

# Family Business Passport



TaylorWessing

# Family Business Passport

The Family Business Passport is a concise and practical guide for family business owners. It addresses some of the unique issues such owners face, including advice on how to:

## Organise

Balance the dynamics of family ownership and management with the needs of the business (see Corporate Governance on p.2)

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## Integrate

Establish a platform for preserving and growing family wealth and a basis for the involvement of family members (see Family Constitutions on p.10 & Family Offices on p.16)

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## Plan

Provide for succession with certainty and minimise taxes, including inheritance tax (see Trusts on p.25 and Property Structures on p.30)

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The Family Business Passport also highlights key issues in other areas that may be relevant for wealthy families including:

- UK immigration
- Sharia compliance
- Reputation management
- Corporate and commercial legal services

**Taylor Wessing** is a leading full service law firm with a network of offices around the world. We offer a fully integrated service for high net worth individuals and families.

We are one of the few international law firms able to assist clients with both Private Client and Corporate advice. We would be delighted to discuss your family's business needs with you.

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“ Solutions for organising, integrating  
and planning for your family’s business ”



# Organise

## Your Family Business

### Corporate Governance

A family business owner's main aim is to maintain the family's wealth, protect asset value and maximise family income. However, effective organisation is vital to the sustainability and profitability of a family business as is prudent financial and commercial management.

The model of a family business allows the members to use family ties as a source of loyalty, commitment and drive to further the business. But the hallmarks also include sensitivities such as transfer of ownership, dissipation of assets, the role of family members who are (or are not) involved in the family business (including their pay, benefits, education, competency and grooming) and other areas of vulnerability. Objectives may include:

- Allowing the family business to operate without interference but with strategic control;
- Having mechanisms for buy-out, valuation, exclusion, re-investment; and
- Holding the family portfolio together.

These and other particulars can be efficiently addressed by a corporate governance policy.

Implementing a corporate governance policy into your family business can demonstrate the commitment of the

shareholders and the board of directors to high standards of corporate governance. This can be especially valuable where local laws and regulations do not mandatorily oblige the company or its group to implement a corporate governance policy.

The policy is a straightforward document. It provides for the intention, objective and details of how a company, its owners and its managers are to comply with principles and provisions of good corporate governance to the extent that



they are proportionate and relevant to the company's circumstances (taking into account the size and scope of the business and the nature of the risks and challenges it faces). Having a suitable written framework for complying with principles and provisions of good corporate governance can act as the cohesive factor that establishes and protects the boundaries between owners and managers. It also helps to promote best practice. This is particularly helpful for situations where owners and managers are members of the same family and wish to ensure a smooth working relationship that is clearly defined.

The document (which may be supplemented by a delegation of authority policy or committee terms of reference) states the principles by which the company will be legally and fiscally structured, organised and operated with a clear structure, with defined and understood lines of responsibility, delegation of authority, segregation of

duties, authority limits and job descriptions.

If relevant, the policy document can also provide for whom the board comprises, how chairmen and vice chairman are elected and the term of office that company officers will hold. Subject to company by-laws, there may also be scope for describing who acts as company secretary, where and how records (including minutes) are kept and details on essential corporate issues such as resolutions, voting majorities and so on. Many of these points may already be covered in shareholder agreements or company constitutional documents. The difference between those and a corporate governance policy document is that the latter will contain further content regarding the company:

- being operated with ethical leadership;
- having a focus on strategy, performance, value creation and accountability;
- having a timely flow of high-quality supporting information;
- having effective decision-making processes and application of sufficient challenge to major proposals; and
- encouraging directors to engage in board and committee meetings by drawing on their skills, experience, knowledge and, if appropriate, independence.

Emphasis is given to supporting relationships based on mutual respect and open communication between the non-executive and executive functions, productive working relationships and consultation of experts where

necessary. The aim of corporate governance is to “open up” the flow of information and “build” the professional relationships between the ownership and management of the family business.

For the family owners, access to management information is key, particularly for enabling decisions to be taken in an effective manner and without unnecessary delay. Reviews of actual performance against budget should be carried out at routine intervals, with reasons for differences analysed and subsequently improved where necessary. Management can also be required to report on the business within a reasonable time and with reasonable detail to the shareholders on material issues. This ensures the family knows at all times how the business is progressing.



The board of the family company should not comprise solely of members of the family. Instead it should also include individuals with an appropriate balance of skills, experience, independence and knowledge of the business. This can be achieved using an appropriate combination of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking. If the chairman wishes to have additional control, this can still be provided for by using a casting vote and veto powers or authority to intervene.

