, so too must the BVI keep step with developments in this space in order to attract and service clients who call upon the strong financial services community in

the BVI to structure these new and innovative digital products. We discuss some of these areas below in more detail.

REGULATORY SANDBOXING

Recognising the trend of financial services jurisdictions to develop regulatory frameworks for emerging business models, a plethora of technological entrepreneurs have already expressed direct interest in the BVI's ability to allow them to test their new digital business models in the BVI by conducting live experiments, in a controlled environment which is operated under the supervision of the BVI regulator, the Financial Services Commission.

Regulatory sandboxes are gaining popularity in most developed financial markets and the BVI Government is currently engaged in discussions across industries and countries to assess how a BVI regulatory sandbox can assist innovators to create more affordable products and services and to foster financial inclusion. The BVI regulator has also recently made a public statement on its commitment to helping financial services firms to innovate through regulatory and financial technology.

In addition to the sandbox, exciting industry proposals are currently before the BVI regulator to expand the horizon of the BVI Financing and Money Services Act, 2009 to allow for P2B (including P2B and B2B) lending platforms to operate from in or within the BVI without the need to obtain a licence.

GUIDANCE TO CLIENTS STRUCTURING CRYPTO-CURRENCY FUNDS AND ICOS

We have seen a staggering level of interest and requests to structure initial coin offerings (ICOs) in the BVI, thereby raising third party capital by issuing tokens of some form via a blockchain network; and we have been advising and continue to advise on structuring some of the world's leading ICOs through BVI companies. For further specific guidance on launching an ICO in the BVI please also click on the following link: [Launching an ICO in the British Virgin Islands](#).

Crypto-currency Funds

At the same time, crypto-asset focused funds have more recently been a primary agenda item in the BVI financial services transactional space. Many new start-up and emerging managers wish to gain access to this market and they correctly identify the BVI as a jurisdiction with a very natural fit for that purpose, given the innovative fund products on offer.

Whilst crypto-assets may be seen by many as simply the in vogue asset class of the moment, there are three important areas that must be focused on when structuring a crypto-fund as opposed to, for example, a long/short equity fund:

1. **Risk Factors:** The risks involved in investing in crypto-assets are likely to be different than investing in other asset classes. As such, additional care needs to be taken in crafting specific risk factors that are both appropriate and relevant and to ensure that the potential investors are appropriately informed of the challenges (both actual and potential) in this niche area.
2. **Custody:** Despite the growth in the number of managers trading crypto-assets over the past few years, there is still a lack of premier custodians willing and, more importantly, able to service the industry. For this reason,

self-custody is currently the norm. As the market matures and best practices are developed, this position is likely to change. However, for the time being, the BVI regulator has, in principle, no objection to granting custodian exemptions to "private" or "professional" funds on a case-by-case basis, to allow a fund the flexibility it needs in this regard.

3. **Subscriptions in-kind:** Many clients come to us wanting to accept crypto-asset subscriptions into a fund. There are two issues with this; firstly, the number of fund administrators who have a sophisticated enough system to cater for this sector is currently limited; and, secondly, the question as to how a fund can satisfy its anti-money laundering and countering the financing of terrorism obligations



The BVI has always been successful in delivering quality financial services at an affordable cost.

(AML/CFT) in circumstances where obtaining details on the source of funds to originally acquire the crypto-assets can be so opaque, must be addressed. Whilst the first issue is clearly a practical problem, the second issue has legal ramifications and is something on which we are regularly asked to advise. The concern is that it is very difficult to verify that the crypto-currency transferred to the fund's wallet actually belongs to the subscriber (unlike in circumstances where the subscriber subscribes in FIAT currency, the fund can take a great deal of comfort that the relevant regulated financial institution has conducted its own KYC/CFT checks on the subscriber and will confirm in the relevant wire details that

subscriptions monies are from an account in the name of the subscriber). There is no silver bullet in these situations, and, as we have previously pointed out, there may be a number of interesting ways to reduce the risks involved. Click on the link for a further discussion in this regard: [Know Your Crypto](#) on Harneys Offshore Fund Blog.

