

MACFARLANES

AN INTRODUCTION TO FAMILY OFFICES

This note contains a brief introduction to what Family Offices are and how they are used in practice.

WHAT IS A FAMILY OFFICE?

Conventionally, a private Family Office is an entity or structure set up by a wealthy family to provide a range of administrative and support services to family members.

WHY WOULD I USE A FAMILY OFFICE?

A family often considers setting up a Family Office following the sale of a family business or otherwise when significant liquid wealth has been extracted from an on-going family business.

Rather than each family member dealing separately with their individual assets, the family's combined wealth is managed centrally by dedicated professionals employed by the Family Office. The Family Office acts as a central co-ordination point to preserve and manage the family's wealth and to provide any other services required by the family members. If the Family Office functions as it should, it consolidates best practice and saves costs for the family.

A Family Office has particular advantages where there are large numbers of family members, or where the family wealth is very considerable, with perhaps a disparity in different generations' ability to manage the responsibility.

The variety of services provided by a Family Office include:

- ♦ managing investment portfolios;
- ♦ monitoring and reporting on investments (including those managed by external investment management firms and private banks);
- ♦ administering family members' cash management and bank account arrangements;
- ♦ dealing with the family's properties and non-financial assets (e.g. art, cars, yachts, planes);
- ♦ selecting and instructing professional advisers on behalf of family members (e.g. lawyers, accountants, investment advisers, insurance advisers);
- ♦ employing and managing the family's domestic staff (e.g. chefs, security staff, drivers, nannies);
- ♦ other concierge-style activities such as dealing with the family's travel and accommodation arrangements; and

- ♦ managing the family's public and media relations and acting as the public face of the family (e.g. in relation to business and philanthropic activities).

A Family Office may also be used in the context of a family's on-going ownership of a successful business. As well as providing a parallel, independent entity to manage the profits received from the business, it can also play a role in family governance, including the family's future involvement with the business.

WHERE SHOULD THE FAMILY OFFICE BE LOCATED?

It is important for family members to develop a personal relationship with the individuals running the Family Office and the best way of achieving this is by basing the Family Office nearby and having regular face-to-face contact.

A counter-balancing factor is that the family may wish deliberately to separate the Family Office from the jurisdiction that they are most closely connected with. This may assist with diversification, confidentiality and security.

Another consideration that influences the location of the Family Office is where the family's wealth is managed and in particular where the top investment professionals are found. It is therefore common for a Family Office (or at least a branch of the Family Office) to be situated in London, New York or Switzerland.

If a family is international and has assets (such as real estate) in a number of different countries, or relies heavily on overseas professionals for the provision of its Family Office services, it may make sense for the Family Office to have branches in different jurisdictions.

HOW SHOULD THE FAMILY OFFICE BE STAFFED?

There is no fixed staffing structure for a Family Office. The structure can be adapted for each particular family's needs and wishes.

It may be, for instance, that family members wish to remain involved in the day-to-day activities of the Family Office. On the other hand, the family may wish to step back while maintaining a supervisory role. It is common for controls to be built in so that any significant decisions can only be taken with the express consent of family members.

A key element of the success of a Family Office is the performance of the staff. It is essential that the family trust the staff and have confidence that they are providing the best possible service. It is also important that members of staff be remunerated and incentivised appropriately.

WHAT LEGAL ISSUES ARE POTENTIALLY INVOLVED IN THE CREATION OF A FAMILY OFFICE?

Again, the legal structure of the Family Office is normally flexible. A Family Office is generally designed so that it can adapt over time to deal with, for example, changes in circumstances of family members and also external developments (such as changes in the law).

There is a broad range of legal issues to consider when setting up a Family Office. In each case, specific advice should be sought.

Below are some of the key issues which may arise when considering legal structuring:

- ◆ **The type of entity (or entities) used to act as the Family Office** (e.g. company, partnership, trust or a combination of these).
- ◆ **How the Family Office will be funded.** For example, will it charge a fee to family members and, if so, how will this be calculated? Tax issues may play a part in this.
- ◆ **Employment arrangements** (e.g. employment contracts and remuneration/incentivisation packages).
- ◆ **Taxation issues.** This will to a large extent depend on where the Family Office is based and also where the individual family members are resident.
- ◆ **Regulatory issues.** This will need to be considered if the Family Office is based in a jurisdiction with a sophisticated investment regulatory framework (such as the US or the UK).

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