

VIRTUAL ROUND TABLE

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OFFSHORE INDUSTRIES & MARKETS 2016



MEET THE EXPERTS



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Waleed Abdullah Kh. Al-Ayoub earned his Bachelor in Law Degree (LL.B.) from Cairo University, Faculty of Law. He is currently pursuing an LL.M. in International Business Law held at Center for International Legal Studies in Salzburg, Austria. Prior to joining the firm in 2011, he worked as Legal Manager with a financial investment company. He is a founder and chairman of Raja Company W.L.L. He currently practices civil and commercial law, corporate transactions and litigation. He is fluent in Arabic and English.



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Caroline Leclezio is an executive at ENSafrica Fiduciary Ltd in the Mauritius office.

She has extensive experience in international, multi-jurisdictional structuring, cross-border financing and corporate trusteeship.

Caroline also has experience in the drafting and enforcement of internal compliance and anti-money laundering procedures, statutory and regulatory compliance across numerous jurisdictions in Africa and abroad, establishing systematic corporate reporting systems and the integration of good governance into daily operations.

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Calum Mckenzie has worked in the offshore financial services industry for approximately 14 years. He has extensive experience and knowledge of fiduciary services, including providing director and trustee services to entities varying greatly in terms of structural complexity, asset value and activity, more lately with a focus on providing services to mutual funds. Mr. McKenzie is currently a non-executive Director of a BVI Class I General Trust Company, a director of a BVI Company Management company and is presently approved as a director in a number of offshore jurisdictions, including the BVI, Cayman Islands, Nevis and Anguilla. He is a sitting member of the BVI Financial Services Commission (“FSC”) Fiduciary and Registry Liaison Committee providing operational advice and guidance to the BVI FSC and a sitting Council member of the BVI Association of Registered Agents. Calum is a member of the Institute of Directors, London and by birth is a British citizen who has been resident in the British Virgin Islands since 1998.



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Daniel has been a Director of the Folio Group since 2003. Now residing in Panama and acting as the Managing Director to Folio Administrators (Panama) SA, its fund administration operations office, Daniel is an expert in the establishment and formation of Funds and related vehicles. Daniel qualified as a Chartered Accountant in London and has worked for several large financial services groups in both the UK and the British Virgin Islands.

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Sharon is a co-founder of the BeesMont Group and CEO of BeesMont Law Limited. She practices in all areas of corporate law with particular expertise in investment funds, structured finance, joint venture structures and mergers and acquisitions.

Prior to establishing the BeesMont Group, Sharon spent the first eight years of her professional practice with Linklaters (in London & Hong Kong) where she worked primarily in the fields of commercial property, banking and capital market and banking transactions; after a sabbatical involving cycling from England to the Near East, she worked with Denys Reitz in South Africa, advising on corporate cross-border transactions. Sharon then moved to

Bermuda where she was the head of banking at one of the leading Bermuda law firms and the principal external counsel for one of Bermuda's banks, Bermuda Commercial Bank. In 1997 she co-founded the original ISIS Group which included the ISIS Foundation now known as Adara Development, an international non-profit, which seeks to improve the lives of children and their families in Nepal and Uganda.

Sharon has over the last 22 years in Bermuda developed a recognised investment fund practice, particularly with respect to infrastructure and alternative fund strategies. She has also advised on a wide range of corporate transactions including mergers and acquisitions and general corporate governance issues.

Sharon is currently a member of the Asset Management Group, a committee of the Bermuda Business Development

Agency, previously chaired a Bermuda investment funds industry committee and has served on numerous other voluntary business groups in Bermuda. Sharon is also a member of the BSX Listing Committee.



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Offshore Industries & Markets Roundtable 2016

In our Offshore Industries & Markets 2016 Roundtable we spoke with six experts from around the world to discuss the latest regulatory changes and interesting developments in their jurisdiction. Highlighted topics include: a summary on the different types of offshore companies and centres, an outline on the process and administration involved for company formations, and we discover which jurisdiction is noticing an increase in pressure from US and European regulatory authorities as well as the OECD to increase transparency and eliminate tax evasion. Featured countries are: Bermuda, Panama, British Virgin Islands, Mauritius and Kuwait.

1. Can you outline the key differences between offshore, midshore and onshore?

Al-Ayoub: Offshore entities can refer to either 1) oil or gas drilling operations that are conducted in the ocean; or 2) offshore company.