ICOs

In terms of best practice to clients seeking to structure ICOs in the BVI, perhaps the most important guidance we can provide is for clients to retain lead onshore counsel who is well-versed in ICO and crypto matters. Also, as every transaction is different, the analysis of each transaction will be different. Hence, we would also need to review the White Paper associated with each ICO in order to assess whether the platform operation, tokens to be issued or the transactions related to any of them will trigger regulation under BVI law. From experience, the vast majority of clients in this space use onshore legal counsel to draft the key transaction documents (token pre-sale agreements, private offering memoranda, ICO sale agreements, technology licensing/assignment agreements), which BVI counsel will review for purposes of complying with BVI law and drafting the necessary corporate approvals. A regulatory and tax review and analysis should also be carried out by qualified lawyers/tax experts in any jurisdictions where the tokens are to be offered or sold.

Additionally, BVI legal counsel would need to carry out its own risk assessment of the transaction as required by the BVI laws applicable to on-boarding clients for corporate/transactional work. Issuers of crypto-tokens are expected to adhere to best practices in relation to customer due diligence and know your customer policies and procedures on investors. Therefore, clients will also need to obtain legal advice on BVI anti-money laundering and countering the financing of terrorism requirements (AML/CFT). The question as to how a cryptocurrency fund or a digital token issuer might satisfy its AML/CFT obligations when accepting subscriptions from investors is a main issue for regulators and service providers alike to wrestle with. Unlike funds with fiat subscriptions, verification of source of funds for a virtual subscription is more of an issue. For further discussion as to how risks associated with crypto-subscriptions can be minimized, search "[Know Your Crypto](#)" on Harneys Offshore Fund Blog.

As regards the tax position in relation to ICOs, tax analysis under BVI law is relatively straight forward as BVI compa-

nies are (save for a few exceptions) tax exempt. The tax analysis will be driven by factors such as where the company conducts operations, shareholding and control (controlled foreign company analysis) and the tax residency of investors. Tax experts will therefore need to be consulted in those jurisdictions as opposed to in the BVI.

The BVI has always been successful in delivering quality financial services at an affordable cost. There is now an ever-increasing fast-pace attitude shift in the conduct of financial services and financial services experts have all agreed that the future is hard to predict. However, the BVI must and is well positioned to respond to this paradigm. The BVI remains engaged in the conversation, cognizant of the shift in its marketplace and readily adaptive to its new environment. It is therefore committed to embracing the idea of innovation and competition, so that it can continue to deliver products on client demand in order to continuously strengthen the strong, vibrant and successful financial services eco-system that has become the BVI.



LIMITED PARTNERSHIP ACT – Real Talk

By Kerry Anderson
Partner, Funds, Investment, Regulatory
O’Neal Webster

The British Virgin Islands has long been a leader in company incorporation. It is also the jurisdiction of choice for many whose needs include investment funds, banking, trust services and more. Not content to rest on its past achievements, the BVI government and industry have embarked on a course to continually review and update its products. It is this process that has led to the passing into law of the new Limited Partnership Act, 2017 (the LPA). The LPA modernizes former BVI partnership law introducing several key new features for limited partnerships.

KEY FEATURES

One of these new features is the concept of “legal personality.” The legal personality of the LPA gives limited partnerships the right to enter into contracts (domestic and international) and to sue or be sued in the name of the limited partnership. In addition, a limited partnership may create a charge over assets of the partnership and register such charge against the name of limited partnership as opposed to in the name of the general partner. With legal personality a limited partnership may be able to participate in structures where members are required to be a legal person. Legal personality means that the limited partnership has the ability to continue to exist despite the withdrawal or admittance of its partners.

Legal personality will apply by default to new limited partnerships under the LPA and the partners may, on formation decline legal personality; but once this election is made it cannot be changed.

OTHER BENEFITS

Among the commercial benefits the LPA incorporates is an extensive list of safe harbor activities that limited partners may engage in without forfeiting their limited liability. This

includes the limited partnership’s ability to manage its service providers or investments, own assets, and hold property in its name.

