

BUSINESS INSIGHT

CORPORATE BUSINESS

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CAPTIVES



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By Gary Hales

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BUSINESS INSIGHT

NOTE FROM THE EXECUTIVE DIRECTOR



Lorna Smith, OBE
Interim Executive Director

Welcome to the latest edition of BVI Finance's internationally read publication, Business Insight. We hope you find the information in the following pages entertaining, illuminating and thought provoking.

It is often said "Our most significant opportunities will be found in times of greatest challenge." This jurisdiction has certainly had its fair share in recent times; such as the Panama Papers and the passage of Hurricanes Irma and Maria, but we have been able to forge ahead with new initiatives and changes to the Territory's business and finance sector.

As such, this edition of Business Insight is aptly themed "Exploring New Possibilities". The BVI is fully committed to capitalising on the opportunities that come our way, whether in good times or bad, and will continue to stand at the forefront of innovative business and financial services products and services. The three catastrophic events we experienced between August and September have certainly spoken to our resilience as a people.

The many changes we've undergone in the last few months are absolute proof of our ability to explore new possibilities. Earlier this year we officially became BVI Finance Limited; a public/private partnership created to ensure BVI's continued success as an international business and finance centre, launched our membership programme and elected our first Board of Directors. We also published the long-awaited Capital Economics commissioned report titled "Creating Value: The BVI's Global Contribution" which examines the economic, financial and legislative connections between the BVI's business and finance sector and the international community. I encourage you to download the report at www.bvigoalimpact.com.

As the industry expands globally and explores new possibilities unparalleled opportunities, dynamic challenges and endless avenues of professional and personal growth have become more readily and increasingly available. To better illustrate these opportunities we have an article on page 04 which delves into BVI Finance's future endeavours in the African market.

The underlying theme throughout this newsletter is one of growth and change. We're all focused on turning any proverbial lemons into lemonade and ensuring that the BVI continues to play a pivotal role in global commerce, economic development and cross-border trade.

The BVI's international business and finance centre is a key engine of economic growth and with the right support it could play an even bigger role in the years ahead. Look out for the article on page 16 which provides information on the Beneficial Ownership Secure Search System (BOSSs) and the potential opportunities stemming from the platform.

We welcome your feedback as we continue moving forward. Please contact the team at info@bvifinance.vg, with your comments and suggestions.

Happy reading,

Lorna Smith, OBE
Interim Executive Director



CHARTING THE COURSE FOR AFRICA

By Gary Hales, Head of Business Development and Marketing, BVI Finance

Earlier this year, BVI Finance hosted a breakfast forum to discuss the opportunities that exist in Africa for the Territory's business and finance sector. The forum, a follow up from a series of meetings held with industry in 2016, aimed to update attendees on the progress made thus far and BVI Finance's future plans for Africa.

BVI Business Companies are well-known for the role they play in facilitating international trade and Foreign Direct Investment (FDI) with Africa being no exception. The BVI is well positioned to assist African countries in growing their economy as evidenced by the recent Capital Economics commissioned report, *Creating Value: BVI's Global Contribution*, which highlights the Territory's proven links to the continent.

Supporting the growth across the continent is the fact that the median age is below 25 in every country except South Africa. The World Economic Forum estimates that by 2030 more than 50 percent of the population will be living in cities and this will increase to over 60 percent by 2050. With a growing working population, increased mobility and a renewed entrepreneurial spirit there are a lot of positive changes coming to the continent.

Despite the positivity, the last few years have provided some challenges for Africa some of which are most notably driven by the reduction in oil prices and commodities prices-upon which many African countries depend. For 2017, the World Bank expected growth across the continent to be at 4.8 percent in 2017, with the Ivory Coast leading the way at 8.5 percent and seven other countries with a projected growth rate of 6 percent or more. These growth rates are important to note as economic growth is the best way to reduce poverty, which is still a key issue on the continent.

For many countries in Africa the main demand is for investment in order to support infrastructural development. Foreign Direct Investment (FDI) is absolutely crucial in helping African economies to continue to grow and develop. Globalisation has increased connectivity between African countries and the rest of the world thus boosting global trade and capital flows into many of these economies.

“BVI plays a key role in the flow of capital around the globe and in facilitating investment from across the world into emerging economies.”

The BVI plays a key role in the flow of capital around the globe and in facilitating investment from across the world into emerging economies. The BVI's well-established funds regime is the second largest in the world and is well-positioned to support investment

“...the new Limited Partnership Act, when approved, will further illustrate the BVI as a modern, up-to-date and business friendly jurisdiction that meets the requirements of private equity and venture capitalists who are considering opportunities on the continent.”

into Africa. In terms of supporting African entrepreneurs looking to expand globally, the BVI's Incubator Fund offers a great opportunity for managers looking for a low cost entry into the funds market and who want to establish a track record with a view to growing their investor base and assets under management over the short to medium term. In addition to this, the BVI's Business Companies Act is world renowned with 400,000 active companies and is ideal for the quick and cost-effective set-up of companies to support business growth.

