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## AN INTRO

It's easy to look forward to the future since most of us would rather not look back to the recent past. Although Folio Administrators continues to be the largest fund administrator and service provider in the British Virgin Islands, our clients were affected as much as anyone else's during 2008 and 2009. However, there is plenty to be enthusiastic about in 2010 and much to update you on in regards to Fund Administration and our other core businesses of Insurance Management and Brokerage, Company Management and Director Services.

Folio Administrators has established a joint-venture Fund Administration Company in Malta with International Trust Limited, one of the largest Company Management and Trust Companies on Malta and its sister company ITL Advisory Services Limited ("ITL"). Folio-ITL Fund Services Limited ("Folio-ITL") is a strategic alliance between knowledgeable and experienced players in the field of fund administration services who wish to make use of Malta's ideally suited geographical location, together with its legal and regulatory framework to provide such services. Malta is perceived to have solid future growth potential as a service provider to the financial services industry and Folio-ITL seeks to be an excellent provider of such services and participate profitably in this success. Kevin Vella, the Managing Director, explains more on why Malta is a great jurisdiction for Funds and the different types of Funds we can now offer.

It is anticipated that the new Securities and Investment Business Act ("SIBA") will be enacted during the first half of 2010 and will replace, amongst other Acts, the Mutual Funds Act, 1996 (as amended). Calum McKenzie, our Corporate Director, summarizes the changes and how it will impact our clients.

Fiduciary Group Limited ("FGL"), our affiliated dedicated Director Services Company, will, in 2010, offer Director Services to non-Folio clients on the back of new regulations in the BVI and the ever changing framework of offshore Funds that require experienced, intelligent and independent Directors. We detail why you should consider appointing FGL and/or one of its executives and what they can do to enhance your business.

Insurance Services continues to be one of our biggest growth areas and last year saw us establish regulated subsidiary companies in various new jurisdictions so we can offer our services to a larger catchment. Simon Owen, our Insurance Director, updates you on the success of Folio Insurance Management, our Captive Management Company, and Hyperion Risk Solutions, our Insurance Broker.

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## Folio - ITL

Folio Administrators Limited has recently set up a joint venture, Folio-ITL Fund Services Limited, in Malta to expand further geographically the scope of its business and to be able to offer alternatives to clients in an attractively emerging EU domicile.

There are numerous reasons to consider using Malta as a base for international operations. These include its strategic location in the centre of the Mediterranean, an educated and skilled English-speaking labour force, a stable political situation, a modern legal and tax framework, an accessible and flexible regulator, a strong industrial relations record, a "can do" attitude, excellent communications infrastructure, a convenient European time zone, and a culture within the industry of hard working professionals.

Malta is still a reasonably-priced location where the cost of living and labour are relatively low and the quality of life high by European standards. Malta's business laws and practices are standard and the work and business ethic is excellent. A member of the European Union, since May 1 2004, Malta is strategically placed for international business at the crossroads between Europe, North Africa and the Middle East.

These factors, combined with a strong international tax treaty network and other tax-efficiencies, make Malta a unique, attractive proposition as an onshore, EU domicile for financial services which is the fastest growing sector in Malta and set to double over the next decade.

### Investment Funds Regulatory Framework

Malta's investment funds regulatory framework is straight forward, transparent and reflects industry trends and developments. In so far as investment funds are concerned, Malta's regulatory regime can be broadly classified into two main categories: retail and non-retail funds.

Collective investment schemes licenced in Malta are ordinarily structured as investment companies with variable share capital (SICAVs), however other permissible investment vehicles are the INVCO, the investment trust, the limited partnership and the contractual fund.

#### RETAIL

Within the retail regime it is important to distinguish between a Malta-based UCITS or and a Malta-based Non-UCITS.

##### UCITS

Given that Malta is a full member of the European Union, Malta can be used as a Home country for a UCITS platform. The main benefits of a UCITS fund, are (1) the global brand which this investment vehicle enjoys; (2) the facility to offer a Pan-European product (through the notification procedure); and (3) the protection afforded to investors under the UCITS regime.

##### Non-UCITS

The retail Non-UCITS collective investment scheme is predominantly used for Maltese offerings. It is also

important to point out that where the retail Non-UCITS is of the closed-ended type, its units may be offered and/or traded within the EU through the provisions of the Prospectus Directive.

