

Families investing in the future: the Guernsey Private Wealth team look ahead

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| Gazing into the future

Ogier was proud to be a headline sponsor for this year's We are Guernsey Private Wealth Forum. This year's topic, Families Investing in the Future, explored the importance of looking ahead; through succession planning, long-term investing or engaging with the next generation. Ultimately, by preparing for and staying up to speed with possible developments, families and their advisers will be able to move with the times and be ready for what may come, even if that seems difficult to predict at the moment.

Here, we set out just a few of the ways Ogier has seen this in practice and how Guernsey's robust legislative and regulatory framework helps the island to provide a stable, modern and forward-thinking environment in which to plan for and invest in the future.

| Where is the starting point?

We are living in difficult times – from the first global pandemic in 100 years to geo-political instability and the cost of living crisis. When the present seems so uncertain, it can be hard to plan for the future. This feeling is amplified further by how quickly the world is evolving around us, from the enhancement of disclosure and transparency measures to the exponential rise of social media and the online world.

However, for many clients and families, a "wait and see approach" is not realistic. Perhaps it is because they are getting older, individuals are not well, or they feel a real need to do something to protect and enhance their wealth due to the world's economic position. This is combined with higher numbers of divorces and non-traditional family arrangements. So, to say "que sera sera" ignores the opportunities to enact effective plans, even though the future is uncertain and may not look like the present.

The question is: what can families do now to best "invest" in their futures, both literally and figuratively speaking?

Planning for the future – who will succeed me?

Succession is often at the heart of a family's wealth generation and preservation goals. However, if a structure is to stand "the test of time", it can't just be legally effective and robust, it also has to be flexible.

Flexibility is a fundamental point that all Guernsey vehicles have in common. Two of the most popular succession planning vehicles are trusts and foundations. These remain popular for many reasons, but clients and families often mention:

- the ability to flexibly structure the distribution or dissemination of wealth across individuals and generations
- there is no need to obtain a grant of probate or similar formalities in order to deal with the trust fund upon the death of the settlor
- the ability to set up trusts for charitable and non-charitable purposes as well as for the benefit of beneficiaries
- family members, who may not have otherwise had the ability to, can benefit from the assets, for example, by enabling the transfer of wealth to family members in proportions different to those dictated by rules of forced heirship which may apply in their country of domicile

Helpfully, the creation and operation of trusts and foundations is governed by the Trusts (Guernsey) Law, 2007 and the Foundations (Guernsey) Law, 2012 (as amended). This modern and flexible legislation allows trusts and foundations to continue to be convenient and appropriate structures even as the world moves on and new innovations emerge.

Further, there is legal certainty as the statutes have been well-tested and understood by the Guernsey judiciary in a collection of contentious and non-contentious applications over the years. This complements a well-established, highly regarded fiduciary services industry with many years of experience and a focus on the future standards of services in the island.

Alongside trusts and foundations, Ogier advises on wills and will trusts, pensions and incentive schemes, companies and limited partnerships. All of these are popular succession planning tools and can be used, to a greater or lesser extent, to provide all levels of flexibility.

Working together in the long term

It cannot be ignored that with flexibility can come risks. Over time, families, their common

interests and goals can grow, change or diverge. So, how can the flexibility afforded by Guernsey vehicles be kept "in line" when it comes to families?

One way is to work with advisers and service providers to ensure that the wishes of the first generation are understood and reflected in the form of vehicle and documentation put in place.

What is appropriate will differ from case to case. Some examples we see in practice include:

- the use of discretionary trusts, where the trustee ultimately decides how and when to exercise its powers
- the use of letters of wishes
- and the involvement of family members and trusted persons within the structure to provide guidance, act as "gatekeepers", or be a form of check and balance

In other circumstances, the use of governance arrangements and documents will be desirable. And this is a route where we have seen an increase.

Over the past few years, the use of the terms "good governance" and "family constitutions" have grown, although how they are used and what people understand them to mean may not always be the same.

The two terms are most commonly associated with family businesses. However, we sometimes see these principles reflected in other circumstances where communication and interaction between family members and families may benefit from some form of regularisation or procedure.

Having such regularisation in place can help to embed the first generation's values in their family without alienating the next generation. Instead, it builds a bond between them and ultimately helps to preserve and enhance the family's wealth and avoid disagreements in the future.

Investing in the future – the next generation

However, another way of helping ensure families work together over time is to involve the next generation at appropriate stages. A well-structured succession plan can fracture if the recipients do not understand how to manage their wealth or feel it should be managed differently.

By involving the next generation, advisers can facilitate a smoother transition when the time comes and a stronger relationship between clients, families and their service providers. In return, the older generation, advisers and service providers will get to know the next generation, understanding early on how they see the future, their role in it and how their wealth should be

managed and used.

