



# Insights from the Ogier Funds Symposium in New York

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The panel discussion at Ogier's Funds Symposium in New York - featuring leading voices from key clients Pantheon, Wellington, AQR and ALTi Tiedemann - offered attendees insights into the latest market trends in fund structuring, domicile selection and investor demands.

Ogier partner and Cayman funds specialist Joanne Huckle moderated the panel's lively discussion, which concluded that the investment funds industry is continuing to evolve amidst the changing pressures of regulatory shift, investor preferences and increased competition for market access to unlock investor capital.

This overview provides some of the key takeaways.

## Choosing the right jurisdiction

The choice of fund jurisdiction is a pivotal decision for fund managers, and ultimately comes down to the target audience for any given fund-raising, as managers consider different markets from which to access investor capital. Differing regulatory tensions and comparative service levels between jurisdictions also factor into the decision-making process.

While Delaware continues to have mass appeal for the domestic US market, the panel agreed that the Cayman Islands is often the preferred choice for managers targeting investors that are non-US taxpayers, such as Asian, LatAm and US tax exempt investors. Managers and institutional investors also value the domicile's familiarity, service-levels, streamlined set-up and operational processes.

Although European investors have, historically, been hesitant about using the Cayman Islands, its removal from the Financial Action Task Force (FATF) grey list and the jurisdiction's proactive approach to making various regulatory enhancements are gradually changing perceptions.

Luxembourg and Ireland remain attractive for European market access because of their European

Union (EU) passporting rights and if the intention is to market the fund principally to investors based in the EU, an Irish or Lux domiciled fund vehicle may be preferable. However, what often underscores a choice in domicile are the regulatory requirements. Some panel members reported that there is an additional administrative and regulatory burden when establishing and operating a European fund structure.

## **Evolving fund structures and sources of capital**

The traditional lines between hedge funds and private equity are blurring. The default continues to be that partnerships are the preferred structure for closed-ended funds, due to their flexibility and alignment with US legal practices and forms, and companies or corporate vehicles remain the preferred choice for open-ended hedge funds. That said, the panel commented that some large hedge fund managers prefer using Cayman partnerships for open-ended, investor-facing vehicles, despite this not being the default in the hedge fund space.

The panel also reported seeing traditional hedge fund managers expand into other sectors and launching closed-ended products, particularly in the credit space, to cater to investor demand for more diverse products, including hybrid vehicles.

In the quest for new sources of investor capital, the panel noted an increase in non-institutional high-net-worth individual investors as a significant source of capital in-flow. While these sources of capital certainly represent significant opportunities, there are also increased challenges when compared with institutional capital. High-net-worth individual investors tend to require additional operational and structural support to accommodate the higher volume of investor numbers and a less sophisticated investor make-up.

Fees, transparency and reporting remain the primary concerns for investors. ESG considerations have also become a factor in investor decision-making, in particular the rise of an anti-ESG movement which can require some delicate balancing between competing demands and preferences. Managers are navigating these divergent views by offering solutions that accommodate specific investment restrictions and preferences.

## **Increasing sophistication of outsourcing solutions**

Increasing regulatory requirements and the associated costs and risks involved have led to a significant increase in outsourcing solutions, particularly for compliance functions tax reporting, cybersecurity, AML and more general back-office services such as payroll. Outsourcing benefits managers and groups of all sizes. For smaller and emerging managers, it provides a solution to those that might not have the infrastructure or leading technology to do everything in-house. Outsourcing allows them to stay nimble and offers a cost-effective pathway to scale operations while maintaining compliance and operational excellence.

In Cayman, for example, the AML Officer role has really expanded since it was first introduced for funds, to now include support with risk rating and training services. Increasingly, funds are looking to outsource this to Cayman-based persons with direct experience of the Cayman AML regime. Similarly, outsourced company secretarial services are increasingly used to ensure compliance with recently enhanced Cayman governance requirements and obligations.

## Tailormade solutions

Despite the moderator and panel's best efforts to agree on the "holy grail" for fund jurisdiction and structure, they could not solve the riddle of how to address the competing demands of an increasingly diverse marketplace of investors, strategies and managers.

As no single structure or jurisdiction is able to offer a solution that addresses the requirements of a diverse market, the panel agreed the best available approach is to use trusted service providers (outsourcing as appropriate) who are capable of providing a multi-jurisdictional offering within an international regulatory offering.

## How can Ogier help?

Our market-leading Investment Funds team has been at the forefront of the funds industry for more than 25 years. Our lawyers have substantial experience working with clients across a wide variety of sectors and strategies and we have investment funds experts located across our global network of offices, providing clients with seamless support on the six laws of BVI, Cayman Islands, Guernsey, Ireland, Jersey and Luxembourg. For more information, please contact one of the team below.

### About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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