

Structuring family office investments using Jersey private funds

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Group partner Emily Haithwaite and partner Josephine Howe discuss Jersey private funds and what structures may be most appropriate for family office structures. Their article first appeared in HFM Jersey 2019 Special Report.

Wealth is increasing exponentially among some of the world's richest families, many of which have their own bespoke (single) family office which looks after key operations and functions of the family. Ordinarily the establishment of a family office also goes hand in hand with succession planning and provides a framework to ensure an orderly transfer of wealth to the next generation. To this end family offices may also provide family management services, which includes family governance, financial and investment education for future generations and philanthropy coordination.

A family office will typically include teams responsible for the management of investments, property, and other assets, as well as the management of the family's legal and tax affairs. In addition, some family offices provide softer 'concierge' services connected with travel and managing household staff. Increasingly, however, the concierge functions of the family office are being separated from the key investment functions as the trend towards professionalism and sophistication of investment platforms within family offices continues.

For a number of reasons, ultra-high net worth families are choosing Jersey as their jurisdiction of choice to locate not only their family office but also their investment structures. Jersey is politically stable and, while it is neither part of the UK nor a member of European Union, it has close links with the UK and Europe as well as strong legal foundations and a robust and respected regulatory framework. We have assisted a number of wealthy families from different parts of the world, including the US, Middle East and East Asia, establish family offices and investment structures in Jersey. Founders from these jurisdictions are increasingly looking to protect wealth in the face of global financial, regulatory and political instability.

This article considers the way that the assets of a single family office might be managed and the

type of investment or holding structures which might be most appropriate.

Direct investing by family offices outside the public markets is increasing year on year

Key wealth management reports have shown that direct investing by family offices outside the public markets is increasing year on year. Commercial and residential real estate are particularly attractive assets, providing both capital appreciation and solid investment returns in the form of rental income. And private equity investments have reportedly delivered the greatest returns for family offices, compared with indirect investments in the asset class. Some of the reasons for the appeal of direct investing include the ability of family offices to manage their assets internally by hiring investment professionals, the desire to retain greater operational control over their investments, their ability to be agile and gain priority access to deals. Compared with investing indirectly via traditional investment funds, direct investing allows family offices to be patient investors, hold investments for longer and significantly reduce service provider fees associated with pooled structures. In addition, for most family offices, the regulatory overlay associated with investment funds is unnecessarily burdensome and costly, given that they are investing their own money. For all of these reasons, the trend towards direct investments by family offices is proving to be very a disruptive force for fund managers.

We are increasingly asked to advise on the most appropriate holding structures for family office investments. These will differ depending on whether it is intended to acquire a single asset (for example a real estate asset) or a portfolio of assets (such as a number of private equity investments). Jersey provides a variety of structures which are familiar to investors, namely companies (including protected and incorporated cell companies), unit trusts or limited partnerships (including separate and incorporated limited partnerships). The regulatory treatment of such structures will depend on the number of participants (investors) in the structure and the nature of the assets acquired.

Single asset holding structures, for example, do not meet the definition of a collective investment fund for Jersey regulatory purposes and can therefore be established without the need to obtain any additional consents from the Jersey regulator, the Jersey Financial Services Commission (JFSC). Structures which are established to hold multiple assets, however, may, in principle, fall within the definition of a collective investment fund and, subject to certain exceptions which are set out below, are likely to be subject to regulatory oversight by the JFSC, the level of which depends on the sophistication of the participants in the structure.

Due to the popularity and ease of establishment of Jersey Private Funds (JPFs), we are often asked to advise whether they are an appropriate vehicle for the purposes of structuring family office investments.

An investment fund structure provides a number of benefits for entrepreneurial families

Using an investment fund structure for family office investments provides a number of benefits for

entrepreneurial families - the ability to organise the family assets into different pools which can benefit all or some members of the family, to define the rights and interests of family members in relation to those assets, to engage with professional service providers in relation to the management of the structure, set parameters to measure and reward their performance and the appointment of third party administrators and independent directors with expertise in the relevant asset classes to drive institutional behaviour and ensure high standards of corporate governance are maintained.

JPFs are private investment funds requiring at least two investors pooling their capital to acquire a number of assets, such that there would be 'risk spreading'. Offers for investment in a JPF cannot be made to more than 50 potential investors and investors must qualify either as professional investors or eligible investors (which includes those investing at least £250,000).

There is no requirement for a JPF to issue a formal offer document, though participants must acknowledge in writing their receipt and acceptance of an investment warning and disclosure statement. A Jersey regulated service provider (the "designated service provider") must be appointed for the purposes of providing certain initial and annual confirmations to the JFSC with regard to the JPF, as well as ensuring the JPF's compliance with Jersey's legislation for the prevention and detection of money laundering and the financing of terrorism.

Specific considerations in relation to JPFs

A number of considerations specific to family offices arise in relation to JPFs and, as mentioned above, to advise fully, an analysis of the participants in the structure is required. Because, even if the structure has most of the features of a collective investment fund, if it is established for the purpose of investment by a single family office then, more often than not, it will benefit from a specific exemption on the basis that each participant in the scheme is connected by way of a 'family connection'. Care is required in assessing the precise connection between the participants and that they are able to rely on the exemption, but the definition is otherwise relatively broad and includes blood and other relationships such as adopted or step-children, or children born outside of marriage.

Multi-family office co-investment structures might also be exempt, for example where the structure is essentially a joint venture between separate families. In this case, however, it will be necessary to examine the features of the arrangement in order to be certain that it may properly be categorised as a joint venture. If it is not truly a joint venture or a single asset holding vehicle and the 'family connection' exemption is not available, the presumption will be that the arrangement is, in fact, a JPF.

On the other hand, where a structure is established for the purpose of enabling a family to pool their capital with selected third parties or where it permits co-investment by employees of the family office, it is likely to be registered as a JPF. Such structures are frequently managed by an

external manager if, for example, the family office lacks the resources to employ their own asset managers or in order to obtain independent asset allocation advice. In this case, the JPF will be subject to a very straightforward regime which largely dis-applies the more onerous regulatory and compliance requirements applicable to Jersey collective investment funds and exempts service providers to the fund from local licensing requirements. JPFs can be authorised within a streamlined 48-hour process once the necessary submissions have been made to the JFSC.

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