



TWO SEAS TRUST



June 2010

Briefing: Investment Funds in Bahrain and Offshore

Preface

This briefing has been prepared by Two Seas Trust B.S.C.(c) in association with the Ogier Group for the assistance of clients considering the establishment of an investment fund in Bahrain or offshore. It is intended to provide a summary of the general principles applicable to the establishment of an investment fund. It is not intended to be comprehensive in its scope and it is recommended that a client seek legal advice on any proposed transaction prior to taking steps to implement it.

There are many options available to promoters as to which domicile to choose for their fund and different factors, such as the preferences of seed investors or regulatory requirements may be important. This briefing highlights some of the different investment fund products available in Bahrain, the British Virgin Islands ('BVI'), the Cayman Islands ('Cayman'), Guernsey and Jersey and provides some background on each of those jurisdictions.

1. Summary of Products and Regulation

The following table sets out a summary of the core products available, a detailed explanation of this summary information is provided below.

	Bahrain	BVI	Cayman	Guernsey	Jersey
Regulatory Options	Exempt	Unregulated (closed-ended)	Unregulated (closed-ended)	Registered: closed-ended and open-ended	Unregulated (closed ended or listed)
	Expert	Private	Regulated	Authorised: closed-ended and open-ended (classes A, B, and Q)	Private COBO only
	Retail	Professional Public	Administered Licensed	Qualifying Investor	Listed Expert Unclassified Recognised (Retail)

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	No capital gains tax	No capital gains tax	No capital gains tax	No capital gains tax	No capital gains tax
	No withholding tax	No withholding tax	No withholding tax	No withholding tax (other than retention tax system for individual beneficial owners of certain funds resident in an EU member state)	No withholding tax (other than retention tax system for individual beneficial owners of certain funds resident in an EU member state)
				Dividends are subject to income tax at 20% for Guernsey resident investors only	Dividends are subject to income tax at 10% for Jersey resident investors only



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2. Fees on Set Up

	Bahrain	BVI	Cayman	Guernsey	Jersey
Incorporation / Registration Fees	BD 100	Company - USD 350 or USD 1,100 (depending on number of shares authorised to issue) Limited Partnership – USD 500 Trust – N/A	Company - USD 732 Limited Partnership – USD 1,220 Trust – USD 610	Company – GBP 100 Limited Partnership – GBP 350 Trust – N/A	Company – GBP 200 Limited Partnerships – GBP 500 Trust – N/A
Regulatory Fees	BD 30	Private and Professional Funds - USD 0 (increasing to USD 700 with effect from 1 January 2011) Public Funds – USD 500 (increasing to USD 1,000 with effect from 1 January 2011)	If licensed or registered - USD 3,659 If unregistered – N/A	GBP 3,000	If regulated – GBP 1,000 for the fund, GBP 1,000 for each service provider and GBP 500 for each cell or sub fund None if private or COBO only.
Annual Fees	BD 2,000	Incorporation / Registration fees are payable annually Additional Annual Regulatory Fees - Private and Professional Funds - USD 350 (increasing to USD 1,000 with effect from 1 January 2011);	Incorporation / Registration and Regulatory fees are payable annually	Regulatory and Tax Exemption Fees are payable annually Annual validation for company GBP 100 Annual fee for Limited Partnership GBP 500	Annual Return – GBP 150 Annual International Service Entity fee - GBP 100

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		and Public Funds – USD 500 (increasing to USD 1,500 with effect from 1 January 2011)			
Tax Exemption Fees	N/A	N/A	Tax Exemption Fee – USD 1,830	Tax Exempt Status Fee for an investment company – GBP 600 annually	International Service Entity fee – as above

All fees are given on the assumption that simple form entities are used and (if appropriate) have an authorised share capital and a standard incorporation time attracting the minimum registry fee applicable in the relevant jurisdiction. Additional fees may arise for registrar certified copy documents, stamp duty, incorporation agent fees, registry filings and sundry disbursements (as appropriate in the jurisdiction). Fee quotes for legal charges and administration fees can be provided on request from the relevant jurisdiction.

3. Marketing into Bahrain, Kuwait, Qatar and Saudi Arabia

Marketing of the interests of an offshore fund into Bahrain and of the interests of an offshore or Bahrain fund into Kuwait, Qatar or Saudi Arabia requires the registration or approval of the local regulator and may require the appointment of a locally resident and regulated distributor.

4. Stock Exchange Listings

Investment funds established in Bahrain, the BVI, Cayman, Guernsey and Jersey can be listed on all of the major international stock exchanges including the NYSE, NASDAQ, the London Stock Exchange, AIM, Euronext, the Toronto Stock Exchange and the Channel Islands Stock Exchange (which is an internationally recognised stock exchange).