Offshore oil and gas industries:

As the name suggests offshore oil and gas industries are located off the shore and are situated in the ocean. These ocean industries can either be floating or fixed to the ocean floor. Offshore industries are strongly built and are designed to resist extreme environmental conditions. Such offshore platform provides for the processing and storage facilities depending on the requirements, production, drilling, power generation and accommodation units for all the needs of the on-board crew.

Offshore company:

Offshore company is a company managed, registered or operated in a foreign country, by individuals or corporations. The types of offshore investment include cash investments, invest-

ments in equities, real estate, options, forex, bonds and offshore collective investment schemes. Such companies are operating outside the country of its registration and/or the place of residence of its directors, shareholders and beneficial owners mainly to realize various financial, legal or tax benefits. Offshore companies can be run discreetly without much disclosure requirement because the majority of the jurisdiction regulatory bodies do not constantly monitor the operations of offshore companies.

Onshore company:

Onshore entities are companies set up or incorporated in a home country or in a particular jurisdiction. Onshore companies must comply with all legal and tax filing requirements, which makes it more expensive than offshore investment. The activity of the onshore entity is under the jurisdiction of the courts where the company is situated and such companies usually conduct its business within the local market. There is a requirement to keep the company matters public and abide by the laws of the home country. In Kuwait, the onshore companies require a

Kuwaiti national to act as an agent or company shareholder (holding not less than 51%). There are several types of onshore entities which can be incorporated viz. limited liability company, closed shareholding company, joint venture, commercial agency.

Midshore company:

Midshore investment refers to managing, registering or operating a company in a middle jurisdiction by a non-resident whereby he shall be entitled to variable taxation rates. Such jurisdictions include: Singapore, Malta, Great Britain and Hong Kong. This is favorable in the case of an operating business with investors from different parts of the world. Mid-shores investment is gaining more popularity since these jurisdictions unlike offshore entities implement the internationally agreed tax standard making it more transparent and reliable.

Leclezio: Offshore centres have developed legislation and strict regulations which allow non-residents to set-up and register vehicles to do business on an international basis by creating incentives to attract, facilitate and ensure

efficient flows of global capital across borders. Onshore would refer to traditional bastions of finance whose domestic tax systems or legislation are ill-suited to hosting or facilitating cross-border transactions. Midshore would incorporate the characteristics of both offshore and onshore jurisdictions. Typically, they would offer a reputable financial industry, tax transparency and substance, a tax treaty network, solid economic infrastructure, a sound legal system and political stability.

Beesley: Responses are given in the context of investment business operations:

Offshore – refers to the conduct of business overseas by establishing the business entity in a different country to the home jurisdiction of operations or in a different country to investors;

Onshore – refers to the conduct of business within the national boundaries of the base of operations or in the same country as the investors;

Midshore – refers to those jurisdictions which provide a “half-way house” be-

tween offshore and onshore jurisdictions with the greater focus on substance for tax transparency purposes.

Bermuda is oft referred to as an “offshore jurisdiction” but it could be viewed as quasi midshore (similar to Hong Kong or Singapore) as the substantive and sophisticated insurance/reinsurance market is physically based and carried on in Bermuda. Further Bermuda has a consumption based, duty tax system and with 91 tax treaty partners around the World, Bermuda is rated a first class domicile by the OECD (Organisation for Economic Cooperation and Development).

2. Are you noticing any new trends in offshoring strategies?

Al-Ayoub: Recently many offshore entities are trying to invest into Kuwaiti market for the purposes of selling their units to local investors. Such offshore investment companies have been marketing and providing investment products / services discreetly on a one-to-one basis pursuant to a reverse inquiry more so to the sophisticated / institutional investors in Kuwait. Further, the Kuwait Investment Authority (KIA), Kuwait’s sovereign wealth fund, one of the oldest in the world, who is known to be a conservative investor has late-

ly reformed its asset allocation, shifting from developed-market sovereign debt and equities and approaching private markets, alternative investment strategies and emerging market equities and debt. KIA has made its investment in emerging markets in Asia, and is the only Gulf sovereign wealth fund to have a representative office in the Chinese capital, Beijing.

Leclezio: In recent years we have seen a surge of pressure from the US and European regulatory authorities as well as the OECD to increase transparency and eliminate tax evasion. The concrete measures implemented as result have undoubtedly reshaped the IFCs. Traditional IFCs are changing their business models and their offerings whilst retaining their appeal. The emergence of robust and well-regulated financial centres are the new trend. IFCs demonstrate a new level of sophistication even as they retain their competitive advantages such as being tax neutral platforms where it is easy to do business, and continue to be used by legitimate global corporations for numerous purposes.

