IQEQ

Setting up a Fund:

Six Popular Variable Capital Fund Vehicles

April 2022

Six popular variable capital fund vehicles

Private equity (PE) or investment funds are typically structured around a corporate/limited partnership structure, which imposes restrictions on the redemption of capital. The Cayman Islands exempted company is usually what comes to mind when fund vehicles are mentioned, largely due to its popularity and appeal.

To remain relevant to the global fund management landscape and increase their attractiveness, locations such as Singapore, Hong Kong, Ireland, Luxembourg and Mauritius have introduced new fund structures. These structures typically consist of features such as the removal of capital redemption and the simplification of regulatory and administrative processes.

In this document, we describe variable capital fund structures in these six jurisdictions. The table below provides a brief comparison of the six fund vehicles. A more detailed comparison is included in the appendix.

	Singapore	Hong Kong	Ireland	Luxembourg	Cayman Islands	Mauritius
Name	VCC	OFC	ICAV	SICAV	Exempted Company	Special Purpose Fund
Limited liability & Variable share capital	*Can use dividend to pay capital ✓	✓	✓	✓	✓	✓
Governmental support and regulatory facilitation	70% of eligible expenses , capped at SGD 150,000.	70% of the expenses up to HK$1m per OFC	N/A	N/A	Quick registration	N/A
Ring fencing of asset and liabilities of Sub Fund	Yes	Yes	Yes	Yes	Yes, via SPC framework	Yes if the entity is a Protected Cell Company
Special Notes	Company secretary and fund administrator must be appointed to enjoy the tax incentive/schemes	No cross sub-fund investment allowed	Special legislation Future proof changes in Irish and European company law	Annual subscription tax of 0.01%, based on the quarterly net asset value There are also cross sub-fund restrictions	Can be formed on the same day No prior government approval or consent needed	Maximum of 50 investors, with minimum subscription per investor of US$100,000
Taxation Benefits	Multiple tax exemption schemes 80+ double taxation treaties	Onshore profit tax exemption	Exemption from Irish tax and access to Ireland's extensive double taxation agreements (70+ countries)	Not subject to capital gains or income tax 80+ double taxation treaties	Option for written undertaking for tax free period up to 30 years	Tax exempt

Singapore: variable capital company (VCC)

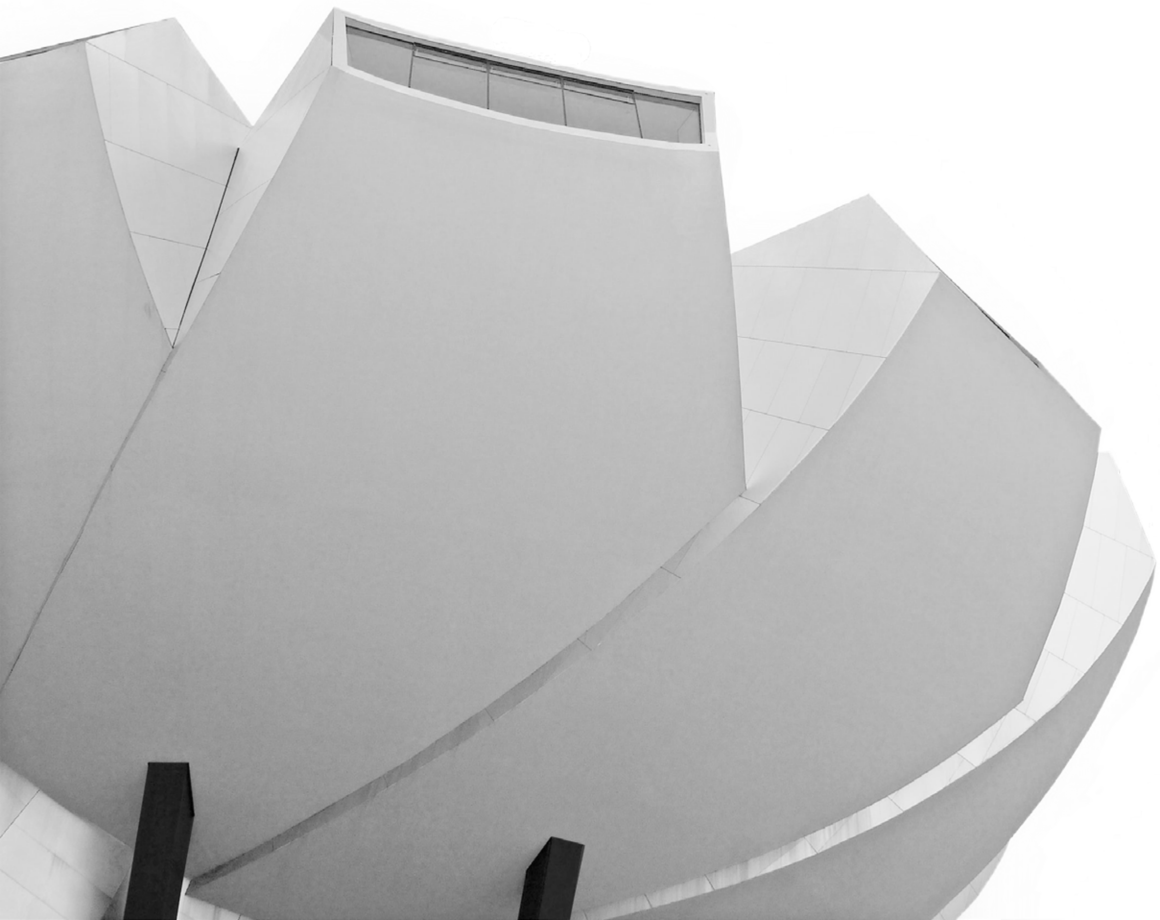
A relatively new fund structure, the VCC was introduced by the Singapore Variable Capital Company Act ("VCC Act") launched in January 2020. The VCC is a corporate vehicle tailored for use as a collective investment scheme and can be set up as a standalone VCC for a single fund or as an umbrella VCC with multiple sub-funds, which allows for efficiencies[1].

