

# A SUCCESS STORY

## DR. ROBERT MATHAVIOUS AND THE BVI FUND INDUSTRY

By Jerome Rubin-Delanchy

The British Virgin Islands (“BVI”), is not only this beautiful, untouched volcanic archipelago, well known for its sensational beaches and its world-class sailing, but is also known for being one of the most respected International Financial Centres (“IFC”). Ranked in the top 5 of the largest Offshore Financial Centres by the International Monetary Fund, the jurisdiction has become one of the leading platforms for collective investment vehicles, with close to 1,800 mutual funds registered, as reported by the BVI Financial Services Commission at the end of Q2 2021.

This success, which is undeniably the result of hard work, perseverance, and strong commitment, would not have been achieved without the exemplary vision of a person who has, for more than three decades, played a key role in getting the jurisdiction accepted by all international regulatory and standards-setting organisations. A task made all the more challenging, considering the constant growing pressure from the Organisation of Economic Co-operation and Development (“OECD”) and other international regulatory bodies.

That person is none other than Dr. Robert Mathavious, OBE, the key figure who has been instrumental in promoting and maintaining the financial services’ integrity. He has spent many years fighting to ensure that the BVI has a seat at the decision making table, along with the “heavy hitters”. A prime example of this, being the instrumental role he played in the formation of the International Trade & Investment Organization, a grouping of small offshore jurisdictions which united to counteract the OECD’s misguided Harmful Tax Competition Initiative and in the commissioning of the hallmark “Towards a Level Playing Field”, a report jointly issued by the ITIO and STEP as a critique and response to the OECD report.

In the 1990s and early 2000s, Dr. Mathavious, in his capacity as the Director of Financial Services at the Financial Services Department (“FSD”), was responsible for the development and regulation of the financial services sector, which includes the Investment Fund industry. The growth spurt of the BVI Investment Fund industry was in most part triggered by the Review of Financial Regulation in the Caribbean Overseas Territories, commissioned by the Foreign

and Commonwealth Office (“FCO”) in 1999. At that time, the BVI counted 139 public funds and 1,545 non-public funds, split approximately equally between private and professional.

While the Financial Services Department (“FSD”) already appeared to be a well-run regulator with a strong commitment to achieving international standards, several pitfalls came to light during the 1999 review; notably a lack of impartiality with a government responsible for licensing and enforcing action relating to financial service activity. A need for reforms to meet the International Organization of Securities Commission’s (“IOSCO”) standards was also emphasized. Shortly after the release of the 1999 report, Dr. Mathavious and his team set to work and created a task force to action the FCO’s recommendations and ensure that the BVI remained at the forefront of the industry.

On 1st January 2002, under Dr. Mathavious’ lead, the BVI Government established the Financial Services Commission (“FSC”), a new autonomous regulatory body which over time has proven to be an essential contributor to the BVI’s growth into a modern, forward-looking IFC that has and continues to garner widespread international recognition. While the FSC’s primary function was initially designed for regulating and ensuring the supervision of the financial services market, it has also helped develop substantial relations with foreign regulatory authorities, international associations of regulatory authorities, and other regional and international organizations concerned with prudential regulation.

Following this reorganization of the BVI financial services framework, the FSC task force undertook a comprehensive review of the rules and policies in place to achieve their next objective, integrating IOSCO – an organization that today regulates more than 95% of the world’s securities markets in over 130 jurisdictions. Dr. Mathavious’ hard work materialised at the IOSCO’s 32nd Annual Conference in 2007, when the BVI became the first country admitted to ordinary membership of IOSCO, based on changes made to its legislation. This adherence marked a significant achievement for the BVI. As Dr. Mathavious stated shortly after this announcement, “being a member of IOSCO is a very important accomplishment that confirms the BVI as one of the premier and most effectively regulated offshore jurisdictions in the world.”

From then on, Dr. Mathavious consistently implemented reforms to enhance the legal and regulatory framework and uphold the reputation of the BVI as a leading financial centre. He contributed to the dramatic evolution of the Mutual Fund landscape, leading to the BVI establishing itself over time, as a transparent and trustworthy driver for collective investment schemes.