#### NON-RETAIL

Non-Retail collective investment funds or Professional Investor Funds (PIF) as referred to in the Investment Services Rules are the most popular funds licenced in Malta. A PIF may be Experienced, Qualifying or Extraordinary. The main differences between the three categories of PIFs are minimum entry limits for investors, investment and borrowing restrictions, and the rules applicable to the providers servicing the funds.

The Maltese regulatory regime also allows a certain level of convergence between the more traditional retail investment funds and the alternative PIFs. In fact, it is not only possible to use alternative assets and strategies within a Maltese based UCITS funds but it is also possible to convert an existing PIF into a Malta based UCITS and therefore benefitting from its distribution benefits. More recently the Maltese Regulator has also issued guidelines on the re-domiciliation of offshore funds to Malta.

*Should you wish to learn more about Folio-ITL and Malta please call Peter Azzopardi or me on +356 2122 7974.*

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## BVI SECURITIES AND INVESTMENT BUSINESS ACT

After what seems like an interminable amount of time, it is widely expected that the BVI Securities and Investment Business Act (SIBA) will be introduced as legislation in the first half of 2010.

The previous consultation with the industry in respect of SIBA was in June 2009 at which time the BVI Financial Services Commission released drafts of the Securities and Investments Business Act, 2009 ("SIBA") and the Mutual Funds Regulations, 2009 (the "MFR") for public consultation. The drafting and finalization process is presently ongoing but the main concepts of SIBA are the following:

- A new investment business licensing regime to regulate investment advisors, broker-dealers, market makers, custodians and operators of investments exchanges.
- Adoption of restrictions on, and regulation of, public issues of securities in a non-mutual funds context.
- Repeal of the Mutual Funds Act 1996 and replacement with Part III SIBA and the MFR
- Introduction of a market abuse regime which provides for offences of insider trading, circulating misleading information and market manipulation.

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SIBA will essentially be split into business category areas currently defined as, Investment Business Regime, Public Issues of Securities, Mutual Funds and Market Abuse. Space dictates that it is not possible to detail the key elements of the entirety of SIBA herein so we have listed some of the key points we believe will have a direct impact upon our clients and those in our industry:

#### **Part I - Investment Business regime**

Any person carrying on "investment business" in or from within the BVI will be required to hold a license, issued by the FSC, covering the relevant categories of investment business. Investment business is defined by reference to certain "investment activities" in relation to an "investment". These terms are set out in details in Schedules 1 and 2 of SIBA. It is important to note that the scope of SIBA includes:

- any BVI Business Company which carries on investment business anywhere in the world even if the only link with the BVI is the location of its registered office; and
- any person who solicits a person in the BVI (including BVI companies) in order to offer the investment services.

Non-BVI persons should take note of this new legislation as it has the potential to capture cross border business involving a BVI company or individual. That said, as a result of certain exclusions in SIBA, a non-BVI person providing investing services to a BVI Business Company whose only link with the BVI is the location of its registered office is unlikely to fall within the scope of the new regime.

Once licensed, firms will be required to implement a number of systems and controls for the operation of their businesses, in particular rules on corporate governance, the control of advertisements, approved persons regime, conduct of business rules and other administrative requirements. Further regulations are also applicable as detailed in the recently introduced BVI Regulatory Code.

#### **Part II - Public Issues of Securities**

Part II of SIBA introducing a new regime for any company that wishes to issue securities to "the public" in the BVI. If within the scope of the new regime, the firm issuing securities will be required to register a prospectus with the FSC and to comply with a number of requirements to be set out in a forthcoming "Public Issuers Code". The FSC has made it clear to us that this regime is not intended to be extra-territorial i.e. an "international" BVI Business Company will not be restricted from offering its securities outside of the BVI. The FSC has also indicated that foreign issuers should not be restricted from offering securities to "international" BVI Business Companies. We believe further work is required on the drafting (some of which is likely to be in secondary legislation) but, on this basis, we believe few issues of securities will fall within the scope of the new regime.

Issues of securities by mutual funds registered or recognized under SIBA do not fall within the new public issuer regime. In addition a number of exclusions exist where the offer is

made to "Qualified Investors" (which includes listed companies, FSC regulated entities, persons having a close connection with the issuer and professional investors).

#### **Part III - Mutual Funds**

The Mutual Funds Act, 1996 is to be repealed and replaced with part III of SIBA and the MFR.