Through meetings held with our office and members of the BVI's business and finance sector who have experience working with African companies, we have been able to identify the African countries where the BVI would be most relevant and can add value as well as to identify any points of resistance or blockages that may exist. We recognised that the new Limited Partnership Act, when approved, will further illustrate the BVI as a modern, up-to-date and business friendly jurisdiction that meets the requirements of private equity and venture capitalists who are considering opportunities on the continent. It was also recognised that China has developed strong links and is focused on growth in the African continent. Considering

that the BVI has a longstanding relationship with the region, where it is often considered the jurisdiction of choice, there are significant opportunities for BVI companies to work with their Chinese clients in order to support their growth aspirations.

As part of the BVI's increased focus on Africa, in 2017 BVI Finance was a gold sponsor of a leading investment event that focuses on Africa's financial services sector - the Africa Financial Services Investment Conference 2017 held in London from 3-5 May. Companies from over 30 African countries were in attendance and it was an ideal opportunity for BVI Finance, and our member firms, to deepen existing relationships and develop new ones in order to support and be a part of the growing Africa story.

In addition, BVI Finance is planning a business development trip to select African countries, which is likely to be followed by a mission consisting of BVI Finance, member firms and BVI Government to continue dialogue with the appropriate stakeholders in key identified markets.

INCUBATOR AND APPROVED FUNDS:

A Tool for Investment and Wealth Planning in LatAm

By Jose Santos, Head of Corporate and Managing Partner and Catherine Ross, Partner, Forbes Hare BVI

In order to provide a faster and more cost-effective solution for startup managers to launch open-ended funds, the BVI introduced two innovative products in 2015 specifically tailored to this important part of the fund industry: the 'Incubator Fund' and the 'Approved Fund'.

These funds enable qualifying open-ended funds to be approved to conduct business at a significantly reduced cost and within a lighter regulatory regime. Both the Incubator Fund and the Approved Fund are welcomed developments for the BVI's fund industry and demonstrate the continued commitment to the growth of international financial services in the Territory.

These funds provide a particularly attractive solution for asset managers in Latin America. Figures released by monitoring bodies show a significant increase in global investments through BVI funds managed by Latin American asset managers. This encouraging development suggests a high level of comfort that these BVI fund structures fully satisfy the domestic regulatory

seeking to grow assets under management in a cost-effective manner; start-up managers who are looking to build a track record for future capital raising purposes; and managers designing funds as wealth and asset management tools. To these managers the BVI, and these new BVI funds, provide several features which are particularly attractive:

- Experienced lawyers and reputable service providers who are familiar with asset protection structures, fund start-ups, and the needs of investors to balance tax transparency with the legitimate concerns for confidentiality and privacy that are prevalent in the region.

- A robust, transparent and consistent regulatory regime, which better equips new fund structures to meet the regulatory and political challenges affecting Latin American investors and asset managers in the region.

- There is greater flexibility, significant cost savings and a streamlined approval process.

“The Incubator Fund and the Approved Fund are welcomed developments for BVI’s fund industry and demonstrate the continued commitment to the growth of international financial services in the Territory.”

environments in those Latin American countries from which capital is being raised.

Asset and wealth managers based in Latin America tend to fall into one of three categories: managers

- The ability to upgrade to a more highly regulated fund structure once assets under management reach a critical mass will enhance these efficiencies, and allow successful funds to flourish without radical restructuring.

“In a growing market such as Latin America, where ultra-high net worth individuals are generating large amounts of investable wealth, managers are exploring and using these funds not only for wealth and asset management purposes but as an additional legal mechanism for effective succession planning and asset protection for the purpose of inter-generational capital preservation and planning.”

Incubator Funds permit distributions to a maximum of 20 investors; minimum initial investment of USD\$20,000 per investor; limit maximum net assets under management to USD\$20 million; and have an operating period limited to two years (which may be extended by one additional year) before the fund needs to either convert into a more sophisticated product (i.e., an Approved Fund, Private Fund or Professional Fund in the BVI) or, in the alternative, wind up its operations. Crucially, during the incubation period, there is no requirement for the fund to appoint functionaries (e.g., administrator, custodian or manager) or to have an auditor. In addition, there is no statutory requirement for the fund to produce any form of offering document (although short form documentation is recommended).

Although the Approved Fund is also limited to 20 investors, by way of contrast it has no operational time limit and is permitted to have net assets under management of up to USD\$100 million. As with an Incubator Fund, there is no requirement for an Approved Fund to appoint functionaries, other than an administrator, or to have an auditor. Again, there is no requirement to produce an offering document (although a short form is recommended).

Both types of funds must appoint at least two directors (one of which must be an individual) as well as a BVI Authorised Representative (whose primary function is to act as a liaison between the fund and the BVI Financial Services Commission (BVIFSC)). An application to the BVIFSC for approval of either an Incubator Fund or an Approved Fund must include a description of the fund’s investment strategy and a written warning to investors, both of which may be set out in the fund’s offering document or, where it is not proposed to issue an offering document, submitted as separate documents to be provided to investors.

In a growing market such as Latin America, where ultra-high net worth individuals are generating large amounts

of investable wealth, managers are exploring and using these funds not only for wealth and asset management purposes but as an additional legal mechanism for effective succession planning and asset protection for the purpose of inter-generational capital preservation and planning. Local emerging markets often lack the variety of investment classes in which to invest significant wealth and these new fund structures provide potentially useful vehicles in which to invest, protect and preserve assets.

