

Investment Funds



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Investment funds are an increasingly popular way for individuals and companies to endeavour to make the most of their assets. By investing wisely with a group of other investors, returns on funds can be attractive and the costs associated with such investment are shared amongst the entire group, meaning the amount borne by an individual investor is reduced. To find out more, we speak to Sharon A. Beesley, shareholder and director, and Christopher Buchan, senior corporate attorney at ISIS Law. ISIS Law Limited (ISIS Law) is a Bermuda based law firm. ISIS Law's practice is predominantly in the areas of investment funds, structured finance, secured lending, aircraft registration and financing, M&A, joint ventures, corporate advisory work and litigation matters.

What are the main issues you deal with regarding investment funds in your role?

We currently advise on different investment fund structures, handle the fund formations and launches, advise on operating and/or liquidity issues as they arise and provide restructuring assistance.

What are the main challenges to arise within investment fund-related cases in your experience?

Our experience is that the principal challenges facing investment funds/managers (particularly emerging managers and smaller funds) at the present time are in raising capital due to a more cautious prospective investor base after the global financial crisis and with the added focus on corporate governance, risk management, operational due diligence and transparency and managing the increasing compliance and general regulatory demands post the US Dodd Frank legislation and the EU AIFMD. Indeed globally we are dealing with a "tsunami of regulation."

How do you assist clients in overcoming these challenges?

We provide guidance on how best to handle the new regulatory environment. We also advise on restructuring options. In addition we are involved with various voluntary committees to assist both the Bermuda Government and our regulator the Bermuda Monetary Authority (BMA) be pro-active in addressing these challenges. We are also involved with the establishment of fund manager platforms which provide a more cost and time effective route for emerging managers to launch a new fund.

What are the current challenges facing the investment management industry?

Increased regulation and associated costs of compliance and investor due diligence and need for transparency has resulted in an overall increase in the costs of launching and managing funds. This affects the funds, managers, service providers and professional advisers. The Bermuda Government and the regulator, the BMA have responded to this with

new legislation to stream-line the fund launch process and make it quicker and cheaper. Administrators and custodians are establishing fund platforms for emerging managers and professional advisers are being more creative with fee proposals which reflect the challenges faced by managers in the start-up phase in order to keep their total expense ratios down.

Have there been any legislative changes over the last year that have affected this practice area?

Inevitably US legislation such as Dodd Frank, FATCA etc has had ramifications for the investment fund industry in Bermuda but this has not resulted in any new legislative changes in Bermuda. With respect to the impact of the EU AIFMD, Bermuda has entered into a cooperation agreement which will enable cross-border marketing of alternative investment funds to professional investors between jurisdictions, subject to certain conditions. Firstly that the Financial Action Task Force (FATF) continues to recognise Bermuda as a cooperation jurisdiction which is expected as the Organisation for Economic Cooperation and Development (OECD) has consistently credited Bermuda with its work in the area of tax transparency. Secondly that as from the entry into force of the passport for non-EU managers, Bermuda has cooperation agreements in place with EU member states regarding the exchange of information on tax matters which again is expected to occur.

Additionally Bermuda has responded to industry demands for an exempt fund which allows for greater speed to market due to the nature of the sophisticated investors and the existence of a regulated investment manager.

Do you feel the need for any, and if so, what?

It is important for Bermuda to regularly assess its responsiveness and effectiveness as a domicile for investment fund business. Hence the recent introduction of a new regulatory regime for self declared funds marketing to sophisticated or accredited investors was largely in response to the needs of US managers.

What issues should fast-growing companies be aware of in terms of investment funds?

Bermuda offers a variety of structures that can be tailored for companies wishing to raise capital through a listing on the Bermuda Stock Exchange (BSX) as their primary exchange followed by a secondary listing with an onshore

exchange. The BSX is the world's largest offshore, fully electronic securities market offering a full range of listing and trading opportunities for international and domestic issuers of equity, debt, depository receipts, insurance securitisation and derivative warrants. The BSX is a full member of the World Federation of Exchanges (FIBV) and the US Securities Exchange Commission (SEC) recognises the BSX as a "Designated Offshore Securities Exchange" (DOSM) and the UK Financial Services Authority (FSA) recognises the BSX as a 'Designated Investment Exchange' (DIE).

Is there anything else you would like to add?

Bermuda is a sophisticated offshore financial centre due to its position as a leading provider of reinsurance expertise and also as a market leader in the offshore alternative investment fund industry. A growth area in Bermuda for fund managers has been in the area of insurance linked securities products which are attractive as they offer diversification coupled with the prospect of returns which are not correlated with the financial markets leading to a convergence between investment funds/capital markets and (re)insurance markets.

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