McKenzie: The general consensus in the industry is that 2015 is proving to be another very good year for BVI in terms of M&A activity. However this is

not wholly surprising given BVI’s position as industry leader in this sector of the market.

The more positive trend that we are seeing, certainly as far as we are concerned as a BVI based boutique services provider, is the increasing number of companies being set-up in BVI requiring substance and value added services. BVI has traditionally been known as an incorporation centre and will continue to dominate this market. However with the increase in regulation and demands being placed on offshore financial centres and companies and businesses setting up there, clients are moving away from the simple vanilla company set-up and are seeking more specialised and value oriented services such as director, corporate governance and accounting services. This is where we as a business are focusing our attention and we are seeing a great deal of success.

Cann: I’ve been a director of a BVI based fund administrator for 12 years and now operate out of Panama. The 2 trends that I am seeing specific to us are:

In what was a reluctant market has been sparked into life by the introduction of the new Approved Funds and

Incubator Funds legislation in the BVI. The BVI has traditionally been, along with Cayman, one of the most respected jurisdictions to establish Funds. However, the barriers to entry slowed down the establishing of small Funds over the past few years. With the new legislation small Fund Manager can set-up relatively cheaply and timely and operate on lower fees to allow them the opportunity to establish and grow without constraint.

LATAM Managers and Managers wishing to tap into the LATAM markets are utilising vehicles in LATAM more such as Panamanian Private Funds. Also, the new REIT legislation in Panama is proving very popular.

Beesley: We are seeing greater focus on compliance, risk mitigation and investor communication in order for fund managers to remain competitive given increasing regulatory demands. With managers becoming more attuned to the need for effective offshore fund governance with independent directors and regular meetings; independent fund administrators for valuation purposes; imposition of fund redemption restrictions and management of conflicts of interests. Similarly more investors are requiring voting shares.

We are also seeing some pressure on management fees with the norm being 1.5% management fees and 2% performance fees though investors remain willing to pay the fees of proven managers of 2 and 20.

Bridgewater: Traditional factors in deciding on an offshore location have long been around political and financial stability, cost and ease of doing business, the presence of the necessary intellectual capital and any tax benefits (e.g. low taxation, double tax treaties). With the increasing focus on tax transparency, tax morality, and money laundering and fraud, strategies are also now considering a jurisdiction's standing in adopting international standards on these items (e.g. signing tax information exchange agreements ("TIEA's")), adoption of international best practices. Entities are also considering the substance of where they are doing business to ensure that the business activities are commensurate with the profits being derived from each location (base erosion and profit shifting).

3. Have there been any recent regulatory changes or interesting developments?

Al-Ayoub: The Capital Markets Law No. 7 of 2010 (the "CMA Law") is one of the

greatest regulatory work in the legislative history of Kuwait. The CMA Law in general prohibits (without any exceptions) the sale, solicitation or marketing of securities and investment funds in the State of Kuwait, except under a license from the Capital Market Authority. However, with respect to offshore marketing, it did not constitute an offer or sale of securities in Kuwait and thereby does not require a license to conduct such activities. In fact, on 18 November 2012, the Capital Market Authority issued an informative announcement relating to investment funds formed outside of Kuwait.

Leclezio: While it is true that finance is the essence of business it is equally true that it is the essence of criminal activity. Having said that, I am of the view that financial services have a central, constructive role to play in society. With that in mind, it is evident that regulation reforms will continue to play a central role over the next decade. Mauritius has made enormous efforts to raise its standards of transparency and governance. We have successfully implemented FATCA and are in the process of implementing the OECD CRS. Parliament has recently adopted the Good Governance and Reporting Bill with a view to promote a culture of good governance, stimulate integrity

reporting in the public and private sector, disclose malpractices and recover unexplained wealth. The country is eagerly awaiting publication of the Government Notice and Proclamation of the official text of the legislation.

McKenzie: There have been changes in a legislative and product sense but changes we can only view as positive. The BVI Business Companies (Amendment) Act 2015 will introduce a number of fine tuning modifications which should be warmly welcomed by the industry in general. We have seen the formal introduction of the new investment funds products – the Approved Fund and the Incubator Fund (see below) and the Approved Manager continues to be a very popular product, even more so now that people are becoming aware that they can be used for managed accounts and non BVI funds.

The approved fund and the incubator fund essentially allow emerging or start-up managers a swift and uncomplicated entry into the market at a price point they can afford and sustain.