The use of BVI Incubator and Approved Funds provide clear advantages to emerging managers (and HNW individuals) in Latin America by not only reducing structuring and start-up costs and offering early operational efficiencies, but by providing a regulatory flexible platform within an open-ended fund structure that can be tailored with proper legal and tax planning advice, to suit both the investment, wealth management and succession planning needs of clients in Latin America and other emerging markets.



The BVI Advantage FOR SHIPPING

By Captain Raman Bala, Director, Virgin Islands Shipping Registry

History shows the British Virgin Islands has a rich and vibrant maritime heritage. In the past, local businessmen traded within the Caribbean on sailing vessels which helped to facilitate the growth of the BVI's culture and economy as we know it today.

For example, the famous "Tortola Sloop" is a boat uniquely designed in Tortola, which bears testimony to the BVI's reputation of being a major boat building centre in the Lesser Antilles over the last two centuries.

These days under the direction of the Virgin Islands Shipping Registry (VISR), the BVI's boating industry has chartered a new course. VISR is the government department empowered to exercise regulatory control and register ships on behalf of the Territory and its primary responsibilities include facilitating the operation of ships and shipping, ensuring safety of lives at sea and preventing marine pollution.

Most countries have shipping registries where ship owners can register their ships, however, only a few specialise in mega and super yachts. The VISR operates

a world class shipping registry that is a knowledge base for registration, certification and survey of mega and super yachts; the VISR is part of the Red Ensign Group (REG) of British Registry and every ship listed on the register is a British ship entitled to fly a modified Red Ensign; and the VISR draws its authority to register ships from the government of the United Kingdom and ensures that BVI flagged vessels are synonymous with "quality shipping" by maintaining high technical, social, and administrative standards.

The VISR is a well-known and reputable flag for super yachts and smaller yachts, however what is less known is that the Registry has the ability to register merchant ships. As a full Category 1 Register of the REG ships, container ships, cargo ships, bulk carriers, oil, gas and chemical tankers, offshore vessels and cruise ships can fly the BVI Red Ensign as proudly as our super yacht owners and expect the same level of individual attention to their every need.



There are many other advantages to registering ships and yachts in the BVI such as:

- By flying BVI's flag you are entitled to British Diplomatic and Consular support worldwide.
- Ships passing through Arabian Gulf are entitled to British Naval Protection.
- The BVI has political and social stability and is internationally recognised as a respected finance centre. .
- It is extremely easy for companies registered in the BVI to have their ships and yachts registered.
- Marine Mortgage recognised and enforced worldwide.
- The fees are reasonable and none are hidden.

“As a full Category 1 Register of the REG ships, container ships, cargo ships, bulk carriers, oil, gas and chemical tankers, offshore vessels and cruise ships can fly the BVI Red Ensign as proudly as our super yacht owners and expect the same level of individual attention to their every need.”

To add to an already impressive list of qualifications, SVITZER Americas, a global market leader in towage and emergency response with a fleet of 430 vessels in 100 locations worldwide, is keen on growing their operations in this region. A SVITZER office was first established in Road Town in 2015 and the company has now started to coordinate its regional operations from the BVI, which

includes recruiting potential seafarers to work on its vessels in some of the nearby Caribbean islands. SVITZER has chosen the VISR as the flag of choice and is gradually changing flags on its vessels to BVI's flag.

Additionally, the VISR received 'Quality Shipping in the 21st Century (Qualship 21) programme' recognition for the year 2017. The department received a Certificate of Achievement confirming that the United States Coast Guard (USCG) officially recognised the VISR for having qualified for inclusion in the USCG Qualship 21 programme.

This means that ships registered with the VISR will find it easier to operate in the United States ports in regard to the USCG port state control compliance and owners will find the VISR even more attractive to register their ships.

There are many opportunities for BVI based companies in the business of facilitating ship registration especially since internationally based ship owners need a BVI based company to act as their representative to facilitate correspondence between the Registry and ships owner. Local companies can act as an authorised officer to sign documents on behalf of the company.

The VISR is the key maritime administration arm of the BVI Government and as it continues to move forward with purposeful resolve it will surely make this area of our economy stronger and more vibrant.

As an established and pioneering centre for international business and finance, the BVI is very conducive for establishing a shipping company. The department's many favourable attributes create a plethora of opportunities for growth and expansion including numerous areas for co-operation between local companies and the government. It is clear to see that VISR provides a slew of value added services and benefits which will be of benefit to the BVI's business and finance centre for years to come.



Tips for **FINANCING A MERGER** in the British Virgin Islands

By Ashley Davies

There has recently been a number of acquisitions of British Virgin Islands business companies carried out using the merger process set out in the BVI Business Companies Act, 2004 (BCA) (as amended).

The statutory merger route set out in the BCA is a relatively simple, quick and efficient way of acquiring a company that does not require the involvement of the courts and is an increasingly common way of merging two companies.

The provision of lenders providing financing to the purchaser in an acquisition by way of a BVI merger raises a number of BVI-law issues for lenders and their counsel, which should be properly addressed in the loan documentation. This article seeks to explore some of the key points of which transaction parties should be aware.