5. Regulatory Framework

The establishment and operation of investment funds is governed in each jurisdiction by the legislation, rules and guidance discussed below. Generally, open-ended investment funds permit investors to redeem their holdings at a price related to the value of the underlying assets. Closed-ended investment funds do not entitle investors to redeem at their own option.



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Bahrain makes no distinction in its regulatory treatment of open-ended and closed-ended vehicles. BVI and Cayman distinguish between the level of regulation applied to open-ended investment funds and closed-ended investment funds. Guernsey distinguishes initially between those funds which are authorised by the GFSC and those which are subject to a lighter regulatory regime and then whether the fund is open-ended or closed-ended. Jersey looks initially at both the number of investors to which the fund will be offered and also the minimum level of investment to determine the level of regulation applicable.

Bahrain

The establishment and operation of investment funds is regulated by the Central Bank of Bahrain (the 'CBB') pursuant to the regulations promulgated as the Collective Investment Undertakings Module of the CBB Rulebook (the 'Module').

The definition of a collective investment undertaking within the Module is an undertaking:

- the sole object of which is the collective investment of capital raised from the public in financial instruments or other assets and which operates on the basis of risk-spreading; and
- the holdings of which are re-purchased or redeemed, directly or indirectly, out of those undertaking's assets.

There are three categories of collective investment undertaking in Bahrain, namely:

(a) Retail – open to all investors and subject to detailed regulation and supervision by the CBB. Retail collective investment undertakings are subject to restrictions on diversification and the types of financial instruments or assets that can be held by the collective investment undertaking. A retail collective investment undertaking must be authorized by the CBB.

(b) Expert – may only be offered to Expert Investors and require a minimum investment of US\$10,000. Expert Investors are individuals or commercial undertakings which have financial assets of at least US\$100,000. Expert collective investment undertakings are also subject to restrictions on diversification and the types of assets that can be held but are able to utilize higher aggregated and individual exposure limits than retail collective investment undertakings and may invest in a wider range of asset classes, including among other things, real estate, commodities, unlisted securities and hedge funds. An expert collective investment undertaking must be authorized by the CBB.

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(c) Exempt – may only be offered to Accredited Investors and require a minimum investment of US\$100,000. Accredited Investors are individuals or institutions with financial assets having a value of at least US\$1,000,000. Exempt collective investment undertakings are subject only to high level disclosure and reporting requirements and not to any restrictions on their investment policies. An exempt collective investment undertaking must register with the CBB prior to being offered to prospective investors. An exempt collective investment undertaking must not quote the CBB as its regulator, must clearly disclose that it is considered exempt for the purposes of the Module and must delegate its administration and custody of assets to third party licensed institutions which are licensed by or otherwise acceptable to the CBB.

The Module provides for retail and expert collective investment undertakings to be Shari'ah compliant within the meaning of the Module, which requires that two or more Shari'ah advisers be appointed, disclosure of the names of each such adviser and of the provisions describing the Shari'ah compliant nature of the collective investment undertaking. The Shari'ah compliant undertaking must also comply with all applicable standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions and its annual report must include an opinion on such compliance issued by the undertaking's Shari'ah advisers.

The offering document of a Bahrain collective investment undertaking must be kept up to date and any subsequent material changes to the document, including changes of service providers or to the investment strategy or fees applicable to the undertaking, require the prior approval of the CBB. A collective investment undertaking must adopt a valuation policy which has been agreed with the CBB and must ensure that an independent, fair and regular valuation of its assets is carried out in accordance with that policy. All operators, managers, administrators and custodians of a collective investment undertaking and any placement agent offering interests in a collective investment undertaking to persons resident in Bahrain need to be approved by the CBB and generally the administrator and custodian are required to be CBB licensees for an undertaking to be authorized by the CBB.

The approval process for an Exempt Bahrain fund can be completed in a time frame of between one to two months.

BVI

The establishment and operation of investment funds is regulated by The British Virgin Islands Financial Services Commission (the 'FSC') pursuant to the Securities and Investment Business Act, 2010 ('SIBA'). If the fund vehicle is open-ended the fund vehicle will require licensing with the FSC. Where the fund vehicle is closed-ended the fund will be beyond the scope of the FSC's



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jurisdiction and will not require licensing. There are three categories of licensed funds in the British Virgin Islands, namely:

(a) Private Funds - A private fund is essentially a fund whose constitutional documents specify that it will have no more than fifty (50) investors and/or that the making of an invitation to investors to subscribe for shares/interests in the fund is to be made on a private basis. Unlike professional funds, there are no minimum investment or investor suitability requirements for private funds.

