

British Virgin Islands

Chamber of commerce:

Hotel and Commerce Association
PO Box 376
James Frett Building
Road Town
Tortola
British Virgin Islands
Tel: +1 284 494 3514
Fax: +1 284 494 6179
Email: bviccha@surfbvi.com

Professional body:

British Virgin Islands Bar Association
PO Box 7
Craigmur Chamber
Tortola
British Virgin Islands
Tel: +1 284 494 22 33
Fax: +1 284 494 35 47

Factors in the BVI's phenomenal growth

Keisha M Durham
Harneys
Tortola

Notwithstanding the geographic size and location of the British Virgin Islands (BVI), a British overseas territory in the northern Caribbean, it has emerged as a leading global finance centre with a total of over 800,000 international companies doing business in virtually every region around the world. This vast number of BVI companies certainly demonstrates the islands' attractiveness and popularity in international corporate finance circles.

What is also significant is the contribution made by the BVI through the medium of its international companies, which have fuelled economic growth, particularly in China, by way of foreign direct investment (FDI). The extent of the contribution made by BVI companies to the global economy, which is greater than some may have imagined, was recently confirmed by figures published by the Chinese Ministry of Commerce. These figures place the BVI in the top ten leading countries (in second place to Hong Kong and followed by Singapore, Japan, the USA and others) in the amount of FDI inflows into the Chinese economy. In fact the BVI's contribution in this regard, from January to May of this year, currently stands at \$7.39 billion.

Against this backdrop, it should be no surprise that the BVI's reputation and importance as a leading global finance centre was recognised by business professionals worldwide when it was included for the first time (ranking in the top 30 financial centres worldwide) in the *Global Financial Centres Index* published by the City of London.

To what then can we attribute the phenomenal growth and success of the BVI relative to its international competitors, and the influence and popularity of BVI companies

on the global stage? No doubt a combination of factors is attributable to any great success and for the BVI such factors include:

- (i) a stable environment;
- (ii) a strong, flexible and balanced legislative framework;
- (iii) the consultative and pragmatic approach of the BVI Financial Services Commission (FSC) - the autonomous, non-governmental authority charged with regulating the financial services sector in the BVI - which continues to benchmark and enhance the BVI's regulatory regime against regulatory processes in other leading financial centres; and
- (iv) the flexibility, expertise and experience of practitioners in the BVI who engender a responsive and commercial approach in order to deliver the highest quality of service to their clients.

Key legislation

It is useful to note the most important pieces of legislation which constitute the legislative framework which underpins the success experienced by the BVI: the Banks and Trust Companies Act, 1990; the Company Management Act, 1990; the Insurance Act, 1994; the Mutual Funds Act, 1996; the Financial Services Commission Act, 2001; the Insolvency Act, 2003 and the BVI Business Companies Act, 2004 (BVIBCA).

The BVIBCA, the principal aim of which is to provide a flexible and sensible legislative framework for BVI companies, is certainly the cornerstone and main piece of legislation with regard to corporate financial activity in the BVI. In light of its key importance, it would be useful to highlight a few of its main features.

First, one of the main attractions lies in the range of options generated by virtue of the number of corporate vehicles available. Indeed, seven different types of company can be incorporated under the BVIBCA: (i) companies limited by shares; (ii) companies limited by guarantee not authorised to issue shares;

(iii) companies limited by guarantees authorised to issue shares; (iv) unlimited companies authorised to issue shares; (v) unlimited companies not authorised to issue shares; (vi) restricted-purposes companies; and (vii) segregated-portfolio companies.

Another main feature of the BVIBCA lies in the fundamental change to the law which it brought about by virtue of there no longer being a concept of authorised share capital, or indeed of share capital. As a result, the BVIBCA does not contain any specific provisions relating to capital. In addition, the flexibility of the BVI corporate regime is further underscored by provisions in the BVIBCA relating to the acquisition by a BVI company of its own shares. These provisions allow for a company to purchase, redeem or otherwise acquire its own shares either under a statutory regime or in accordance with its own memorandum or articles of association. Certainly, these are a few highlights of the BVIBCA and there are a number of other provisions in the BVIBCA which lend themselves to the attractiveness and widespread usage of BVI companies in financial transactions around the world.

Continuing legislative reviews

The BVI continues to review its legislative framework. The abovementioned legislation has undergone amendments over the last few years, in an effort to improve and modernise the financial services sector in the BVI and to ensure compliance with international standards. In terms of recent legislative developments, there has been a focus on strengthening the territory's anti-money laundering and anti-terrorist financing regime through the enactment of the Anti-Money Laundering Regulations, 2008 and the Anti-Money Laundering and Terrorist Financing Code of Practice, 2009.