A family business will always draw great strength from the dedication and drive that family members will dedicate to their roles within the company. Since the company will have been established with the purpose of being a family business, it makes sense to provide for how family members may be employed or involved in the business. Such guidelines can help avoid awkward or embarrassing situations which shareholders or management find difficult to deal with, or which may cause tension, drain resources and even provoke disputes in the business. Suggested provisions include specification that:

- Family members must be suitably qualified, experienced (including experience from outside of the company) capable and suitable for a position before they are appointed.
- Family members may be interviewed (with references taken) and appraised by objective persons before and during their employment.
- Family members will be subject to objective performance appraisals and salary and benefit reviews in keeping with the usual procedures of the group but without preferential or favourable treatment.
- As the business grows or a role changes, the suitability of a family member employed in a particular role will be reviewed and such family member may be substituted or retained, required to undergo training or professional skills development if necessary.

- Employed family members will be required to work the same hours, periods and in the same conditions and with the same remuneration and benefits package as non-family member employees in the same position.
- Family members may not be given or have access to additional strategic, business or confidential information beyond that relevant to their employed position nor will they have any other advantage in access, treatment or promotion by virtue of being a family member.

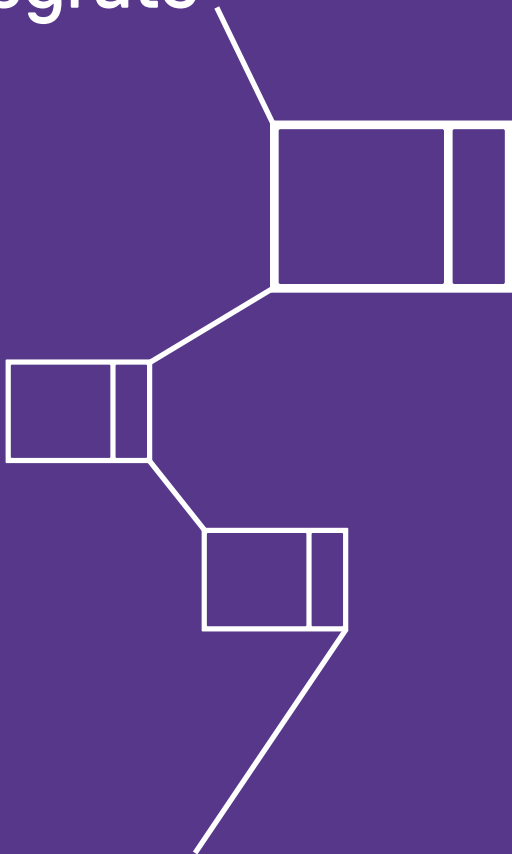
Concerns arise where family members take advantage of their employment in or association with the company for their personal benefit (or that of their friends, relatives or associates). This should be dealt with in the documentation and firmly enforced if the reputation of the company is to be preserved.

Other issues that can be effectively dealt with by a corporate governance policy include details of the annual business plan (its contents, circulation and accountability), restrictions on management, deadlock/dispute resolution provisions and dividend policies determining how and when cash can be returned to the family from the business. The latter can be particularly helpful in ensuring the family income is protected whilst helping to resist tension when, for example, material cash withdrawals are demanded by a family member for spending or personal projects.

The remuneration strategy of a family business should always be open and transparent and pay should be based on an individual's value (and comparative to the market rates). Benefits and bonuses should be based on set criteria and subject to regular review and non-family members should have access to equal entitlements.

The influence of the shareholders of the family business should be limited to major decisions, with the rest being delegated to the board for effective management. Allocation of board positions to the shareholders should reflect a balance between enabling one or more family members to have control (to enable decisions be pushed through) whilst representing the interests of all and having a board composed of the requisite experience and expertise. We can advise you on corporate policy documents as well as shareholder agreements that provide for buy-outs, transfer of interests and valuation methodologies and buy-back funds for intra-family transfers.

# Integrate



Your Family Business

# Integrate

## Your Family Business

### Family Constitutions

A **family constitution** is a charter which sets out in a comprehensive document the mission statement of the family and provides for the framework by which the family's affairs will be governed. It acts as a basis for ensuring the wishes of the patriarch and family are clearly expressed and efficiently followed. The constitution may set out, for example, the family's policies and preferences on education, communication, the scope of family office services, communication, spending habits and acceptable activities and conduct by family members. This is particularly helpful for larger sized families or where members live in a number of different locations or jurisdictions.

The constitution document (sometimes also referred to as a family charter) sets out the practices to be followed by family members and the scope of their operational framework. It helps to avoid conflict, provides members with the certainty of what is expected of them, boundaries they must observe, roles they should follow and resources available to them. The constitution can also provide for a method for communication and reporting to family members and describe policies on supervision, meetings and appointments.

It is important to note that a constitution contains statements regarding the values and legacy of the family and its contribution to society. It also states the aims of preserving and growing the family wealth and ensuring returns. Such mission statements serve as a cohesive and pervasive objective for the family members to pursue and as a foundation for the character of the relationship between the family and its business.