The year 2010 set another cornerstone in the continued development and growing sophistication of the financial services sector, with the enactment of the Securities and Investment Business Act, 2010 (“SIBA”). The objective of SIBA, was to update



and modernise the regulation of the BVI investment funds industry by repealing the Mutual Funds Act. Whilst the introduction of SIBA maintained the popular concepts which have underpinned the historic success of the BVI's fund industry over the last decade, it has also facilitated the provision of greater transparency for investors and financial institutions investing into or lending to a BVI fund - hence further strengthening of the BVI's fund offering.

But, it is truly 2015 that marks one of the most exciting and key legislative developments for the BVI fund industry, with the introduction of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015. The concept of this new regime reflected Dr. Mathavious' awareness of global funds market trends and his commitment to ensuring that the BVI remains a leading, dynamic, and attractive domicile for investment funds, whilst maintaining best practices in international standards.

Two new types of funds were born from this initiative, coming to complement the existing BVI funds offering: the "Incubator Fund" and the "Approved Fund", both being lightly regulated fund vehicles, primarily aimed at attracting start-up, emerging managers, and those managing funds for smaller groups of closely connected investors.

The BVI Approved Fund has been one of the most successful and popular BVI innovations in the last decade. At the end of 2016, just about a year after the Regulations came into play, there were 33 Approved Funds registered in the BVI. By the end of 2019, that number had already tripled and today, 229 Approved Funds have been registered in the BVI, with the number of launches growing constantly every year.

The success of the Approved Fund mainly lies in the fact that it provides for a quick, innovative, flexible, and less upfront cost alternative to funds domiciled in other jurisdictions. The Approved Fund does not require an offering memorandum, a licensed investment manager, custodian, or auditor. Rather, investors must only be provided with a written description of the investment strategy and a written outline of the risks including, the risk of investing in an Approved Fund. This vehicle may have up to 20 investors with no restrictions in terms of minimum investment, provided that its net assets do not exceed US\$100 million.

Within the past four years, Approved Funds have satisfied a recognised need in the market for a lightly regulated investment vehicle to hold private family wealth, instead of the traditional BVI Company or closed-ended structure; the latter having a considerable drawback as an investor's right to redeem shares is restricted. The main benefit of this simpler

fund structure, is that it provides a cost-efficient and swift option for a start-up manager, looking to establish track records with investments from either friends and family or small investments from third-party investors. In today's climate, it is indeed no secret that new managers are facing more and more difficulties launching, with ever more complex international regulatory requirements and with investors' demand for a certain scale and performance history.

From an investor's perspective, BVI companies have been commonly used by venture capital and private equity investors for acquisitions, joint ventures, and pre-IPO financings. Banks, lenders, and their counterparts are familiar with and therefore comfortable doing business with BVI companies. The Approved Fund provides an alternative vehicle to pool investments and attract joint venture projects and institutional investors. An approved fund is not a regulatory arbitrage, but an enhancement and draws on a BVI business company to make it a suitable solution for attracting new and existing business, tailored to suit the client's needs.

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By developing a simple, quick, yet regulated additional framework, designed to insulate managers from the traditional regulatory challenges and attract more sophisticated investors, Dr. Mathavious demonstrated again, with the introduction of the Approved Fund regime, how important it is for the BVI to constantly remain on the cutting edge of the financial services markets, particularly in relation to fund business.

More recently in 2019, playing his last pivotal role in charting the course of the development of the BVI financial services industry, Dr. Mathavious brought forward the Securities and Investment Business (Amendment) Act, 2019. This amendment, which came in response to the European Union's ("EU's") pressure for IFCs to regulate close-ended collective investment schemes, constitutes his last major achievement and contribution to the BVI funds industry.

As a culmination of Dr. Mathavious' legacy, on 18th February 2020, the EU announced that the BVI met all requirements of the EU tax good governance standards and was, therefore, "whitelisted". The jurisdiction was deemed fully compliant in all respects. The whitelisting evidenced the BVI's commitment to meeting the EU's requirements in respect of good governance, anti-money laundering, and economic substance.

This article speaks to the many changes and developments of the BVI's product offerings over the last 30 years – the developments of which many can agree are attributed to the resilience and strength of Dr. Robert Mathavious, OBE. His forward-thinking approach has led the BVI to be a leader in financial services business and continues to ensure that the BVI remains a top IFC of choice, for companies and fund managers alike. 