

公报文章

Offshore Separate Portfolio Companies in the Family Office and Private Client World

家族办公室和私人客户领域的离岸独立投资组合公司

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Earlier this month I hosted a webinar in Hong Kong entitled “*Offshore Separate Portfolio Company: Flexible Ring-Fencing in the World of Insurance, Funds and Family Office*”. Having spent 17 years in Conyers’ Bermuda office before joining Hong Kong, separate portfolio companies (SPCs) or segregated accounts companies (SACs) were a big part of my practice. I saw increasing adoption of these structures amongst my US and European clients, but was surprised to see a low level of use or even familiarity in the Asian markets. In a totally non-scientific poll conducted live during the session, only 20% of the audience had worked with or encountered such entities.

So what are SPCs and SACs?

SPCs and SACs are offshore limited liability companies with an added twist. By virtue of local legislation, they may create and operate multiple separate portfolios of assets within a single company, each of which is legally isolated from each other and from the general non-portfolio assets of the company. Each portfolio or account is created for the exclusive benefit of a group of persons.

Each portfolio or account is responsible for its own business mandate, assets and liabilities and the creditors of one portfolio cannot have legal recourse or make legal claims against the assets of another portfolio or of the company itself by statutory law. This applies even if there are insufficient funds in the portfolio to pay off the debts and claims of its creditor or if the SPC/SAC itself is liquidated or wound-up. General creditors of the SAC/SPC unrelated to the portfolio cannot have legal recourse to the assets of the portfolio even in liquidation and any liquidator appointed must respect the order and priority of payments set out and agreed between the stakeholders with respect

上月初，我在香港主持了一场题为“*离岸独立投资组合公司：保险、基金和家族办公室领域的灵活围栏措施*”的网络研讨会。在加入康德明香港办事处之前，我在百慕大办事处任职了 17 年，独立投资组合公司（SPC）或独立账户公司（SAC）曾是我执业领域的重要组成部分。我目睹了越来越多欧美客户采用这类结构，但却诧异地发现亚洲市场极少采用甚至不熟悉它们。在研讨会上进行的一项完全不具科学性的民意调查中，只有 20% 的听众曾与该等实体合作或接触。

何为独立投资组合公司（SPC）及独立账户公司（SAC）？

SPC 和 SAC 是具有额外变化的离岸有限责任公司。根据当地法例，它们可以在一间公司内创建和经营多个独立的资产投资组合，各个资产投资组合在法律上相互隔离，并与公司的一般非投资组合资产隔离。每个投资组合或账户乃为一组人士的专属利益而创建。

每个投资组合或账户对其自身的业务授权、资产和负债负责，一个投资组合的债权人不能依据成文法对另一投资组合的资产或公司本身的资产依法追索或提起法律申索。即使该投资组合的资金不足以清偿其债权人的债务和申索，或者 SPC 或 SAC 本身已被清算或清盘，这一点仍然适用。SAC 或 SPC 的一般债权人如与该投资组合无关，即使在清盘中也不能对该投资组合的资产有合法的追索权，任何指定的清盘人必须尊重利害关系人之间就该投资组合规定和商定的支付顺序和优先次序。因此，由于每个投资组合都是单独隔开或“隔离”的，一个投资组合与另一投资组合没有关联性；一个投资组合的成败不会影响另一投资组合的成败。

to that portfolio. Accordingly one portfolio has no correlation to another portfolio because each portfolio is individually segregated or “ring-fenced”; the success or failure of one portfolio will have no impact on the success or failure of another portfolio.

SACs and SPCs are prevalent in the reinsurance and investment fund industry to ring-fence different asset pools.

What would the Private Client world do with such an entity?

Plenty. Two words say it all: “Asset Protection”.

Often a Family Office is just an administrative body at its core and usually does not hold a family’s assets or operate its businesses directly. But for those Family Offices or foundations that do hold significant assets in their own name or through offshore subsidiaries/affiliates with exposures to liabilities, there may be a benefit to segregating assets and investment portfolios along diverse investment types, strategies, or beneficiaries (for different family branches or different generations). There’s no reason why it could not be registered as a Bermuda SAC or a BVI company as a BVI SPC for the added ring-fencing protection.