In addition, the LPA applies several corporate concepts to limited partnership, including:

- Ability of a foreign limited partnership to continue into the British Virgin Islands.
- Ability to continue to another jurisdiction.
- Ability to merge or consolidate with another limited partnership, including a foreign limited partnership where the foreign law permits mergers and consolidations of limited partnerships.
- Ability to redeem minority partnership interests (subject to the limited partnership agreement).
- The right of a limited partner to dissent on a merger, consolidation, or mandatory redemption (subject to the limited partnership agreement).
- Ability of a limited partnership to enter into a plan of arrangement or a scheme of arrangement.

FORMATION

Formation is simple. The limited partnership is required to have a registered agent in the BVI who will submit an application signed by or on behalf of each general partner, setting out certain basic information on the partnership. The limited partnership is also required to have a partnership agreement. Under the LPA, a model partnership agreement is available and is deemed to be the partnership agreement for the limited partnership unless and until it is modified or excluded by a customized limited partnership agreement. The availability of the model agreement means limited partnerships can be formed quickly and begin operating even while a limited partnership agreement is being finalized and signed by all general partners.

Among the commercial benefits the LPA incorporates is an extensive list of safe harbour activities that limited partners may engage in without forfeiting their limited liability.

GOOD TO KNOW

Existing limited partnerships registered in the BVI will continue under the old Partnership Act, 1996 until they voluntarily re-register under the LPA. However, after ten years, all limited partnerships remaining under the old Partnership Act will be automatically re-registered under the LPA and will have two additional years to adopt a compliant limited partnership agreement.

For more information on how you can take advantage of the full provisions offered under the LPA, please contact O'Neal Webster partners Kerry Anderson, Vanessa King, or Christopher Simpson. Mr. Anderson can be reached at kanderson@onealwebster.com, Ms. King at vking@onealwebster.com and Mr. Simpson at csimpson@onealwebster.com. Or call directly at +1 (284) 393 5800.

BVI SOLUTIONS FOR AFRICA AND ASIA

Micro Business COMPANIES

By Matthew Gilbert and Sarah French, Maples and Calder

The British Virgin Islands ("BVI") is a well-established jurisdiction of choice for international businesses, and has long provided innovative legal structures for cross-border trading and investment activity.

A material amount of foreign direct investment into Africa has been made through BVI companies and collective investment vehicles, and similarly investors throughout Asia have used BVI vehicles when investing overseas. BVI has been an early adopter of electronic filing systems for company incorporation and maintenance, and has a modern risk-based compliance regime, which has helped to keep annual fees at a manageable level for international businesses.

The jurisdiction has now sought to enhance its reputation as a cost-effective provider of legal structures with the new Micro Business Companies Act 2017 (the "Act"). The Act is primarily aimed at small, non-financial sector businesses including sole traders, start-ups and small to medium enterprises, for which the BVI recognises that the initial costs of setting up a company, combined with the associated ongoing regulatory requirements, can often be either challenging or outright prohibitive. The Act's ease of use and the simplicity of its corporate governance regime

makes it particularly suited for smaller, closely held family businesses rather than for international corporations.

The Act allows for the creation of a micro business company through which smaller scale business operations can be conducted, aimed both at local market operators in BVI and micro businesses in other countries. Allowing smaller scale operators access to a corporate structure is intended to enable them to benefit from the usual ability to ring-fence the assets and liabilities of the business, and to offer confidence to the trading partners and potential investors in, and funders of, the micro business.

The operations of a micro business company are carried out by an individual who is referred to in the Act as the principal. A micro business company can only issue a maximum of six non-transferable shares, one of which will be issued to the principal and is referred to as the principal share, and the remaining five shares can, but are not required to, be issued to shareholders. The holder of the principal share is under an obligation to manage, direct and supervise the business and affairs of the micro business company, and has the right of express corporate authority so that he or she may continue to steer the company's business and activities without the need for any further formal action or authorisation by the shareholders or any directors. The Act further includes an express statutory right for the principal to negotiate, conclude, agree and enter into contracts in the name and on behalf of the company.

A micro business company is required as part of its incorporation to prepare an English language charter in an approved form which will set out, amongst other things, its specific business purpose. The charter will be binding on the principal. As with companies incorporated under the BVI Business Companies Act, 2004, (as amended) (the "Business Companies Act") a micro business company is required to have a registered agent and registered office in the BVI, with only certain approved entities able to provide the

service, but the service providers' fees are capped (as discussed in further detail below).