(b) Professional Funds - A professional fund is a fund whose shares/interests are only made available to professional investors. A “professional” investor is a person whose ordinary business involves, whether for its own account or the accounts of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property (e.g. stocks or securities for a hedge fund), of the fund or who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of US\$1,000,000 or its equivalent in any other currency and that he consents to being treated as a professional investor. A professional fund has a minimum investment requirement in that the initial investment of all of the investors (except for investors affiliated or employed by the investment manager or promoter of the fund) must be not less than US\$100,000 or its equivalent in any other currency. A professional fund is permitted to operate for 21 days before receiving its license from the FSC.

(c) Public Funds - A public fund is a more regulated fund product designed for retail investors. The regulatory requirements (and so licensing procedure) for a public fund are more stringent than those required for private or professional funds, given the nature of the investors who are likely to be investing in a public fund.

No private or professional fund may carry on business in the BVI unless it is ‘recognised’ under SIBA and no public fund may carry on business in the BVI unless it is ‘registered’ under SIBA. An exception is granted to professional funds which may carry on business for up to 21 days prior to being recognised. A private or professional fund is recognised under SIBA by application to the FSC for a certificate of recognition which requires the filing of an application form, its prospectus and subscription documents and constitutional documents.

Cayman

The Mutual Funds Law (2009 Revision) of the Cayman Islands (‘Mutual Funds Law’) requires mutual funds to be licensed or registered with the Cayman Islands Monetary Authority (‘CIMA’) before they commence carrying on business unless they are exempt from the need to be registered or licensed.

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The statutory definition of a 'mutual fund' (which is used in the statute instead of the generic term 'investment fund') is any company, trust or partnership either incorporated or established in the Cayman Islands, or if outside the Cayman Islands, managed or administered from the Cayman Islands, which issues equity interests redeemable at the option of the investors, the purpose or effect of which is the pooling of investors' funds with the aim of spreading investment risk and enabling investors to receive profits or gains from investments. Therefore, a mutual fund is one which is open ended.

Unless exempt, open-ended funds must comply with one of the three alternatives prescribed by the Mutual Funds Law:

- (a) registration with CIMA if the minimum aggregate equity interest which may be purchased by a prospective investor is at least US\$100,000 (or its equivalent in another currency) or the equity interests are listed on a recognised stock exchange;
- (b) registration with CIMA if a mutual fund administrator licensed in the Cayman Islands provides its principal office in the Cayman Islands; or
- (c) licensing by CIMA if all the operators of the fund have been approved by CIMA as 'fit and proper' persons.

Registration of a mutual fund requires the filing of the certificate of incorporation, prospectus, certain prescribed particulars, confirmation from the mutual fund's auditor and its administrator that they each consent to act and the payment of the registration fee. Provided that the filing is complete and in order, the fund can commence trading from the date the filing was received by CIMA. Licensing of a mutual fund requires similar documentation but includes personal questionnaires, references and police clearances for each of the fund's operators and will include a review of the prospectus by CIMA for conformity with the prospectus content requirements for licensed mutual funds. A licensed fund should not commence trading until the date of issue of its license which should take four weeks from the submission of the complete application.

A mutual fund will be exempt from the requirement to be registered if the equity interests are held by not more than 15 investors, the majority of whom are capable of appointing or removing the operator. For this purpose, there is no look through to the beneficial owners, the term 'investor' is defined to mean the investor of record. If, therefore, all the equity interests are issued to a single institutional nominee or custodian, the mutual fund will fall outside the scope of the Mutual Funds Law.



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Closed-ended funds and those funds which only issue debt instruments are outside the scope of the Mutual Funds Law and regulation and licensing generally in the Cayman Islands.

Regulated mutual funds are subject to the supervision of CIMA, which has wide powers including the power to require the substitution of a director and at the expense of the fund, to appoint a person to advise the fund on the proper course of its affairs and/or to appoint a person to assume control of the affairs of the fund. With the exception of requiring a sign off by an auditor based in the Cayman Islands on the audited financial statements filed with CIMA each year for a registered or licensed fund and that certain categories of regulated fund require a Cayman Islands based administrator, there are no requirements that the operator (except if an exempted trust is used) or any other service provider be located in the Cayman Islands.

Guernsey

The establishment and operation of investment funds in Guernsey is governed principally by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 ('POI Law') together with the rules made thereunder. In addition, where an investment fund is listed on the Channel Islands Stock Exchange CISX, the CISX Listing Rules will apply. Among other things, the CISX Listing Rules impose certain additional disclosure obligations.

POI Law

Guernsey funds are classified into two types: authorised funds and registered funds. Each are then broken down into open-ended (that is, investment funds where investors are entitled to redeem their holdings at a price related to the value of the underlying assets) and closed-ended funds (where investors are not entitled to redeem their holdings). The POI Law applies to both open-ended funds and closed-ended funds.