A VCC can be positioned for a traditional or alternative fund strategy, either in open-ended or close-ended form. A VCC permits the diversity of having funds within a fund; however, it will still be treated as a regular Singapore company from a tax perspective[2].

What are the VCC's features?

- Its ability to vary its share capital using net assets without having to seek shareholders' approval. This provides greater flexibility to investors to enter or redeem their investment, as and when they wish to
- It can pay dividends using its capital, in contrast to a company which generally can only pay dividends out of profits
- No annual general meeting (AGM) requirement
- Register of members is not publicly accessible, unlike that of a Singapore company. However, such information will still need to be disclosed to regulatory and law enforcement authorities upon request
- In an umbrella VCC, cross sub-fund investments are permitted. Sub-funds may be wound up independently of each other, ensuring the ring-fencing of assets and liabilities between sub-funds
- With access to Singapore's network of over 80 double tax treaties and a favourable tax exemption incentive for funds, a VCC allows multiple tax benefits accorded to a regular Singapore company
- The financial regulator of Singapore (the Monetary Authority of Singapore) will cover up to 70% of "eligible expenses" paid to Singapore-based service providers, up to a cap of SGD 150,000
- For U.S. federal tax purposes, it may make an election under the U.S. "check the box" rules to be treated as a "pass-through" entity. This makes the VCC a more attractive proposition for U.S. taxable investors

[1] If a VCC has sub-funds, those sub-funds can share a Board of Directors, as well as use the same service providers (e.g. custodian, administrator, etc.), creating considerable savings in operational cost and time.
[2] It will need to demonstrate its proof of substance via a Singapore registered office, a Singapore resident company secretary and auditor, and at least one resident director. It will also need to be managed by a Singapore-based licensed or regulated fund manager (unless exempted under the applicable regulations)
[3] Income from eligible VCC funds may be tax-free if they qualify for the Enhanced Tier Fund Scheme or the Singapore Resident Fund Scheme.