The Act provides that a micro business company can have no more than 10 employees and its turnover and gross asset value must not exceed US\$2 million per annum, making these companies ideally suited to smaller operators. A micro business company which exceeds these limits can re-register as a BVI Business Company under the Act and the Business Companies Act, thus allowing the growth of the business to be reflected in the type of legislation and associated regulation to which it is subject, which will remain appropriate to the nature and size of business, and provide appropriate comfort for its stakeholders over time.

The fees involved in registering a company can often add to the reluctance to incorporate before the business of a would-be company has sufficiently grown in scale. In order to cut through this issue the BVI has included the ability for the regulator to prescribe the fees that may be payable for the registered agent and registered office services which the legislation requires. Service fees must be published on agents' websites. This fee transparency allows for the clear identification of the costs involved from the outset and promises to ensure the micro business company will have a macro future.



BOSSs:

BVI's Contribution to Global Efforts to Improve TAX TRANSPARENCY

By Ryan Geluk
Director, Audit and Technology
Risk, BDO

The British Virgin Islands is not only one of the world's leading centres for company incorporations; it has been at the forefront of meeting global standards for tax transparency.

Released in June 2017, Capital Economics' report BVI's Global Contribution shows throughout that the BVI is a tax neutral jurisdiction. To call it a 'tax haven' is simply incorrect. The BVI compares very favourably with other jurisdictions on international standards for transparency, tax information exchange, anti-money laundering and measures to combat the financing of terrorism. This has led to the FATF giving the BVI a rating of 'largely compliant'.

Indeed, the BVI has responded quickly and constructively to international developments seeking to improve transparency and clamp down on criminality, including tax evasion.

A prime example of this, and one I have been close to, is the BVI's commitment to supporting the development of a new global system for the systematic exchange of beneficial ownership information – the Beneficial Ownership Secure Search System, or BOSSs. This is the hallmark of the BVI's efforts to constantly look at how it can bolster its regime further and innovate its systems to ensure these remain market-leading and to cooperate more effectively with law enforcement authorities to trace beneficial ownership.

The BVI wanted to create a system that balanced the need for law enforcement to obtain beneficial ownership information quickly and that met appropriate levels of privacy and security.

Striking a balance between transparency and privacy is crucial for the BVI. The BVI believes in the right to privacy which includes the right to keep one's financial affairs private. Accordingly, the BVI Government is absolutely clear that global co-operation on information exchange and transparency are vitally important if jurisdictions are to prevent and take action against crime.

However, privacy must remain if the business community is to remain confident in its ability to operate effectively. An erosion of confidence would not only affect the BVI, but also the global economy. As demonstrated in BVI's Global Impact, BVI Business Companies are used worldwide and facilitate a huge amount of cross-border investment. This would be at risk if a

balance between privacy and transparency was not found. It is felt that BOSSs maintained this balance with pinpoint precision. One global CSP described BOSSs as being the “most sophisticated IT platform currently in existence of any of the [Overseas Territories] and [Crown Dependencies] to date with regard to housing UBO data securely.”

In order to create a system, and its accompanying enabling legislation, that met the needs of both private sector and law enforcement, the Government ensured that stakeholders had a say in its design, development and implementation. Bluntly imposing a technology platform on third parties is unlikely to yield the desired results – it is always preferable to collaborate where possible.

The result, BOSSs, is a platform with a searchable portal that allows beneficial ownership information on any BVI company to be shared with law enforcement agencies within minutes. This efficiency puts us ahead of most other jurisdictions.

It works in practice as follows: once a valid request for beneficial ownership information has been made by a foreign competent authority (i.e. law enforcement, such as HMRC), BOSSs can be deployed immediately by the authorised BVI competent authority to find the relevant information. Once the search is complete, the BVI authority then shares the relevant information in a timely fashion (within 60 minutes in urgent cases) to BVI’s law enforcement agency partners. Because of the design of the system, the risk of tipping off a CSP that a search is being done has been eliminated.