Authorised Funds

Application is made to the GFSC for authorisation as an open-ended fund under three categories: Class A, Class B or Class Q. Class A Schemes are governed by the Class A Rules. It is possible for a Class A Scheme to be a futures and options fund but generally uncovered exposure must not exceed 20% of the value of the scheme property. A Class A Scheme is subject to a heavier level of regulation in its operations than a Class B or Class Q Scheme. However, Class A Schemes may be marketed more widely in certain jurisdictions (for example, they are eligible for recognition by the UK Financial Services Authority for sale to the public in the United Kingdom). Class B Schemes are governed by the Class B Rules, which are designed to be as flexible as possible, with reliance placed on disclosure.



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There are no investment restrictions set out in the Class B Rules although the principle of risk spreading applies. The GFSC has the power to derogate from the requirements of any of the rules and will consider all levels of disclosure and investment restrictions in light of the proposed investor base and will consider the totality of the circumstances in each case. Class Q Schemes are governed by the Class Q Rules which provide for the regulation of professional investor funds. Greater discretion is permitted in respect of investments with the emphasis again on disclosure. Holdings in Class Q Schemes may only be held by 'qualified professional investors' which are:

- (a) government, local or public authorities; or
- (b) trustees of trusts with net assets of greater than £2,000,000 (or currency equivalent); or
- (c) body corporates or limited partnerships if they (or any holding company or subsidiary) have net assets of greater than £2,000,000 (or currency equivalent); or
- (d) individuals who (together with any spouse) have a minimum net worth (excluding main residence and household goods) of greater than £500,000.

An authorised closed-ended fund is subject to the Authorised Closed Ended Investment Scheme Rules. Again, the principle of risk spreading applies and certain specified disclosures must be made in the fund's prospectus. The fund is not required to appoint a custodian.

Registered Funds

The GFSC has introduced a Registered Fund regime which in short allows an applicant to take advantage of the fast track application process but which does not contain the QIF Regime restrictions as to investors. The Registered Fund regime is available to open or closed-ended funds. A Guernsey resident administrator (or designated manager) will be required for all Guernsey Registered Funds. The administrator conducts appropriate due diligence and confirms the same to the GFSC. Registered Funds are subject to the Registered Collective Investment Scheme Rules and the Prospectus Rules and must not be offered to the public in Guernsey.

Qualifying Investor Funds ('QIFS')

In respect of either open-ended or closed-ended funds, authorised or registered, the GFSC will permit a fast track application where a locally licensed administrator conducts appropriate due



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diligence and confirms the same to the GFSC. Funds that use this procedure are called QIFs. Other requirements apply. Principally the investors in the fund must be restricted to:

- (a) government, local or public authorities;
- (b) professional investors;
- (c) affiliates of the fund (that is, financial services business or professionals associated with the operation of the fund);
- (d) individuals who make an initial investment of greater than US\$100,000;
- (e) experienced investors who are able to understand the nature of the risks involved; or
- (f) employees of the fund or consultants appointed by the fund.

Please note the requirements for investors in a QIF and a Class Q Scheme are not the same and must be considered separately.

A Guernsey resident custodian will generally be required for all open-ended funds authorised under the POI Law. For hedge funds, however, a prime broker, regulated in an acceptable jurisdiction and having substantial net worth, may be appointed without the need for a Guernsey custodian.

Jersey

The establishment and regulation of investment funds in Jersey is governed by the Borrowing (Control) (Jersey) Law, 1947 (the 'Borrowing Law') and the Collective Investment Funds (Jersey) Law, 1988 (the 'Funds Law') together with their related regulations. Although the scope of the two statutes overlaps, in practice an investment fund with a limited number of investors which is not to be listed will only be governed by the Borrowing Law whereas a more widely distributed or listed fund will be regulated under the Funds Law.

In general, if shares, units or limited partnership interests are to be offered to 50 or fewer persons and are not to be listed it is necessary only to obtain consent of the Jersey Financial Services Commission ('JFSC') under the Borrowing Law (and not the Funds Law).

If the total number of investors is generally less than 15 then the investment vehicle will be treated as a private vehicle and will be exempt from any regulatory approval other than a



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consent under the Borrowing Law which would be issued as a matter of course on incorporation or registration. No prospectus or private placement memorandum is required.

Where an investment vehicle has more than 15 investors but less than 50 it will still only need a consent under the Borrowing Law but the JFSC will treat the vehicle as an investment fund rather than a completely private vehicle and will apply a promoter test to ensure that the promoter has the necessary track record and expertise to advise the fund. However, the Funds Law (and associated prospectus consents requirements) will not apply. For such funds, the JFSC will also expect a form of private placement memorandum to be produced (which is not required where it is a private structure with less than 15 investors).