These enactments seek to codify and thus ensure compliance with the AML/CFT obligations under the 40 recommendations and nine special recommendations of the

Financial Action Task Force. Though these 49 recommendations are not binding, they have been agreed to by most countries as part of a worldwide commitment to combat money laundering. The BVI has certainly demonstrated its continued commitment to international standards by virtue of these enactments and has once more benchmarked its legislative framework to strengthen its reputation as a stable and internationally compliant finance centre.

In terms of developments on the horizon, the FSC has confirmed that plans are in place for further legislative changes in the not-too-distant future. Such changes will serve to further modernise and enhance the legislative framework by building on the International Association of Insurance Supervisors' standards through the enactment of new insurance legislation and a review of the mutual-funds regime to modernise the investment business sector and regulate securities. It is expected that this will improve and build upon the BVI's success as a leading global finance centre.

Financial and corporate

Recommended firms

Tier 1

Harneys
Walkers

Tier 2

Conyers Dill & Pearman
Maples and Calder
Ogier

Tier 3

Appleby

Tier 4

Dancia Penn & Co
Farara Kerins
Forbes Hare
Hewlett Beck & Arad
McW Todman & Co
O'Neal Webster

Thanks to their tendency towards general practice, and the traditionally conservative approach of their domestic clients, the sub-prime crisis has not hit lawyers in the British Virgin Islands (BVI) as hard as those in many jurisdictions. The local financial-services market remains stable, and the crisis has in fact made it a haven for private-equity funds seeking protection and discretion.

The islands have not been entirely immune from problems - the shortage of

global credit has reduced the overall number of international deals dispatched from London and New York, impacting real-estate and capital markets work. But partners remain upbeat: "This only means that for the moment we cannot afford to buy apartments in London or Hong Kong," says one.

The jurisdiction has become popular with emerging markets, receiving a lot of work from investors looking to establish corporate structures, joint ventures and listings. The islands have been also busy registering Chinese and Indian companies listing on the London Stock Exchange's Aim board - many of these companies have turned to the BVI because of the islands' flexible regulatory regime and sophisticated corporate legislation.

Harneys

Harneys, which boasts the oldest and largest practice in the BVI, has recruited heavily during 2008, adding 12 lawyers to its practice. The firm has a distinct size advantage, allowing it to draw on wide resources for cross-border deals. This ability is set to be boosted even further: the firm announced in June that it is to merge with Cayman firm CS Gill & Co.

Marco Martins joined the firm in June 2007 as head of its Latin America practice, while Colin Riegels returned to the BVI to lead the banking and finance team. Peter Tarn has been dividing his time between London and the BVI. The team has a strong reputation for advising Aim 100 companies in the BVI - around 80% of these companies are clients of Harneys.

One of the firm's highlights this year was advising Frigstad Discoverer Invest in its listing on the Oslo Stock Exchange. In another highlighted deal, Kyle Sutherland and Ray Wearmouth advised Rusoro Mining in the merger of its BVI subsidiary with Gold Fields' BVI subsidiary, which facilitated Rusoro's \$532 million acquisition of Venezuelan gold mining assets from Gold Fields.

Leonard Birmingham also worked alongside Herbert Smith to advise the Tchenguiz Brothers on their £490 million sale of Shell-Mex House in London to New York private-equity house Westbrook Partners.

The firm has a thriving practice in advising on bond issues. Recently-appointed partner Tim Clipstone, together with Thalia Myers, advised the sellers on the sale of the London-based fund-of-hedge-funds manager Key Asset Management to SEB for \$3 billion. Other clients of the firm include HSBC, RBS, Barclays Capital and Goldman Sachs.

Leading lawyers

Kieron O'Rourke
Colin Riegels
Peter Tarn
Ray Wearmouth

Walkers

Walkers moves into the top tier this year after numerous comments from clients and peers that the firm is growing in size and appearing on strong transactions. The firm has recruited aggressively, almost doubling its size in 18 months, and has also promoted several of its associates to partner this year. Philip Paschalides and Sonia Starvis were made partners of the finance group and property group respectively, and Caroline Williams was promoted to partner in the investment funds group. Heidi de Vries is especially praised by the market; she is described by a rival as "a very good lawyer, and entirely committed to the cause in the BVI".

One of Walkers' highlights this year was advising a uranium mining project company on its joint venture and acquisition of Nigerian exploration properties, and subsequent admission to the Aim market. In another important deal, the firm advised Uramin on the successful completion of a \$2.5 billion multi-jurisdictional takeover bid, and its dual listing on the Toronto Stock Exchange list and Aim markets. The firm also acted for GLG Partners on its \$3.4 billion reverse takeover by Freedom Acquisitions Holdings.

