Snapshot: single asset investment funds and Ogier's Single Asset Fund Solution

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We continue to see significant interest in setting up investment fund structures for the purpose of making single project/asset investments. This represents a "deal by deal" approach where private equity (PE)/venture capital (VC) managers provide access to a specific investment, thereby allowing their investors the choice of whether or not to gain exposure to a particular asset.

Key drivers for the rise in popularity of such structures has been the increasing preference of managers to institutionalise their club deals, raise funds quickly for pre-IPO investment opportunities, but also the fundraising challenges that may be faced in raising blind (or semi-blind) pool funds, particularly in the current investment environment. These single asset investment structures can have simplified documentation and be quick to launch.

This snapshot explores some of the benefits and structuring considerations for these single asset fund structures as well as detailing how Ogier can assist with its **Single Asset Fund Solution**.

Some benefits of single asset funds compared to blind pool funds

- Fewer unknowns as asset is usually pre-identified
- Excludes the uncertainties about the final geographical and sector exposure of the fund vehicle
- Can be set-up and launched quickly as less due diligence on the fund and manager is typically required and fund documentation may be simplified
- Total expenses easier to define and estimate
- Can launch with lower total capital commitments and can generally set lower minimum subscription thresholds. This can allow for a broader spectrum of investors

There are of course many reasons why a blind pool fund will be preferred (diversification of portfolio risk, provides scale, ability to rely on skill of the GP/manager to identify investment opportunities over a period of time, and so on). However, a single asset fund might be a better fit for certain situations.

Choice of domicile and structure

Cayman Islands and, increasingly, the British Virgin Islands (**BVI**), have proved the most popular domiciles for single asset funds in Asia. Generally the choice of domicile will be determined based on the location of the prospective investors, the location of the underlying investment and the location of the manager. Cost is also likely to play a factor.

Single-asset funds are typically structured as limited partnerships or limited companies. Whereas a partnership is the more familiar type of vehicle for PE/VC type investments, limited companies may be the preferred vehicle in this case because it reduces formation and ongoing entity filing costs.

A segregated portfolio company (**SPC**) structure might also be an attractive structure. Fund managers can set up an SPC as a platform through which they roll out multiple funds, each represented by a separate segregated portfolio (**SP**). Both the Cayman Islands and BVI allow for the formation of SPCs. Some benefits of SPC structures are as follows:

- Once the initial structure is setup, the formation of a new SP is effected by way of board resolution (which is quicker than the process for setting up a new company) [1]
- Only need to appoint one board of directors (as there is only one company, the SPC)
- Opening a bank account for a new SP of an existing SPC is often less time-consuming than for a new standalone fund structure
- Cost reductions where setting up a number of funds, as it may be cheaper to use an SPC with multiple SPs rather than setting up multiple separate fund entities

Both the Cayman Islands and BVI have introduced a regulatory regime for closed ended private investment funds. One significant distinction between the Cayman and BVI closed ended fund regimes is that the definition of "private investment fund" in BVI stipulates that the fund should have the purpose of "diversification of portfolio risk". Therefore, it should be possible to interpret a BVI single asset fund as not being subject to the registration and other operational requirements imposed by the relevant BVI legislation [2] where there is no "diversification of portfolio risk."

On the other hand, in the Cayman Islands Private Funds Act (**PF Act**), the definition of "doesn't contain a 'diversification of portfolio risk' requirement" or component. As a consequence, single asset funds may fall within the definition of a "private fund" (regardless of the fact that there is no diversification of portfolio risk) and, if so, be required to register with the Cayman Islands

Monetary Authority. This will increase the costs of this vehicle compared to the BVI structure.

Accordingly, it is not surprising to see sponsors and managers that are more cost-conscious (often due to the nature and size of the fund) determine to establish single asset funds in the BVI. For a BVI asset fund which is not a private investment fund, not only are there no annual filing fees to pay to the FSC but it is also not a legal requirement to appoint an auditor to audit the fund's accounts (as the fund structure is not regulated by the BVI Financial Services Commission). The fund may therefore determine to reduce costs by not appointing an auditor, particularly where the fund will be investing in just one portfolio company whose accounts will themselves be audited. Typically, BVI single asset funds are set-up as a company or partnership.

Regardless of the cost savings associated with the BVI structure, we continue to see interest in setting up Cayman Islands single asset fund structures, particularly where the size of the fund is significant so as to justify the regulatory cost of setting up a private fund. Cayman also remains a popular choice where there is only one "investor" in the structure (as defined under the PF Act) and therefore no requirement to register with CIMA as a "private fund". GPs and managers may also prefer to maintain consistency and use a Cayman Islands domicile where their other funds are also formed in the Cayman Islands.

For information about the Cayman Islands and BVI closed ended fund regimes you can read our briefing here.

How Ogier can assist

Ogier's **Single Asset Fund Solution** provides a one-stop solution for setting-up your single asset fund, including the following services[3]:

- Providing structuring advice from a BVI or Cayman legal perspective (Ogier is also in a position to advise on Guernsey, Jersey, Irish and Luxembourg laws)
- Assisting with the formation of the fund vehicle and ongoing provision of registered office/agent services
- Assisting on the documentation for the fund vehicle, including working with your onshore and in-house legal counsel
- Advising on relevant regulatory considerations for the structure (from a BVI or Cayman perspective)
- Providing independent directors to the board of the fund, where required
- Providing investor services including investor on-boarding and FATCA & CRS (AEOI) services
- Providing AML officer services, where applicable
- Providing cash custody services as a short term solution where the fund's bank account

cannot be opened in time for the launch

Please get in touch with one of our investment funds experts to find out more.

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[1] However, in the BVI, an SPC is required to obtain the approval of the FSC for the creation of an SP and an SPC is not permitted to create an SP without the prior written approval of the FSC

[2] The Securities and Investment Business Act, 2010 and the Private Investment Funds Regulations, 2019.

[3] Services delivered by Ogier and Ogier Global

About Ogier

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