BVI Mergers — A Brief Overview

The BVI merger regime is well-recognised as a simple and effective way to acquire shares in BVI companies; it also has a number of advantages. For example, compared to a BVI scheme of arrangement, the merger route is quicker, less costly and requires

a lower shareholder approval threshold. In addition, unlike a BVI takeover offer, there is no requirement for the purchaser to acquire 90 percent of the affected class of shares before it can seek to invoke “squeeze-out” mechanisms to acquire ownership of minority shareholdings. Finally, there are the other more general advantages for using a BVI structure, such as the fact that there is no statutory prohibition in the BVI on a company giving financial assistance for the purchase of its own shares, not to mention the absence of BVI foreign-exchange controls and taxes.

A BVI merger usually involves two companies (the “constituent companies”) incorporated in the BVI. (Although it is possible for one or more of the constituent companies to be a foreign company and for more than two companies to be involved in the merger, for the purposes of this article we assume both constituent companies are incorporated in the BVI.)

One participant will be the BVI company acting as the purchasing

entity (and often the borrower under a loan agreement) and the other BVI company will be the target company, with the target company as the surviving company. The directors of each constituent company that proposes to participate in a merger will need to approve a plan of merger, containing the terms and conditions of the proposed merger and certain other prescribed information. The merger must also be approved by the shareholders of both constituent companies. After approval of the plan by the directors and shareholders of each constituent company, articles of merger must be executed by each constituent company and filed (together with the plan and any amendment to the memorandum or articles of the surviving company) with the BVI's Registrar of Corporate Affairs.

Conditions Precedent

It will be apparent from the above that there are certain key BVI-law considerations that lenders would typically want to see properly documented in their loan documents as conditions precedent to the submission of a utilisation request by a borrower and/or as a condition precedent to drawdown of funds. This would usually include the following evidence:

Shareholder and Board Approvals: that the merger has been approved by resolution of the shareholders of both constituent companies (typically a simple majority of those present and voting, although it will be important to check the constitutional documents

“The BVI merger regime is well-recognised as a simple and effective way to acquire shares in BVI companies...compared to a BVI scheme of arrangement, the merger route is quicker, less costly and requires a lower shareholder approval threshold.”

If the registrar is satisfied that the requirements for the merger under the BCA have been met, it will register the articles and any amendment to the memorandum or articles of the surviving company, as well as issue a “certificate of merger,” which is conclusive evidence that all requirements of the BCA with respect to the merger have been complied with. The merger is effective from the date of registration of the articles (or such subsequent date not later than 30 days thereafter as may be stated in the articles).

As soon as the merger becomes effective, assets of every description (including choses in action and the business of each of the constituent companies) immediately vests in the surviving company. In addition, the surviving company is liable for all claims, debts, liabilities and obligations of each of the constituent companies. The other constituent company is then struck off.

Note that the merger process also provides a mechanism for dissenting shareholders to seek payment of the fair value of their shares, and the BCA lays down a procedure to be followed by any dissenting shareholders (though this procedure is not available in all cases, for example if the shareholder is left with the same or similar shares in the same constituent company as he had prior to the merger because such company is the surviving company).

to see if there are more bespoke requirements, for example a requirement to obtain separate class consents or meet a higher voting threshold), as well as their respective boards of directors.

Dealing with Contractual Counterparties: that prior written consents from contractual counterparties have been obtained where relevant. In this regard, we note that it would not be unusual for a constituent company to have agreed in other arrangements with third parties, particularly secured creditors, not to participate in a merger without their (prior written) consent. It would be prudent to identify any such restrictions early on in the process and include appropriate representations in the loan documentation and confirmation that all issues have been addressed. Note that lenders may find that technically, they need to consent to their own security if the deal is structured such that the lenders are taking security from a constituent company prior to the merger effective date.

Regulatory Issues: that any prior consents from regulators have been obtained and any notifications have been filed. This can be particularly important where one or both of the constituent companies is carrying on some form of regulated or licensed business where the prior written consent of its regulator may well be required prior to it participating in a merger.



Filing of the Plan and Articles: that the plan and articles of merger have been filed with the registrar. In this regard it would be advisable for the lenders to obtain confirmation in writing that the filing has been received by the registrar. The lenders will want to review the plan and articles and make sure that they have been filed in the form previously approved by the lenders. On the other hand, the borrower may want to negotiate this point and only agree to having “agreed form” documentation in place prior to drawdown of funds, and a separate discussion may be needed to resolve the position.

Paying the Acquisition Price: It is worth making a distinction between, on the one hand, any requirements that lenders may want to impose as conditions precedent to utilisation of a facility and, on the other hand, any further conditions that lenders may consider appropriate prior to the loan amounts actually being paid to selling shareholders. In this context, while each transaction will have its own specific characteristics, usually the timing of delivery of the following items will need to be carefully considered.

