

The growth of private funds

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With 20 years' experience as an offshore practitioner, Marcus Leese advises clients across the full range of investment funds, private wealth and Banking & Finance matters. Besides his role as head of Ogier's Guernsey office, Marcus advises on Guernsey and BVI law to an international client base including many Asian clients, having spent four years in Ogier's Hong Kong office.

How are private funds blurring the old distinctions between Private Wealth and Investment Funds work?

We are already getting instructions for this work, and we are seeing it across all our jurisdictions – and particularly in Guernsey, Cayman, BVI and in Jersey. Traditional investment funds function as a collective investment structure – they are simply a vehicle for a range of investors to pool their money together and invest in a project, or multiple projects. That is a tried and tested model with which we're all very familiar. What we are seeing now is using the same vehicle for a single investor or family to provide them with a structure in order to invest in one or more projects.

The structure provides a pooled, organised vehicle for the family's assets and can define their interests and rights in relation to the assets. It may also provide future opportunities to open investment to others outside of the family to tap into a larger investment pool. This is a different and largely untapped market for fund managers and fund administrators to be thinking about.

What is motivating the clients behind the trend?

Clients are not always establishing new investments – we have seen instructions where they have been moving family-held investments out of one structure, and into a private fund structure, because they saw it as a much more flexible option. So in this example, we were not establishing a fund vehicle in order for that family to invest in new things, we were taking existing investments and effectively putting a fund structure around that for them.

In a recent case the clients were an international family who have UK-based real estate assets worth approximately £400 million currently owned by different offshore companies. The thinking

was that as time goes by there were more family members and an increasing risk of the shareholding in the companies becoming more widely spread.

The solution was a private fund – with assets on that scale it was important to put some professional management and structure behind them, and to allow everyone to contribute their respective shareholdings in a new fund vehicle, and finally to distribute the shares so that all of the family members became passive owners.

That new structure adds new options. The investment manager – one of the family members who is qualified in this area – can go out and borrow to increase the portfolio. Moreover, a fund is regulated and recognised and so more attractive to third party investors. Accordingly they have the ability to offer shares in the fund to third parties – the family vehicle could potentially become a vehicle used by third party investors.

The assets in this case have all been real estate – but there is absolutely no reason why it needs to be limited in that way, it could be any asset class.

Where is this work happening?

We are seeing instructions along these lines in all our jurisdictions but certainly including Guernsey and Jersey – the regulators and legislators in both islands have developed new “private investment funds” products which restrict the number of investors, establish a minimum investment and which prohibit or limit retail public offerings in return for a less demanding regulatory regime than would be applied to funds offered publicly to retail investors.

How does the Ogier team service this trend?

We're well-placed to deal with this kind of work – my practice has spanned funds and Private Wealth work for many years and it is the combination of these two different elements which is so important.

In addition, we operate in the three key jurisdictions for this kind of activity – Cayman, Guernsey and Jersey, and we have Cayman attorneys in our Guernsey and Jersey offices offering advice within the European timezone.

Looking forward, how is this likely to develop?

As an alternative to trusts, private funds have a role, and that's driven by the value of the assets and the changes in the profiles of beneficiaries as families grow and develop in sophistication. They are quite different in a way but in Guernsey there is no limit on the legal vehicle that you use – company, limited partnership, or unit trust.

In some respects the motivations driving these clients to Guernsey are the same ones driving professional fund promoters here as opposed to any other jurisdiction, which is a mixture of

familiarity with the jurisdiction and structures, infrastructure and connections, the quality of the regulatory framework and the range of regulatory levels, the quality of service providers, the timezone, and the quality of the courts.

And if they are looking in the future to move beyond family investors and move to seeking third party investment money – that will be a consideration. What would third party investors be wanting to invest in? The empirical evidence based on the past several decades of the investment fund industry is that Guernsey is an extremely attractive jurisdiction.

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