Crucially, the beneficial ownership information is not held in a central repository nor is the data managed by the BVI



The BVI has responded quickly and constructively to international developments seeking to improve transparency and clamp down on criminality, including tax evasion.



Government. Through the use of sophisticated technology, CSPs hold all relevant beneficial ownership information within their own data repository, which is housed and accessible within a fully secure cloud-based network, following strict international standards for data protection. Each CSP is only able to access the beneficial ownership information for companies that they entered.

With the General Data Protection Regulations (GDPR) being brought into force on 24 May 2018, it is important to note that the technology within BOSSs is compliant with GDPR articles. With BOSSs, we took the design of security several levels above this requirement, and built a highly secure platform on top of one of the most secure infrastructures in the world. This was done by design. In fact, the cloud platform in which BOSSs is built has over 40 security and data privacy certifications. Such a combination of security and technology would be very difficult to achieve within any system that is built from scratch.



BOSSs is a great example of how the BVI is contributing to the global goal of improving tax transparency and tackling financial crime – other jurisdictions should look at it as a system to emulate.



BOSSs is an efficient, effective and innovative tool and the model it is based on must be given much greater consideration in the worldwide debate on transparency of beneficial ownership information. The combination of the verification of information by the CSPs and the state-of-the-art technology of BOSSs is exactly the sort of system that will aid law enforcement’s efforts to find criminals exploiting the global financial system and bringing them to justice.

BOSSs is a great example of how the BVI is contributing to the global goal of improving tax transparency and tackling financial crime – other jurisdictions should look at it as a system to emulate.

TOP 10

Tips for Good CORPORATE HOUSEKEEPING

By Matthew Gilbert, TEAM BVI Europe Team Leader

By remembering the summarised points below, you can ensure that your British Virgin Islands (“BVI”) company remains compliant with the main ongoing requirements of the BVI Business Companies Act, 2004 (the “Act”), that the company does not risk breaching financing covenants it may have entered into, and that actions of the company are not invalidated on account of a failure to follow some basic requirements.

1

USE OF NAME

Every written communication sent by or on behalf of a BVI company must clearly state the company’s full registered name (and any registered foreign character name), as must every document issued or signed by the company which evidences or creates legal obligations of the company. Failure to comply is an offence and the company is liable to a fine of US\$1,000.

A company may be registered with an additional foreign character name approved by the BVI Registrar of Corporate Affairs (the “Registrar”). Where a company is registered with an additional foreign character name the memorandum shall contain a statement that the company has a foreign character name in addition to its name and shall state the foreign character name wherever the name of the company appears in the memorandum or articles, there shall also be a reference to the foreign character name.

2

FINANCIAL RECORDS

Every BVI company must maintain financial records which are sufficiently detailed to show and explain the company’s transactions, and which at all times will enable the financial position of the company to be determined with reasonable accuracy. Failure to keep such financial records is an offence for which the company could be fined US\$10,000.

This includes accounts and records (such as invoices, contracts and similar documents) in relation to:

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by a BVI company; and
- (c) the assets and liabilities of a BVI company.

Recent case law has emphasised the expectation of the Courts that directors will review management accounts at least monthly, and will keep themselves abreast of the company’s financial position.

3

REGISTER OF CHARGES

Every BVI company must enter details of all charges created by it on a register of charges maintained at its registered office or at the office of its registered agent.

Where a variation or release of the relevant charges occurs, a BVI company must send details to its registered agent within 14 days of such change, and update its register of charges accordingly.

Failure to keep an up to date register of charges is an offence and the company is liable to a fine of US\$5,000.

4

FILING OF AMENDED MEMORANDUM AND ARTICLES OF ASSOCIATION

All amendments to the memorandum and articles of association of a BVI company must be registered by the Registrar and will not take effect until the date of such registration (which will be the date of filing). For example, shares of a class established in an amended memorandum and articles of association which have not been registered cannot validly be issued.