Statutory ring-fencing brings strong asset protection for multiple family portfolios because they contain a form of offshore “firewall” protection to resist any foreign law and foreign court interferences with respect to the ring-fencing. Offshore jurisdictions like Bermuda, Cayman and BVI have “firewall” legislation for their trusts which inhibits the use of foreign laws to attack or vary an offshore trust except in accordance with Bermuda, Cayman or BVI law, particularly in cases where the trustee has not submitted to the jurisdiction of the foreign onshore courts. Provisions in the SAC/SPC legislation requiring that constitutive instruments or contracts be governed by the local SAC/SPC ring-fencing legislation binding on the creditors and the liquidator, operate as a form of offshore “firewall” protection. Under general principles of private international law, a foreign court should recognize the law governing the organization of the company or where parties have adopted it by contract. Any move to get an offshore court to recognise a foreign court order that is contrary to the local SAC/SPC legislation would likely be contrary to local public policy and not be successful.

Could a SPC/SAC ever take the place of a trust?

That is not as unlikely as it may seem, given a general trend forwards adopting a more “corporatized” structure as a trust alternative. Instead of a trustee, a board of directors is appointed to manage the corporate entity, comprising a select combination of key family members and professionally qualified specialists (e.g. trust specialists, bankers and other experts). We are already seeing the use

SAC 和 SPC 在再保险和投资基金行业中普遍存在，用以隔离不同的资产池。

这类实体在私人客户领域有何用途？

用途很多。两个字概括：“资产保护”。

通常情况下，家族办公室的核心只是一个行政组织，一般不直接持有家族的资产或经营其业务。但对于确实以自身名义或透过离岸附属公司/联属公司持有大量资产，并承担负债风险的家族办公室或基金会，（针对不同的家族分支或不同的代际）按照不同的投资类型、策略或受益人来隔离资产和投资组合可能会有好处。没有理由不能将其注册为百慕大 SAC 或将英属维尔京群岛（BVI）公司注册为 BVI SPC，以获得额外的隔离保护。

法定隔离的离岸“防火墙”保护可抵御任何外国法律和外国法院对隔离的干预，从而为多个家族投资组合带来强有力的资产保护。百慕大、开曼和 BVI 等离岸司法管辖区都有针对其信托的“防火墙”法例，除了根据百慕大、开曼或 BVI 法律，特别是在受托人没有接受外国在岸法院管辖的情况下，禁止利用外国法律损害或变更离岸信托。SAC/SPC 法例中要求组建文书或合同受当地 SAC/SPC 隔离法例管辖的规定，对债权人和清盘人具有约束力，起到离岸“防火墙”保护的作用。根据国际私法的一般原则，外国法院应当承认管辖公司组织事宜的法律，或承认公司以合同方式同意采纳的法律。任何意图让离岸法院承认外国法院命令的举动，如果与当地的 SAC 或 SPC 法例相悖，则很有可能会违背当地的公共政策，而不会成功。

SPC/SAC 能否取代信托？

鉴于采用更加“公司化”的架构作为信托的替代方案已成普遍趋势，取代信托并不像看起来那样不可能。没有受托人，而是任命董事会来管理公司实体，董事会由主要家族成员和具有专业资格的专家（如信托专家、银行业者和其他专家）组成。我们已经看到百慕大和开曼基金会公司被用作信托替代方案的实例，也许不久之后它们也会注册为 SAC/SPC，以标记和隔离不同资产。

of Bermuda and Cayman foundation companies as trust alternatives and perhaps it won't be long before they are also registered as SACs/SPCs to earmark and ring-fence different assets.