Obtaining the Certificate of Merger: The lenders will want to see a copy of the certificate of merger as soon as possible. This can pose practical timing issues. Because the certificate of merger constitutes conclusive evidence that the merger is effective, it is a key document — and it may be a requirement for the lenders that this is provided on the same day that the merger is specified to become effective in the articles. The BVI merger regime affords some comfort in this regard, as the BVI registrar has recently introduced a “premium service,” where a four-hour turnaround time for a merger filing is guaranteed upon payment of an additional fee.

Updating the Register of Members: Given that the target will be the surviving company, the lenders will often want security over shares in the target to be effective immediately upon completion of the merger. In this regard, it will be important to obtain a copy of the updated register of members of the surviving company and make sure it reflects the appropriate entity is registered as legal and beneficial owner of all the issued shares after the merger. This can pose some timing and logistical issues depending on how quickly the registered agent/service provider maintaining the register of members can update and provide a new register of members. Bearing in mind that prior to the merger, the register of members may be held by a different service provider from the service provider that will maintain the register of members post-merger, and that the various parties may be based in different time zones, sufficient time will need to be given to deal with this process.

Updating the Register of Directors. Similarly, the lenders may be keen to ensure that, post-merger, the composition of the board of directors of the surviving company is changed according to the agreed terms of the loan agreement and the plan of merger. It would accordingly be important to ensure that the register of directors of the surviving company is duly updated by the registered agent/service provider to reflect the new composition of the board. Similar timing and logistical issues may apply as discussed above. Note that the BVI recently introduced a requirement to file a copy of the register of directors with the registrar (although such copy is not made available to the public).



Post-Closing — Registration of Security

Following execution of the security documents, lenders will want to ensure that their security package is appropriately registered to the extent security has been granted by the surviving company (assuming it is a BVI business company), or over its shares. The first registration to note is the “internal” registration. Pursuant to Section 162 of the BCA, a BVI company must enter a short description on its register of charges of the property that has been mortgaged or charged, the liability secured by the charge, and the name and address of the holder of the charge. Note that failure to register in this way leaves the company open to a financial penalty, but does not invalidate the security itself. It is good practice for the surviving company to then deliver to the lenders a copy of the updated register of charges evidencing that the register has been duly updated.

The second registration, which is the more important registration, is the “public” registration. Pursuant to Section 163 of the BCA, a security interest granted by a BVI business company can be publicly filed and registered with the registrar. This is done by preparing summary particulars of the security document and filing the summary online. Security interests registered in this way will generally have priority over security interests that are subsequently registered in respect of the same secured property, or that are unregistered (although there are various exceptions — the order of priorities can be varied with the consent of the relevant secured parties, by way of intercreditor arrangements, for example).

Unlike some jurisdictions, there are no statutory time limits within which the Section 162 or Section 163 registrations have to take place to avoid being void against a liquidator or creditor, although it is clearly prudent for lenders to ensure their security is registered as soon as possible so that other potential creditors are put on notice. Another difference in comparison to many jurisdictions is that there is no requirement to file an original of the security document itself.

In addition, if there is a share charge or mortgage taken over shares in the surviving company or its parent (as will usually be the case), it is also common practice to enter a notation on the register of members of such company to the effect that the shares are secured in favor of the lenders. Usually, the lenders will require that a copy of the register of members is also publicly filed with the registrar (although this is not legally required). In addition, sometimes the memorandum and articles of association of the surviving company may also need to be amended (and such amendment would then need to be registered with the registrar to be effective).

The BVI merger process is well-established and lenders may well find themselves involved in an acquisition financing that is structured in this manner. There are significant BVI-law issues involved that can vary from transaction to transaction. Accordingly, transaction parties and their counsel will want to carefully consider, and document appropriately, a number of BVI-specific points, including those set out above, to ensure that their transaction proceeds smoothly.

This article was first published on law360.com. 

The VALUE of VALUE INVESTORS

By Mark Chapman, Partner, Azur Consulting

If someone mentions the word Omaha, what do you think of? Is it the largest city in the state of Nebraska or something else? For a lot of people, Omaha is referred to with deference as the home of Berkshire Hathaway.

It is a place where tens of thousands of investment pilgrims congregate each May to listen to pearls of wisdom from Warren Buffett and Charlie Munger, but it's not just these two characters that draw the crowds – it's as much the shoulder rubbing with like-minded individuals, the exchange of ideas and the ability thereafter to recount, first-hand, the war stories from a weekend in the company of the greatest compounders on the planet.

Many reading this may ask “So what if Berkshire is a conglomerate? What does that have to do with the alternative investment space?” Berkshire is not a hedge fund but there are many parallels and many hedge fund managers can only dream of Buffett's access to permanent capital.

In recent years many commentators have said “Just buy the index” and even Buffett has advised “Don't pay for investment advice, buy a low-cost S&P 500 index fund instead”. Far be it for me to criticise such sage advice but I have another idea. “Don't pay for investment advice, instead find a trusted hedge fund manager that can unearth value”.

Let's step back. In the years leading up to the 2008 market crash, there were many managers bringing innovative products and ideas to the market – a lot of these were esoteric and doomed to failure as they were grounded on flawed business concepts, especially in the derivative space. But out of this mayhem, there came a new breed of manager, like-minded and cohesive – that is, they found each other, shared intelligence and hung out together. The concept has existed since the 1930's if not before, when codified by Ben Graham, suggesting at its simplest level that buying stocks at less than their intrinsic value was a good idea. Not then in the thirties, but today, such investors, and Buffett can be included in this category, are called Value Investors.

