The Five Things Fund Managers Should Be Doing Now

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THESE ARE TRYING TIMES. Social and economic systems on national and international levels have been disrupted to an unprecedented degree, while political and legal uncertainty also lurk. Not unlike other businesses, funds are considering what steps to take to maintain some stability for their clients and employees. The prudent fund manager will be reviewing the portfolio under management, considering existing strategies, and looking ahead. With so much uncertainty in the investing environment, flexibility is the order of the day.

- **Reviewing your fund documents.**
  Fund managers and fund directors should be reviewing their offering documents. If they have not already done so, they should be familiar with their rights and obligations, particularly the gate and redemption provisions in their offering documents. Is there any scope for slowing redemptions or suspending them altogether? What circumstances have to exist in order to trigger any right to suspend redemptions? Funds may also want to look at what options might be available to them for creating side pockets, and, crucially, should also look again at any side letter arrangements which may modify the terms in the general fund offering documents.
- **Communicating with investors.**
  Communicating with investors is imperative. Developing rapport with key investors could be beneficial to the fund in the long run. There is a cottage industry in the funds arena for outside managers to approach fund investors with promises of lower fees and better returns if the investor gives them the authority to speak on their behalf. The primary goal for this type of third-party manager is to get the investor out of your fund. They tend to be more interested in stirring dissent rather than arriving at solutions. Maintaining clear channels of communication with your investors is therefore essential. One note of caution, however. Fund managers should consult their lawyers before any non-routine communication to ensure they do not publish anything that could be misconstrued and used against the fund in the future.
- **Reviewing investment strategy.**
  The current pandemic crisis has led to significant volatility in many asset classes, and fund managers may need to tweak their existing investment strategy to suit. This is where British Virgin Islands investment vehicles shine. Generally, BVI funds are not limited in terms of the investment strategy that they can pursue, nor are they limited by the asset class in which they can invest. And a BVI fund can switch strategies or asset class without the need for any further approval from the BVI Regulator.

  Further, BVI funds can divide their assets and investments into segregated portfolios. Segregated portfolios operate by permitting a fund to hold assets in a discrete portfolio separate and apart from the other assets managed by the fund. This means that losses in one asset class do not affect assets in another class. A fund can therefore have separate portfolios with different strategies, asset classes, investors, and so forth, which do not affect and are not affected by gains or losses in other asset classes. BVI legislation also provides protection from creditors of one portfolio gaining any access to assets in another portfolio. This is an invaluable tool for the fund manager.
- **Reviewing applicable laws.**
  Depending on the scenario facing a fund, considering its size, liquidity, and rate of redemptions, it may be beneficial for a fund to consider migrating to another jurisdiction like the BVI, whose laws may fit its future goals better. Migrating to another jurisdiction like the BVI might be attractive bearing in mind its stable political and legal climate based on English common law. Migrating

is not only relatively simple but many of the advantages available to a fund incorporated in the BVI are also available to a migrating fund. As such, the fund can take advantage of the BVI's segregated portfolio laws and face a simpler, yet effective, regulatory regime.

- **Reviewing your investor base.** The current turmoil in the markets can rattle investors. Many will be looking to change or diversify their current investments. Fund managers should consider whether they can attract new investors and what they need to do to successfully attract those new inflows. For instance, investors may be looking to diversify into a more internationally invested fund or a fund with a different strategy. Offshore entities, like BVI funds, are well placed for this.

The BVI is a tax neutral jurisdiction. BVI funds do not pay an additional layer of tax at the fund level. Taxes are paid by individual investors in accordance with the domestic law to which they are subject. This is the reason why fund managers, looking to attract international investors, typically use a BVI entity. Tax savings can be passed on to their investors, maximising returns and avoiding an investor having to deal with his/her own local tax rules as well as the tax rules of a foreign country.

Another advantage is that BVI funds come in different flavours. There is a BVI fund entity to suit several types of investors. For example, a fund manager looking to spin off a small test fund can quickly and efficiently launch a lightly regulated BVI incubator fund which permits investors to invest as little as US$20,000 and has relaxed rules for qualifying as an investor. A fund manager with the opportunity to manage a small family fund or manage funds for High or Ultra High Net Worth Individuals can launch a BVI private fund dedicated to that family or individual.

Finally, BVI funds can be set up in a matter of days rather than months, and in many cases are allowed to accept funds or begin trading while approval is pending. This means that in a volatile market where timing is crucial, even setting up a brand new BVI fund will not interfere with a fund manager's ability to take in funds from new investors or to seize a market opportunity.

No one doubts that today's business environment is uncertain. However, this does not mean that opportunities aren't out there. Investors are still looking for good returns and opportunities in the market for fund managers still exist. Fund managers must review their current investor base, investment strategy, and legal documents to assess their current situation. Then, they will be ready to take the steps that allow them to thrive, even in difficult circumstances. BVI funds can play a critical part in this exercise and should not be overlooked by the prudent fund manager. ■