Guidelines included in the terms of the constitution include family policy on issues that may otherwise cause tension, strain resources or affect the profile of the family and put parts of its wealth or assets at risk. Examples include:

- Family values and intrinsic culture;
- Requirements for pre-nuptial agreements and divorce procedures;
- Policies on dissipation of assets and spending habits;
- Requirements for testamentary succession to core assets, such as the family business;
- A timetable for business succession and criteria for choosing a successor;
- Provision for grooming family members entering the family business;
- Distinction between family business assets and family amenity assets;
- Grounds for entitlement to family wealth and income;
- Mandatory education and qualifications for younger family members and requiring them to gain experience of business inside and outside the family business;

- Rules governing dispute resolution and conflict between family members and between the family and third parties;
- Co-ordination of professional advice;
- Requirements for independent accounting and audit of family assets;
- Policy on risk tolerance (spectrum between capital preservation and aggressive growth);
- Confidentiality and press relations or spokespersons for the family;
- Use of the family name and properties or facilities;
- The role of the owners of the family business, a framework for transferring ownership interests, capital liquidity and matters reserved to the owners (and the procedure through which decisions are made and family members are contacted for their views e.g. on broad strategy matters);
- Policies on the employment and remuneration of family members in the business and their role, benefits and selection criteria;
- Resolution of conflicts of interest;
- Philanthropic aims and activities; and
- Regular family meetings, communication policy, supervision, reporting and accountability and appointments.

Having a method for determining how leadership roles are allocated in both the business and the family is essential for continuity. At the same time, the business exists for the benefit of the family members and so **there is also a need to have a**

clear policy on what lifestyle family members should expect and how the lifestyle of those members will be maintained whether they are engaged in the family business or not.

The key to acceptance of the family constitution is to first consult with the family and understand their values and requirements in a collaborative process.

Their input and buy-in will help to ensure acceptance and compliance with the constitution. A consultation process can bring underlying tensions to the surface but



this can be a healthy way of constructively and openly addressing issues. The constitution should be clear and accessible but must also be flexible and regularly reviewed to allow for changing circumstances and changing times and family membership.

Phasing in the successor to the chairmanship of the family business often works well and some families use up to five years for such transition period. This allows the successor to give the principal and the family confidence in his or her ability and expertise and allows all involved, including third parties and service providers such as banks, to get accustomed to the change. It also enables the successor to work in the business under the guidance of the principal before the latter winds down. The mechanism for this can be provided for in the constitution.

Information flow is always a concern for all family members and for the third parties involved in the family business, so describing it in detail is key.

Constitutions can also provide for the other concerns of a family business including death of key individuals (such as the principal or his nominated successor), misfortune, tax, distribution in accordance with Sharia, competency of heirs to manage the business and the risk of the business breaking-up without effective succession.

Factors to consider in family businesses include the method of allocation of ownership interests or shares amongst the relevant members so as to enable appropriate representation but avoid deadlocked boards and hindrance to decision making. This includes making a distinction between economic (e.g. dividend) and control (e.g. voting / representation) rights. The inclusion of non-family members in the business and the roles open to them and representation of their interests should also be considered. A mechanism for decision making in the family business whereby decisions are made for business and not personal reasons is essential. **The risks of the family business model can entail a particular member dominating or retaining control of the business** even if they do not have the best business skills, members of the family making assumptions about what each other want for the business based on their personal ties (and such ties inhibiting honest opinions) and non-family members feel excluded within the business.

A family governance structure comprising a family assembly (represented by a family council), an owner's assembly and a board (counselled by a supervisory board and or advisory board) can be put in place to facilitate communication and consultation. These governance structures can be provided for in the family constitution.

## Sample Governance Structures

<p>Family Assembly</p>	<ul style="list-style-type: none"> <li>■ Can be used to ensure that all interested family members have the opportunity to contribute to family policy and benefit from communication on family and business issues (whether such members are directly entitled to income from the business or not).</li> <li>■ Also generates opportunity for social interaction and contact between family members and scope for idea exchange on new projects or directions.</li> </ul>
<p>Family Council</p>	<ul style="list-style-type: none"> <li>■ Where the size of a family is very large, a family council can be appointed to represent the interests of the Family Assembly to the board of the family company.</li> </ul>
<p>Owner's Assembly</p>	<ul style="list-style-type: none"> <li>■ Acts as the forum for communication between the shareholders of a family business on important issues for their attention.</li> </ul>
<p>Board of Directors</p>	<ul style="list-style-type: none"> <li>■ The directors to whom the owner's delegate.</li> <li>■ Undertake the daily decision making, the strategic planning and supervision of the family business.</li> </ul>
<p>Supervisory Board</p>	<ul style="list-style-type: none"> <li>■ Counsels, advises and oversees the Board of Directors with independent advice and expertise.</li> <li>■ May include family members and non-executives.</li> </ul>

## Family Offices

The preservation of family wealth is the prime objective of all high net worth families. In order to achieve this goal, prudent and effective asset management is necessary. In addition to preserving the family wealth, investment growth and income are also strategically important objectives of family asset management. The role of managing these affairs can sometimes best be carried out by a family office. This can be particularly effective in larger families, where there is a clear benefit to separating the ownership of the family business from managing its assets.

