

An exceptional island



Maddie Saghir reports

Aside from its beautiful beaches and sunshine, Bermuda makes a compelling case for fund managers looking to domicile in a competitive and dynamic jurisdiction

Bermuda brings to mind images of pretty pink sand beaches and beautiful blue seas. Its financial services industry prides itself on being one of the more developed jurisdictions in the region compared to its Caribbean peers. Bermuda has perhaps the largest and most sophisticated asset servicing ecosystem. It offers an infrastructure that is unsurpassed in the offshore world (both in the Caribbean and globally), with established and knowledgeable industry service providers.

A clear differentiator for Bermuda in the asset management space is its nexus to the insurance industry and the jurisdiction's dominance in servicing insurance-linked securities (ILS) structures. With this in mind, there is much to play for in Bermuda, and experts say its financial services industry is only going to

continue to grow. And, while the island's trust business is stable, there is real positivity in other markets such as insurance and reinsurance, which are well positioned to take advantage of the hardening market conditions.

There have also been a number of recent mergers of insurance managers which have created larger firms and more competitive pricing as a result.

Its asset servicing industry's Q1 results have revealed a steady flow of registrations for holding companies, investment partnerships and insurance entities. Industry players in Bermuda are excited for the future of its financial services industry and say technology will be key as it will open the doors to many opportunities.

Renewed confidence

Bermuda's growth and chances for future opportunities coincide with its renewed confidence since it regained its spot on the EU's 'white list'.

Bermuda returned to this list in February last year for the first time since 2017. The private sector worked collaboratively with the government, along with the active involvement of the Bermuda Monetary Authority (BMA), to implement reforms specifically relating to collective investment vehicles.

The decision to move Bermuda onto the 'white list' was made by EU finance ministers at the meeting of the Economic and Financial Affairs Council (ECOFIN). The EU blacklist was first introduced on 5 December 2017 as part of its efforts to clamp down on tax avoidance and harmful tax practices. Out of the 92 jurisdictions initially chosen, 17 including Bermuda, were added to the list. Bermuda also featured in the EU's 'blacklist' in March 2019 but was later moved onto the 'grey list' in May.

Ross Webber, country head, Apex Bermuda, highlights: "Bermuda's inclusion on a so-called EU 'grey list' has not had a significant negative impact on our industry. There is always jurisdictional arbitrage when financial institutions are searching for the most suitable domicile for their structures and it is important not to get too excited, or disappointed, with regard to the EU's listing – no matter its colour."

Webber notes that the EU isn't the only game in town and the island currently has a total of 80 treaty partners, including 41 bilateral Tax Information Exchange Agreements (TIEAs) and 76 co-signatories of the Council of Europe's Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Damian Resnik, managing director of Bermuda at Ocorian, identifies that the cooperation between the BMA, the Bermuda Finance Minister and the private sector demonstrated Bermuda's commitment to upholding a robust and transparent regulatory compliance and economic substance regime.

According to Resnik, for existing market participants and for those thinking about conducting business in Bermuda, the news reaffirmed that it remains a high-quality international business jurisdiction.

In the funds space, Bermuda did witness some shift from funds domiciled in Caribbean islands to Bermuda's more attractive position. However, there were other compelling factors behind this shift too, such as Bermuda's regulations relating to local audit sign off.



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"Some other jurisdictions insist on the expense and logistics of local audit sign off whereas Bermuda remained flexible and more competitive in this regard," says Webber.

While in other jurisdictions, funds are required to be audited by a local auditor, Bermuda does not have this requirement. Instead, a Bermuda authorised or registered fund can appoint an auditor that is based anywhere as long as the BMA deems them fit and proper to act in that role.

It is also important to note that in addition to the reinstatement to the white list, Bermuda has also gained EU Solvency II equivalence and US Reciprocal Jurisdiction status in reference to its commercial insurance sector. Meanwhile, its anti-money laundering regime was deemed compliant by the Caribbean Financial Action Task Force.

Taken together, Resnik suggests this international recognition for upholding a sound regulatory environment makes Bermuda a compelling case for fund managers looking to domicile in a competitive and dynamic jurisdiction.

Asset servicing trends

Players in Bermuda's asset serving industry have noticed a few notable trends.

Firstly, it is expected environmental, social and governance (ESG) concerns will play an increasingly important role in fund domiciling deci-



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sions. The BMA has already taken steps to keep pace with these expectations by incorporating ESG matters into its strategic plans for existing supervisory frameworks.

Sarah Demerling, member of the AIMA ExCo and partner at Walkers Bermuda, says: “ESG is of course on everyone’s radar and Bermuda’s thriving ILS sector fits well into this investment strategy and is a sustainable investment.”

Asset servicing firms are starting to deploy technology in this space in order to provide more efficient service and better insights to clients.

Digital assets are another prominent trend in Bermuda’s asset servicing industry. Apex’s Webber comments: “We are seeing growing interest in Bermuda as a jurisdiction which is supportive of, and well equipped for digital assets. Our Bermuda office is Apex’s digital assets centre of excellence and we have been fielding a number of inbound enquiries relating to cryptocurrency funds. With the valuation of Bitcoin on an upward trajectory and the recent successful Coinbase IPO, we see continuing interest from sophisticated institutions and accredited investors seeking exposure to the asset class.”