The Segregated Investment Fund

Notably, in Hong Kong we have seen the convergence between Family Office and the Private Funds world where Family Offices are increasingly self-managing their own wealth fund (often focused on real estate) and relying less on traditional institutional support. Some have set up a proprietary Family Office-owned private investment fund available for investment by members of the family only, with the Family Office as project coordinator and fund administrator pursuing diverse investment strategies. The fund could be registered as a SAC or SPC and its diverse underlying investments placed into separate portfolios with participating shares issued for each portfolio. The Family Office may pick and choose qualified experts to manage or advise on the specialized portfolios. By creating "accounts" with different investment mandates, this enables the family to mix and match investment decisions creating their own personalized portfolios by subscribing for shares in individualized "accounts".

For example, a SAC may create an "Investment Account 1" to trade precious metals or other commodities, "Investment Account 2" to hold publicly traded securities to be managed by a licensed US broker-dealer and a more speculative "Investment Account 3" to invest in renewable energy resources in Japan. Each account is segregated and ring-fenced from the others in terms of liabilities and a particular investor may choose to invest in all three accounts or in any combination he desires. Further, the shares may be gifted, held for or bequeathed to the next generation or to charity by personal trusts or testaments.

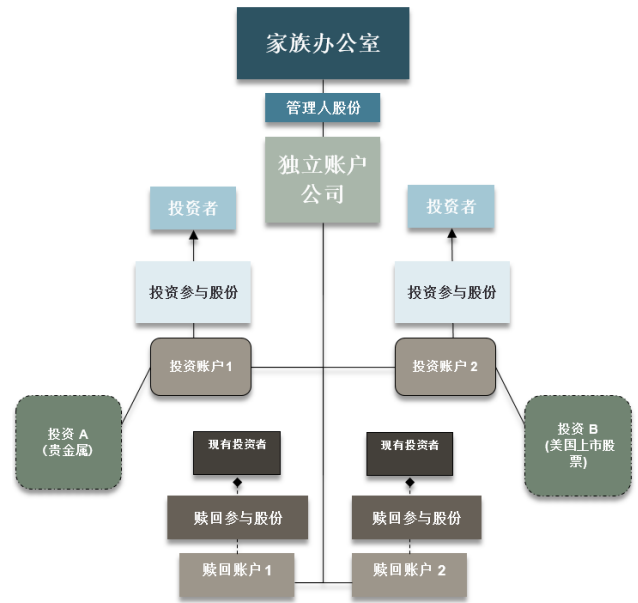
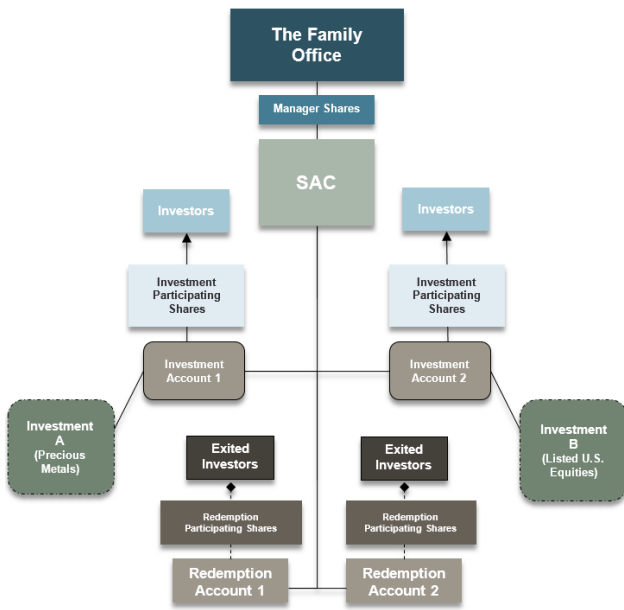
Increasingly, the role of the Family Office is seen not only as a means of coordinating wealth investments, but also to share the family blueprint with the next generation consistent with their family values and involving all in the management of their own wealth and business in a controlled fund structure. The family fund could also offer a way of supporting and educating the younger generation by getting the whole family involved in their ventures.