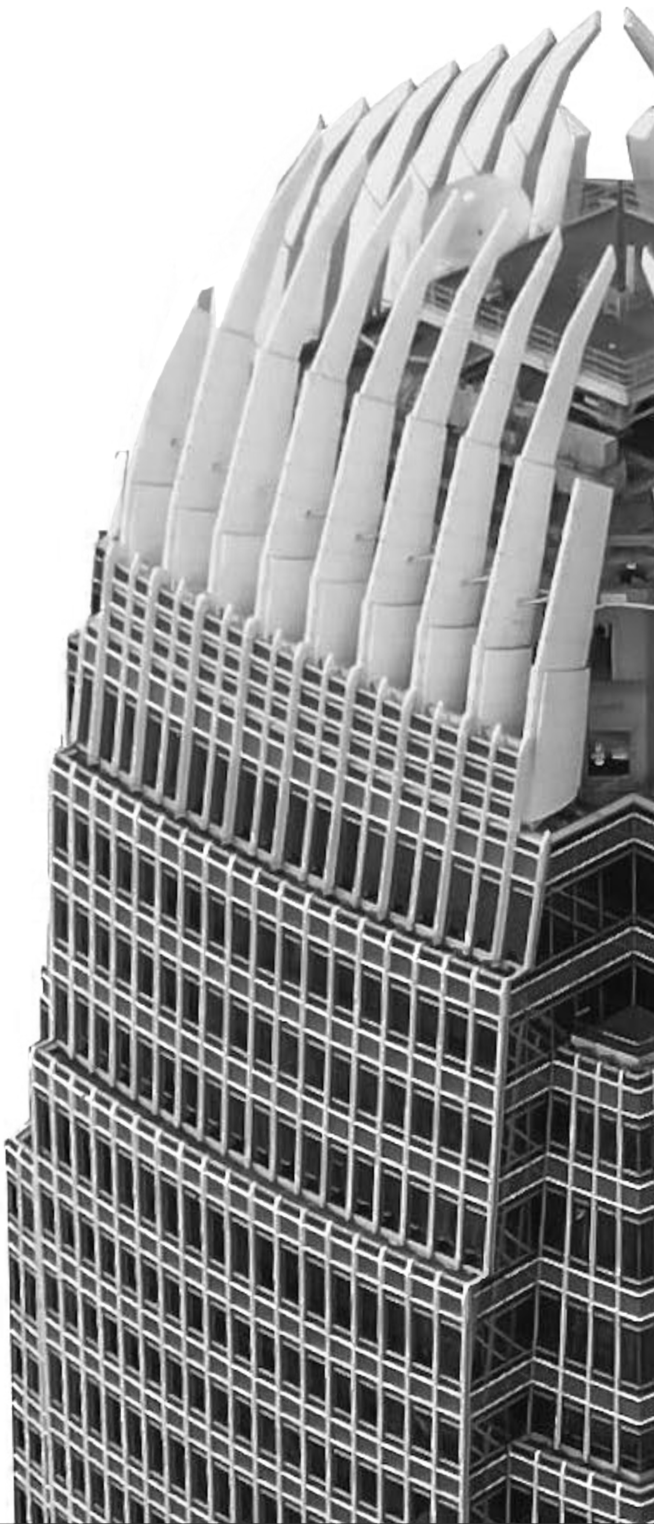
Hong Kong: open fund company (OFC)

Traditionally, an open-ended investment fund in Hong Kong is established in the form of a unit trust rather than a company limited by shares. With the launch of the OFC in July 2018, investment funds in Hong Kong can be established in a corporate form with a variable capital structure.

What are the key features of OFC?

- It allows for flexible investor subscription and redemption requests
- An OFC can be established as a private OFC or public OFC
- Working in a similar way to unit trusts, an OFC can increase or decrease its capital or the distribution of its capital without the approval of the shareholder(s) of the company
- Similar to a VCC, an OFC can be used as a traditional and alternative fund. It can be structured as a standalone investment fund or as an umbrella fund with different sub-funds, each of which can adopt different investment objectives and strategies and operate as a "protected cell". This segregates the assets and liabilities of each sub-fund, ensuring they are not available to creditors of another sub-fund in the event of the respective sub-fund's insolvency
- An OFC enjoys onshore profits tax exemption
- The government of Hong Kong will cover up to 70% of the expenses paid to Hong Kong-based service providers for the establishment or re-domiciliation of OFCs in Hong Kong, subject to a cap of HK$1m per OFC

The activities of an OFC will reflect those of a traditional investment fund, whereby the board will delegate investment management functions to a professional investment manager. The assets of the OFC will be held by an independent custodian.



