

BVI continues to introduce positive regulatory developments

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2016 was an incredibly hard year for the hedge fund industry. One industry statistic has suggested that new fund launches were 40% down on 2015, with the number of new funds launched in 2016 the lowest since the financial crisis. This has had an impact on all fund jurisdictions, including the BVI, but despite this, over the last 12 months there have been a number of positive developments for the jurisdiction's funds industry.

One is the creation of an AIFMD opt-in regime for the BVI, called the Securities and Investment Business (AIFMD) Regulations, which is significant for the BVI as it looks to seek approval from the European regulator, ESMA, for third country equivalence and introduces into the BVI an AIFMD equivalent regime. Once enforce, this will allow new or existing BVI funds to opt in as an "EU Qualified BVI AIF" and for new or existing BVI managers to opt-in as an "EU Qualified BVI AIFM".

"Secondly, there is fairly advanced work on updating the BVI's Partnership Act. This statute is due a refresh and expected to be finalised during 2017. It will enhance the BVI's partnership regime at a time when other jurisdictions are also looking at updating (or in the case of Cayman, have recently updated) their equivalent regimes," says Jersey-based Simon Schilder, Partner at Ogier and head of the firm's BVI Investment Funds Practice.

He continues: "There are also enhancements in the pipelines which are being made to the BVI's Segregated Portfolio Company Regulations, the main change being to open up the product to accommodate a broader range of opportunities than currently exist. At present, one is only able to use SPCs for open-ended funds and for insurance companies. The new enhancements will expand the types of structures that can utilise a segregated portfolio company ("SPC") structure, significantly to enable closed-ended funds to utilise SPC structures. Currently, the SPC product has not been available for close-ended funds, which has meant that managers investing in less liquid asset classes and wanting to structure their funds as close-ended fund vehicles (as opposed to open-ended fund vehicles with extended lock-up periods) have been precluded from utilising SPC structures. As SPC

structures are available for close-ended funds in other jurisdictions, this has put the BVI at a competitive disadvantage, which is now being addressed. This is good news as we are continuing to see interest from managers to utilise SPC structures, as managers like the legal ring fencing capability that they offer". "If someone is pursuing a closed-ended strategy but can't do something because the right legal vehicle isn't available to implement that strategy in the BVI, it will," says Schilder, "prompt them to look other jurisdictions where they can.

"In this marketplace you have to be nimble with your regulation and look to improve your competitiveness wherever possible."

A good example of this in recent years has been the introduction of the BVI Approved Fund and BVI Incubator Fund, which have steadily gained traction over the last 18 months as awareness in the market about their availability grows. The Incubator Fund gives start-up managers a two-year easier ride (from a regulatory perspective) where they can test their investment strategy and gain a track record, which can be extended to a third year with regulatory consent.

"We are six months away from seeing the first waive of Incubator Funds needing to convert to a BVI Professional Funds or extend their Incubator Fund status for a further twelve month period (or shut down). The whole point of the Incubator Fund in the first place was to get people through the door in the BVI and give them a platform with which to test their investment strategy and develop a track record, which they could then market to investors upon conversion into a Professional Fund," explains Schilder.

He thinks that updating the BVI's Partnership Act is the latest example of the BVI moving forward; after all, this is a 21-one year old piece of legislation.

"How does life compare now to 21 years ago? Not much at all. The way businesses are run has changed and you need to have legislation that is in tune with the current marketplace and industry standards. The BVI has a relatively modern set of statutes across the board but at the moment the one that sticks out as being in need of an update is the Partnership Act.

"The BVI's flagship statute, the BVI Business Companies Act has been amended several times since it was enacted in 2005. Then there's the BVI Regulatory Code, which was enacted in 2009; the Securities Investment Business Act (SIBA), which was enacted in 2010 along with the Mutual Funds Regulations; the Approved Manager Regulations, which were enacted in 2014, the Approved Fund and Incubator Fund Regulations, which were enacted in 2015; and the Insolvency Act which was enacted in 2004. Once the Partnership Act is updated, this will leave the BVI with a suite of modern statutes" concludes Schilder.

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