独立投资基金

值得注意的是，在香港，我们看到家族办公室与私人基金领域的趋同，越来越多家族办公室自行管理其自身的财富基金（通常集中在房地产），而更少地依赖传统的机构支持。一些人设立了由专有家族办公室所有的私人投资基金，只供家族成员投资，由家族办公室担任项目协调人和基金经理人，追求多样化的投资策略。该类基金可以注册为 SAC 或 SPC，并将其各种相关投资放入独立的投资组合中，就每个投资组合发行参与股份。家族办公室可挑选合格的专家来管理专门的投资组合或提供建议。通过创建具有不同投资目标的“账户”，令家族能通过认购个性化“账户”中的股份来组合和搭配投资决策，创建其各自的个性化投资组合。

例如，SAC 可以创建“投资账户 1”用以交易贵金属或其他商品，创建“投资账户 2”持有公开交易的证券（由美国持牌经纪-交易商管理），再创建一个更具投机性的“投资账户 3”用于日本可再生能源的投资。每个账户在负债方面都是相互独立和隔离的，特定投资者可以选择投资于所有三个账户或任何其希望的组合。此外，这些股份可以透过个人信托或遗嘱的方式赠与、代持或遗赠给下一代或慈善机构。

越来越多的人认为，家族办公室的作用不仅仅是协调财富投资，还能与下一代分享符合其家族价值观的家族蓝图，并让所有家族成员在受控的基金架构中参与管理其自身的财富和业务。家族基金还可以提供一种支持和教育年轻一代的方式，让整个家族参与他们的事业。



Let's say an enterprising niece has a good business idea and needs seed capital support from the family. She could approach the Family Office and look to create a new account to own and run this incubator business or project, but still sharing back-office functions and costs with the core SAC until she is ready to take it to the next level whereupon the account can be spun-off into a separate company. It could also be easier for an account to raise external funds or take out a bank loan than a brand new start-up, given the backing and track record of the Family Office SAC. Other accounts can also provide financial support to the incubator account. Family members who are willing to support this incubator may subscribe for participating shares (with bespoke rights) in the account and if it should fail, it will only affect the particular sponsor and investors of that account and will not contaminate the other investments or family assets. By actively involving the whole family as sponsors or as investors, they learn to take responsibility for their own investment or entrepreneurial successes or failures.

A potential unique add-on feature is for each Investment Account to be accompanied by a dedicated and separate "Redemption Account", the sole purpose of which is to receive the redemption proceeds following the redemption of shares of the Investment Account, without having to repatriate the proceeds back to the home jurisdiction, and thereby incurring a taxable event.

The investors could opt to exchange their participating shares in the Investment Account for equivalent shares in the Redemption Account, parking their proceeds in a ring-fenced account held by the same SAC. Proceeds in the Redemption Account may subsequently be deployed for reinvestment in another Investment Account or to other external investments as directed by the owner of the Redemption Account.

比方说，一个富有创业精神的外甥女有一个很好的业务构思，需要家族提供本金支持。她可以与家族办公室接洽，寻求设立一个新账户来拥有和运营她的孵化业务或项目，但在项目准备就绪进入下一层级前仍需与核心 SAC 共享后台功能和成本。进入下一层级后，其账户则可拆分成为一个独立的账户。鉴于家族办公室 SAC 的支持和往绩，账户相较于全新的初创公司更容易进行外部筹资或申请银行贷款。其他账户亦可为孵化账户提供财务支持。有意支持该孵化项目的家庭成员可通过该账户认购参与股份（享有定制的权利），并且倘若孵化项目失败，则仅会影响该账户的特定发起人和投资者，而不会损害其他投资或家族资产。整个家族以发起人或投资者的身份积极融入，能让他们学会如何为自己的投资或企业的成败承担责任。

一个附加的独特之处是，每个投资账户均配有一个专用、独立的“赎回账户”，其唯一目的是在投资账户的股份被赎回后收取赎回款项，而毋须将款项汇回本国司法管辖区（这样会引发应税事项）。

投资者可选择用其投资账户中的参与股份交换相等的赎回账户中的股份，并将其款项存入同一 SAC 持有的分离账户中。赎回账户中的款项随后可按照赎回账户所有者的指示用于再投资另一投资账户或用于其他外部投资。

In some instances, there could be tax and other advantages in legitimately deferring income taxes on dividends or capital gains taxes from the realisation of overseas investment assets from the exchange of investment shares for redemption shares in different accounts of the same fund.