So whether you love them or not, these Value Investors have become something of a clique, worshipping Buffett for the most part and setting themselves apart as the smartest people on the planet. Some are – others just buy what Buffett buys and there is no shame in that.

Many of these smart people manage wonderful hedge funds and I should just sound a note of caution here. If anyone is looking to invest in a hedge fund, beware of Ponzi schemes and run the red flag checklist, the most critical question being “Are the returns smooth (too good to be true) or bumpy (as they inevitably should be)? But back to the Value Investors and what they are up to. Well, one of the things they like to do is get together with each other, whether in Omaha, another location or even online. Around the globe we have Value Investor clubs, periodicals, newsletters, books and conferences springing up all over the place where like-minded people can exchange ideas.

Last year, I went to a Ben Graham event in Toronto and was struck by the camaraderie of the attendees who were all willing to share their greatest ideas with the world. More recently I went to VALUEx in Klosters, Switzerland, an event inspired by and focused on “Ideas worth sharing”, rather than pitching products, which is often one of the pains when attending events. But what a brilliant concept – put 50 Value Investors in a conference room and let them speak to each other, then adjourn to the bar or to the ski slopes to talk more investing. People are hosting events similar to VALUEx around the globe – in Almaty, Kazakhstan in early March 2017 or in Vail, Colorado during June 2017 – all in the name of not for profit intelligence.

It's an eclectic bunch at Klosters from the billion-dollar private equity fund, to the lone wolf individual investor with his Schwab account, to the people I can really relate to, with their beautifully structured

Delaware onshore/BVI offshore master feeder – all seeking one thing – the next Amazon or Google.

For my part I am low on the totem pole, a bean counter, with a few thousand dollars invested, mingling amongst some of the brightest brains on the planet. But everyone is equal in the Value Investing world and everyone has something to offer. At Klosters I share my view of the world with those willing to listen. Roaring inflation is around the corner and where should one be then? It's been a long time coming and I like the money centre banks in the USA – held for the long term, compounding way, I personally cannot see a better bet. This isn't investment advice nor is it Value Investing which involves, as I said, picking out one or more stocks which the market has significantly undervalued.

“Don't pay for investment advice, instead find a trusted hedge fund manager that can unearth value.”

So where are we really heading in the alternative investment space? With consolidation in the industry the largest hedge fund managers look after trillions of dollars – I don't even know what a trillion dollars looks like, nor am I particularly interested in following what they do. For me the interesting stuff is the entrepreneurial Value Investor start-up manager, one who understands that he only has two tasks – the first, always a challenge, to find enough capital to make the hedge fund model work in terms of economics. For years I would tell start-up managers that they needed to “Get to USD\$100 million quickly to make it work”. I have recently revised that to “Get to USD\$100 million quickly to make it work comfortably”. A frugal manager can make it work at USD\$10m, at least for a while. And the second of the two tasks is to find and buy the value stocks and value ideas. I think there's really only two ways to do that – research or copy – and if you are going to do the latter, then there's probably no one better than Warren Buffett as your role model.



WHO'S THE BOSSs

By Natalia Prieto, Assistant PR and Communications Manager, BVI Finance

An Interview with Ryan Geluk

Over the past 30 years, the BVI has developed a robust system for identifying beneficial ownership information. Very few countries in the world hold a publicly accessible registry on beneficial ownership, but recently there have been requests from international bodies to do so. In April 2016, the BVI agreed with the UK Government to exchange beneficial ownership information between the respective law enforcement agencies.

As a result, the BVI implemented the Beneficial Ownership Secure Search System (BOSSs) in July 2017. The BVI's approach to the holding of beneficial ownership information is based on effectiveness, adherence to all international standards as defined by the Financial Action Task Force (FATF) and in finding the appropriate balance between privacy and transparency.

For a more in-depth look at BOSSs, BVI Finance sat down with Ryan Geluk, Director at BDO BVI who provided his insight on how the platform went from idea to reality.

1. Can you provide me with some information on how BOSSs came into being?

BOSSs, or the concept of a more efficient way to organise beneficial ownership information, was born out of discussions with the Financial Secretary and the Financial Services Business Development Committee focused on trying to create new, innovative solutions to improve the efficiency of exchange of information, particularly beneficial ownership information. During the discussions the group recognised that there are particular pieces of information that should be easier to come by and that's when Sjoerd Koster of VP Bank and I sat down and developed a framework from which we saw making these efficiencies possible. Over time as we got more into the requirements in terms of what the competent authorities wanted and what the industry could bear, the framework evolved into what we now know as BOSSs.

2. What's the link between BOSSs and beneficial ownership?

BOSSs is actually an acronym which stands for Beneficial Ownership Secure Search System and the connection between the two is essentially that BOSSs will contain particular pieces of beneficial ownership information which are required under the Anti-Money Laundering (AML) Regulations and AML Code of Practice. The platform is comprised of database repositories held by each of the corporate service providers and a search engine that will simultaneously search all 120 or 125 or 130, depending on how many there are at this point in time, databases. It is important to note that the system will not contain any documents.

