

# Family offices in Asia - how wealth can survive the third generation

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## Family offices in Asia - how wealth can survive the third generation

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Family offices in Asia are on the rise. Asian patriarchs and families are increasingly seeking to centralise the management of their assets, provide for continuity of the family business and ensure preservation of wealth. The rumoured new inheritance tax laws in China could also be a contributing factor to the increasing interest in trust structures in the region. Ogier's Hong Kong office has seen a growing number of enquiries regarding family office set ups over the last year.

But what people are looking for in a family office can vary widely. Often the first step of an adviser is to determine what the client's real needs are when they say they want a family office. This is particularly the case in Asia where, compared to Europe and America, succession planning both for family wealth and the family business has not yet reached maturity.

### A matter of choice

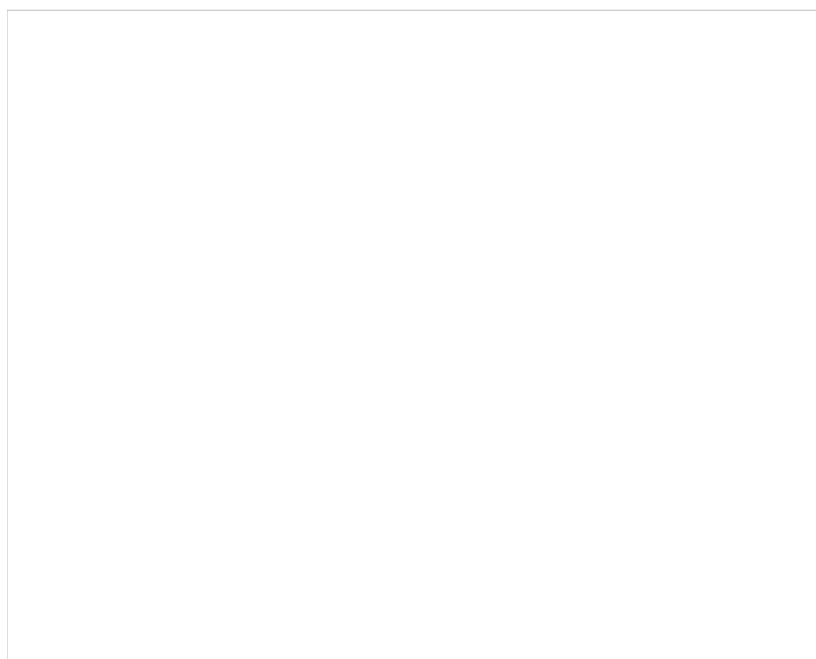
There is no one definition of what constitutes a family office. It is by all intents and purposes a fluid concept. It therefore takes flexibility and ingenuity from professional advisers to pull together an effective structure that fits the family, both in the present and with a view to the future.

In Asia and predominantly in Hong Kong and Singapore, the desire to set up a family office can be highly connected to asset management, such that a fund structure might well be incorporated into the family office platform. There are many possible scenarios in the emerging high-net- worth

landscape.

For example, we see fund managers who want to run their own private funds, fund managers who are being seeded by one or more families to set up private structures, as well as wealthy patriarchs (and indeed a new generation of young wealthy businessmen and entrepreneurs) who wish to provide a legacy and, increasingly, a structure to involve members of the family in the running of the business.

A fund structure can also be relevant where the single family office expands into a multiple family office; as such structures are well placed to deal with multiple classes of investors and asset classes. A multi-family office can take the form of a full service family office platform for multiple families, or it can simply describe the sharing of the investment architecture of the original single family with other families and investors, in each case providing for economies of scale.



We can broadly look at the family office as having two levels: (a) the holding structure designed to cater for the holding of the family members' interests; and (b) the operational/investment level where the administration and operation of the family office is carried out on a day-to-day basis, and where the investment decisions are made (see fig. 1).

### **Family office structures**

The holding structure will normally be driven by considerations around tax and succession planning, and should provide a framework for the overall management of the family's wealth. The day-to-day administration of the business might take place in a jurisdiction chosen for convenience (for example, where the settlor is based).

### **Utilising trusts**

Trusts are a popular tool for succession planning as they provide for the separation of legal and beneficial interests in the trust fund. This allows for a great deal of flexibility as to how trust assets can be applied and enjoyed by a number of persons, while protecting against fragmentation of ownership.

Beneficiaries can be granted fixed interests in the trust fund or the trustee may be granted control over how much income and capital should be distributed among the beneficiaries (i.e. a discretionary trust). In a discretionary trust, the beneficiaries are not regarded as having any fixed legal rights over any particular portion of the trust fund, and this can be efficient from a tax planning perspective.

The trust would usually be irrevocable, although there may be some circumstances where the settlor may require the comfort of knowing he has the power to revoke the trust. However, this preservation of power can negate some of the intended benefits of setting up the trust in the first place, and usually doesn't achieve the intended tax objective.