5

ANNUAL FEES PAYABLE TO THE FINANCIAL SERVICES COMMISSION (THE "FSC")

- (a) Failure to pay the company's annual fees to the BVI FSC will render a BVI company liable to penalty payments and will lead to the company being struck off the BVI Register of Companies.
- (b) Where a company has been struck off, the company, its directors, its members and any liquidator/receiver of the company, may not:
 - (i) commence legal proceedings, or carry on any business or in any way deal with the assets of the company; or
 - (ii) defend any legal proceedings, or make any claim or claim any right for (or in the name of) the company; or
 - (iii) act in any way with respect to the affairs of the company.

It is therefore essential that any company that has been struck off be returned to good standing by payment of all outstanding annual fees and penalties before purporting to enter into any transaction.

6

DETAILS REQUIRED TO BE KEPT AT THE REGISTERED AGENT'S OFFICE

- (a) The Act requires every BVI company to keep certain records and documents at the office of its registered agent. Failure to keep such documents is an offence which could result in the company being fined US\$10,000. These documents include:
 - (i) memorandum and articles of association and all amendments;
 - (ii) register of members (or a copy);
 - (iii) register of directors (or a copy); and

- (iv) copies of all notices and other documents filed by the company within the previous ten years.
- (b) Where copies of registers of members and/or directors are kept at the office of the registered agent, the company must notify the registered agent in writing of the physical address of the original registers, and within 15 days of any change in the registers, and provide the registered agent with updated copies of the registers.
- (c) Where the place at which the original register of members or directors is changed, the company must provide the registered agent with details of the physical address of the new location, within 14 days of the change of location.
- (d) All newly incorporated companies need to file their register of directors with the Registrar within 21 days of the appointment of the first director. Failure to comply is an offence and the company is liable to a fine of US\$100. Existing companies had to file particulars of their current directors by 31 March 2017 and failure to do so incurred a substantial penalty.

Where there is a change made to a filed register of directors, whether due to the appointment of a new director, the resignation of an existing director or the change of an existing director's details, particulars of the amendment to the register of directors must be filed within 30 days of the changes occurring. Failure to comply is an offence and the company is liable to a fine of US\$100.

- (e) With certain exemptions, all BVI companies must identify their beneficial owners, and certain qualifying corporate shareholders, and provide the prescribed details to their registered agent. The BVI company must notify its registered agent within 15 days of becoming aware of a change in the particulars of a beneficial owner or relevant corporate shareholder. It is an offence for a BVI company or its registered agent to fail to comply with these obligations.

7

FINANCIAL RECORDS

- (a) BVI companies must keep certain other documents, including the following:
 - (i) minutes of all meetings and resolutions of the members and of classes of members; and
 - (ii) minutes of all meetings and resolutions of the directors or any committee of directors.

8

TRANSFERS OF MORE THAN 50% OF THE TOTAL ASSETS OF A BVI COMPANY

Any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than 50% in value of a BVI company's assets, if not made in the usual or regular course of the company's business, usually (subject to contrary provisions in the memorandum and articles of association) requires the approval of the company's members and directors.

9

BOARD RESOLUTIONS

- (a) Subject to any modifications or limitation in the memorandum and articles of association, the directors of a BVI company have all the powers for managing, directing and supervising its business and affairs.
- (b) The board of directors should decide on all matters by resolution which can either be decided at a meeting of the directors (the minutes of which must be recorded and retained) or by way of written resolution.

10

DISTRIBUTIONS TO MEMBERS

Subject to additional requirements in a BVI company's articles of association, any distribution by a BVI company to its members must be authorised by board resolution and such resolution must contain a statement that, in the opinion of the directors (which must be based on reasonable grounds), the company will, immediately after the distribution, satisfy the statutory solvency test. Unlawful dividends must be repaid by the members.

2018 MEMBERS SPOTLIGHT



JTC ACHIEVES 'GOLD EMPLOYER' STATUS ACROSS TEN JURISDICTIONS

JTC's recognition, which is part of STEP's Employer Partnership Programme (STEP EPP), is testament to the strength of the policies, practices and structures that the firm has in place to support its growing international private wealth offering, along with the encouragement and opportunities it provides to staff wishing to progress in their career. The 'gold' status has been awarded to JTC in the Channel Islands and Isle of Man, BVI, Cayman Islands, Switzerland, USA, Malaysia, Singapore and New Zealand.



