

Regulatory oversight puts Bermuda in prime position

Interview with Ariane West

With some offshore jurisdictions having only moved recently to introduce registers of beneficial ownership, one could argue that having had its own register in place for over 70 years, Bermuda has been ahead of the curve. Now, as global regulatory oversight and transparency expectations rise, Bermuda is well placed to demonstrate that its house is very much in order.

The Bermuda Government and the Bermuda Monetary Authority have always paid close attention and cared to know who is doing business in Bermuda.

“That has been the standard operating procedure for Bermuda throughout its history as an international financial centre,” says Ariane West, Partner in the corporate and finance practice at Taylors, a full service law firm which works in exclusive association with Walkers.

She says that whilst other offshore jurisdictions have had to ramp up their regulatory regimes, for the BMA it has been more a case of maintaining a commitment to the highest standards and best practices. What that has meant, in recent years, is keeping abreast of all the updated requirements driven by international initiatives such as CRS, signing up to a FATCA agreement with the US Government, as well as signing up to the BEPS initiative. In April 2016, the island became the 33rd signatory of the *Multilateral Competent Authority Agreement* for the automatic exchange of Country-by-Country reports on income and taxes paid by corporates.

Commenting on the BEPS regulation, West says that becoming signatory is



Ariane West, Partner at Taylors

simply reflective “of our ongoing method of operating”.

“We will always look to comply with the highest standards in the marketplace so signing that agreement was really par for the course. We try to be a jurisdiction that has the appropriate level of regulation that adheres to global best practices. Some of the world’s largest insurance companies are based here and that wouldn’t be the case if we weren’t a highly reputable jurisdiction that has appropriate levels of governance, transparency and regulatory stability.

“For us (adapting to global regulatory expectations) is not a sea-change but simply an ongoing commitment to being the best jurisdiction we can possibly be.”

As part and parcel of that, the BMA and the Bermuda Government maintain their commitment to ensuring Bermuda’s AML framework is keeping up with its obligations by constantly reviewing and adopting best practices within the regulatory regime.

“There are far more demands on financial regulators today, in terms of applying an ongoing oversight function. The frequency and size of data they are collecting is substantial. The demands have been ever increasing, transactions are becoming faster and more sophisticated and it’s a matter of keeping pace with the markets,” says West.

With respect to industry-specific initiatives, in the investment funds sector and the insurance sector the BMA strives to take an approach of ‘smart regulation’.

At all times, it looks to ensure the regulations in place are addressing key

concerns, with respect to regulatory compliance and who exactly is operating in the jurisdiction.

At the same time, says West, the BMA has to ensure that the industry has a product that is fit for purpose and meets the needs of investment managers.

"In the investment funds sector, we have introduced new classes of exempted funds that are looking at trying to focus on the appropriate approach to regulation. For example, if someone is an SEC regulated manager there are Class A Exempted Funds that leverage off of that onshore regulatory oversight by allowing the US manager to benefit from more efficient regulatory processes in Bermuda.

"Also, in the insurance and ILS industry, Solvency II equivalence was a big focus for Bermuda's authorities. As that industry continues to grow and evolve so too has the product offering. The BMA pays close attention to this, ensuring they have a handle on how the different vehicles are being used, different classes of licenses, etc, and that they are being effectively regulated," explains West.

Something that people often overlook is that Bermuda was actually the pioneering jurisdiction for the creation of hedge funds almost 50 years ago, with its prominence in the space continuing into the 1990s.

In the last 20 years, the Cayman Islands has risen to prominence but Bermuda has a long history of serving the investment funds industry.

"At the time, perhaps Cayman was viewed as offering a more user-friendly product and it's true that Cayman has become the pre-eminent jurisdiction for hedge funds but I would say Bermuda has a very comparable service offering. For anybody who has an interest in Bermuda, the fund product is just as good.

"Indeed, some of our fund manager clients choose Bermuda because of its geographical location, being less than a two-hour flight to New York. They want that accessibility to the jurisdiction. There are numerous reasons for why Bermuda might be a natural fit for alternative fund managers but in terms of offering a straight up investment funds product, we can meet the needs of managers just as well as the Cayman

Islands or any other offshore jurisdiction," states West.

There is a bit of a herd mentality at play here. Start-up managers in particular, simply assume that they should launch a Cayman fund because everyone else does but on a like-for-like basis, there is very little difference between the two jurisdictions; in fact from a cost perspective, Bermuda fares better.

"Several service providers here offer an emerging manager platform solution using the Segregated Account Company (SAC) structure. For a manager who is looking to get up and running and build a few years of track record, the SAC platform is a very attractive option.

"We also have the ability for smaller funds with fewer than 20 investors to operate as private funds and not be subject to regulation under the Investment Funds Act. It is only once they pass certain thresholds that the manager would need to register and either apply for exempted fund status or authorisation by the BMA," says West.

She says that for the past seven or eight years, there has been a renewed focus on the investment funds space. This led to a re-appraisal of the Investment Funds Act in 2012.

"We made great strides and efforts to communicate with the market, asking managers what they needed from their offshore jurisdiction and out of that consultation came legislative initiatives to create streamlined classes of exempted funds, as well as the introduction of LLC legislation. That was modelled very closely on the Delaware statute so that we are able to offer managers a product that sits alongside their Delaware onshore LLC vehicle," adds West.

She confirms that Bermuda is very keen to maintain interest among alternative fund managers in the jurisdiction.

"We have been engaged in pursuing an AIFMD-equivalent status, which is still ongoing. It's in the hands of the European Commission at present but we have put in place the requisite legislation to create an equivalency regime. If and when things move forward, we will be ready to further enhance the attractiveness of Bermuda as a jurisdiction to domicile funds," concludes West. ■