[4] A private OFC means an OFC which is not authorised by the Securities and Futures Commission (SFC) and can only be offered to "professional investors" in Hong Kong. A public OFC is an OFC which has been authorised by the SFC in Hong Kong and can be offered to the public in Hong Kong.

Ireland: Irish collective asset-management vehicle (ICAV)

The Irish collective asset-management vehicle (ICAV) is a form of collective investment vehicle for UCITS or undertakings for collective investment in transferable securities funds and alternative investment funds (AIFs). ICAVs can be structured to suit all major investment strategies and can accommodate traditional as well as alternative investment policies. ICAVs can avail of the full suite of liquidity options making them suitable for mutual funds, hedge funds, real estate funds, infrastructure funds, lending vehicles, private equity fund, managed accounts and hybrid funds. ICAVs can also be established as part of global master-feeders, co-investment or joint venture structures and can utilise a full range of underlying special purpose vehicles and subsidiaries to hold investments.

ICAVs are regulated funds and therefore have all the benefits of a regulated structure. The ICAV can be established as either a UCITS or an AIF structure; it can therefore avail of the European Economic Area (EEA) UCITS and/or Alternative Investment Fund Managers Directive (AIFMD) marketing passports, respectively. Critically, the ICAV will be able to 'check the box' and be treated as a partnership for U.S. tax purposes and thus represents a simpler product for U.S. investors from a tax perspective.

The key features of an ICAV are:

- The ICAV legislation is separate from that governing other Irish companies – which intends to "future proof" against unintended consequences arising from changes in Irish and European company law. The Central Bank of Ireland, rather than the Companies Registration Office, is the relevant authority for registration purposes and there is no requirement to have subscriber shareholders
- The investors in an ICAV benefit from limited liability protection
- Similar to open-ended collective investment schemes, an ICAV is able to issue and redeem shares continually according to investor demand. It is also permissible to establish ICAVs as closed-ended schemes, subject to Central Bank of Ireland requirements relating to closed-ended funds
- There is no requirement for an ICAV to have the aim of spreading investment risk, thus it is possible to establish single asset funds as well as to use ICAVs as feeder funds
- An ICAV may be established as an umbrella structure with a number of sub-funds and share classes. An umbrella ICAV has segregated liability between sub-funds, with the possibility of preparing separate accounts for each sub-fund. This ensures that investors in a single sub-fund of an umbrella with multiple sub-funds only receive information that is relevant to them and will reduce the costs and time spent by managers in compiling accounts to be provided to shareholders
- ICAVs can issue debenture stock, bonds and other securities and may be listed on a stock exchange
- Paid up share capital must be equal to the net asset value of the ICAV
- The board of directors of an open-ended ICAV are permitted to elect to dispense with the holding of an annual general meeting by giving at least 60 days' written notice to all of the ICAV's shareholders

ICAVs are subject to the same tax regime as other Irish funds:

- No Irish income tax at the fund level
- 41% exit tax on distributions to Irish investors but no Irish withholding tax/exit tax on all distributions to non-Irish investors and certain categories of Irish investors
- No Irish withholding tax/exit tax on all distributions where the shares are held in a recognised clearance system
- No transfer taxes on the issue, redemption or transfer of shares
- No hidden taxes; for example, wealth taxes/net asset taxes
- Access to Ireland's extensive double taxation agreements, minimising the effects of foreign withholding taxes on returns on investments
- Exemptions from VAT for many services required by a fund (in particular, fund management services)

Luxembourg: SICAV

SICAV stands for Société d'Investissement à Capital Variable, or an investment company with variable capital (also known as an 'open-ended investment company') and which issues shares.

With SICAVs, the fund itself is a stock corporation and thus a legal entity. Similar to VCCs and OFCs, a SICAV can be structured as an open- or closed-ended fund, can be a standalone fund or umbrella structure and can be used for any investment strategy. In reality, however, SICAVs are mainly closed-ended funds.

A SICAV's share capital depends on the amounts paid up by investors, and shares in a SICAV can be bought and sold based on the value of the fund's assets or net asset value. It is important to note that a SICAV has a minimum capital requirement of EUR 1.25 million to be reached within 12 months following approval.