Whilst some families prefer to retain investment banks for asset management and advisory services, others prefer smaller, bespoke relationships or more direct control of their financial and private affairs. Establishing a family office can meet this need. It allows a centralised approach to the preservation of the family wealth in a private environment that also has the unification and service of all parts of the family as one of its objectives.

A trust company can also serve as a family office or, alternatively a specially established separate investment management company can take on this role (in which case the investment manager will advise the trust company in respect of the family assets). The latter model is used by a number of European families.

### What is a family office?

A family office provides investment services to the family and is mandated to preserve and grow the family wealth for the next and future generations through prudent investments.

The team of analysts at the family office examine opportunities for investment and provide professional opinion as to whether and how much to invest. The separation of the family office from the family members who own the business has a number of advantages for time and cost efficiency. The office also brings an objective analysis to investment proposals. For example, the pressure to invest in proposals brought by associates of family members (which may only otherwise be approved to “save face” or perform favours) can be managed from the family office without such bias. Pooling and collectively investing the assets of all the members of the family allows for greater cost-efficiency and access to more sophisticated investment opportunities.



The family office oversees investments being made through fund or sub-fund structures, which will usually have different risk profiles and asset classes so as to meet the pervasive objective of wealth preservation and growth. **The ethos of the family office will reflect that of the family and its business** and that can include, for example, specification to Sharia compliant investing or a focus on entrepreneurship. The family office will develop and maintain relationships with lenders and business counterparties who provide support and services for the wealth and asset management activities. Other functions include risk management, consolidated reporting, property management, day to day accounting and payroll.

**The family office can provide cost-efficient business concierge services to the family itself**, such as arranging group insurance cover, medical services infrastructure, corporate / luxury travel and client identification documentation for family members. The office can also oversee work experience and use its business relationships to arrange placements and training for junior members of the family to help them get a foothold in business. The office charges management fees for its activities, but these will commonly be competitive vis-a-vis investment bank charges. The advantage of a family office over an investment bank in this respect is the promotion of a service offering rather than a sales focus and the concentration of relationships to the benefit of the business. This can in turn facilitate family cohesion and instil in new family members, a respect for the wealth created.

The family office will usually prevent the youth in the family from knowing the extent of their inheritance until they reach an age of responsibility. When providing a right to income to younger beneficiaries, the family office will often prevent the money being placed directly into their hands and instead use the private trust company structure to responsibly ensure custodianship of the wealth. This prevents individuals from dissipating their entitlements on their own, since the trust owns the assets, not the individual.

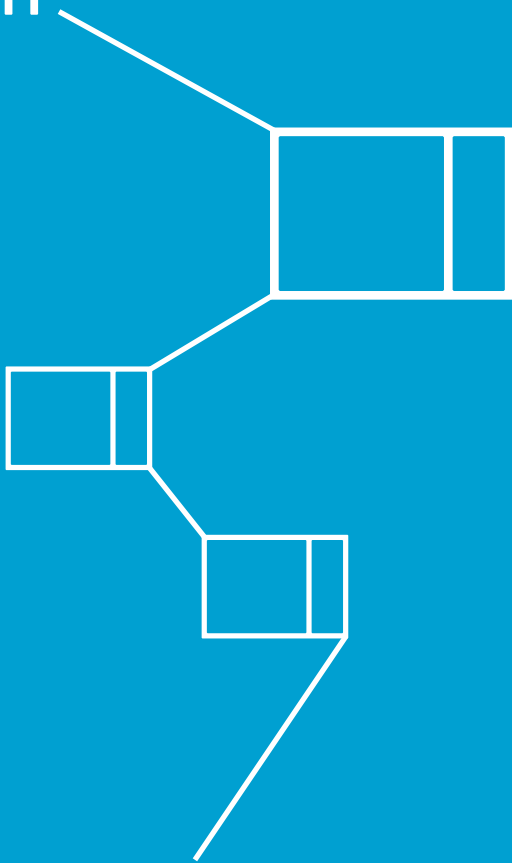
The family office can also co-ordinate the philanthropic activities of the family, administering the charitable trusts settled by individual members of the family covering different causes. Such activities help give a sense of purpose to the family, particularly its younger members. Families will often receive requests for donations or contributions to good causes and the family office will also oversee those in a co-ordinated and tax-efficient manner.

Finally, the family office will co-ordinate the legal and financial services, tax consultants and other professionals advising the family. It will also oversee the effecting of confidentiality and press relations.

## What is a multi-family office?

- Some family offices become successful enough to offer their services for a fee to other families who share the same values of preserving and growing wealth for future generations and who follow a similar business model. Such family offices are known as 'multi-family offices'. They are often structured as partnerships with different families owning or controlling interests in the partnership that acts as the asset manager of the funds and pooled assets of the families who invest alongside each other.
- If expanding the scope of your family office's services to become a multi-family office, it is essential to ensure there are criteria for aligning the suitability of a new family to join the model. Procedures need to be in place for effective and frequent communication with the additional families but the efficiency of those procedures can facilitate staff cost effectiveness and good understanding between families doing business together under this model.
- If moving the asset management function of the family wealth into the management of a bigger multi-family office, it can be key to retain the private equity and concierge or more confidential functions of the family service within the private family office.
- Some commercial investment allocators / managers brand their offering as a multi-family office, however these may not actually originate from a family mandate.

