



## Private wealth - the potential for impact

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**"It is good to have money and the things money can buy, but its good too to check up once in a while and make sure you haven't lost the things money can't buy". - George Lorimer**

Ogier is proud to be the headline sponsor of this year's Guernsey Private Wealth Forum, the topic of which, The Power of Capital, is focused on the good that wealth can do. Here we set out just a few of the reasons why Guernsey is at the forefront of impact and philanthropic structuring for high net worth and ultra-high net worth clients.

The positive impact of private wealth is of course nothing new - many international families have for centuries used their wealth to positively benefit social, economic and environmental causes and movements.

However, there have been a number of changes over recent decades including:

- the need for professional and sophisticated advice surrounding the structuring of philanthropic and impact focused ventures;
- the desire to correlate new wealth generation with positive impact, as reflected in the growth of impact investing (and the key performance indicators when assessing this); and
- the expectation of corporate sustainability both at a business level and a governmental level.

Philanthropic endeavours among private clients in Guernsey have been seen for some time (as was explored by the ever-prescient Gavin Ferguson some years ago now, in [this article](#)) and are increasing as a result of, amongst other reasons, the transfer of wealth to the next generation, which has a greater desire for better social and environmental credentials[1].

The COVID-19 pandemic has also led many to consider their own mortality and their legacies,[2] with many clients and their families contemplating their family's genuine needs when weighed against the needs of society and the world we live in. As some may ask, why have wealth in a world we do not want to spend it in? One significant example of this is the Giving Pledge, which began in 2010 and has seen more than 200 of the world's wealthiest commit to donating the

majority of their wealth to philanthropic and charitable causes and to participating in a community seeking to positively impact the world in a variety of ways.

How wealthy families can most sensibly make a difference is now a common area for private wealth advisers and wealth managers to advise on. The structuring toolbox available in Guernsey and the ability to obtain high calibre professional assistance make Guernsey a very popular jurisdiction in which to set up and manage private wealth structures with a focus on "doing good".

## Sophistication of structuring

Guernsey has a long history of philanthropic structuring, well before the introduction of the first specific statutes. For example, a number of laws from at least the early 20th century demonstrate the use of trusts in Guernsey for the benefit of children, healthcare and education among other causes.

Guernsey has since built on this with the introduction of flexible but robust structures designed to benefit others or for purposes, the most popular of which are trusts and, more recently, foundations.

Guernsey trusts law, unlike in some jurisdictions, permits the use of trusts not only for the benefit of persons but for purposes - charitable and non-charitable (on which see [our article](#)). The latter can be of importance where the purpose is considered to be philanthropic but not strictly charitable under Guernsey law. As such, settlors have the comfort of knowing that their desired intention can be fulfilled whether or not Guernsey, or any other jurisdiction, would agree it is strictly charitable.

Foundations were introduced as an additional string to Guernsey's bow and have proven popular as a structure for charitable and philanthropic purposes (with now more than 200 having been registered, many of which are for charitable purposes). This is not surprising given how foundations are often used in civil law jurisdictions and Guernsey's legislation has been credited as preserving the fundamental civil law concepts of a foundation within a common law framework. (See [our article](#).)

Aside from the more traditional private wealth structures of trusts and foundations, we have seen an increase in the popularity of the use of funds for philanthropic purposes with, for example, the development in the use of private investment funds (or PIFs) and Guernsey being a world leading jurisdiction for green and sustainable finance<sup>[3]</sup>. Indeed, see the new [Route Three PIF](#) which has been introduced specifically to help families easily navigate and take advantage of Guernsey's funds regime. This trend was seen prior to the pandemic and has shown no sign of slowing down but rather has continued to grow in light of a marked change in mentality within the investment world, led by investors' drive to put their wealth to good use. For more on this particular area, see our article "[The changing ESG landscape: keeping Guernsey ahead of the curve](#)" and our article "[Green finance in Guernsey: helping US investors realise their ESG potential](#)".

## Succession

Although there has been an increase in the total value of philanthropic work and donations from private clients during their lifetimes, the amount left for charitable and philanthropic purposes in post-death arrangements is considerable and private clients continue to seek advice on how best to structure their affairs so as to ensure their wealth is used for good after they themselves can no longer do so. Ogier advises on both testamentary trusts as well as complex wills for wealthy individuals wishing to ensure their wealth can continue to make a worthy impact after they are gone.