The general structure and landscape of the BVI mutual funds industry is to remain with the categories of public, private and professional funds being retained. Investment managers and fund administrators will be licensed under Part I of SIBA. It should also be noted that many of the proposed changes simply codify current FSC practice. Particular points to note are as follows:

- An audit requirement for private and professional funds although funds may apply to be exempt from this requirement.
- The minimum initial investment for a professional fund of \$100,000 will apply to all investors other than certain exempt investors (primarily functionaries and their employees) rather than applying to a majority of investors as is currently required.
- All funds and licensed managers and administrators will be required to have a BVI authorized representative unless it has a "significant management presence" in the BVI.
- A general requirement for private and professional funds to have an offering document and to appoint a manager, administrator and custodian (note that the FSC may exempt the fund from all of these requirements other than the requirement to have an administrator).
- A requirement to notify the FSC of various matters including changes to directors and functionaries and updates to offering documents.

*Should you wish to learn more about SIBA and the MFRs, please call me on +1 284 494 7065.*

Calum McKenzie, Corporate Director  
Folio Corporate Services Limited  
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## **Fiduciary Group Limited**

To coincide with the implementation of the new BVI Regulatory Code and the upcoming introduction of SIBA, Folio is pleased to announce that their affiliated dedicated director service company, Fiduciary Group Limited ("FGL"), will be offering its services to outside clients.

FGL has been providing services to Folio clients since its inception in 2004. It is a dedicated director service company providing experienced professional director services to a wide range of corporate entities, specializing in alternative investment funds. FGL is approved to provide director services by the BVI Financial Services Commission.

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With the need for BVI registered mutual funds to now have a minimum of two directors FGL aims to expand its services to support a greater number and diversity of clients whilst continuing to focus on providing director services to mutual funds. When you appoint FGL or one of its executives as a director of your company you can have complete confidence and trust that there is a professional looking out for the company's best interests. FGL has a commitment to quality directorship services which means that you gain a truly independent director, providing your company with real substance and valuable expertise.

In the current financial and regulatory environment FGL believes that there is a real need for all companies, and specifically investment funds, to consider independence and offshore management and control as an essential element of its board of directors. From a shareholders perspective, having a director or directors who have no affiliation to a fund's investment manager and / or advisor means they will have the peace of mind knowing that a truly independent and impartial director will hold in equal measure both the fund's and the shareholder's interests at all times. In a nutshell, independent directors will provide effective oversight of a fund's actions and will enable a fund to function efficiently whilst adhering to industry standards and best practice.

FGL aims to add value to every mandate that it represents, giving succinct and timely advice without disrupting the day to day operations which are crucial to a company's success. Adding the expertise and values of FGL will also mitigate operational risks in an ever more demanding environment.

Through its experience and the resources at its disposal, FGL is able to recognize and identify the uniqueness of each entity it provides services to and is able tailor its services accordingly. Value is added by contributing experience and direction to an entity, including during difficult times. The benefits of this process are ultimately reaped by investors and returned to the company. On an ongoing operational basis FGL will provide assistance in the areas of selecting and communicating with service providers, including auditors, lawyers and regulators as issues arise. The appointed director for your company will work to coordinate with the company's service providers to ensure that action is taken promptly and in accordance with any contractual obligations. Clients can rest assured that FGL has the necessary expertise in identifying issues and, at times, making critical decisions which will have a positive impact upon the performance and attractiveness of your company.

*For full details on FGL and how they enhance the operations of your company please log on to the website at [www.fiduciarygrouplimited.com](http://www.fiduciarygrouplimited.com) or email FGL for more information at [info@fgl.com](mailto:info@fgl.com).*

## Folio Insurance Management

Despite the difficult economic climate, we are pleased to advise that 2009 was a year of considerable growth for our captive management practice.

In a similar vein to our early success during the latter part of 2008, we structured and formed 11 new captives over the past twelve months. Furthermore, we expanded our operations and capabilities by obtaining insurance management licenses in two additional jurisdictions, those being the British Virgin Islands and Nevis.

Offshore jurisdictions continue to hold a dominant position in the captive world, with the BVI retaining a significant market share. Anguilla and Nevis have also seen significant growth over the last couple of years and have begun to position themselves as preferred jurisdictions for smaller captives with US parents.

The BVI has remained one of the world's largest captive jurisdictions for a number of years now and, over time, has evolved into a domicile to address the needs of the international market without sacrificing the cost-efficiency associated with doing business there. The legislative framework compares favorably with that of longer-established competitors and enables the service providers operating from the jurisdiction to offer our clients a wide range of products and structures. A recently enhanced Insurance Act coupled with close working relationship between the private sector and the regulators has undoubtedly been a significant factor in the jurisdiction's unprecedented growth.