3. How does BOSSs work?

When an information request comes in to one of the BVI competent authorities, it is vetted against specific criteria under the exchange of information agreements that are in place and then sent to the competent authority which is authorised to perform searches on BOSSs. Once the request is received the designated person from the authorised competent authority will login with a secure username and password, and then be provided with a token for an extra level of security on a specific machine.

After securely logging into the platform, the authorised user initiates a search and then the platform searches its data repositories of the many Corporate Service Providers (CSPs) that are housed within it and then return the results back to the competent authority. The competent authorities would then complete the specified forms associated with the exchange of notes or exchange of information agreements and then send that information to the relevant foreign competent authority. To avoid the risk of 'tipping off', CSPs will be unaware of when searches are made.

4. What has been done to ensure the information stored on the platform is secure?

In regard to data security, there are a few key points to consider, starting with the authorisation process. As a user you not only want to ensure that the information you upload to the platform is secure but also that the people accessing the information are properly authorised to access it.

Within BOSSs there are various levels of security that have been put in place such as your standard username and password and the fact that information will only be entered into the system by the administrator of BOSSs and by each of the administrators from the CSPs. The second tier of authentication provides authorised users with a token, which is a random number that changes on a continuous basis, via email or phone providing users with five minutes to login to the system. If the five minute window has passed the entire process will have to begin again. This part of the authorisation process ensures that not only do you need an authorised user's username and password but also access to their email in order to log in to BOSSs. An additional layer of authentication is the use of the SSL certificate, which are security certificates installed on specific machines using BOSSs by either the CSPs or the authorised competent authorities that way not only do you have an authorised user, but you also have an authorised computer. To take it even further, the SSL certificate is actually designated to a specific user on a specific machine so technically you would have to bypass a user's login details for their computer, email account and BOSSs in order to gain authorised access to the system.

So as you can see, we've gone to great lengths to ensure only authorised persons are accessing this system. Now going on to the encryption side once you're using the system you'll want assurance that the information being kept within BOSSs is secure and in that regard we follow the highest levels of industry standard for encryption. BOSSs uses a 256 bit encryption, which is essentially the highest level of encryption that international standards require for data at rest. From the moment the information is uploaded by the competent authority or CSP, it is encrypted with a unique key.

That really sums up how we keep everything secure while also having what is effectively a decentralised

system as per the industry's request. To put it in layman's terms, BOSSs is like an apartment building of 120 or so different apartments - you have your key and that gives you access to your apartment, but it's not going to give you access to your neighbour's apartment, the penthouse or any other room in that apartment complex. While all of the units are within the same infrastructure, everyone doesn't live in or have access to the same rooms.

5.

What information are Corporate Service Providers required to provide?

The CSPs are required to provide the same information that's required under the AML Code of Practice which is your name, your nationality, your residential address and your date of birth. Additionally, no documents will be hosted on BOSSs, so CSPs will only have to provide alphanumeric characters and foreign characters, but not documents like PDF's or JPEG's.

6.

Is all of the information accessible by the competent authorities

Only one single competent authority is being authorised to access the information. Individual requests for information will come through each of the competent authorities, but they'll do their own vetting and then pass the request on to the authorised competent authority. The real reason for this is purely as a security measure, the more hands you have touching the system, the more likely it is that breaches or lapses in security could happen. Therefore, only one of the BVI's competent authorities will be given the ability and the authorisation to conduct searches on behalf of all of them.

7.

How does BOSSs compare to comparable systems being implemented in other countries?

I haven't had a good look at what other jurisdictions are doing, but let's just say that industry experts from countries like Jersey and Guernsey who have seen BOSSs and compared it to others have mentioned that there are many features within our system that are far superior. We're very focused and we know that our system is cutting edge based on the technology we're using and the method we used to create it. We know the platform meets the wants and needs of the industry, the regulators, the BVI Government and the foreign competent authorities. So we're very confident that this system is likely going to be far greater and far better than what any of the other jurisdictions will be able to develop but we've been so focused on what we're doing with our system that we haven't worried about what everyone else is doing.

8.

What has the industry response been like regarding the platform?

Surprisingly enough or not surprisingly enough, the industry has been relatively positive about the system in regard to its security and usability. I mean there was been a lot of frustration regarding the pace at which the legislation came out, but overall the industry has been pleased with what has been developed and they are confident with the security around it. In fact, we had a lot of CSPs going into meetings very skeptical about BOSSs' security level, but we reassured everyone that a significant amount of time, effort and attention had been put into the platform's security.

We have an entire cyber security team within the development team who have vetted the system and who continue to vet the system to ensure that it is meeting all of the specifications that we want and international industries require. In all, the industry has definitely been supportive of BOSSs as they understand it is an inevitable evolution with regard to how they manage data. The industry also recognises the fact that there may be some time and cost savings down the road by using BOSSs.

9.

How do you think BOSSs will help to further ensure the BVI's status as a respected international business and finance centre?

