



A Practitioner's Perspective: some common questions and pitfalls regarding the use of OFC and LPF

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How long does it take to go through the SFC registration process for the (private) OFC?

- From submission of the application to the SFC to the (private) OFC being registered is approximately 3 to 4 weeks
- This process can be done in parallel to preparing the fund documents eg PPM, hence this 3 to 4 weeks period doesn't prolong the fund formation process
- The documents that need to be submitted to the SFC are the SFC application forms and the Instrument of Incorporation
- Not the same process as authorization of a retail fund by the SFC, and not the same as applying for an SFC license

Can you use an OFC for a closed end fund, and can you use an LPF for an open ended fund

- It is more common for open ended funds to use a company structure, and for closed end funds to use limited partnership
- However, there are no technical reasons why you can't use the OFC for a closed end fund, despite the name being an open ended fund company
- Closed end fund: a fund that doesn't allow investors the right to make regular redemptions
- If the OFC is an umbrella OFC, you can also have closed end sub-funds together with open ended sub-funds within the same umbrella OFC - not permitted for a Cayman SPC
- You can use an LPF for an open ended fund
- It means you can use an OFC to invest in illiquid assets and you can use an LPF to invest in liquid assets, and vice versa

Does an LPF need a Type 9 licensed corp as its investment manager

- There is no requirement that an LPF must have a Type 9 as its investment manager
- Whether or not an LPF's investment manager needs a Type 9 depends on whether the investment manager carries out Type 9 regulated activities in HK. That is, whether it makes investment decisions for the LPF in HK
- Need to be careful as to not hold itself out as carrying on a regulated activity
- Also need to be careful as to not carry out Type 1 or Type 4 regulated activities

How does the OFC subsidy grant work?

- 1 application for grant per OFC, and if the OFC is an umbrella OFC, there can be more than 1 sub-fund covered by the subsidy
- Takes approximately 3 weeks for the grant to be approved, then approximately 2 weeks for the subsidy to arrive at the nominated bank account of the investment manager
- Consider cost of setting up a new OFC vs setting up a new sub-fund within an existing Cayman SPC
- The subsidy grant only applies to the OFC, not the LPF. However, it also covers the re-domiciliation of an OFC

Why use HK and not Cayman?

- Although cost is an incentive, there are more compelling technical reasons
- Onshorisation is a global trend, not a HK specific phenomenon
- Alignment of form with substance
- The starting point for fund structuring is to domicile the fund in the same jurisdiction as the investment manager
- The fund will be governed by HK law and subject to the courts in HK
- More pertinent to ask: why use Cayman, not HK? The historical reasons why Cayman vehicles were used are disappearing

Common misperceptions, myths and concerns

- Most common misperceptions relate to tax and SFC licensing issues, eg:
 - Fund domiciled in HK is subject to tax in HK, but not Cayman funds ✘
 - Can avoid tax on management fee and carried interest by using Cayman fund ✘
 - Can avoid getting an SFC license using a Cayman fund ✘
- Investor preference: however, investors from different parts of the world have different preferences
- Investor familiarity: however, different legal forms of fund vehicles are always created in different jurisdictions around the world. HK is not the only jurisdiction creating a new legal forms for funds
- Political concerns with using a HK domiciled vehicle, some of which seems to relate to the seizing / freezing of assets

Other common questions

- What are the benefits of re-domiciliation? – no longer subject to Cayman laws and Cayman fees, the vehicle continues its existence and hence no need to redeem investors, liquidate fund's assets, or the re-execute documents
- Point to note – re-domiciliation is a new concept in HK, but not new in the global asset management industry
- Can you re-domicile a Cayman SPC as an LPF, and can you re-domicile a Cayman limited partnership as an OFC? - no
- Do you need to launch the OFC or have certain AUM by a certain time after registration? - no
- If the OFC has subsidy but the LPF doesn't, and if you can use an OFC for a closed end fund, then why use an LPF?

Other common questions

- How long does it take to set up an LPF?
- Confidentiality of investors
- Requirements for a custodian of an OFC – cannot be the same entity as the Type 9 even if that Type 9 is a licensed corp which has a Type 1 license. But it can be within the same group

Common pitfalls with the OFC and LPF

- For the OFC – custodian
- For the LPF – the Responsible Person
- For the LPF – need to ensure that it is a fund (eg the initial LP cannot be an employee of the GP or an employee of a company in the same group of companies as the GP)
- For the LPF – need to ensure that not all partners are corporations within the same group of companies within 2 years of registration of the LPF
- Bank account
- Overall experiences have been very smooth for both setting up an OFC and LPF

Speaker's Profile



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Ben founded AltQuest in 2012. AltQuest is a compliance consultancy firm focused on providing fund managers in HK with best in class compliance services, including SFC licensing and regulatory compliance related matters. Prior to establishing AltQuest in 2012, Ben worked in the London, Hong Kong and Sydney offices of preeminent international law firms such as White & Case, Mayer Brown and Norton Rose Fulbright, as well as working as an in-house counsel at Citi. During his tenure at these firms, Ben's primary practice areas were private fund formation (ie hedge fund and private equity fund formation) and related regulatory matters. Ben also founded a law firm, WBY Lawyers, in 2020. WBY Lawyers is a boutique law firm focused on financial services law, with a particular emphasis on private fund formation and financial services related regulatory matters. Ben was qualified as a lawyer in New South Wales, Australia in 1998, in England & Wales in 2003 and in Hong Kong in 2011.

Ben and his team assisted in the registration and launch of the 7th, 9th and 12th private OFC registered. Ben also registered 2 LPFs on the first day when the LPF regime commenced operation and has been involved in the setting up of numerous LPFs since then.

Thank You

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