

FOCUS ON

THE BRITISH VIRGIN ISLANDS

Philip Graham, of Harneys talks to *HFMWeek* about the trends and developments of the hedge fund sector on the British Virgin Islands



Philip Graham

is a partner and head of the investment funds team at Harneys in the British Virgin Islands. He advises on all aspects of the formation and restructuring of investment fund vehicles. In 2012, Graham was appointed to serve on the BVI government's focus group on the AIFM Directive.

HFMWEEK (HFM): WHAT ARE THE MAIN TRENDS SPECIFIC TO THE FUNDS INDUSTRY IN THE BRITISH VIRGIN ISLANDS (BVI)?

PHILIP GRAHAM (PG): With more than 2,200 regulated funds and at least as many closed-end or private equity fund vehicles formed in the jurisdiction, the BVI funds market sees a huge variety of structures and investment managers from all over the world who seek a domicile that provides political stability, an ultra-reliable legal system and experienced industry practitioners. The general trend is that there isn't a general trend; we speak to fund managers from New York and London with over \$25bn under management and in the same day could be speaking to a brand new individual to the sector that wishes to set-up an incubator fund out of South Korea. This special blend is what keeps the BVI in such high regard.

HFM: WHAT ARE THE BVI'S STRENGTHS AS A FUNDS JURISDICTION AND HOW DO THEY COMPETE AGAINST ONSHORE STRUCTURES?

PG: Besides those already mentioned, the BVI funds legislation is based on fundamentally accepted principles, but allows for a great deal of flexibility to ensure that structures of all shapes and sizes are able to function at their optimum level. This is a distinct advantage over the more rigid onshore entities, which will ultimately impact upon the returns to investors. When you combine this with the low cost-base compared to most offshore jurisdictions, let alone the much higher costs of onshore funds, the benefits of setting up in the BVI become obvious.

HFM: WHAT CHALLENGES HAS THE BVI FUNDS INDUSTRY FACED OVER THE PAST FEW YEARS AND WHAT LESSONS HAVE BEEN LEARNT FROM THOSE CHALLENGES?

PG: The challenges from 2008 onwards were not unique to the BVI; these macro issues plagued the funds market on a global scale and every legal practitioner who went through that period has war stories to tell and scars to show of clients that simply were not equipped to cope with the rigours that the industry faced. But once the majority of our funds navigated the treacherous waters

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and came out the other side, we were provided with some real life examples of where language in offering documents or constitutional documents of funds simply didn't have the effect that we previously thought it might. For example, we suddenly saw a much sharper focus on suspension of redemptions or gating language to ensure that managers now have better control over exits from the fund and avoid the need to fire sale assets, thereby preserving value and protecting the interests of the continuing investors. Equally, a large part of the case law in this area highlighted the absolute need for consistency across all of the documents. The other major challenge in more recent times has of course been regulation.

HFM: HOW HAS THE BVI REACTED TO REGULATORY CHANGE, SUCH AS THAT POSED BY THE AIFMD?

PG: Very well. The FSC is incredibly pragmatic, willing to consult and listen to the private sector and then adapt accordingly to ensure that the jurisdiction stays at the cutting edge. They established committees to examine the effects of both the Foreign Account Tax Compliance Act (Fatca) and the Alternative Investment Fund Managers Directive (AIFMD) very early on, which will allow the BVI to ensure it is fully ready to meet the challenges the new regulatory regimes will bring. There is no doubt that the world is moving to a far more regulated environment, but we are very confident that the BVI will be able to keep up with anything that is demanded of it.

HFM: WHAT ARE YOUR PREDICTIONS FOR THIS JURISDICTION OVER THE COMING YEAR?

PG: We remain cautiously optimistic. There is a large amount of investor money out there and managers with a proven track record over the past few years are in fierce demand, especially among the institutional investors who are looking to find that magic touch. We are even hearing stories of managers turning away large subscriptions, a prime symptom of the thriving market that is beginning to return. Further evidence of that is demonstrated by the amount of new entrants to the market who are coming in with some fantastic ideas. We have seen managers come out of every corner of the globe this year and long may this continue. ■