If, on the other hand, shares, units or limited partnership interests are to be offered to more than 50 persons or are to be listed, a permit under the Funds Law will also be required for the investment fund. It is important to note that for these purposes it is the number of offers (not actual investors subscribing) made which dictates whether a fund is to be regulated under the Borrowing Law or the Funds Law. Accordingly, it is possible for a 'red-herring' offering document to be distributed to more than 50 prospective investors without this giving rise to regulation under the Funds Law provided the red-herring document makes it clear that it is not intended to constitute an offer of securities. Where a permit is granted under the Funds Law, any Borrowing Law consents which are required will be issued automatically.

Where an investment fund falls to be regulated under the Funds Law, there are various categories of fund class which permit the JFSC to take a light touch to regulation with an expedited approval process, or, in the case of Unregulated Funds, no approval is required at all.

Expert Funds: these are subject to a streamlined approval process and a relatively light degree of regulation. In particular, provided the promoter is regulated in an approved (OECD) jurisdiction, the promoter of an Expert Fund will not be subject to any regulatory review or approval and an Expert Fund will not be required to adopt any prescribed investment restrictions or risk diversification strategy. Self-certification as to compliance with the Expert Fund requirements means that an Expert Fund can be approved by the JFSC within three days. A Jersey Expert Fund must appoint a Jersey resident administrator, manager or (in the case of a closed-end unit trust) trustee and have at least 2 Jersey resident directors. A Jersey open-ended Expert Fund must appoint a Jersey resident custodian (unless it is a hedge fund, in which case a prime broker with a credit rating of A1/P1 is required). A Jersey open-ended fund (not being an Expert Fund) must appoint a Jersey resident manager and a Jersey resident custodian.

Listed Funds: these are also subject to a streamlined approval process but only for corporate closed-ended funds which are listed on recognised stock exchanges or markets. The



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investment manager of a Listed Fund must be established in an OECD state, in a jurisdiction with which Jersey has entered into a memorandum of understanding or which has otherwise be approved by the JFSC. Listed funds must have at least 2 Jersey resident directors and a Jersey based monitoring functionary, typically the administrator. No minimum investment level applies to Listed Funds and they are open to all investor categories. It is a very quick and easy process to list the fund on the CISX in order to satisfy this requirement.

Unregulated Funds: only a notification to the JFSC is required in set up and no approval is necessary. An unregulated fund is required to be either a closed-ended fund whose equity interests are listed on a stock exchange/market (including the CISX) or a closed-ended or open-ended fund in which all investors (by subscription or transfer) are persons who have made an initial minimum investment of US\$1,000,000 or who are institutional or professional investors as defined in the relevant order. There is no regulatory review or oversight of the terms or the conduct of an unregulated fund. The offering document of an unregulated fund must contain an investment warning and statement that the fund is unregulated.

6. Fund Vehicles

All five jurisdictions allow different structures to be used for investment funds and a combination of structures may also be permitted. There are other Ogier briefing guides describing the types of vehicles available in the BVI, Cayman, Jersey and Guernsey in more detail which are available on request or from the Publications section of www.ogier.com.

(a) Companies

Principal Features:

- The companies law of each of Bahrain, the BVI, Cayman, Guernsey and Jersey are based upon internationally familiar English company law principles and all offer companies with limited liability.
- A fund structured using a Bahrain company is a contractual arrangement whereby the Bahrain company issues units to its investors the terms of which are governed by an instrument and as such the fund does not have a separate legal status under Bahrain law and therefore the Bahrain company acts as the contractual counterparty to all transactions including the acquisition of title to property. Generally a custodian will hold the assets of the Bahrain fund in the name of the Bahrain company.
- There are no minimum authorised or issued share capital requirements imposed in each of the offshore jurisdictions. The level of capitalization required for Bahrain vehicles



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depends on the type of vehicle used for the fund, generally a closed joint stock company is used which requires an authorized and paid up share capital of BD1,000.

- No par value shares are available in each jurisdiction other than Bahrain.
- The BVI, Cayman, Guernsey and Jersey permit the incorporation of segregated portfolio companies (BVI/Cayman) or protected cell companies and incorporated cell companies (Guernsey/Jersey) whereby each segregated portfolio or protected cell's assets and liabilities are legally segregated and, in the case of incorporated cells, each cell is treated as a company in its own right.
- Cayman and Jersey companies may be incorporated as limited life companies or limited duration companies.
- The companies laws of each of the offshore jurisdictions are very flexible compared to other jurisdictions, and, for example, permit distributions out of capital provided the company is solvent.
- Bahrain companies are often selected as the vehicle of choice for Middle Eastern funds due to the reputation of the CBB.

