

Segregated Portfolio Companies in the BVI

Incorporation/ registration as a segregated portfolio company

- BVI entity must be company limited by shares.
- BVI entity can be either incorporated as a segregated portfolio company or if already incorporated, registered as such by the Registrar.
- The prior written approval of the FSC is required in order to be incorporated or registered as a segregated portfolio company.
- To obtain approval from the FSC, the applicant needs to demonstrate "*knowledge and experience necessary for the proper management of segregated portfolios*".
- Approval will only be granted if the applicant will be an insurer under the Insurance Act 1994 or a professional, private or public fund under the Mutual Funds Act 1996.

Key features

- A segregated portfolio company is a single legal entity and each segregated portfolio does not constitute a separate legal entity.
- Assets of a segregated portfolio company are either (i) segregated portfolio assets (ie assets and liabilities of each of the segregated portfolios); or (ii) general assets of the company (ie assets which are not comprised in any segregated portfolios).
- A segregated portfolio company may issue more than one class of shares within each segregated portfolio and the proceeds of such shares are included in the assets of that particular segregated portfolio.
- Any dividends paid out by a segregated portfolio company can only be paid out by reference to the assets and liabilities attributable to the particular segregated portfolio. Therefore the solvency test will be applied in relation to the assets and liabilities constituting the particular segregated portfolio and not the assets and liabilities of the other segregated portfolios or the general assets.
- Directors of a segregated portfolio company are under a duty to establish and maintain procedures for keeping the assets of a segregated portfolio separate from the general assets of the company and the assets of other segregated portfolios.

- Assets of one segregated portfolio can only be used to meet the liabilities of creditors of that segregated portfolio and not the liabilities of any other creditor.
- The segregated portfolio company's liability to a creditor only extends to, and the person only has recourse against, (i) the assets of the segregated portfolio with whom the creditor has contracted; and (ii) if the assets in that segregated portfolio are insufficient, to the general assets of the segregated portfolio company.
- The following terms are implied, unless otherwise excluded on writing, into every transaction entered into by a segregated portfolio company:
 - (a) no party will seek to make the assets of any segregated portfolio liable in respect of a liability not attributable to that segregated portfolio;
 - (b) if any party does succeed in making the assets of a segregated portfolio liable for a liability not attributable to that segregated portfolio, it is liable to pay the segregated portfolio company a sum equal to the value of the benefit it obtained; and
 - (c) if any party succeeds in seizing or attaching or levying execution against the assets of a segregated portfolio in respect of liabilities not attributable to that portfolio, the party holds the assets and their proceeds on trust for the segregated portfolio company and must keep them separate and identifiable.
- The assets of a segregated portfolio company may only be transferred to another person, wherever resident or incorporated and whether or not a segregated portfolio company, in accordance with the terms of a Court Order. However, a Court Order is not required to simply invest and change the investment of segregated portfolio assets or otherwise to make payments or transfers from segregated portfolio assets in the ordinary course of the segregated portfolio company's business.
- On a liquidation of a segregated portfolio company, the BVI Insolvency Act 2003 applies with one modification in that a liquidator is required to observe the provisions for segregating assets and can only apply assets of a

Segregated Portfolio Companies in the BVI

particular segregated portfolio to those entitled to have recourse to that segregated portfolio.

Licensing considerations

- License applications to the FSC need to detail the functionaries responsible for each segregated portfolio.
- If the applicant is not a new incorporation (ie an existing company applying to be registered as a segregated portfolio company), the application will need to include a statement signed by a director setting out (i) the assets and liabilities of the company as at a date no more than six months prior to the application; (ii) details of any transactions, events or other matters not reflected in the statement of assets and liabilities that has materially affected or is likely to have a material effect on the assets and liabilities of the company; (iii) the assets of the applicant intended to be segregated assets and the assets intended to be general assets; and (iv) how the liabilities will be satisfied.
- A segregated portfolio company shall at all times have one or more administrators, managers and custodians and may appoint one or more investment advisors.
- A segregated portfolio company is required to have an auditor and is required to file its annual accounts with the FSC within 6 months of its financial year end.
- A segregated portfolio company that is a public fund is not permitted to create an additional segregated portfolio without the prior written consent of the FSC.
- Where a segregated portfolio company which is a professional or private fund intends to create an additional segregated portfolio, if, the additional segregated portfolio has the same functionaries as the existing segregated portfolios, it must notify the FSC within 14 days of the creation of the new segregated portfolio. If, however, the additional segregated portfolio has different functionaries, the FSC's prior written consent is required;

Fees

- Segregated portfolio companies are required to pay the following fees:
 - (a) an annual government license fee of US\$350 (or US\$1,100, if it is authorised to issue 50,000 shares or more) to the Registrar of Corporate Affairs;
 - (b) an application fee to the FSC of US\$1,000, plus US\$250 per segregated portfolio;
 - (c) an annual license fee to the FSC of US\$1,000 per annum plus US\$100 per segregated portfolio approved (or, if the segregated portfolio company is incorporated or registered during the

second half of the year, the annual license fee in the first year is US\$500 in respect of the company and US\$50 in respect of each segregated portfolio), subject to a maximum fee in any year of US\$10,000; and

- (d) an annual fund license fee to the FSC of US\$350 per annum, if it is a private or professional fund or US\$500 per annum, if it is a public fund.

If a segregated portfolio company fails to pay its annual license fees to the FSC by 31 March in any year, it becomes liable to a penalty of US\$250 for each month or part thereof during which the fee remains outstanding, in addition to its annual lic

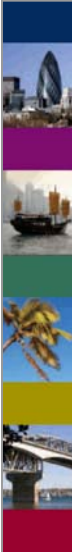


Segregated Portfolio Companies in the BVI

About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. The Group advises on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.



Segregated Portfolio Companies in the BVI

Contact details

NORTH & SOUTH AMERICA

British Virgin Islands

Simon Schilder
+1 284 852 7307
simon.schilder@ogier.com

Ray Wearmouth
+1 284 852 7364
ray.wearmouth@ogier.com

Fiduciary

Gareth Thomas
+1 284 852 7322
gareth.thomas@ogier.com

EUROPE, MIDDLE EAST & AFRICA

London

Simon Dinning
+44 20 7160 5070
simon.dinning@ogier.com

ASIA & AUSTRALIA

Hong Kong

Duncan Smith
+ 852 3656 6010
duncan.smith@ogier.com

This client briefing has been prepared for clients and professional associates of the firm. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Ogier includes separate partnerships which advise on BVI, Cayman, Guernsey and Jersey law. For a full list of partners please visit our website.

Please check with the relevant contact listed above for specific details regarding the legal services we offer from each office as we do not always practice the law of the jurisdiction where our offices are located. Please note that the named contact may not be qualified to advise on all the laws practiced from that office.

www.ogier.com

Excellence. Offshore

Bahrain • British Virgin Islands • Cayman Islands • Guernsey
Hong Kong • Ireland • Jersey • London • Tokyo