The outlook for Folio Insurance Management in 2010 appears to be very similar, with further possible expansion into other domiciles in both Asia and the US currently under consideration. As far as new applications are concerned, even at this early stage of the first quarter, we are already in the process of obtaining licenses for two more international clients.

I put this growth trend we are seeing down to a number of factors that are inextricably linked to the current economic crisis. Firstly, there is a growing concern developing among insurance buyers that their carriers may not be as creditworthy as they once were as rating downgrades continue to occur on a regular basis. Furthermore, as the investments and reserves of commercial insurance carriers diminish, those same insurance buyers may have the additional problem of having surplus capital that they are no longer inclined to invest in the equity and bond markets.

In such a scenario, from the insurance buyer's perspective, this creates a perfect situation to consider the formation of a captive. Insurance premiums in some casualty lines are on the rise as the commercial market tries to harden, so where better to invest your funds than into a long-term vehicle that can help provide much needed stability to your company's balance sheet?

*Should you wish to learn more about captives and the services we provide, please feel free to call either me or Martin Cooke by calling +1 284 494 4717.*

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## Hyperion Risk Solutions

Hyperion, our specialist (re)insurance intermediary and consultancy practice continues to provide value-added services to the clients of both Folio Administrators and Folio Corporate Services, as well as unrelated clients across a number of jurisdictions.

We are a member of the Wells Fargo Global Broker Network, an international network of independent insurance brokers. Membership of the Wells Fargo Global Broker Network allows us to utilize a wealth of broking talent around the globe without having to compromise our independence and the bespoke, dedicated service associated with smaller brokers.

Having specialized in the placement business lines such as fund manager liability, directors' and officers' coverage and professional indemnity insurance for the financial services industry, it will be of no great surprise that we have further expanded our operations in 2009 with the launch of our new Cayman Islands based firm, Hyperion Risk Solutions (Cayman) Limited.

License approval was formally granted by the Cayman Islands Monetary Authority in September, meaning that we are now in the unique position of being the only

intermediary licensed in the world's two largest offshore fund jurisdictions, Cayman and the British Virgin Islands, as well as in Anguilla, another growing jurisdiction.

We continue to receive new enquiries on a daily basis, ranging from the likes of small casualty placements for internationally operating business companies incorporated in the BVI, to requests for bespoke products, designed to protect firms against significantly increased costs and loss of business that may not be covered under their business interruption policies in the event of a natural disaster.

Our consultancy services are also seeing growth and we were extremely pleased to have been recently asked to act as insurance consultants for a recently approved USD1BN+ renewable energy project.

*As ever, our range of business lines and services are listed at the end of this newsletter, if we can offer any assistance with your insurance needs, please do not hesitate to contact me or one of the team by emailing [info@hyperionbvi.com](mailto:info@hyperionbvi.com) or calling +1 284 494 4717.*

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## SERVICES WE OFFER:

### Fund Administration

#### Accounting and Portfolio Valuation:

- Calculation of the Fund's NAV
- Maintaining proper books and records
- Preparation of financial statements
- Portfolio valuation
- Coordination of fund audits
- Calculation of management and incentive fees

#### Share Registration and Investor Reporting:

- Processing of Subscriptions Redemptions and Transfers
- Redemption and fund distribution payment processing
- Shareholder due diligence in compliance with applicable jurisdictional laws and regulations
- Reporting fund performance and shareholder/partner investment activity and account values

### Corporate

#### Company Formation

- Advice on establishing offshore entities
- Preparation of Memorandum and Articles of Association or Articles of Partnership for Mutual Funds, Segregated Portfolio Companies, Insurance Companies, Special Purpose Vehicles and other corporations.
- Registration of Company

- Completion of licencing application process
- Drafting of First Minutes, appointment of Directors and issuance of share certificates
- Issuance of Certificate of Incorporation
- Bank and broker account advice and establishment
- Appointment of auditors and legal advisors

#### Post-incorporation

- Filing of annual fees
- Certificates of Good Standing and Incumbency
- Preparation of Resolutions
- Establishment of banking and brokerage accounts
- Appointment of Auditors
- Licencing of Company
- Amendments to Corporate Documents
- Updating Register of Members and Directors