(b) Unit Trusts

Principal Features:

- In contrast to an investment company, a unit trust is not a separate legal entity as such, but a trust arrangement whereby legal ownership of the fund's assets is vested in a trustee who holds the assets of the fund on trust for the benefit of the unitholder.
- The unit trust will generally be constituted by means of a trust instrument which regulates the rights of the unitholders. It is usual in an offshore structure for the manager to promote and manage the trust with the trustee delegating the administration to a third party service provider. In Bahrain the CBB requires a trustee led arrangement for unit trust funds in which the trustee will retain control over the appointment and removal of the manager and independent valuation agent. Subscription proceeds will be paid to the trustee who will act as custodian of the investment assets of the fund. In addition, the trustee will generally supervise compliance by the manager with its obligations to the trust.



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- The trust instrument will generally contain provisions regulating the issue, redemption and valuation of units, the appointment and removal of the trustee, its duties and remuneration, borrowing powers, investment restrictions and for the winding-up of the trust.
- Each jurisdiction has a modern trusts law.

(c) Limited Partnerships

Principal Features:

- Limited partnerships may be established and operated in each of the BVI, Cayman, Guernsey and Jersey under comprehensive and modern legislation. Limited partnerships are not available as a fund structure under Bahrain law.
- A limited partnership may be an appropriate structure for a number of different purposes. A principal use will be to provide an additional form of investment vehicle for mutual funds, in particular for the venture capital industry. A limited partnership will also be an attractive structure for various tax planning purposes as the partnership is generally treated as being tax transparent and therefore profits and losses of the limited partnership are attributable to the limited partners directly.
- There is no maximum imposed on the number of limited partners of a limited partnership established in BVI, Cayman, Guernsey or Jersey;
- The general partner will manage the business of the limited partnership and have unlimited liability for its debts. The liability of investors taking interests as limited partners (and who do not participate in the management of the business) will be limited generally to the amount of their investment subject to certain limited exceptions which are set out in the relevant legislation; and
- A Guernsey registered limited partnership may elect to have separate legal personality. Jersey will shortly be introducing both separate legal personality limited partnerships and incorporated limited partnerships and similar legislation is proposed in the Cayman Islands.



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7. Selection of Investment Structure

The prospective investor at whom the investment product is targeted will be an important consideration in determining the selection of the appropriate form of investment vehicle. All forms of investment fund vehicle in each of the jurisdictions covered by this briefing can be structured to be compliant with Shari'ah law. Where a fund is to be offered to the public in the Middle East, a corporate entity is likely to be the most familiar vehicle to prospective investors although the CBB is currently promoting the use of trusts within the region and it is anticipated that Bahraini unit trusts will become a more popular choice. Where a retail fund is to be offered to the public in the United Kingdom or to Japanese investors a unit trust may be the most familiar structure, whereas if the fund is to be marketed in Europe or in the United States, an open-ended investment fund company may be the appropriate form. Where a listing on the Hong Kong Stock Exchange is sought, the BVI, Cayman and Jersey are approved as acceptable overseas jurisdictions for the purposes of floating their securities on the Hong Kong Stock Exchange. For a complex investment product having a high minimum investment threshold which is to be offered to investment institutions, a limited partnership may be the appropriate form.

While regulatory and marketing considerations are important in selecting whether the corporate, unit trust or limited partnership form is used, the fiscal implications for investors will generally be the determining factor. The promoters of the investment fund will generally wish to ensure that, at the least, the investment fund achieves tax neutrality, whereby an investor will be in the same tax position whether he makes his investment directly in the underlying assets or through the medium of the investment fund.

In most tax jurisdictions the corporate form, by virtue of being a separate legal entity, is treated as being fiscally non-transparent and the fund's tax position will be determined without regard to its shareholders. However, it has been possible to structure companies as entities which satisfy the relevant conditions within other jurisdictions for fiscal transparency. A limited partnership, on the other hand, will, for tax purposes, generally be treated as being transparent and the total tax take will be determined by the partners' individual circumstances. For fiscal purposes a unit trust has mixed tax characteristics. In certain jurisdictions it may be treated as being transparent for income and non-transparent for capital gains distributions. The revenue authorities may regard income in the hands of the trustee as the income of the unitholder.

Accordingly, for certain types of investments in certain jurisdictions it may be advantageous for investors to use a trust vehicle.

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Master-feeder structures are also frequently used and enable distinct classes of investors to participate in the same investment programmes. Using the US as an example, this is normally achieved by having the US taxable investors invest directly in a limited partnership domiciled in the US and having the offshore investors and US tax exempt investors investing in an offshore company (or, occasionally, a limited partnership). Each feeder will then invest all of its assets in the master fund, which is typically an offshore company which has elected to be treated as a partnership for US tax purposes under the 'check the box' rules. The investment manager will then manage the portfolio at master fund level. One of the advantages of the structure is administrative ease, since the investment manager will only need to maintain one set of books for the investments at master fund level.