Walkers' investment funds and private-equity practice was also busy this year, advising Antarctica Asset Management on its establishment of four BVI professional mutual funds.

In another important instruction, the team advised Enable Capital Management in the creation of a number of BVI professional mutual funds. Walkers also advised Venus Capital Management in the restructuring of an existing master/feeder fund, and the establishment of new investment vehicles.

Leading lawyers

Heidi de Vries
Chris McKenzie

Conyers Dill & Pearman

Conyers Dill & Pearman suffered a minor hiccup with the departure of recently-hired associate Greg Boyd to rivals Maples and Calder. However, any upset should be temporary, say competitors: "The firm has many good people and his departure will be easily fixed," says one.

Robert Briant and Mark Forte both draw the respect of clients and rivals, although

some suggest that the firm may rely too heavily on them. The firm is gradually expanding to popular onshore jurisdictions, such as the establishment of an office in Moscow in early 2008. The office is run by Carolyn O'Hare, who will practise offshore law and refer deals to the firm's London practice.

Conyers Dill & Pearman has taken its share of the jurisdiction's Aim bonanza, advising on the listings of several Aim companies introduced in the BVI.

Leading lawyers

Robert Briant
Guy Eldridge
Mark Forté

Maples and Calder

Maples and Calder's BVI office has grown rapidly in the last year, recruiting talented lawyers such as associate Greg Boyd from rivals Conyers Dill & Pearman.

But in a market with a high number of lateral movements, it is just as important to keep hold of talent as it is to hire it. The fact that the firm has kept hold of partners Clinton Hempel and Robert McIntyre for so many years is testament to the firm's strength in the market.

The firm's corporate and commercial group has been busy in the last year, thanks mainly to the amount of work dispatched from Canada, the US and Russia. The firm has also increased its presence in Latin America, particularly Brazil, where the firm has advised several companies wanting to establish their services in the BVI.

The firm has also found a niche working on the inauguration of special-purpose acquisition companies (Spacs), which have been a particular area of growth over the last year.

Leading lawyers

Clinton Hempel
Robert McIntyre

Ogier

Ogier merged with WSmiths, a rival BVI firm, in February 2007. Since its merger, the firm has grown significantly, recruiting seven lawyers, appointing 11 new partners, and moving to a bigger office in the jurisdiction.

But the firm's progress since the merger is still to reach its full potential. "The firm has not taken full advantage of its merge with WSmiths," says one peer. "The growth has been slow and I thought they were going to expand even more."

The market singled out Rachael McDonald for the strength of her banking and corporate work. Competitors regard her

as a "very experienced, good efficient lawyer", and believe she could be in line to take over from Simon Schilder in a few years time.

One highlight of the firm's capital markets practice was advising Chaarat Gold Holding on its Aim listing in November 2007. The firm also advised on the \$250 million launch of Redbrick Capital, and worked on behalf of EFG-Hermes Asset Management in the structuring of a \$1 billion fund investing into the Middle East and North Africa.

The firm acted as local adviser to Dominion Fund Management, which listed a £1 billion open-ended investment fund on the Irish Stock Exchange. It is also advising numerous investors on the structuring of a leveraged offshore fund and a dedicated energy fund.

Ogier's corporate work includes acting as BVI adviser to Westbrook Acquisitions on the £504 million acquisition of Capelle Properties. In addition, the firm advised Beacon Capital Partners on the £325 million acquisition of DV3 Mid City.

Finally, Oregon Financial Trust Services appointed Ogier as BVI counsel for its £70 million acquisition of Trenton Resources. The firm has also been busy sponsoring listings on the Channel Islands Stock Exchange, where the firm has acted on around a quarter of all listings in the last year.

Leading lawyers

Simon Schilder

Appleby

Appleby suffered a blow last year when partners John Greenwood and Jacqueline Daley left the firm. It has recovered quickly however, appointing Sally Cox and Valerie Georges Thomas as partners, recruiting lawyers Jas Sekhon and James McConvill, and appointing Eliot Simpson as the firm's first litigation partner.

One of the firm's highlights was advising on the refinancing of a loan involving 10 BVI companies. The loan helped to finance the purchase price of a semi-submersible drilling unit, and was one of the largest project finance transactions arranged by Nordea Bank in 2007.

In the investment funds market, Appleby acted for Coller Investment Management in the closing of Coller Investment V, a \$4.5 billion secondaries fund. The firm also advised Meridian Art Management in the establishment of an art fund for investment in contemporary art assets in emerging markets.

Leading lawyers

Sally Cox