The regulatory obligations of both funds are appropriate for the product with approved and incubator funds having the option to only appoint the service providers that the manager

strictly believes the fund requires (although it should be noted that an approved fund will be mandated to appoint an Administrator). They offer almost immediate time to market (able to commence trading within two business days of lodging the application for approval with the Commission) and they offer significantly lower costs to launch and ongoing running costs than those associated with a traditional fund structure.

Cann: As mentioned above, the Securities and Investment Business (Incubator and Approved Funds) Regulations 2015 (the Regulations), is the most interesting development in the industry in recent years. It has been how the BVI has been able to set itself apart from other jurisdictions like Cayman. They offer immediate entry to market by allowing trading after 2 days of lodging the application with FSC.

Specifically, an Incubator Fund does not require an Offering Memorandum (the Fund will prepare some sort of term sheet instead), can have up to 20 investors and \$20m in assets, with a minimum investment of \$20,000. It can operate for 2 years (with an option to extend for an additional 1 year) at which point it needs to convert to another type of Fund. In addition, there

is no requirement for an administrator or an auditor. An Approved Fund can also only have up to 20 investors but the maximum amount of assets is \$100m and there are no minimum investment amount. The life of the Fund is unlimited and it also does not require an Offering Memorandum. An auditor is not required but an administrator is.

Beesley: Bermuda has created (following a collaborative effort including industry contacts in the US) 2 new user-friendly exempt fund classes which can be launched on a fast track basis using an online registration system with the Bermuda Monetary Authority (BMA). It is a key requirement for the Class A exempt category, which involves a self-certification filing, that the manager is either accredited by an established regulator (such as the SEC/FCA/BMA) or it has assets of not less than \$100m and carries on business in a jurisdiction recognised by the BMA. The fund must also only be marketed to qualified investors (i.e. broadly sophisticated investors/accredited investors as used by the SEC) and must have an approved auditor/administrator/custodian or prime broker.

The EU AIFMD (Alternative Investment Fund Managers Directive) is a major regulatory change which has impact-

ed the investment funds industry both within the EU and externally. One of the principal regulatory changes from a Bermuda perspective is that the EU AIFMD seeks to impose a myriad of areas of responsibility onto the manager (not least valuations) and Bermuda like many other jurisdictions has traditionally focused its regulatory reach on the operations of the investment fund and the licensing of the fund administration operators in Bermuda.

Bridgewater: As noted above, the latest regulations influencing the use of international financial centres and the selection of jurisdictions to do business include various pronouncements of the EU and the OECD. Regulations such as Solvency II (insurance), the Alternative Investment Fund Managers' Directive ("AIFMD") (investments) and Base Erosion and Profiting Shifting ("BEPS") is having a heaving influence in the selection of domicile and the activities place in each domicile. These are increasingly driving more and more transparency, particularly as it relates to managing tax liabilities and regulatory capital.

4. What are the main factors when deciding offshore location?

Al-Ayoub: The key factors that need

to be considered prior to any offshore investment include political, taxation, legal and regulatory framework, market stability, social norms, cultural differences, infrastructure, availability of professional services and time zone. Such decision is based on the fact that any adverse event or occurrence that affects any of these factors is more likely to negatively impact the offshore investment securities. Another factor that is to be considered is the rates at other financial institutions. This would help in deciding where to make the cash investments in order to optimize returns while ensuring that the investment is safe. Further, before withdrawing or spending the cash investment offshore, the rate of inflation must be carefully considered.

Leclezio: In the context of the international regulatory and reporting reforms sweeping through IFCs I believe factors such as the ease of doing business, a trusted legal system which provides for suitable protection and recourse in case of disputes, flexible labour laws, facility in raising finance, removal of country risk, exchange control and regulatory barriers, air access and communications, trained professionals to facilitate business, adequate infrastructure, quality of life including housing, health and schooling for ex-

patriate employees and long term stability amongst others all contribute to the choice of an appropriate jurisdiction from which to conduct business. Taxation is also a component.

McKenzie: A number of offshore jurisdictions offer similar advantages. These would include such things as English speaking, absence of currency exchange controls, US dollar as currency, stable democracy, and a common law legal system with final appeal to the Privy Council in London. However not all jurisdictions are equal in all respects.