If, for example, many of the prospective investors or targets for an investment fund are in the Middle East, Bahrain may be an appropriate location to domicile the fund because of the proximity of the jurisdiction to the prospective investors or because of regulations relating the holding of certain GCC situs assets. If investors are located in the United States, the BVI or Cayman may be an appropriate location to domicile the fund because of the proximity and time zone of these jurisdictions. If the prospective investors are in Europe, Guernsey or Jersey may be preferred.

8. Advantages of Bahrain, the BVI, Cayman, Guernsey and Jersey

Investment funds can be established in Bahrain, the BVI, Cayman, Guernsey and Jersey without the imposition of direct taxes. In addition to the tax advantages of domiciling an investment fund in each of these jurisdictions promoters and managers may find other advantages in choosing these jurisdictions for domiciling their funds including:

- The ability to define investment strategies and objectives without restrictions imposed in the name of consumer protection and the consequent absence at fund level of expensive reporting requirements to regulators such as the SEC in the United States and the FSA in the United Kingdom.
- Certain types of funds (an example being property unit trusts) can be more widely marketed to institutional investors and are often listed on a stock exchange (such as the BSE, CSX or CISX) to facilitate this.
- If the investment management of a fund is conducted offshore, there may be regulatory advantages for the investment manager and adviser, e.g. if management services are



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provided offshore, so that only investment advisory services only are provided onshore, this may reduce the regulatory burden on the investment adviser.

- The ability to own assets in certain jurisdictions such as the Middle East.
- All of the financial centres referred to in this briefing are home to a concentrated level of fund management and administration expertise, including experienced law firms, administrators and all of the major accounting and auditing firms.

9. Recognised Stock Exchange

Both the Cayman Islands Stock Exchange (CSX) and the Channel Islands Stock Exchange (CISX) have been designated as 'recognised stock exchanges' by the UK Inland Revenue and the Channel Islands Stock Exchange has been classified as a 'designated investment exchange' by the UK FSA. The Bahrain Stock Exchange (BSE) has been designated a 'recognized stock exchange' by the UK Inland Revenue for the purposes of alternative finance investment bonds.

10. Background Information

Set out below in some other information about the jurisdictions covered in this briefing guide which may be of interest.

(a) Political and Economic Stability

Bahrain

Bahrain is well established as a principal center for regional banking, insurance, and business operations in the Middle East. The Gulf Cooperation Council (GCC) comprising Bahrain, Kuwait, Oman, Qatar, the UAE, and Saudi Arabia provides for regional defence and coordinates policy on trade and economic issues. Whereas the majority of GCC countries grant ultimate power to a single family whose leading member rules as Amir and generally employs an advisory body whose members are drawn from outside the royal family, Bahrain (in addition to Kuwait) has gone beyond this traditional independent balance and has set up a separate parliament with power to draft local legislation. The legal system of Bahrain is based on several sources, including customary tribal law (urf), three separate schools of Islamic Shari'ah law, and civil law as embodied in codes, ordinances, and regulations. Civil law in Bahrain is heavily influenced by English common law which is familiar to the international business community. The civil court system consists of summary courts and a supreme court, the Supreme Court of Appeal is the highest appellate court in the Kingdom and also decides on the constitutionality of laws and regulations. Bahrain launched the Bahrain Centre for Dispute Resolution in association with the



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American Arbitration Association in January 2010 providing a purpose-built solution for the rapid, effective and certain resolution of commercial disputes.

BVI and Cayman

The BVI and the Cayman Islands are both British Overseas Territories and although a governor is appointed by the British Government there is a large measure of internal self-government. However, the British Government retains responsibility for internal security, defence, external affairs and the appointment of certain public officers, including judges. The final court of appeal is the Judicial Committee of the Privy Council in London and it is common practice for advocates from the UK to appear before the British Virgin Islands and the Cayman Islands courts on major litigation matters. Legislation dealing with commercial matters is specifically relevant to its role as an offshore financial centre and the general law is derived from English common law.

Guernsey and Jersey

Guernsey and Jersey do not form part of the United Kingdom. Each is a self-governing dependency of the British Crown. By constitutional convention established over some 900 years, each jurisdiction has complete autonomy in all matters of internal government, including taxation. The legal systems are separate but similar, derived in part from the customary laws of Normandy but strongly influenced by English law in company, commercial and litigation matters. They are also at the forefront of the development of international trust law, with Jersey and Guernsey judgments being cited in English and other courts all over the world. The Judicial Committee of the Privy Council in London remains each jurisdiction's ultimate court of appeal. Guernsey and Jersey's special constitutional position has been recognised by the European Union in a protocol (No.3) attached to the United Kingdom's treaty of accession to the EU. The protocol provides that the Treaty of Rome shall apply to each jurisdiction only to the extent necessary in relation to the arrangements for the free movement of goods. Accordingly, European Union directives on fiscal harmonisation, financial services and company law do not have effect in Guernsey or Jersey, and, in this respect, the jurisdictions enjoy significant advantages over Luxembourg and Ireland.

