

HEDGEWEEK

An aerial photograph of a tropical island, likely in the British Virgin Islands. The island is lush with green vegetation and palm trees. A large resort complex with several buildings and a swimming pool is visible on the left side of the island. The water is a vibrant turquoise color, transitioning to a deeper blue as it extends into the open ocean. The sky is bright blue with scattered white clouds. The overall scene is idyllic and scenic.

# BRITISH VIRGIN ISLANDS

SPECIAL REPORT 2023



# mourant

## Engaged, active players in the BVI

Service providers operating in the British Virgin Islands (BVI) are witnessing a transformation in the type of work being carried out in the jurisdiction, as entities incorporated here are more active and engaged.

“The BVI was known as a high volume, low cost jurisdiction, but this is changing,” comments Mourant partner Ian Montgomery, who heads up the firm’s thriving finance, corporate and funds practice in the BVI. He continues: “The new entities being incorporated in the jurisdiction are a lot more active and tend to be more regulated than in the past. This is leading to more substance being seen across the industry.”

As a result of this, the firms choosing the BVI as their home also need a broader eco system of service providers to attend to their potentially more complex needs.

While this change has contributed to the total number of companies registered in the BVI reducing, the jurisdiction is instead finding growth in other areas, including most notably, among startup and emerging managers.

“The startup space is quite exciting. In the first quarter of 2020, there were approximately 200 incubator and approved funds. Two years later, in the first quarter of this year, this figure jumped to over 420,” says Saraid Taylor, Counsel, Mourant, “So that figure has doubled and now represents over 20% of all funds registered in the BVI. It’s very significant growth.”

Introduced in 2015, the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the Regulations), built an infrastructure appropriate for smaller managers, allowing them to grow, starting from a low cost-base.

### **Building a track record**

Attracting smaller start-up managers and incubator funds has been a key focus for the BVI. The infrastructure is constructed

to allow these firms to build a track record at a low cost – to the benefit of the funds and their investors.

“The BVI is one of the most favourable jurisdictions for these types of managers,” outlines Montgomery. “The country offers novel products aimed at start-up managers and seven years down the line, these groups are forming the cornerstone of the growing industry.”

Although the environment is very supportive of emerging and start-up managers, Taylor identifies a few elements which are key in making sure these entities function to the best of their ability.

“Managers need to strike a balance; they need to be able to meet all their compliance and regulatory obligations as a registered fund and balance that against how much it effectively costs them to maintain and scale their business,” says Taylor.

The reality is regulation is only going to increase and managers need to be prepared for it.

“Often, clients are hoping for less regulation so that they can move quickly and keep costs down. However, they normally still want to be regulated because they want that credibility to help them attract investment, particularly when it comes to open-ended funds. The BVI seems to be getting that balance right by providing a light-touch regulatory framework that allows start-up managers to become regulated at a relatively low cost and to build a track record during those early years,” Montgomery explains.

Helping owners and managers understand the value of getting compliance right is critical and can be challenging at times,







since these organisations often do not immediately see the value in implementing the necessary policies and procedures.

#### US and beyond

Outlining the types of funds being set up in the BVI at present, Montgomery says there has been an influx of US based managers who are looking to attract overseas investment without necessarily incurring huge costs: “The BVI enables them to have US tax exempt investors who invest in their US master funds through offshore feeder vehicles, and often BVI approved funds are used as the feeder vehicles. This is one area that’s carried on growing.”

On the emerging manager side, there has been a significant amount of activity and inquiry emanating from the Middle East and Asia.

Taylor comments: “The set-up trends are driven by clients and their investors; it’s about where they’re looking to access. Last week, we had a call with Italian fund managers looking for offshore vehicles to set up a standalone start-up fund for their investors based in Latin America. It effectively always spreads across more than one continent in our experience.”

Although the managers’ needs are purely driven by their business and expansion plans, Taylor identifies there are small and niche

managers looking for a setup which is cost proportionate – allowing them to build up a track record without being extremely expensive.

#### Compliance measures

Globally, regulation and compliance measures have continued to increase. However, there are some distinctions present in the BVI which can help support managers, especially those at the start of their journey.

Montgomery outlines: “The BVI has extremely robust and stringent regimes but there is a lighter touch here which can make compliance less onerous. The government recently gazetted several new measures to comply with international standards. But elements like not needing a local BVI money laundering reporting officer, not needing to appoint an auditor and, for incubator funds, not needing an administrator, are the types of nuances which are becoming more important for clients and making the BVI the ‘go-to’ jurisdiction for start-up managers.”

## Mourant

Mourant is a law firm-led, professional services business with over 60 years’ experience in the financial services sector. We advise on the laws of the British Virgin Islands, the Cayman Islands, Guernsey and Jersey and provide specialist entity management, governance, regulatory and consulting services. We bridge the gap between legal advice and its implementation, taking an integrated approach to deliver the best results for our clients.

Our ‘one firm’ approach means that working together with clients we deliver seamless, objective and commercially grounded advice on the comparative advantages and disadvantages of the leading offshore fund jurisdictions. Our team exercises true commercial judgment in delivering advice often going the extra mile, with a personal approach, and forming genuine partnerships with our clients and their advisers.

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### Saraid Taylor

Saraid is counsel in our BVI corporate, finance and funds practice. She has extensive experience advising on a range of corporate finance transactions, equity capital markets and mergers and acquisitions. She also advises on regulatory law, investment funds, corporate restructurings, equity and debt fundraisings and general corporate matters. Before joining Mourant, she worked in the corporate team at another leading offshore law firm advising on Jersey law. She previously worked at Pinsent Masons LLP, London, in its corporate finance team and undertook a secondment at Zurich Financial Services, London.



### Ian Montgomery

Ian is a partner in our BVI office and the local practice leader of the BVI finance, corporate and funds team. He has particular experience advising on corporate and finance transactions in the real estate, financial services, energy and technology sectors, including mergers and acquisitions, joint ventures, debt and equity fundraising, public listings, security arrangements, corporate restructurings and corporate and commercial aspects of shareholder and contractual disputes. His clients include leading international law firms and accountancy firms, financial institutions, multi-national businesses, funds and their managers, and high net worth individuals. Prior to joining Mourant, Ian worked for two other offshore law firms in the BVI, as well as Pinsent Masons in London.