MOURANT UPDATE

- We have recently been named as Who's Who Legal Awards Jersey Firm of the Year 2018'
- Offshore Law Firm of the Year: Chambers Europe 2017
- We work with 100% of the top 30 global law firms
- We advise 90% of the world's top 50 banks
- We advise 72% of the top 25 global PE firms
- We are consistently ranked as a top tier firm in the leading global legal directories
- We are the first firm in our market to achieve ISO 27001 certification. The international standard, which is seen as the pinnacle of information security management, requires the development and implementation of a rigorous Information Security Management System (ISMS) programme, that defines how we manage information security across our organisation and office locations.



KALO LANDS TOP AWARD FOR ROLE IN OCEAN RIG RESTRUCTURING

BVI-based insolvency and restructuring firm, Kalo, was part of the team that recently won 'Energy Deal of the Year' and 'Restructuring of the Year (\$1-\$5 billion)' at the 10th Annual International M&A Awards. Judged by an independent panel of industry experts, Kalo was pleased to be recognized for its involvement in the landmark Ocean Rig cross-border deal, where \$3.7 billion of debt was restructured. Kalo was recognised alongside the other international advisors involved in the deal - including leading offshore law firms Maples & Calder and Ogier.

Ocean Rig was an offshore drilling contractor, which had faced financial pressure, and sought to restructure around US\$3.7 billion of New York governed debt. Kalo's Eleanor Fisher was appointed as one of the Joint Provisional Liquidators; and the collaborative and defensive strategy developed by the provisional liquidators has resonated across the international insolvency profession. The creation of innovative and novel approaches for the joint benefit of creditors and the entity itself has achieved global recognition for achieving the optimal outcome for all parties.

**The above firms submitted accomplishments to be highlighted in the Business Insight newsletter.*

MEMBERS



* BVI Finance also highlights members: Crossroads Capital; Association of Insurance Managers; Conyers Trust Company; HLB Trinity; NR Samuel; and Commonwealth Trust Limited. Logos are not available at this time.

OFF THE CLOCK TORTOLA TORTURE

By Eleanor Morgan, Partner, Mourant



14th April 2018 saw the 4th annual KPMG Tortola Torture, a 34 mile ultramarathon around Tortola and Beef Island. BVI Finance members KPMG and Mourant Ozannes both sponsor the event.

“It should be on every runner’s radar, ultra-runner or not, because you can do it in a two or three person team.” (*Sabrina Stanley, female winner 2018*)

A record 121 participants signed up to take on the challenge this year, 44 of them as individuals and 12 two-person teams and 19 three-person teams. 25 of the 2018 competitors were from overseas, with 5 travelling to the BVI from the USA, 8 from the US Virgin Islands, 6 from Puerto Rico, 2 from Turks & Caicos, 3 from the UK and one from Trinidad & Tobago.

The race was won by Avery Collins from Steamboat Spring, with a new course record of 4 hours, 35 minutes and 47 seconds. Sabrina Stanley (also Steamboat Springs) won the women’s race in 05:27:24. The Tortola Torture Agony Cup, presented to the fastest BVI resident, was won by Julius Farley who came in third place with a time of 05:17:09.

The route travels from the sports club in Road Town, out to the very west end of the island before passing around Steele Point and along the North shore to Carrot Bay. Runners then climb Windy Hill all the way to Sage Mountain before descending back to sea level in Brewers Bay. From there runners return to the ridge road by the painted wall and follow the ridge road all the way along to Balsams Ghut before travelling past Hawks Nest down to the Beef Island Bridge. After passing



onto Beef Island, competitors run around Little Mountain before travelling through the airport road and down to the finish party on the beach at Trellis Bay. While battling heat and hills, with 12,000 feet of elevation change, runners enjoy breathtaking views of the BVI.

In an effort to protect Natures Little Secrets, disposable plastic bottles are banned from the race. Instead, runners race with refillable bottles and the six aid stations are supplied with 5 gallon coolers of water and Gatorade. This resulted in an estimated 1,200 half litre bottles not being used on the course. All competitors attend a pre-race briefing and pasta party at the official race hotel, Nanny Cay, where they are fed home cooked pasta on biodegradable plates and cutlery.