# Plan



Your Family Business

# Plan For Your Family Business

## Why is planning important?

### Stability & Effective Leadership

- Having a planned method for the passing of control and assets in a family business is key to stability and effective leadership. It is important to focus on avoiding confusion, uncertainty and conflict or disputes at the time of demise of a principal or passing of control.
- Without an effective succession plan, in a worst case scenario, the family business can collapse if the key relationships, control, direction and funding are disrupted or broken up with the passing of power from one generation to another.
- This is particularly the case when a patriarch dies without defining the roles to be played in the family business by his widow, eldest child, and any favoured non-family members who are close to the business.
- There may be presumptions about the role that each of those persons might take on and without definition there may subsequently be an impact on the business as relationships are affected or disputes arise.

- For example, it may be assumed that a non-family member would only succeed a principal until such time as a younger family member is ready to take on the responsibility himself or herself, whereas that may not have been the principal's intention.

### Confidentiality & Privacy

- Confidentiality and privacy are greatly valued by family businesses, so avoiding public probate procedures to gain control of family assets upon the demise of the principal must be a driver to succession planning.
- Planning should include specification of the principles on which the principal desires the passing of the family assets, such as the application of Sharia law.
- The main objective of succession is the orderly transfer of power and continuation of the family business. This should also include a retirement plan that ensures the principal does not lose prestige once his role has changed.
- Plans should factor in the principal's new position in an ambassadorial or advisory role which can help to incentivise the principal to step-down before death or being forcibly removed.



### Continuity

- Inaccurate planning can lead to the family business being impacted when a principal dies, through lack of leadership or unsettling of employees or suppliers and credit providers.

- In many cases the principal will have had strong ties with the local community, banks and the business community and it is vital that these must be proactively preserved in order to ensure that there is acceptance of the successor and confidence in his or her leadership.
- Preparing early is vital and that entails acceptance that change is inevitable and avoiding the sentiment that “there is plenty of time to think”.
- Consultation with family members should be carried out in disengaged fashion by an independent third party. Taking professional advice and tax counsel is crucial.
- Pitfalls include rushing the plan when time is short or leaving it too late and encountering denial or resistance. The best advice is to start planning early and take advantage of the presence of the principal in doing so. No single solution suits all and so bespoke arrangements are key.

## Trusts

When a principal has successfully built a family business, ensuring the succession of that business becomes an important priority. A principal may inevitably feel that passing on the ownership of the business also entails his position being side-stepped or a reflection being cast on his status as head of the family. However, appropriate planning can ensure the continuity of the family business whilst passing the management to the next generation and allowing the principal to “let go” in a way that he feels comfortable.



The principal objectives for owners of a family business in structuring their investments are usually to:

- Ensure continuity of assets within the family;
- Protect assets from attacks (e.g. by creditors or divorcing spouses);
- Determine the succession of assets;
- Minimise succession taxes and administration; and
- Maintain and ensure confidentiality.

In order to meet these objectives, it is often possible to use a trust. Trusts can be used for a variety of functions, including to pass on wealth through generations of a family in a tax efficient manner. This is particularly advantageous for owners who are resident in countries that have prescribed rules on how assets pass following death. It is also possible to provide for trusts which allow

## What is a trust?

- A trust is a separate legal arrangement which is distinct from the owners of a family's business or assets. Owners can settle their assets into the trust and independent trustees will then be responsible for the preservation, growth and distribution of that wealth. Trustees can include close friends or members of family such as spouses and children. This gives the owner the comfort of knowing his or her wishes will be carried out.
- The separation of ownership enables tax efficiency (particularly in respect of inheritance tax) and avoidance of legalities, publicity and unwanted probate procedures when the owner passes away. The trust can continue after the death and is flexible enough to provide for dependants, make distributions or carry out defined functions.

beneficiaries to have income during their lifetime but which are settled in a way the owner feels respects their objectives and wishes.

So how does a trust arrangement work? The simple answer is that to ensure the passing of assets from the principal (referred to as the 'settlor') to the next generation and surviving family members, the principal can place the family assets in the ownership of a 'trustee'. The trustee becomes the registered legal owner of the assets but is entrusted to hold and manage them on behalf of the family, individuals or charities (referred to as the 'beneficiaries') chosen by the principal to

benefit from their assets. The trustee is bound to act in accordance with the instructions given by the principal as settlor and which instructions are recorded in a document called the 'trust deed'. The beneficiaries can be named individuals (including minors) and also future descendants of the family.

The trustee can have the power to add or remove beneficiaries from the trust, but subject to the safeguards in the trust deed and consent of the principal or supervision of an individual or body given supervisory



power over the trust and the trustee (referred to as a 'protector'). The protector can also have the power to remove the trustee, seek information and audit the assets as well as veto distributions or changes to the nature of the trust.