#### Fiduciary Services

- Provision of individual and corporate Directors
- Provision of Nominee Shareholder Services

#### Other Services

- Accountancy Services
- Liquidation Services
- Custodial Services
- Ship Registration

### Insurance

#### Captive Services

- Advice on establishing offshore captive insurance and reinsurance companies
- Completion of licensing application process
- Provision of resident Insurance Manager
- Provision of principal office of insurer
- Establishment of reinsurance programs for the captive (re)insurance company
- Establishment of fronting programs for the captive (re)insurance company
- Advice on policy rating and issuance
- Claims administration and loss control
- Accounting services and maintenance of proper books and records
- Liaison with actuaries, auditors and tax advisors

#### Intermediary Services

- Professional lines
- General liability
- Environmental liability
- Aviation
- Group/individual health plans
- Directors and Officers
- Public and product liability
- Property
- Marine
- Reinsurance
- Insurance Consultancy

## CONTRIBUTING EDITORS

### **Daniel Cann**, *Marketing Director* Folio Administrators Limited

Daniel Cann ACA ( [daniel@folioadmin.com](mailto:daniel@folioadmin.com) ) is the Marketing Director of Folio Admin. He has resided in the Caribbean since 2001. Prior to this, Daniel worked for Cogent Investment Operations, formerly of Henderson Investments and now part of BNP Paribas. Daniel trained and qualified as an English Chartered Accountant in London. He specialises in building relationships with banks, lawyers, custodians, leverage providers and brokers to ensure Folio Admin can give the best structuring advice to existing and new clients.

### **Calum McKenzie**, *Corporate Director* Folio Corporate Services Limited

Calum McKenzie ( [calum@folioadmin.com](mailto:calum@folioadmin.com) ) is a Director of Folio Corporate Services Limited ("FCSL") and is responsible for overseeing the day to day operations of FCSL. Since graduating in the UK in 1996 with an honours degree in Business Studies, Calum has garnered in excess of ten years working in fiduciary services. Prior to joining FCSL Calum was the Manager of the Fiduciary Services department of a large independent BVI trust Company gaining an excellent knowledge of all aspects of offshore financial services. Aside from FCSL, Calum is currently a Director of a licensed BVI Class II Trust Company, a non-executive Director of a BVI Class I General Trust Company and is presently approved as a director in a number of offshore jurisdictions including the Cayman Islands, Nevis and Anguilla. Calum is a sitting member of the BVI FSC Fiduciary and Registry Liaison Committee, providing operational advice and guidance to the BVI Financial Services Commission and is a Member of the Institute of Directors, London. Calum is a British citizen and has been resident in the British Virgin Islands since 1998.

### **Simon Owen**, *Insurance Director* Folio Insurance Management Limited Hyperion Risk Solutions Limited

Simon Owen ( [simon@folioadmin.com](mailto:simon@folioadmin.com) ) has worked in the finance industry for over 15 years, specialising in investment strategies and insurance and reinsurance solutions. Prior to founding Hyperion, Simon spent a number of years forming and managing captive insurance and reinsurance companies. He also worked in the Lloyd's insurance market for over a decade, latterly in the new business development division of a leading international reinsurance intermediary.

Simon is the Managing Director of Hyperion Risk Solutions Limited and the Insurance Director of Folio Insurance Management Limited. He is a past Chairman of the BVI Association of Insurance Managers and has served a member of the BVI Marketing Advisory Committee, the Financial Services Institute Advisory Committee and the Joint Anti-Money Laundering and Terrorism Financing Advisory Committee.

### **Kevin Vella**, *Managing Director* Folio-ITL Fund Services Limited

Kevin Vella ( [kevin@folioitl.com](mailto:kevin@folioitl.com) ) holds a Bachelors of Arts (Hons.) degree in Accountancy and a Master of Arts in Financial Services from the University of Malta. He is a Certified Public Accountant, holds a practicing certificate in auditing and is also a Fellow of the Institute of Accountants. He started his career in 1996 at PricewaterhouseCoopers, following which he held a senior position at the MFSA and subsequently occupied the post of Chief Operating Officer and Chief Financial Officer with a financial services group listed on the Malta Stock Exchange.

Kevin has extensive experience in the financial services business, including its complex regulatory framework, as well as topmost level management experience, including strategy execution and implementation in life insurance, health insurance, fund administration, IT, Call Centre set-ups etc. He also advises a number of firms in critical business functions.

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