Firewall asset protection

It's often said that where there is an onshore need, there is an offshore solution – with a menu of choices.

There are many separate portfolio or segregated accounts companies in the offshore world. Each product is slightly different and so the choice of jurisdiction could be important. Cayman and BVI SPC legislation are more geared towards investment funds, whereas Bermuda SACs are slightly more universal and prominent in the reinsurance sector. Bermuda has robust dedicated stand-alone SAC legislation and also ISAC¹ legislation and the ability to do inter-cell transactions, but it may cost slightly more to incorporate and maintain. BVI SPCs need to seek permission from the BVI Financial Services Commission when creating new portfolios – Bermuda and Cayman companies generally do not. BVI and Cayman SPCs allow for terminated accounts to be reinstated – Bermuda is silent on this. BVI SPCs provide for the appointment of a portfolio liquidator by the BVI court to deal with insolvent accounts, whereas Bermuda and Cayman have fewer provisions dealing with account insolvencies. There are likely to be onshore factors specific to the Family Office and the family member-investors, so be sure to seek the counsel of an experienced Bermuda, Cayman Islands or BVI lawyer and take a comparative approach to see what platform works best for the particular group.

The “offshorization” of corporate assets for asset protection, minimizing the application of “unfriendly” onshore local law to asset title and ownership, is not a new idea or phenomenon - especially in uncertain times. Statutory ring-fencing coupled with offshore “firewall” legislation to compartmentalize and ring-fence different asset pools and business ventures makes the SAC/SPC a powerful tool across myriad industries. I am certain the Private Client world could teach the SAC/SPC world a few things about innovation.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

在某些情况下，将海外投资资产（通过在同一基金的不同账户间将投资股份交换成赎回股份而获得）变现可在合法的股息递延所得税或资本利得税方面享受税务及其他优惠。

保护资产的防火墙

经常会有这样一种说法，只要有在岸需求，就会有离岸解决方案，并且选择不一而足。

离岸市场有许多独立投资组合或独立账户公司。由于每个产品都略有不同，因此对司法管辖区的选择就尤为重要。开曼和 BVI 的 SPC 法例更倾向于针对投资基金，而百慕大的 SAC 则在再保险领域更为普遍和重要。百慕大拥有健全及专门的独立 SAC 法例及 ISAC¹ 法例，并且有进行小区间交易的能力，但注册和维持费用可能稍高。BVI 的 SPC 在设立新的投资组合时需要获得 BVI 金融服务委员会的许可，而百慕大和开曼公司通常无此需要。BVI 和开曼允许 SPC 恢复已终止的账户，而百慕大对此无明确规定。BVI 规定须由 BVI 法院指定的投资组合清盘人来处理 SPC 资不抵债的账户，而百慕大和开曼有关处理账户资不抵债的规定较少。家庭办公室和家庭成员投资者很可能涉及特有的在岸因素，因此请务必寻求经验丰富的百慕大、开曼群岛或 BVI 律师的法律意见，通过比较选择最适合特定群组的平台。

为保护资产而将公司的资产“离岸化”，从而最大程度地减少“不太友善的”在岸当地法律对资产所有权的影响，这已不是新兴的构想或做法了，尤其是在局势不太明朗的时期。法定隔离与离岸“防火墙”法例相结合，以将不同的资产池和商业风险划分并隔离开来，这令 SAC/SPC 成为众多行业的有力工具。我相信 SAC/SPC 在私人客户领域的引领下会有不少创新。

本文的内容并非详尽无遗，旨在提供简要概述和一般资料，而不应用于替代法律建议或法律意见。中文译本仅供参考，如有歧义，请以英文原文为准。

¹ An incorporated segregated account company under the Bermuda Incorporated Segregated Accounts Companies Act 2019, whereby each account has its own separate legal personality and separate board of directors, capable of suing and being sued in its own name. 根据 2019 年《百慕大合并独立账户公司法》成立的合并独立账户公司，每个账户都具有独立的法人资格和独立的董事会，能够以自己的名义起诉和被告。

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