(b) Integrity and Reputation

Each of Bahrain, the BVI, Cayman, Guernsey and Jersey is a recognised jurisdiction for the purposes of the Financial Action Task Force ('FATF') for its anti-money laundering legislation thereby enabling investors in any jurisdiction to be satisfied that it has adopted standards equivalent to or higher than those of their own jurisdiction. Such considerations are important for institutional investors and government organisations. In respect of investments, it is also often to the fund's advantage that it can demonstrate to the authorities in the jurisdiction where it seeks to invest that it is properly regulated in an internationally recognized jurisdiction. Payments are

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also assisted in and from the target jurisdiction due to the recognition of Bahrain, the BVI, Cayman, Guernsey and Jersey by the FATF. Cayman, Guernsey and Jersey funds invest in most jurisdictions throughout the world.

In particular, Jersey has just received the highest rating out of any country, on or offshore, from the International Monetary Fund in respect of its regulatory environment.

(c) Cutting Edge Legislation and Regulations

Each of Bahrain, the BVI, Cayman, Guernsey and Jersey have governments that recognise the importance of working closely with the private sector to provide legislation which meets market needs.

(d) Absence of Direct Taxes and Exchange Controls

Investment funds can be established in each jurisdiction without the imposition of direct taxes. None of Bahrain, the BVI, Cayman, Guernsey or Jersey have exchange controls.

(e) Good Communications and Access

The communications system in each jurisdiction is first class and the legal and financial service providers operate information technology systems on par with those available in any other major financial centre. Each of Ogier's offices around the globe are strategically placed to service the world's leading financial centres from a time zone and location which allows for effective management of our clients' business needs.

11. Further Advice

This memorandum has been prepared for the assistance of promoters and their counsel in selecting a domicile for an investment fund and in considering structuring an investment fund in Bahrain, the BVI, Cayman, Guernsey and Jersey.

It is intended to provide a summary of the main requirements and practical considerations applicable to the formation, registration, and operation of investment funds in those jurisdictions. It is not intended to be comprehensive in its scope and it is recommended that a client considering an investment fund in Bahrain, the BVI, Cayman, Guernsey, or Jersey should obtain detailed legal advice on the proposed transaction prior to taking steps to implement it.

This memorandum has been prepared in association with the Ogier Group on the basis of the law and practice applicable in the BVI, Cayman, Guernsey and Jersey as at March 2010. The Ogier group does not provide advice on the laws of Bahrain but has a substantial presence in the Kingdom and is able to arrange the provision of legal advice from Bahraini lawyers.



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Services Offered by Two Seas Trust

In connection with the establishment of an investment fund, our team is able to provide the following services: advice and liaison with professional advisers in other jurisdictions in order to recommend the most practical and efficient structure to achieve the settlor's objectives; preparation of an investment fund structured as a Bahraini trust and formation of underlying Bahraini companies to hold the trust assets; and preparation and review of documentation relating to commercial transactions underlying the trust.

Administration

A full range of trust administrative services is provided by Two Seas Trust B.S.C.(c) which is regulated and authorised to conduct trust company business by the Central Bank of Bahrain. Should you wish to proceed with the establishment of a Bahraini trust please contact any member of the team listed at the back of this client briefing.

About Two Seas Trust

Two Seas Trust is a joint venture between Ogier Fiduciary Services (Jersey) Limited and Keypoint Consulting W.L.L.

Two Seas Trust is regulated by the Central bank of Bahrain for trust company business.

About Ogier

Ogier is one of the world's leading providers of offshore legal and fiduciary services employing over 850 professional and support staff. The group has a presence in nine jurisdictions around the world, namely Bahrain, the British Virgin Islands, the Cayman Islands, Guernsey, Hong Kong, Ireland, Jersey, London, and Tokyo.

Ogier provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices that cover all time zones and key financial markets including the rapidly growing Asian and Chinese markets.

Ogier continues to be recognised as a leading law firm by the leading legal directories, including Legal 500 and Chambers. In Legal 500 Ogier has more tier 1 rankings for individual practice areas than any other Jersey firm.

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About Keypoint

Keypoint is a leading provider of statutory advisory, accounting, fund administration and recruitment services in the Middle East. Based in Bahrain they currently provide corporate administration and fund administration services to a wide variety of clients including banks, individuals, real estate and private equity houses.

Prior to 2006, Keypoint formed a part of Ernst & Young Middle East.

Keypoint is licensed by the Ministry of Industry and Commerce in Bahrain and where relevant by the Central Bank of Bahrain for the conduct of all aspects of its business.

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