The legal framework in BVI is modern yet proven and trusted with appropriate regulation as evidenced by BVI being recognised as the leading jurisdiction for corporate vehicles. BVI is home to a dedicated network of high quality sophisticated corporate and financial service providers. We offer legal services from the full array of global offshore law firms and also all of the 'Big 4' accounting & audit firms, along with a very good range of niche and boutique service providers. BVI securities laws are recognised by regulators worldwide, (BVI is a member of IOSCO -International Organisation of Securities Commissions). BVI companies can list their shares on stock exchanges

worldwide, including the London Stock Exchange, LSE's AIM exchange, the New York Stock Exchange, NASDAQ, the International Securities Exchange, the Toronto Stock Exchange, and the Hong Kong Stock Exchange. We have cutting edge insolvency legislation and leading insolvency practitioners which should provide comfort to people doing business with BVI companies. Build in to this the fact that BVI companies offer unsurpassed administrative flexibility and highly competitive fees (in many instances vast cost-savings over comparative jurisdictions) and you see what differentiates BVI.

Cann: The major reason for establishing an offshore Fund is tax efficiency. Offshore Funds are established in jurisdictions where little or no tax is paid on the revenues generated within the Fund. However, there are a lot of jurisdictions that fulfil this requirement. Therefore, Fund Managers specifically look at factors like;

Investor protection. This can be achieved by establishing a Fund in a strongly regulated center like the BVI, a member of IOSCO.

Regulatory controls. For instance, if they wish to market to LATAM then they need to investigate which coun-

tries blacklist certain jurisdictions and which jurisdictions have double tax treaties.

Flexibility. If the Fund Manager wishes to trade sophisticated instruments or is arbitraging between stocks and options, for example, then the Fund is more likely to be marketed towards sophisticated and institutional investors. This lends itself more to a jurisdiction like the BVI or Cayman where the legislation is less rigid.

Service Providers. Again, jurisdictions like the BVI or Cayman remain much more flexible when it comes to appointing investment managers/ advisors, brokers, custodians, auditors, administrators so long as those service providers meet their standards. The jurisdiction will then approve the Fund and allow the investor to make their minds up on investment strategy and risk.

Costs. Last but not least are barriers to entry. New legislation in the BVI, for instance, has led to a large number of new enquiries.

Beesley: Critical factors are: commercially sensible regulation, speed to market, low cost set up, audit and legal efficiency, independent administrators,

availability of different fund structures (including segregated account companies), access to capital and a jurisdiction which is stable both politically and as regards infrastructure and technology. Bermuda offers all of those factors and its regulator (the BMA) is internally recognised for its pragmatic, risk-based approach to regulation. The European Commission recently awarded Bermuda full equivalence under the tough EU Solvency II regulations. This is a reflection of the sophistication of the BMA as an offshore regulator which includes the supervision of the Bermuda based investment fund industry.

The growth of the innovative insurance linked securities (ILS) industry in Bermuda is an example of the collaboration in Bermuda between senior insurance and asset management executives. Bermuda is also strategically located with regular direct flights to the UK and is less than 2 hours from New York City with the benefit of US Customs pre-clearance in Bermuda. Finally the Bermuda Stock Exchange is a fully electronic vertical integration platform with a combined market cap of over \$400bn and has a range of international investors.

Bermuda also has a deep talent pool across all sectors of the financial ser-

vices industry which is physically based here and consequently a range of independent directors to select from.

Bridgewater: See discussion above.

5. Do organisations need to factor in cultural differences?

Al-Ayoub: Yes, organizations have to factor in the cultural differences that influence offshoring decisions as they would comprise of a combination of locals and expats. These cultural differences may include the country/region specific religious observances. For instance, in the Middle East during the holy month of Ramadan, the western expats need to observe the ministerial orders with respect to work timings etc., as well as the social norms. Cultural differences refer to the extent to which the locals and expats differ on their shared values, norms, beliefs and assumptions. It is important to understand the differences and structure the work accordingly for the betterment of the organization.

Beesley: Whilst cultural differences can make doing business more challenging than it needs to be, Bermuda is a unique mixture of British and North American influences which makes it easier for most to fit in and conduct

business here.

We have found that an important consideration for clients is the existence of a strong legal system. Bermuda satisfies this requirement as it has a legal system based on the English common law with a final right of appeal to the Privy Council. There is additionally a specialist commercial court which operates on the basis of 'overriding objective' of justice for the commercial parties and it makes decisions expeditiously and is receptive to hearing urgent and/or confidential cases. As a result very few hedge fund decisions over the past 6 years have been the subject of appeal to the Court of Appeal and none to the Privy Council.

6. How are technological advances altering the landscape?

Leclezio: The landscape for IFCs is set for continued transformation due to major factors reshaping the global economy. The role, structure and commercial realities of the financial services industry at large are being disrupted. The world is becoming customer-centric and mobile hence competition has shifted to real time and predictive outcomes. By using the power of new technology, IFCs must implement a customer and regulatory-centric approach with in-

creased focus on compliance to prosper.