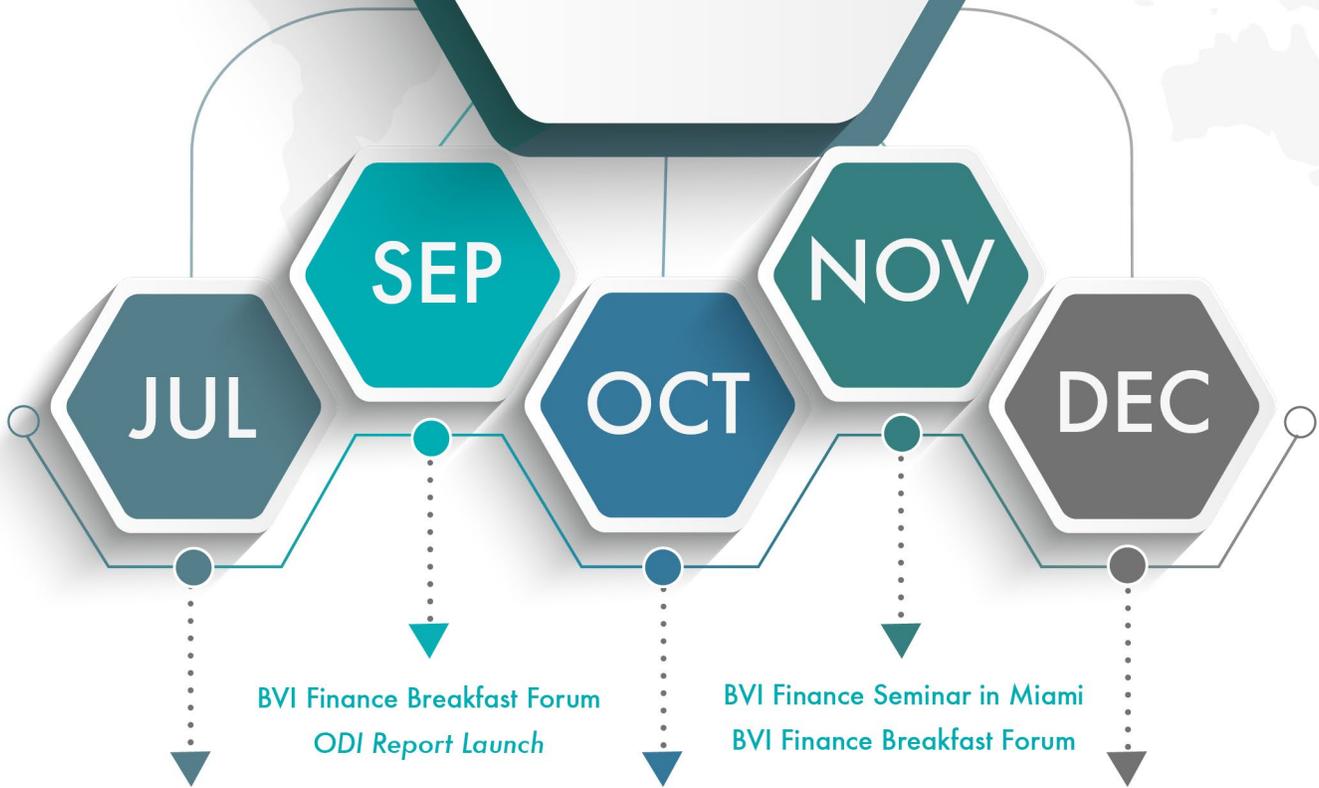
The event is a true community event, with over 25 volunteers, many of whom work in BVI Finance member firms helping at the aid stations and providing assistance with roving support and logistics. The finish party was held at Trellis Bay Market Bar & Grill.

Sabrina Stanley commented in her race report:

After participants finish their own race they stick around to cheer on runners that are still coming in. Every runner comes in to a slew of cheers, no matter what time they finish the race. The entire event is an experience that every race director should strive to achieve.



UPCOMING EVENTS



BVI Finance Breakfast Forum

STEP LatAm

BVI Finance: A Year in Review

BVI Finance Breakfast Forum

London/Africa Trade Mission (TBC)

Fort Lauderdale International Boat Show