The BMA says there have been legislative developments in the fintech sector. The Bermuda Government demonstrated its commitment to ensuring Bermuda’s leadership role in the fintech sector through the passing of the Digital Asset Business Act 2018 (DABA).

DABA established the foundation for a comprehensive legislative and regulatory framework designed to support and facilitate growth in Bermuda’s fintech.

According to the BMA, the passing of DABA allows Bermuda’s funds to offer more innovative investment strategies, within a legal framework that fosters financial stability and investor protection.

Regarding registration trends, the BMA has reported several new private fund registrations. This fund class is regularly used for private equity structures, as well as professional funds that have been established to support ILS transactions.

The latest statistics show the period Q3 2020 to Q4 2020 saw an increase in the total number of funds from 708 to 829 (up 17.09 per cent) due to steady increases in private fund, professional closed fund registrations.

The portfolio also saw an overall increase in the total net asset value of 4.11 per cent to BDS\$205 billion, primarily as a result of positive market performance for the funds’ underlying portfolios during Q4 2020.

Bermuda’s funds regime

The IFA categorises Bermuda funds as either registered or authorised, with a range of fund classes to accommodate the various types of investment fund arrangements. The BMA’s regulatory framework remains fit for purpose, giving consideration to the investor base’s sophistication, international standards of best practice and the level of regulatory oversight the fund is seeking.

According to the BMA, some funds prefer a higher level of regulatory oversight and this feeds into the way the fund is marketed.

The key elements embedded in the BMA’s framework include the requirements for the operator to be fit and proper; to appoint fit and proper service providers; and to facilitate transparency and disclosure.

The fund’s class determines the level of prudential oversight. Due to their public nature, authorised funds and, more specifically, retail funds are subject to a higher level of prudential oversight and more frequent reporting.

At the other end of the spectrum registered private funds that do not promote and are open to no more than 20 participants; and professional funds that are open to only sophisticated investors), prudential requirements are tailored accordingly, explains the BMA.

AIMA's Demerling states: "Bermuda's fund regime is very versatile. It is a menu approach so depending on the strategy the vehicle can be supervised to a lesser or greater extent depending on the sophistication of the investors or whether the manager is an emerging manager or SEC registered."

As Bermuda caters for the US market as well as the UK and Europe and Asia, Demerling highlights there is an ongoing challenge to ensure international compliance with global requirements.

However, Bermuda has demonstrated its commitment in this area. Weighing in on this, Webber adds: "Innovative legislative and regulatory developments implemented over recent years have invigorated Bermuda's asset management and private equity industries and created a highly responsive capital market for investors."

In terms of regulation, the BMA is a pragmatic regulator, which means its goal is to apply the regulations sensibly.

BMA comments: "As a result, our legislation is principles-based rather than rules-based. There are provisions built into the legislation that allow for modifications and waivers where the investment fund is able to demonstrate, to the BMA's satisfaction, that appropriate alternative arrangements are in place, or the risks that the requirement was intending to mitigate do not exist."

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Compared to its Caribbean peers, Bermuda arguably has more advantages to offer. Following recent EU initiatives, experts are noticing more people jurisdictionally shopping and they are pleasantly surprised to see that Bermuda's funds regime is one that they are already familiar with when dealing with off-shore structures, be that a company, partnership, LLC, segregated account or unit trust.

Webber explains: "Bermuda does not require GPs of partnerships to register in Bermuda in order to act as a general partner which keeps costs and filings to a minimum."

Ocorian's Resnik comments: "Bermuda has always been looked upon as one of the more developed jurisdictions in the region. From its world class regulatory environment and modern infrastructure that can withstand hurricanes with minimal disruption, to its financial services industry dedicated to harnessing cutting-edge technology, Bermuda provides an ideal environment to facilitate the needs of its vast client base."

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Meanwhile, there are also similarities in the frameworks of that of Bermuda and its Caribbean peers.

This is because many of the BMA's regulatory counterparts in the Caribbean are ordinary members of the International Organization of Securities Commissions (IOSCO), the global standard setter for the asset management sector; and IOSCO's core principles underpin members' frameworks. However, there are distinct factors that distinguish one jurisdiction from the other.

For example, Bermuda has benefited from the enactment of complementary legislation that has afforded Bermuda-established funds more flexibility.

The BMA says: "Bermuda has also benefited from its reputation as a world-class centre of commerce. As one of the world's leading (re)insurance and financial centres, Bermuda is also a jurisdiction of choice for funds. These attributes make Bermuda an ILS transaction flagship jurisdiction—ripe with talent and expertise in the area of ILS, including the BMA's experience in ILS, which fosters pragmatic application of the regulatory and supervisory framework."

Indeed, the island has much to offer for further development. The BMA will continue to work with stakeholders to leverage growth opportunities for the investment funds sector, taking advantage of Bermuda's lead position in insurance alternative capital.

AIMA's Demerling concludes: "We are very excited for Bermuda's future. In addition to welcoming managers to physically relocate to the Island, which is becoming more attractive in this post-COVID world, Bermuda is embracing technology which opens the doors to many opportunities."