A SICAV is generally not subject to Luxembourg taxes on capital gains or income and there is no liability to withholding tax on distributions and redemption of shares. Additionally, Luxembourg has concluded around 80 double taxation treaties and it should be possible to structure a SICAV to benefit from the majority of these. Whilst SICAVs themselves have certain favourable tax exemptions and reductions, these are modified – and mostly further enhanced by – the fund regime identity they sit under.

A SICAV is, however, subject to an annual subscription tax of 0.01%, based on the quarterly net asset value. There are also tax exemptions available for certain money market funds, microfinance funds and pension funds or those investing in other funds that are already subject to subscription tax.

Given the somewhat unique opportunity in Luxembourg to layer up to three legal, corporate (SICAV/SICAF)/contractual, fund regime identities, fund managers can use the SICAV structure to effectively create a bespoke vehicle based on investment, investors' and tax needs.

Cayman Islands: exempted company

Located in one of the world's most popular offshore jurisdictions, a Cayman Islands exempted company (limited by shares) has been one of the most commonly used companies for offshore vehicles. An exempted company is a versatile and flexible vehicle that is quick to set up[5] and easy to maintain.

The Cayman Islands exempted company offers a number of advantages that makes it a desirable vehicle for those incorporating a structure in the Cayman Islands[6].

These advantages include:

- No requirement to disclose its register of members to the public
- No requirement to hold an annual general meeting
- No obligation for audited accounts, and no requirement to publish financial statements
- No requirement for Cayman resident directors or the appointment of any officers of the company
- Shares may be issued with nominal or no par value
- Flexibility to transfer the company by way of continuation from another jurisdiction to the Cayman Islands and vice versa
- Flexibility to alter the memorandum and articles of association without restriction (although the registrar must be notified of any changes)
- Dividends may be paid out of profits from the company's share premium account, provided the company remains solvent after the payment. Capital distributions are permitted by the redemption of redeemable shares or the company purchasing its own shares

For segregation of assets and liabilities, a Cayman Islands exempted company can be registered as a segregated portfolio company (SPC)

Taxation benefits:

There are no forms of direct taxation in the Cayman Islands. An exempted company may also apply for a written undertaking that should taxes ever be introduced in the Cayman Islands, the company will remain tax free for a period of up to 30 years from the date of the undertaking.

[5] Cayman Islands companies can be formed on a same day basis with no prior Government consents or approvals. Incorporation documents are usually available within five to seven working days.
[6] Only for the purpose of engaging in business outside of the Cayman Islands

Mauritius: special purpose fund (SPF)

Located in a strategic location in the Indian Ocean, Mauritius is a popular choice for South Asian funds seeking investment opportunities in South Asia and Africa.

On 9 June 2021, the Mauritius Financial Services Commission (FSC) launched the new special purpose fund (SPF) under Financial Services (Special Purpose Fund) Rules 2021 ("the 2021 Rules"), which revoked the Financial Services (Special Purpose Fund) Rules 2013 ("the 2013 Rules"), to provide further flexibility and ease of access to new markets.

The 2021 Rules replaced the 2013 Rules' restrictive provisions that required the SPF to:

1. Conduct investments solely in countries that do not have a tax arrangement with Mauritius, or
2. Invest mainly in securities whose returns were exempted from taxation

The upgraded SPF rules offer a tax-exempt entity having economic substance in Mauritius, which is attractive to international fund promoters and managers wishing to avail of modern securities laws and an overall fund ecosystem with globally competitive cost structures. This benefits both the manager and the investor with respect to the set up and ongoing operations and maintenance of fund structures.

A SPF is a collective investment scheme (CIS) or a closed-ended fund that is specifically authorised by the FSC as a SPF, based on the following requirements:

- A collective investment vehicle (open-ended fund) or a close-ended fund can apply for recognition as an SPF
- The SPF can have a maximum of 50 investors, with a US$100,000 minimum subscription per investor. The investors can only invest in the SPF by way of a private placement of shares
- The SPF shall at all times be managed by a CIS Manager (a locally licensed investment manager) and administered by a CIS administrator (a locally licensed fund administrator)
- The SPF, the CIS manager and the CIS administrator shall carry out their relevant core income-generating activities in, or from, Mauritius, and shall employ an adequate number of suitably qualified persons to conduct such core income-generating activities and incur minimum expenditure proportionate to the level of such activities
- The SPF is also exempted from preparing and filing unaudited quarterly financial statements, though it must file its audited financial statements with the FSC within six months of its financial year end. Audited financial statements of the SPF must be submitted to the FSC
- All ongoing obligations such as Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT), corporate governance and other usual obligations applicable to investment funds shall be applicable to SPFs

The SPF is a tax-exempt vehicle as provided under the Income Tax Act with economic substance in Mauritius, benefiting from tax exemptions under the Income Tax Act. An SPF can make investments inside as well as outside Mauritius.