Most commonly, [the trustee will have discretion over whether to grow the assets or distribute them to the beneficiaries](#) (known as a 'discretionary trust'). However, sometimes the principal wishes for the trust to have a particular defined purpose, such as supporting a charity or a company and such trusts are known as 'purpose trusts'. A 'foundation' is similar to a trust but is itself a legal entity in a non-commercial form. A foundation is managed by a council acting in accordance with instruction from the settlor.

The professional investment criteria mandated on the trustee varies with different models, as does the role of the persons acting as the trustee, which could

be members of the family, or professionals, or both (depending upon the wishes of the settlor). The trustee role can also be taken on by a private company specially formed for that purpose. Many jurisdictions will require that the trustee supervises the management of the business held by the trust and also places a director on the board of wholly owned subsidiaries (again, such director could be a nominated professional or family member).

Trusts are not public arrangements so they are not subject to the mandatory public disclosure of accounts. This helps the requisite details to remain private but in most jurisdictions beneficiaries do usually have the right to see the trust deed and annual accounts.

The easiest way to think of a trust is not as an entity but instead as a “relationship” between the settlor, the beneficiaries and other interested parties such as the protector. Flexibility is provided by supplementing the trust deed with a letter of wishes or statement of principles. A trust can be tailored precisely to the wishes of a settlor and the needs of a family and is a bespoke arrangement (not an “off the shelf” product).

We recommend arranging for your trust to be administered in a low tax jurisdiction such as the Cayman Islands, Jersey or the Dubai International Financial Centre. A number of offshore locations have suitable infrastructure to enable that and we recommend the Cayman Islands in particular for its trust laws and Special Trusts Alternative Regime (“STAR”) trust structures, which have good protection and information flows. The Cayman STAR trust restricts disclosure of information to a supervisory body.

Please ask us for more details and examples of different types of trust structures. Please note that trusts are not necessarily a universal solution to all family objectives – specific review of an individual portfolio is required before deciding whether a trust (or another type of structure or arrangement) should be implemented.

## Property Structures

Many wealthy individuals and families acquire residential property in London or elsewhere in the UK. Such property may include luxury apartments, houses or estates. There can be considerable advantages in acquiring such property through an **offshore vehicle**.

This is particularly the case if the purchaser is resident or domiciled outside the UK but has a property in the UK. Without an offshore vehicle in place, in such circumstances, inheritance tax would be payable if the purchaser holds the property directly themselves. The beneficiaries of the property owner would not be able to obtain legal title to the property until after they had paid the inheritance tax due. The amount of this tax will be calculated in accordance with the property value and prevailing tax rate. If the property is held by an offshore vehicle then no inheritance tax would be payable (unless the owner of the offshore vehicle was a UK domicile or had lived in the UK for over 16 years). This is because the shares in the offshore vehicle would be considered “non-UK” assets (even though the offshore vehicle owned a property in the UK). The offshore vehicle would not have to pay corporation tax in the UK and any income it obtained (e.g. from renting the property to tenants) would only be taxed at the basic rate (not higher).

Another advantage of using an offshore vehicle to own UK property is that no stamp duty land tax would be payable when the property is sold (i.e. by transferring the company with the property in it). This could be an incentive for a buyer (provided the buyer is willing to own a company).

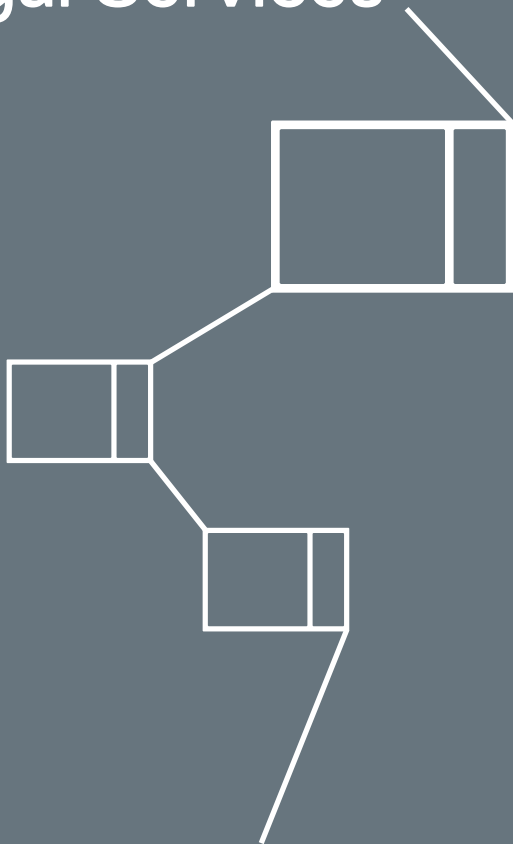
If the purchaser of UK property is going to live in the property rather than rent it out, careful consideration of the offshore structuring is required to ensure taxable benefits do not arise when the purchaser's offshore company "allows" the purchaser to live in the property rent-free. Such a "benefit" could be taxable even though the purchaser is not a UK resident. However, Taylor Wessing has prepared advice on how this risk can be eliminated, which is explained in a separate note, available upon request.