Beesley: This is a fund administrator question but based on our knowledge of Bermuda, cybersecurity is currently the principal technological issue facing fund administrators which means securing the fund, fund manager and investor data during transmission and whilst it is stored on the administrator's systems. Cybersecurity initiatives also included putting in place tools or services to monitor the perimeter of the network and designing and implementing policies and procedures to effectively respond to cyber-attacks.

Similarly Bermuda fund administrators have seen a steady development of cloud based next generation accounting and reporting systems most of which are now web based or at a minimum web accessible. The key feature of these new generation systems is to provide managers and investors with transparency into the back office processes; whilst providing flexibility and insight into the data. We have also seen many of these systems respond to the ever increasing regulatory reporting requirements fulfilling the reporting requirements related to Form PF, AIFMD, FATCA, OPERA and most recently CRS.

Bridgewater: Technological advances are increasingly changing business practices. For example, the speed at which business can be performed and the extension of the business day is being influenced by technological advances. Technological advances are also introducing new risks into the business process, the most notable and topical being cyber and data security risk. These risks should now be on every Board's and management team's agenda as a key business risk. Not appropriately managing cyber security risk can have significant reputational and going concern implications as can be seen from various examples recently around the world. Regulators are now also increasingly issuing guidance notes around cyber and data security risk and what they expect entities to be doing to manage it. The existence of these risks has also increased the number of laws that have been developed around the collection, use and protection of personal information.

7. What tax considerations need to be accounted for?

Leclezio: The international community continuously scrutinises tax contributions from multinational corporations so the question is how do we bring together tax planning and fiscal efficien-

cy with corporate governance and financial risk management? Clearly the concrete measures such as BEPS, FATCA, TIEAs have reshaped the taxation of investment flows. Another aspect to be considered is the morality of tax. It is evident that countries that remain secretive and opaque will be rejected by the international community.

McKenzie: BVI has no income tax, corporation tax, capital gains tax, wealth tax or other similar punitive fiscal laws. Using a BVI company for any commercial purpose offers the benefits of tax neutrality. Generally companies will pay taxation based on the regimes of the countries in which they operate and conduct business. This allows for streamlining or simplification of the taxation involved when using a BVI company as the tax questions revert to the relevant domicile of each individual investor, shareholder, partner etc. where each party will have a clear understanding of their obligations and presumably will have reporting arrangements already in place.

Cann: Investors into a Fund established in a zero tax or low tax jurisdiction, are not liable to taxation on their investments or can defer meeting such tax liabilities until they realise their profits. Offshore Funds are, therefore, at-

tractive to the investors because of tax planning considerations. The fund itself may suffer withholding tax on its revenue earned in some countries.

Beesley: Bermuda is tax neutral for investment fund business which does not have a physical base or any employees in Bermuda.

Bridgewater: Tax transparency and morality needs to be appropriately considered. Increased transparency and the automatic exchange of information is the new norm. This is evidenced by the US's Foreign Account Tax Compliance Act ("FATCA") and the OECD's Common Reporting Standard ("CRS")

8. What challenges and opportunities exist in your jurisdiction?

Leclezio: The major constraint lies in altering the perception that Mauritius is merely a conduit for global investment when it has always demonstrated evidence of being a jurisdiction of substance with a genuine, prosperous and diversified economy. The challenge for Mauritius lies in anticipating and adapting to global instability or uncertainty caused by factors such as regulatory changes, fiscal pressures, constantly evolving demographics.

The jurisdiction will need to look beyond short term realisations to develop a strategy for long term sustainable growth whilst striving to ameliorate its compliance rating.

Cann: Panama is one of world's fastest growing countries and has an excellent banking and international financial services center with a strong economy and growing infrastructure. A Fondo Privado is lightly regulated. There is no restriction on the type of investment it can make. The directors do not need to be based in Panama and they are exempt from tax on income received overseas and so can be structured so as to have a zero rate of tax in Panama. A Fondo Privado of less than 20 investors does not need to register with the Superintendency of the Securities Market (SSM) and, therefore, can be established relatively quickly and cost efficiently. A Fondo Privado of up to 50 investors operates similar to a Professional Fund in the BVI or a Sophisticated Fund in Cayman in that the minimum investment is \$100,000 with a net worth of \$1m.

What we are seeing is more and more enquiries of these types of Funds as Fund Managers try to access new markets and new investors in LATAM utilising a structure more familiar to the re-

gion, in a jurisdiction better recognised and with documents written in Spanish.