Please refer to Appendix I for the table of comparison.

[7] Offer for shares shall only be by way of private placement to investors having competency, significant experience and knowledge of fund investments.

Appendix I: Table of comparison

	Singapore	Hong Kong	Ireland	Luxembourg	Cayman Islands	Mauritius
Name	Variable Capital Company (VCC)	Open-ended Fund (OFC)	Irish collective asset-management vehicle (ICAV)	Société d'Investissement à Capital Variable (SICAV)	Exempted company	Special purpose fund (SPF)
Variable share capital	Yes, with the ability to use dividend to pay capital	Yes	Yes	Yes	Yes	Yes
Limited liability	Yes	Yes	Yes	Yes	Yes	Yes
Statutory requirements highlights	No AGM requirement	No requirement to file an annual return	Not mentioned	SICAV has a minimum capital requirement of EUR 1.25 million within 12 months of approval.	Flexibility to amend company documents, with no AGM, audited accounts and to maintain company secretary	Can offer its shares, solely by way of private placements, to investors having competency, significant experience and knowledge of fund investment
Number of directors required	Three directors required	Two directors required	Three directors required	Three directors required	Only one director required	At least two resident directors
Directors' requirement	One director must be resident	No requirement, but directors must be certified fit and proper.	Two directors must be resident	No requirement	No requirement	At least two resident directors
Custodian requirement	Yes	Yes	Yes	Yes	No	Yes in some cases
Check the box election for US tax purpose	Yes	Not specified	Yes	Yes	Yes	N/A
Required location of Fund Manager	Singapore	Hong Kong	Based in EU, or approved in non-EU countries	AIFM Law, must be based in EU, but portfolio management can be delegated to a regulated entity anywhere.	No statutory requirement to be specifically based anywhere	In Mauritius, unless otherwise approved by the regulator
Umbrella Fund and Sub Fund structure	Yes	Yes	Yes	Yes	Not specified, but available through SPC structure	Yes
Ring fencing of asset and liabilities of Sub Fund	Yes	Yes	Yes	Yes	Separate structure via SPC framework	Yes if the entity is a protected cell company
Governmental support and regulatory facilitation	The financial regulator of Singapore, Monetary Authority of Singapore, will cover up to 70% of "eligible expenses" paid to Singapore-based service providers, up to a cap of SGD 150,000	Government of Hong Kong will cover up to 70% of the expenses paid to Hong Kong-based service providers for the establishment or re-domiciliation of OFCs in Hong Kong, subject to a cap of HK$1m per OFC.	Exemptions from value added tax (VAT) for many services required by a fund (in particular fund management services).	Not mentioned	Speed of registering an exempted company	Tax exempt vehicle with economic substance in Mauritius