I think BOSSs will help us market the BVI internationally as a technologically advanced and innovative business and

finance centre. When you think back to when the Virtual Integrated Registry Regulatory General Information Network (VIRRGIN) first came out, it was a first of its kind. A cutting edge system that revolutionized how companies were incorporated and we see BOSSs as the next version of VIRRGIN, not in the fact of it being a register but just in the impact that it will have on the industry. BOSSs will hopefully help the BVI's financial services industry manage their data better, differently, more efficiently, and more effectively. Hopefully on the back of BOSSs the industry will create more sophisticated databases which will better allow them to monitor their information. With BOSSs we're not only able to talk about how efficient we are with incorporating companies, but also how important the protection of that information really is and how much we take that into consideration when we're creating our products. It's something that we can really pride ourselves on and which we have a niche within the market to be able to focus on those two aspects - the efficiency of the incorporations and the protection of the data.

The BVI has always been at the forefront of regulatory compliance and I think that with BOSSs we've taken efficiency to another level. By being more efficient in the way we manage data, I think it will allow us to be able to prove how effective we are in terms of abiding by transparency. I think that's where we have a true advantage and where we can create a true competitive advantage in the world.

“With BOSSs we've taken efficiency to another level.”

10. **What opportunities do you think will arise for the BVI because of BOSSs?**

The McKinsey report spoke a lot about value added services and the whole area of data protection creates an almost completely new industry in the BVI in which we can create additional substance. This will create opportunities for young BVI Islanders to go to school and study information technology, data security and IT security. A local chapter of the Information Systems Security Association (ISSA) is in the works and we expect that will add to a level of credibility to the BVI and give the Territory substance to be able to train local persons and the ability to advise Government and industry on areas of information security. I think we have a long way to go in regard to data protection laws but because of BOSSs, I believe that there will be more awareness on the importance of data protection. I think that's really been highlighted with the Panama Papers and Paradise Papers, but it's something that I've spoken a lot about in the last four or five years noting that the protection of this data really is important.

It's truly an opportunity we can have here if we not only improve the awareness, but also the legislation so that we can be seen to have robust industry leading or industry standard legislation around data protection that will ensure that whatever data is being managed in the BVI for beneficial ownership information will be done at an internationally recognised standard.

11. **Earlier this year, industry was given a six-month extension to be able to complete the onboarding process. Are there any penalties for non-compliance?**

If a firm or person fails to comply with the requirements referenced in the Beneficial Ownership Secure Search System Act, 2017 without reasonable cause or they commit an offence they are liable to either fines ranging from \$5,000 to \$75,000, imprisonment for a term not exceeding two years, or both.

OFF THE CLOCK

with Claire Burke

Passions outside of work

By Clair Burke
Trust Company Director, skipper



Dubbed by many as the sailing capital of the world, the BVI doesn't disappoint when it comes to water activities. One of the primary reasons I decided in 1998 to leave my job as Tax Consultant with Ernst and Young (EY) in Ireland was to race in warmer waters than Cork Harbour. When I arrived here to start my new position as Corporate Administrator with EY, it was a top priority for me to join a fun crew to go racing so I immediately visited the Royal BVI Yacht Club (RBVIYC) to find out what opportunities there were.

Upon arrival, I quickly discovered that there was a vibrant sailing community and was welcomed with open arms - in fact I think I was adopted onto a race crew that very same day!

I've had the pleasure of racing on many of different types of boats since my first day at the RBVIYC and I'm now a regular crew member onboard Pipe Dream, a 38ft yacht crewed typically by eight people. My role as crew boss means I have to find replacement crew when the regulars are not available as well as making sure there are sandwiches and beer for the races. It's all about team work onboard a race boat like this and the social aspects are (almost) as important as the racing. While my crew primarily races in the BVI, over the years I've travelled overseas to the USVI, Puerto Rico, St. Maarten, Barbados and Antigua to compete. In 2007, I had the opportunity to be part of the BVI Women's keel boat team that was crowned Caribbean Champions and also represented the BVI at the Rolex Women's Keel Boat Championship in Houston, Texas.

At the heart of every yacht club is a love for sailing and the spirit of volunteering. The RBVIYC was founded in 1973 and it is only fairly

recently that the sailing activities are managed by full time staff. In 2006 I was elected as Commodore, a position that I served for three years. Before that I was Treasurer for three years and was re-elected to that role in 2011 and still hold that position to this day. It has been interesting to see how the yacht club has changed over the years and it has been especially rewarding to see today the strength of our youth sailing programme.

We couldn't do any of it without the membership or volunteers though, or partners such as Nanny Cay, the Moorings and Nagicco who heavily support the programme. Many persons in the community have worked hard to develop our youth sailing programme and at the moment we have a great variety of fun activities as well as some really successful young racers.

Over the years, much has evolved but there is one regatta that continues to really stand out and that is the BVI Spring Regatta. Not only is it great racing, but it's also an event for the whole community with fun on and off the water. The event is a hit for our local and regional boats, but also attracts a large number of people from the UK, US, and a few other countries. The organisers do a great job promoting the islands and involving lots of local businesses.

I have recently taken up photography and I'm regularly roped in to photograph our youth sailing activities, prize giving ceremonies and racing. Sometimes that can be a little tricky from onboard Pipe Dream, but it's a great way to help us show off the achievements of our sailors, both young and old.