

Snapshot: considerations for Chilean pension funds investing in offshore funds

Insights - 06/10/2022

Under Chilean regulation, pension funds established in Chile that invest in an offshore fund must obtain certain legal confirmations from legal counsel in the jurisdiction where the offshore fund is located before they are able to invest in that fund.

What's needed?

Broadly speaking, the Chilean regulations require a pension fund (**AFP**) to obtain confirmations covering the following items:

- i. reporting the main terms of the fund documentation (generally comprising the offering document, the subscription agreement and the limited partnership agreement) and comparing them with accepted market practice for similar types of investment fund;
- ii. confirming that the fund documentation is valid under the laws of the relevant jurisdiction and detailing all pre-requisites to ensure that the investment is valid under local legislation;
- iii. confirming that the AFP will hold the level or quality as a limited partner or equivalent of the investment fund, and the specific moment when the AFP acquires such status, and that such AFP will be in a position to enforce all its rights as provided under the relevant laws to the entities that invest in this kind of asset/investment fund; and
- iv. confirming that the AFP's liability will be limited up to the amount of its capital contribution to the investment fund.

Working through complexity

Given that the AFPs are often looking to invest in funds managed by some of the world's largest fund managers (eg Blackstone, HPS, PIMCO), the fund documentation tends to be extremely detailed and complex and therefore requires a thorough review in order to extract the relevant information to be able to give the required confirmations to the AFP.

In some circumstances, there can be time-pressure to obtain the confirmations in order to meet the investment closing deadline. Our extensive investment funds practice ensures that we are always on-hand to be able to turn this type of instruction around on short notice (which, given the length and technical nature of most fund documentation, can be a tall ask).

The end result is:

- A memorandum of advice and a fund review checklist that provide the required confirmations and that the AFPs can share with the Chilean regulator (if requested) to ensure its compliance with the regulatory regime in Chile.
- Ultimately this then allows the AFPs to make investments in their chosen offshore investment funds.

How we can help

With our outstanding level of expertise in investment funds work, we are able to carry out a thorough review of the target fund's relevant documentation and prepare the required confirmatory documentation.

This comprises of the following:

- A memorandum of advice – this document contains a high-level overview of the process of becoming an investor in the Cayman Islands fund (whether by subscription at initial closing, subscription at a subsequent closing or acquisition of an interest in an existing fund through transfer or assignment of such interest), details of the Cayman Islands legal and regulatory regime relating to investors in Cayman Islands funds (typically structured as exempted limited partnerships) and giving the required confirmations to satisfy the Chilean regulatory requirements.
- A fund review checklist – this document provides an overview of the key elements of the fund's documentation, including noting where there are any unusual provisions. This includes (but is not limited to) areas such as: term of the fund and its fundraising/investment periods; details of any investment/borrowing limitations; details relating to the fees (ie performance and management fees) payable by investors in the fund; general partner removal/default provisions; investor committee provisions; and, practical considerations (like the payment of distributions and the process for making capital calls).

As Ogier itself acts as fund counsel on a number of different types of fund structures (eg hedge funds and private equity funds) and has been practising in the funds space for more than 30 years, we are well-placed to be able to provide the confirmations required and have excellent insight into current market practices.

Additionally, over the past seven years, we have advised each of the AFPs on their investments in

offshore funds, with Chilean distributors that distribute offshore funds to the AFPs, and to Chilean law firms that provide assistance to the AFPs in their investment process (which generally also involves the negotiation of side letters) and we have accordingly developed a full understanding of their requirements. With this experience we have been able to improve our processes and documentation to align them with the requirements of the regulation and regulator in Chile and improve their effectiveness for the AFPs.

Finally, we are present in all major investment fund jurisdictions of British Virgin Islands, Cayman Islands, Guernsey, Ireland, Jersey, and Luxembourg and have assisted AFPs in their investments in each of these jurisdictions.

Ogier's Latin America team

Ogier's multi-disciplinary Latin America team is ranked highly recommended by the Latin Lawyer 250 guide 2023, with six of our partners singled out for recognition.

Latin Lawyer also recognises that our presence in Latin America is one of the most established in the region. Our team of Cayman, BVI, and Luxembourg qualified lawyers have a long track record of working with clients in the region, including some of Latin America's key banking institutions and most prominent asset managers, as well as leading corporates, ultra high net worth individuals, and family offices.

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.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. 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.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Giorgio Subiotto

Partner

Cayman Islands

E: giorgio.subiotto@ogier.com

T: [+1 345 815 1872](tel:+13458151872)

Key Contacts



Angus Davison

Partner

Cayman Islands

E: angus.davison@ogier.com

T: [+1 345 815 1788](tel:+13458151788)

Related Services

Investment Funds

Legal

Related Sectors

Funds Hub