Beesley: The greatest threat to managers is the increasing regulatory oversight and compliance requirements. Though cybersecurity is the most recent concern and this affects all stakeholders. Bermuda has an advanced and robust infrastructure including with respect to internet security issues.

From an offshore perspective, the greatest challenge is the perspective that being offshore equals tax haven which fails to take account of the specifics of an offshore jurisdiction such as Bermuda which has a consumption and duty based tax system; substantive business carried on the island and it is the world's largest captive domicile, one of the top three reinsurance centres and the leading market for property catastrophe insurance and ILS and (not least) a strong reputational track record.

The opportunities which exist in Bermuda are:

- Potential UK tax changes for "non-doms" could create opportunities as Bermuda provides a pleasant lifestyle and a secure, world-class physical and

technological infrastructure and communications base from which to carry on their business.

- Partnering more closely with the local Trust & Private Client and Re/Insurance sectors to tap into the large pools of assets in those industries that require professional management (Bermuda is not a one-trick pony).

Bermuda is a highly respected, well regulated and safe jurisdiction, which investors may be looking for given recent scandals and the threat of terrorism in other jurisdictions Bermuda has the largest ILS base globally and is highly regarded for its ability to offer one-stop-shop innovative solutions.

Bridgewater: Bermuda continues to be at the forefront of adopting international best practices in regulation. Bermuda has robust responses to the initiatives mentioned above including Solvency II, AIFMD, FATCA, CRS, AML and the protection of personal information, making it a reputable international financial centre in which to do business.

9. Can you explain the process and administration involved for company formations in your jurisdiction?

Al-Ayoub: The Kuwaiti Commercial Code states the basic premise for doing business in Kuwait. Article 23 of the said Code provides that non-Kuwaitis cannot engage in commercial activities in Kuwait without having a Kuwaiti partner whose equity holding is at least 51%.

Kuwaiti law permits foreign entities to establish permanent presence in Kuwait by forming and investing in the following Kuwaiti companies: (i) a limited liability company (“WLL”), (ii) a close joint stock company (“KSCC”) and (iii) a public joint stock company.

A WLL is a company where the liability of its partners is limited to the extent of their share capital contribution. This is the most common corporate entity in Kuwait and the main route adopted by foreign companies or investors to enter the local market. The minimum required capital in a WLL is KD 10,000, although this amount may vary from industry to industry.

KSCCs cannot offer their shares by a public subscription and are incorporated by an official deed issued by the incorporators. The incorporators must have subscribed to all the shares and the shares must be fully paid up. Incorporators of KSCCs are not permit-

ted to dispose of their shares in the company until the lapse of three years from the date of incorporation. The incorporation and setting up of a KSCC is time consuming; the approximate time needed for its incorporation is three to four months.

The abovementioned companies are required to apply to the Ministry of Commerce and Industry in Kuwait for the necessary approval to incorporate the company and also to obtain the relevant license(s).

Leclezio: Unlike some other offshore, and in fact, onshore jurisdictions, Mauritius does not focus its offering on company formation. Mauritius is departing from the traditional combo of corporate set-up, secretarial services and/or administration to moving up the value chain by diversifying its offering to include a number of professional services in areas such as banking and capital markets, insurance and funds, and private wealth.

McKenzie: Reflecting on previous answers, I think it is important to once again mention that the BVI has long been recognised as the ‘go-to’ domicile for the incorporation of offshore companies. There is no question that this can be attributed in large part to the

basic tenets of the jurisdiction being tax neutral, highly cost efficient and offering a good degree of privacy within which to conduct business affairs.

The total number of companies registered now is around 1 million with approximately 500,000 remaining active. The main single reason for this is the product; the BVI company is quick and simple to obtain/register, easy to use and understand.

Some points;

Speed – Subject to satisfying relevant KYC requirements, companies can be incorporated quickly by licensed registered agents via the BVI’s online electronic interface, usually within 24 hours.

Names – BVI companies may be incorporated with foreign character names (e.g. a Chinese name) in addition to their English name.

Cost – BVI companies are still comparatively inexpensive compared to other premium jurisdictions such as Cayman and Bermuda, and most mid-shores such as Hong Kong or Singapore. The regulatory fees, both on formation and on an annual basis therefore are also extremely competitive.