This is more important than ever in light of the inter-generational wealth transfer anticipated in the next two decades, predicted to be the largest seen.

Both generations have a lot to learn from each other. A future generation which understands the structures put in place and, more importantly, the overarching aims of those structures will avoid the risk of unmet expectations and disputes. And a first generation which is open to the next generation's thoughts and ideas can allow for innovation and for future-proofing strategies to be adopted.

Among the next generation, there has been an increase in crypto and developing asset classes and less interest in the asset classes preferred by their predecessors. So, these conversations between both generations are vital to create succession plans that meet the wishes of the first generation but also embrace the innovative approaches favoured by the next generation.

| What will be my legacy?

If future generations are unhappy with the world they live in, structures - no matter how innovative they are - will not have the desired impact.

Socio-economic and environmental issues remain at the top of the global agenda. As a result, we have seen families, high net worth and ultra-high net worth clients take a more active role in utilising their wealth and the culture of innovation to fight against these issues.

Families and advisers have for some time now been delving into the world of impact investing, including ESG. This area has moved into the mainstream and appears to be a permanent strategy for consideration rather than just a hot topic or tick-box exercise.

As advisers, we are seeing an increased demand for advice on the ability to vary structures to take into account such investing strategies. However, the need to drastically change planning already in place can be avoided if:

- a family's transfer of wealth is planned with the understanding that the next generation may wish for the wealth to "do more"
- and flexible planning is integrated into the family's future wealth management strategies

Guernsey has built a reputation over the past few years as an innovative and forward-thinking jurisdiction focused on sustainability in how it does business. Together with its commitment to uphold international standards, the island is committed to a culture of innovation with a breadth of expertise and experience in the green and sustainable finance sector.

Guernsey – staying one step ahead

In order to achieve this, Guernsey has been at the forefront of investment and technology developments, working closely with industry to introduce legal and regulatory solutions that cater for the fast-paced development of technologies and digital investments. This is reflected both in how Guernsey does business and what business Guernsey can do for clients.

A leading jurisdiction

While maintaining a robust regulatory regime and high standards across all financial services, Guernsey has also strived for decades to be one of the best, if not the best, jurisdiction in which to do business. This is reflected in the continuous technological developments over the years, including:

- the development of an online Registry for companies, limited partnerships, foundations and, most recently, charities
- the Guernsey Financial Services Commission's Innovation Soundbox Hub, which provides an open channel of communication to aid the development of innovative products and services, among other things
- the validity of electronic signatures in Guernsey, as codified in the Electronic Transactions (Guernsey) Law, 2000 (as amended)
- and the introduction of the Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019, which confirms contracts dealt with by way of electronic means (for example, executed or terminated) and presumes the natural persons the electronic agents are acting for intended to create legal relations

Can-do attitude

In addition to Guernsey being a modern jurisdiction in which to do business, what business Guernsey can carry out is continuously reviewed to ensure the island stays ahead. Some areas of impressive innovation include:

- the development of private investment funds, including a specific category designed for use by family investors – for more information, read our briefing: [Guernsey - three routes to PIF establishment](#)
- the introduction of the Guernsey Green Fund and the Natural Capital Fund regimes – for more information, read our briefing: [Guernsey Green Funds – an environmentally friendly wrapper](#)
- the use of blockchain technology for the first time in Guernsey's private equity funds market, which allows real-time access to data and a full view of the fund's lifecycle, permitting easy

communication with investors, efficiency and transparency

- the establishment of TISE Sustainable, a specific segment of The International Stock Exchange dedicated to financing sustainable businesses, investments and projects generating positive environmental impact
- the creation of a number of crypto asset holding trusts catered for by the modern and flexible provisions of the Trusts (Guernsey) Law, 2007

There is a multitude of reasons why Guernsey is and will continue to be a modern, stable and innovative jurisdiction in which to conduct business. Of course notwithstanding this, advisers – both those in Guernsey and those abroad working with services provided in Guernsey – need to consider what they are doing to prepare their clients and families for the future and the best way to take advantage of what Guernsey currently has to offer and what it may offer in the future.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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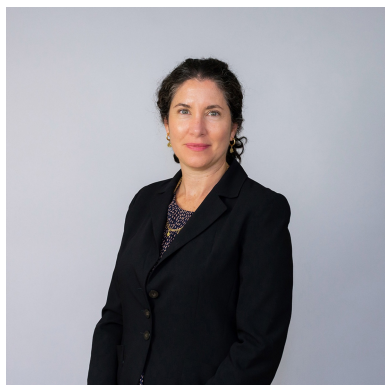
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