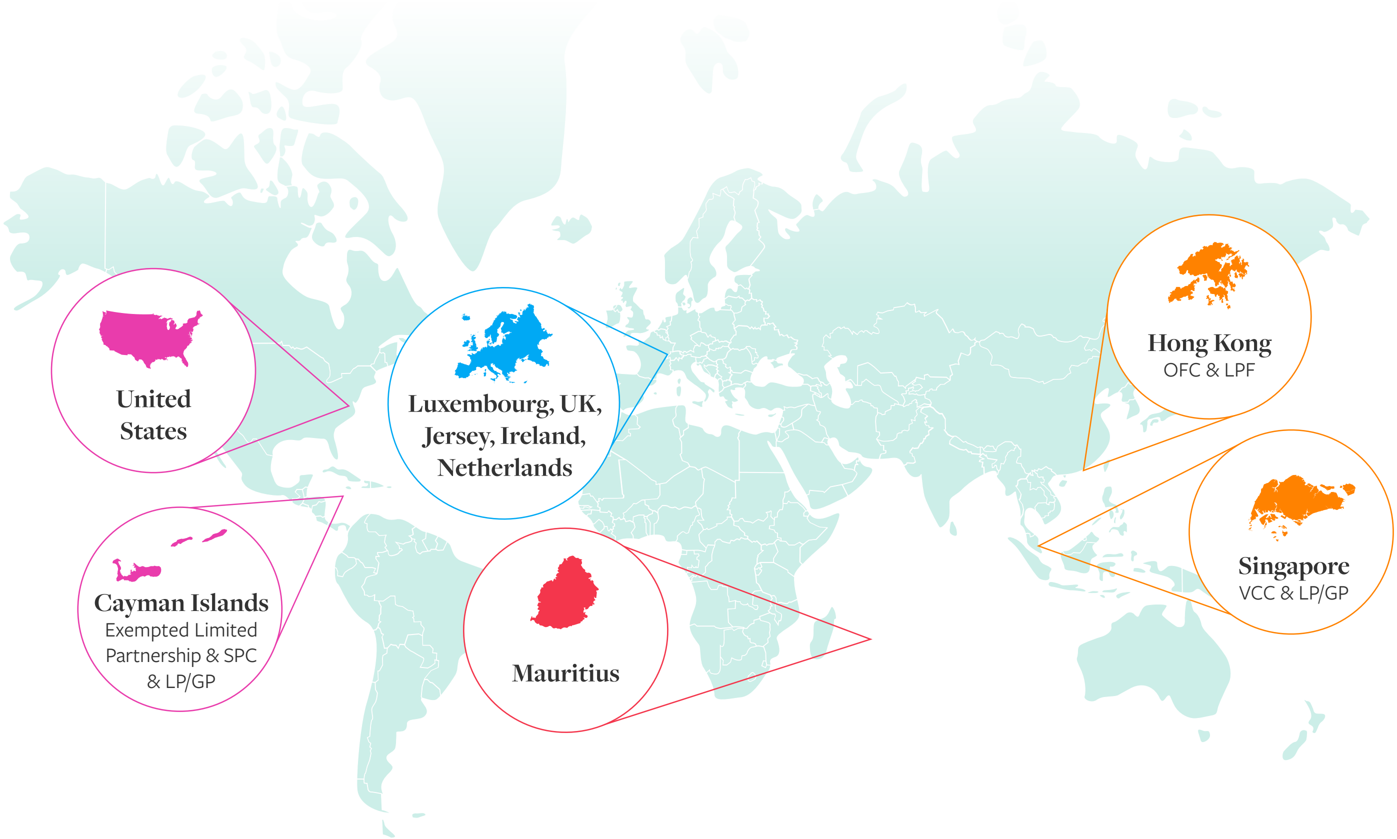
Taxation benefit	Able to access various tax exemption schemes in Singapore and its tax treaty	Enjoys onshore profit tax exemption	Exempted from Irish tax and access to Ireland's extensive double taxation agreements	Not subject to capital gains or income tax. Able to access Luxembourg's tax treaty	Option to have written undertaking that provides for tax free period up to 30 years	Tax exempt
Special note:	A company secretary and a fund administrator must be appointed in order to enjoy the tax incentive/ schemes	Does not allow for cross sub-fund investment	Special legislation governing ICAVs. This will future proof any changes in Irish and European company law Exit tax applies to distributions to Irish investors but no Irish withholding tax/ exit tax on all distributions to non-Irish investors and certain categories of Irish investors	A SICAV is, however, subject to an annual subscription tax of 0.01%, based on the quarterly net asset value There are also cross sub-fund restrictions	Can be formed on the same day. No prior government approval or consent needed	Can have a maximum of 50 investors, with minimum subscription per investor of US$100,000

Similarities:

No publicly available financial statements and shareholders register, providing privacy to various investors.
All fund structures can be structured as a main umbrella fund, or with various sub funds. All can be either open or closed-ended.

Fund services

Some popular fund domiciles in the world IQ-EQ can support:



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Key facts and figures*

People worldwide	Worldwide location	Assets under administration	Minimum senior team experience	Funds under administration
4000+	24	$500+ bn	20 yrs	800+

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