A traditional trust structure, where the trustee is required to invest the trust fund in the interests of the beneficiaries, invariably involves giving up some element of control. Therefore a number of tools may be used by the settlor to provide comfort that his/her wishes will be respected in the long-term.

In respect of a private family trust, the settlor might write a letter of wishes to the trustee to provide guidance as to how the settlor expects the trust fund to be run and distributed. A settlor might also require the appointment of a protector to direct or restrain the trustee in its administration of the trust. A settlor can also look to reserve powers and retain control by using a PTC structure, which is further discussed below.

By divesting the settlor of ownership of the trust assets, this avoids the need to obtain a grant of probate (or equivalent formalities) so that assets can be efficiently passed from settlor to beneficiary, without a time consuming and costly exercise to pass title on the settlor's death.

### **Global trust options**

There are a significant number of available trust structures (across a number of jurisdictions) that may be appropriate for holding the family's interests. BVI and Cayman have introduced bespoke trust regimes (namely the Virgin Islands Special Trust Act (VISTA) and Cayman Islands STAR trust legislation). Either a BVI VISTA trust or a Cayman Islands STAR trust could be used to hold the shares in the underlying family business.

Unlike in a traditional trust structure where the trustee has a duty to oversee the operation of a company owned as part of the trust fund, these trusts can allow for the company directors to be left running the company without interference from the trustee. This means that the settlor can control the business himself during his lifetime (perhaps with input from other family members),

with provision made for other persons to run it after his/her death.

Clients may be interested in setting up a private trust company (PTC) as an alternative to appointing a professional trustee to exercise discretionary powers regarding treatment of family interests. A PTC is established by the family and can include family members and advisers on its board, thereby protecting confidentiality and allowing for family members to be involved in the decision making. This ensures that they retain control of the structure. If the family office is to have multiple trusts, it is possible to harmonise their administration through the use of a single PTC.

Where a PTC is used, either a foundation, a BVI VISTA trust, a STAR trust or other form of purpose trust, might be formed to hold the shares in the PTC. By arranging for the shares in the PTC to be held by such vehicles, the problems of succession in relation to the ownership of the PTC are avoided.

### **The foundation approach**

It is becoming increasingly common to incorporate a foundation into the fabric of the family office, particularly in relation to the family's philanthropic endeavours (where applicable). Unlike a trust, a foundation is a legal entity and is typically viewed as being somewhere between a trust and a company.

Like a purpose trust, it can be established for objects or purposes. Only certain jurisdictions provide for foundation laws; Guernsey and Jersey are two such jurisdictions. Under both Guernsey and Jersey laws, the powers of a foundation will be exercised by its council which is similar to a board of a company.

Where a family office is mainly focused on asset management activities, it might start out as a private investment vehicle. This allows the family to focus on its own interests and set its own investment objectives, rather than investing in blind pool funds. The family is also able to structure their own fund exactly as they wish, and to update and change the structure as desired. They may employ an external manager to manage a portion or indeed all of the assets invested into the private fund, and family members may be given influential roles such as sitting on the fund's investment committee.

Fund structures domiciled in the Cayman Islands are particularly popular in Asia, with a range of vehicles being utilised. These include partnerships, unit trusts, limited liability companies and segregated portfolio companies. It may be appropriate to introduce an umbrella structure where different subfunds are used to invest in alternative asset classes.

The majority of these private structures would be capable of falling within an exemption from regulation under the Mutual Funds Law (Revised), which helps to reduce costs and allow for flexibility. By introducing a fund structure at the outset, the family office is well placed to open up

the structure to external investors at a later stage, perhaps to branch out into a multiple family office for example (as discussed above).

### **People, goals and towing the line**

Setting up a family office is often contingent on the level of trust and confidence the family has in the external manager, who will be appointed to run the portfolio. The pool of asset classes under management may be diverse and the office might also require, in addition to the investment manager, a CEO, company secretary, in-house lawyer, an accountant and so on, to ensure the effective running of the business.

As well as their own internal staff, family offices can also coordinate other external professional advisers such as tax advisers, trust companies, consultants and private bankers.

When structuring a family office that is designed to stand the tests of time and the individual dynamics of the family, some thought should be given at the outset as to how to link up the structure as a whole, and provide an overarching framework. It may be prudent to consider adopting a family charter or constitution to incorporate governance provisions, and to set the objectives of the family office.

A family constitution might cover topics such as how a fair decision making process will be implemented, a code of conduct and provisions around how family meetings shall be held. This will require careful drafting by the family's advisers. It is essential that the terms of the constitution balance the need for legally binding provisions, versus flexible guidelines that are not so rigid in their nature that they restrict the operation of the family business.

There is no one size fits all approach to the Asian family office. There are a variety of tools and available structures that may be incorporated. However, with the right advice and planning, it should be possible to accommodate the majority, if not all of the needs of the family. Such planning surely puts families in better stead to combat the fate described in the Chinese proverb, 'Wealth does not survive three generations'.

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