## Family offices

With a strong reputation and history for the provision of private wealth services, supported by a professional financial services industry and well regarded judicial system, it is no surprise that Guernsey has become a popular jurisdiction for the establishment of family offices<sup>[4]</sup>. In addition, Guernsey is a politically stable jurisdiction with modern legislation and regulation, including in the areas of data protection, beneficial ownership, substance and tax information exchange.

Families with, or who are looking to establish, family offices are often multi-jurisdictional and multi-generational such that their needs, tax considerations and aims are diverse and complex. A family office can be well suited to dealing with the unique and ever-evolving position of the family.

We have seen a real growth in the use of family offices for wealthy families (see our article ["Family matters: why the world's wealthiest are setting up family offices in Guernsey"](#) and our article ["Keeping it in the family? - An introduction to family offices"](#)), including the next generation, wishing to not only protect and enhance their wealth, but to ensure their wealth is managed as effectively as possible.

Whether it be the establishment of their own philanthropic arrangement or the management of significant donations or ESG investments, a family office can be a desirable option allowing a dedicated, experienced and professional team to manage the complexities of utilising wealth to make an impact in an increasingly complex, regulated and globalised business environment. Some family offices with significant philanthropic ventures will have specialist philanthropy advisers retained and others are seeking the knowledge of specialists in impact investing. Ogier has worked alongside such specialists in formulating appropriate structures and governance documentation to achieve the intentions of the settlor or family.

## Impact investing

Although impact investing and particularly ESG investment designs have grown over the past decade and a half, in recent years it has become an area in which we see a need for advice,

particularly for fiduciary clients wanting to ensure they adequately address their fiduciary duties in the context of impact investing where the two may not always perfectly align (see [our article](#)).

We have also seen a growth in the number of settlors looking to build into the terms of the company, trust or foundation specific provisions regarding the type of investments that can or cannot be made based on the settlor's personal ethical views, such as a prohibition on investment in gambling, arms or non-renewable energy sources.

There has also been an increase in the demand for family governance documentation designed to accompany private wealth structures, and impact investing can be addressed in such documentation.

What is clear is that structures with a particular focus on impact and ESG investing are often of a bespoke design with significant underlying value and it is fundamental that legal advice is taken to accompany investment advice and asset management services.

## Regulation, oversight and transparency

As the International Monetary Fund has identified, it cannot be overlooked that there are risks associated with the operation of charitable and non-profit structures as a result of the potential for their misuse or abuse for money laundering and terrorist financing purposes. It is for this reason that over the past decade, Guernsey's legislature and regulator have introduced requirements to ensure Guernsey is at the forefront of anti-abuse methods to combat these potential risks and HM Procureur is concerned with charities and any proceedings commenced regarding charities, charitable trusts or charitable gifts, much like the Attorney General in other jurisdictions.

Charities and non-profit organisations in Guernsey are required to register with the Charities Registrar if they fall within the requirements for registration in The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, or can choose to register if they don't. The Policy & Resources Committee of the States of Guernsey has relatively recently published guidance on governance measures expected of charities and non-profit organisations. It is anticipated that this guidance is the pre-cursor to updated legislation.

From an investment perspective, with the increase in impact and ESG investing, it remains to be seen whether there will be a global standard for impact investing or whether jurisdictions decide to release their own. Ultimately however, it will be important to be able to quantitatively and qualitatively measure impact pursuant to a set of recognised standards.

Guernsey has for years prided itself on being at the forefront of regulations and it is expected that it will continue to do so as the attitudes and mentalities of clients and their families change over the next generation, to ensure that philanthropic giving and impact investing in which Guernsey structures are involved are carried out to the highest of standards and with helpful modern guidance from within the industry[5].

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[1] Guernsey Private Wealth Report 2020/21 by Gibson Strategy.

[2] With 64% of those surveyed by Gibson Strategy pursuant to their research compiled in the Guernsey Private Wealth Report 2020/21 agreeing that their concern for the next generation is a factor in their increased interest in green and sustainable investment.

[3] Guernsey being a member of the United Nations' Financial Centres for Sustainability network and with some £2.7 billion in net assets in value in Guernsey Green Funds according to the Guernsey Private Wealth Report 2020/21.

[4] Whether that be through a single-family office, a multi-family office or a family office service provider.

[5] See a number of guides published by We are Guernsey for example including Governance and Sustainability - a guide to private wealth structures for single and multiple family offices and Impact Investing and Sustainability.

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