Beesley: Anyone wishing to carry on business in or from within Bermuda through any type of corporate structure is subject to vetting by both the local service provider and the regulatory authority, the BMA. The main registration/formation requirements are as follows:

- Application to the Registrar of Companies (RoC) to reserve the proposed company name. The reservation is valid for a three-month period.
- Application to the BMA seeking approval of the nature and intended business of the company as well as the proposed ownership. The BMA concurrently approves the direct and indirect beneficial ownership, and gives exchange control approval.
- Application to the RoC to register the company, which completes the incorporation process.
- Ordinarily, a straightforward incorporation can be accomplished in 24 to 48 hours.

The company’s Memorandum of Association submitted to the RoC must state, among other things:

- The company’s authorised share capital and its division into relevant classes of shares of a specified par value.
- Whether the shareholders’ liability is limited or unlimited.

- The company's objects and powers. Bermuda companies can be incorporated with unlimited objects and all the powers of a natural person.

If an investment fund is being formed then it will need to be either:

- excluded from the Investment Funds Act 2006, as amended (IFA) and regulation by the BMA as a private fund or close-ended fund (used for master funds; consortium vehicles); or
- exempted from the IFA as either a class A fund (which is a 1 day self-certification process) or a class B exempt fund which is where the manager has less than \$100m assets but the fund is only offered to qualified participants (there is a 14 days approval process by the BMA); or
- authorised under the IFA as either an Institutional (\$100,000 minimum investment and qualified participants); Administered (\$50,000 minimum investment or listed on a recognised exchange) or Standard (i.e. retail).

Following incorporation it is a requirement that the registered office is in Bermuda and there are a number of corporate services administrators based in Bermuda who can provide this service. It is not required that the Directors are Bermuda based unless the client wishes one or more of them to be resident.

With a fund it is typical for the corporate secretarial services to be provided by the fund administrator. There are a number of large administrators who are based in Bermuda including Mitsubishi UFJ Fund Services and SS&C Global and a range of independent administrators.

10. What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

McKenzie: With the increasing regulatory obligations that surround the global financial industry at present, the BVI recognises the need to adapt and respond to the demands of the global financial community and this is backed up by a regulator who recognises and understands the commercial reality of the industry.

We believe that we will continue to see positive levels of demand for products across the spectrum of the BVI financial services offering, not least in investment business products. Specifically we believe there will be continued development in creating substance and seeking value added services. Whilst we undeniably foresee a lot of work in the near future as a result of impending regulation such as AIFMD,

FATCA & CRS, we must continue to be responsive to industry demands and view the implementation of regulatory and industry changes as necessary and indeed positive developments for our jurisdiction. Our view is that by adopting and implementing global financial standards it demonstrates the BVI's continuing maturity as a jurisdiction and our position as an important financial centre.

Cann: Those jurisdictions that recognise the increasing international regulatory obligations coupled with understanding commercial reality will thrive in the coming years.

The BVI, in particular, is focused, as can be seen by the recent introduction of the Incubator and Approved Funds and, last year, the Approved Manager, in creating substance products. It's also adopting international regulatory standards and is one of the most well respected offshore jurisdictions because of it.

In Panama, economic growth has topped 8% in the last 5 years. Much of this is due to the prosperous financial sector, a well-educated workforce, a currency pegged to the dollar and a country that is both safe and stable which has attracted people and invest-

ment from throughout the world. The economy will continue to grow and Panama should become the financial focus point for investment into, out of and within the LATAM region.

Beesley: With the implementation of the Common Reporting Standard and the progress being made on BEPS, compliance matters continue to climb up as a higher priority for global organisations. Compliance is moving from the back-office to the front-office and compliance departments are generally being bolstered and given a bigger say with respect to how their organisations are run including collaborating with executive management as compliance will increasingly impact both global and local strategy. Organisations will face challenges to keep up with the increased global regulations and cross-border regimes and will need to focus on keeping their infrastructure current whilst balancing budget constraints. A key to this will be ongoing training and education in respect of the regulatory changes affecting the compliance landscape.

Bermuda has approved amendments to its Investment Business Act legislation to provide for an AIFMD-compliant, opt-in regime and is developing the AIFMD Rules to transpose the de-

tails of the terms and conditions set out under the AIMD framework into Bermuda law. This Bermuda AIFMD opt-in regime will require the AIFM (Alternative Investment Fund Manager) to be subject to the prudential supervision and regulation of the BMA based on the Bermuda AIFMD-complaint regime. In late September ESMA (European Securities and Markets Authority) confirmed that Bermuda would be included in the second wave of its assessment relating to the extension of the passport for non-EU jurisdictions. The advantage to a non-EU AIFM is that the BMA is an internationally recognised regulator with the sophistication and experience to handle the demands of the AIFMD regime.