We can advise you on the procedure, costs, timeframe and advantages of setting up an offshore company (or, if relevant, group of companies) to hold your family's properties in the UK and elsewhere. Please contact us for further information.



# Legal Services



Family Business Passport

# Legal Services

## UK immigration

The UK's immigration laws are changing constantly, but we at Taylor Wessing are at the cutting edge of developments in immigration policy. Our recent lobbying to the UK immigration authorities led to a change in their guidance documents. We have a highly regarded Immigration Strategies Group which specialises in providing creative and innovative immigration solutions for non-European clients to enter and remain in the UK. We advise a wide range of clients including prominent Gulf families and trading dynasties.

We have produced guidance for high net worth individuals and families in the Middle East, Far East and elsewhere around the world looking to come to the UK on either a short term or long term basis. Under the UK's strict immigration rules, the UK Border Agency will refuse entry to the UK to any person that does not hold prior immigration approval. If you wish to discuss your family's particular requirements with us, please contact us.

A UK visa application involves an application to the British Embassy in the migrant's country of nationality (or sometimes the country of residence, if different). All documents submitted in a visa application must be original and translated into English (where applicable). Visa processing times depend on which country the

application is submitted in and the type of application – a visitor visa can be processed in 2-3 days, but longer term visas may take several weeks to process.

Dependants (spouse, partner and children under 18) are permitted to accompany the main applicant, if the main applicant's visa is approved.

While historically domestic workers, meaning those workers providing a personal service linked to the running of their employer's household (such as chauffeurs, gardeners, cooks and nannies), have been



permitted to apply for a UK visa with the main family, the UK government is likely to remove this visa route (or restrict it severely) towards the end of 2011.

A visitor visa allows travel to the UK for up to 6 months, but no “work” is permitted. A general tourist visa is the simplest to obtain. It is possible to apply for long term visit visas, lasting 1, 2, 5 or 10 years. However, the applicant is still only entitled to stay in the UK for a maximum of 6 months in any 12 month period.

Investor visas are for high net worth individuals making a substantial investment in the UK. With an investment of £1 million, permanent residency may be available (subject to meeting certain criteria) after five years of living in the UK and permanent residency may be accelerated if a bigger amount is invested.

Entrepreneur visas are for individuals who have at least £200,000 held in a regulated financial institution and who are willing to invest at least £200,000 into a new or existing UK business shortly after arrival to the UK.

In addition to the foregoing, we can advise you on the following:

- Extension visas;
- Settlement (permanent residency) after five years continuous stay;
- Applying for a British passport;
- English language requirements;
- Maintenance funds requirements;
- Residency status (for tax purposes);
- Sole Representative visas; and
- Sponsored skilled worker visas.

## Sharia compliance

Families resident in Middle Eastern countries (and Muslim families elsewhere in the world) often wish to ensure the smooth succession to family assets in accordance with Sharia law in the event of a death.

Sharia law pre-determines fixed proportions for certain blood relatives of a principal and other heirs have residual or discretionary entitlements. In some cases, the entitlements vary according to local tradition or the following of a particular



school of Islamic thought (“Madhab”). It is also important to bear in mind that, if following Sharia inheritance tenets, some heirs may be excluded from entitlement by the presence of others who have priority. Males also receive greater proportions than females and blood relatives can have fixed proportional entitlements, even if that is not the desire of the principal.

Calculating fractional entitlements prescribed by Sharia can be complex and requires careful consideration. A principal's power to dispose of his property in accordance with his wishes is recognised by Sharia but restricted to only one third of his net assets. Only where legal heirs are prepared to voluntarily forgo their rights under the Sharia would the client's wishes (where different to Sharia) be operative for asserts in excess of those allocated under this rule. Sharia principles also require that the distributable portion of a principal's estate would only comprise the remainder of tangible and intangible assets

after the funeral expenses, debts and valid specific bequests have been satisfied.

In addition to ensuring that Sharia is complied with, sometimes there is a requirement that a surviving spouse or family member be able to manage the family assets with discretion to retain or to sell assets and to spend money on them where appropriate. Having a corporate and trust structure is key to ensuring that in the event of death, assets are not subject to probate formalities in different countries, which will cause delay and will be a public process (which could involve the payment of local tax).

Many countries have prescribed succession procedures that take place in the event of the death of any individual holding assets in those countries. For example, the UK has such rules, although in the UK they can be overridden using a suitable testamentary document which complies with Sharia (rather than following the UK's prescribed succession, which may not follow Sharia).

However, unlike the flexibility of the UK system, other countries, such as France, have rules which are deemed to take precedence over any testamentary documentation. This means that even if a family business owner were to express wishes about the succession of his assets in France in accordance with Sharia, the French legislation would take precedence (and would not follow Sharia). Therefore, in order to ensure that succession mechanisms comply with Sharia and that property the family owns in non-Muslim countries passes in accordance with wishes, it is important to establish trust or corporate structure arrangements as described in this Family Business Passport.

We can work with Sharia experts on your behalf to advise on the principles that need to be considered in succession plans and trusts in determining the prescribed and discretionary entitlements for heirs under Islamic law.

## Reputation Management

Our reputation management expertise covers all forms of dealing with the media including strategies to deal with the publication of anything negative. We have one of the strongest teams in this area which is led by partner Niri Shanmuganathan.

Where necessary, we will obtain prompt corrections, apologies and undertakings. Where an issue concerns content on the internet or other new media, we can advise on the best ways to have, for example, defamatory allegations removed quickly.

In dealing with the media, we are often able to use our in-house lawyer contacts within the media industry to resolve issues without proceedings. Our experience of working for media clients has given us a unique insight into how they operate and, in many cases, we can help dispose of an issue quickly and cost-effectively via correspondence or by picking up the phone. This would generally be our preferred approach.

We can assist you with advice on:

- Defamation and privacy
- Obtaining prompt pre-publication/broadcast advice
- Avoiding costly and time-consuming litigation by resolving claims quickly, or defending claims to trial where appropriate

- Reputation management
- Achieving corrections, apologies and undertakings if defamatory material is published about you or your business
- Securing the removal of online content from the internet where it is defamatory and, if necessary, obtaining the identity of anonymous defendants.

### **Corporate & Commercial Legal Services**

Family owners wish to secure commercial benefit in their portfolios, minimise costs and maximise value. Structuring assets correctly can enable the owner to benefit from:

- Limitation of liability
- Separation of asset classes
- Separation of geographic territories where assets are held
- Facilitation of bank lending (whilst avoiding cross collateralisation)
- Minimisation of risk
- Allowing assets to be bought or sold easily
- Using politically sound jurisdictions for asset holding

Family business owners often have a requirement for a unified ownership structure to hold their core family assets outside the jurisdiction they are resident and domiciled in. This can be for reasons of confidentiality, ease of control, in order to mitigate the risks of the local political or business environment or simply for tax and cost efficiency.

In addition to estate planning and tax law we provide advice on:

- Partnerships
- Corporate law and group holding structures
- Real estate investment
- Shareholders agreements
- Funds
- Asset finance (including yachts, jets and hotels amongst others)
- Commercial litigation & dispute resolution
- Wealth structuring
- Contentious trusts
- Press management and defamation
- International corporate project management



It is important to note that if you or any members of your family are resident in the UK and/or are a US citizen (or intend to become one) this will have a material effect on the advice relevant to your business. Please contact us for further details.

## Philanthropy

Philanthropic aims and activities can become the uniting focus of a family. We can advise you on all aspects of law and tax applicable to charities and donations, including:

- The establishment and operation of charities;
- Creating efficient, cost-effective and tax friendly formats for charitable work and donations;
- Undertaking reviews of the funding of charities you support;
- Maintaining control of donated funds;
- How to take an active role in the charity's activities beyond provision of funds; and
- The requirements of The Charity Commission and the use of offshore trusts.



# Taylor Wessing



Family Business Passport

# Taylor Wessing

## About Us

Taylor Wessing is a leading International law firm, based primarily in the UK, Germany, France, the United Arab Emirates and Belgium, with representative offices in Beijing and Shanghai. We also have a well-established alliance in Poland and a network elsewhere across the world.

Our clients include leading financial institutions, major corporations, public sector bodies and wealthy individuals and families.

We think creatively about business issues and are constantly looking for new and better ways to add value. By doing this, we come up with truly innovative solutions that help to grow our clients' business.

## Our Focus

Our focus for the future is set firmly on those sectors that we believe are the industries of tomorrow:

- Technology, Communications and Brands;
- Life Sciences and Healthcare;
- Real Estate and Infrastructure;
- Energy and Environment; and
- Financial Institutions and Services.

## Our Wealth Group

Our Wealth Group in London works closely with our colleagues in mainland Europe, the Middle East and Far East. We are highly experienced in advising international families, private banks and fiduciary groups. We have particular expertise in advising wealthy entrepreneurs and members of the finance industry, as well as landed estates and trading dynasties.



Our team includes specialists in financial services who are experts in advising on the establishment and management of a wide range of bespoke investment structures. It also includes property specialists who can advise on the purchase, financing, occupation and sale of all types of residential and agricultural property.

Our Wealth Group practice has received some fantastic accolades during recent years, reflecting the hard work and success of the growing team. We have been nominated for every mainstream private client award over the last 12 months. The latest edition of the Chambers Global Legal Directory has acknowledged Taylor Wessing as one of the top three Private Client firms in the UK and amongst the leading Private Client firms globally.

We would be delighted to discuss your family business and its legal and commercial needs in confidence with you. Please contact us for further information.

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Europe > Middle East > Asia

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