

TaylorWessing

The family office guide

A practical guide to the
legal issues on establishing
a family office in the UK



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| The family office guide

This guide provides a comprehensive introduction to the legal considerations involved in establishing a family office in the UK.

It considers what a family office is, how it can benefit family members, how it might be structured and the benefits of constituting a significant part of the structure in the UK. It also addresses some of the key legal considerations when establishing a family office in the UK, including:

- the process of obtaining authorisation from the UK regulator
- the use of an 'appointed representative' model as an alternative to obtaining authorisation, where the proposed activities are regulated.

Financial services regulation

As is the case in most jurisdictions, the UK regulates the performance of investment activities. This guide considers:

- the investment activities that are most relevant to a family office and the factors which determine whether they are being carried out in the UK
- circumstances in which activities may fall outside the scope of UK regulation

Immigration

There are a variety of visas that allow short and long term stay in the UK. Consideration would need to be given as to which visa would be the most appropriate for family members and any accompanying staff before making a visa application. Immigration law in the UK is regularly evolving (often reflecting the political and economic objectives of a government) and so it is important to ensure that any advice is up to date, as a visa refusal can result in complications with travel to the UK.

Employment

Employment of family office staff, including personal assistants, investment managers or domestic staff, will require an employment contract that is compatible with UK employment law. All staff must have a written document setting out their terms and conditions, which must also include certain mandatory employment terms.

Tax

Particular care, through well documented arrangements and processes, must be taken in order to ensure that the activities of a family office do not result in 'tax leakage' – that is, additional tax costs arising for family members or the family's asset holding structures as a result of the presence and operations of the family office in the UK.

Ongoing support

Establishing a family office is only the start. Our International Private Wealth team understands the responsibility of managing high magnitudes of wealth in unique family dynamics and will support the ongoing legal needs of the family office.

Our expertise spans across a number of key areas that will ensure the smooth running of the family office's affairs. We regularly find ourselves acting not only as our clients' legal advisors, but as sounding boards for some of their challenges beyond the law.

This guide provides a general guide only and is not a substitute for specific legal advice. Please contact us for further information or to arrange a confidential briefing tailored to your particular circumstances.

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Introduction

What is a family office and why set one up?

In its broadest sense, a family office is a vehicle which provides services to the members of a family to help manage their wealth and family arrangements. The services provided can vary and evolve in nature and extent, depending on the family's needs and circumstances, but may commonly include some form of asset management, or other financial management services. Additionally, the family office may also provide advisory, lifestyle, philanthropic and administrative services.

A family office may be dedicated to assist only one family (a single family office) or multiple families (a multiple family office).

For families with a global footprint, multi-generational members and/or a broad portfolio of business interests and investments, it can be invaluable to have a central organisation for management, record keeping and basic advisory services. Whilst there is an expense to establishing and running a

family office, it can often be more cost-effective and co-ordinated than having to engage multiple independent advisers on a permanent or 'case-by-case' basis. A family office can also provide structure to which an expanding family can rely upon to provide a degree of continuity and stability.

Whilst the scope of services for a family office may be restricted to financial management, family members may also benefit greatly from having trusted 'in-house' advisers to provide initial legal or tax advice, making referrals only when absolutely necessary. Equally, it may be convenient to employ personnel to deal with administrative matters, such as arranging travel and diary management. The family office is also often the focal point for co-ordinating the administration of the structures, such as trusts and other asset holding entities, through which the family wealth may be held.

In order to comply with tax and beneficial ownership reporting obligations in various jurisdictions, such as the Common Reporting Standard and US FATCA, there is

often a heavy burden to retain appropriate and consistent records in support of the position of each family member. It can make life much easier for family members to have a central office taking care of the necessary records and which can provide those records in a timely and consistent manner to third parties, where required, in each relevant jurisdiction.

How might a family office be structured?

There is no commoditised structure for a family office. The term refers more to a concept encapsulating different structures, and in each case a bespoke solution should be considered, taking into account the family's unique jurisdictional, tax and regulatory considerations. In the UK, the typical legal form of a family office is either as a limited company or as a limited liability partnership.

A family office may be structured to have several different branches or subsidiaries. The reason for the presence of multiple branches may either be a functional divide (for example, certain jurisdictions may

provide a better base to perform certain functions), the location of key decision makers or simple geographical proximity to family members located in different parts of the world. Whatever structure is adopted, due consideration should also be given at the outset as to its ownership, both in the immediate and longer term, reflecting the role of the parties involved and future succession.

The division of responsibility between family members and specialists brought in to work for the family office would also need to be carefully considered. A governing board with both family and external representatives is commonly established in order to ensure that the family's vision is balanced with a degree of objectivity. The remuneration of staff may consist of a mixture of a base salary, as well as incentives based on individual and/or investment performance.

The number of branches and the activities of each branch may also be influenced by the role designated to the family office in relation to investment management.

The family office may manage the family's investments itself or supervise independent, third party fund managers to whom investment management has been delegated. In the latter case, one would expect the family office structure to be less substantial and motivated more by geographical concerns. Whereas, if the family office acts as an in-house investment manager, the structure might be more substantial in order that different functions may be allocated to personnel who have the appropriate expertise and in order to address risk management and tax concerns.

It is also important to determine how the family office would be funded. Whilst initial start-up capital (whether by loans or equity) is usually provided by the founding family members, ideally the family office would become self funding through fees received for its services in the longer run.

The establishment of a family office is often a building block of a wider strategy of a family wishing to develop a framework for the management, preservation and

growth of the family's wealth. One of the core elements of a family constitution (also often referred to as a family charter or protocol) is to set out the interaction and respective roles to be played by the family office alongside family members, trustees, asset and wealth holding structures and other trusted advisors.

The UK as a base for a family office

When considering the establishment of a family office, there are various factors which make it highly attractive to either headquarter the operations, or at least to house investment management functions, in the UK.

There are many attractions for locating family office functions in the UK. Its geographical location (being ideally placed between the Middle East and the US, amongst other regions) can assist with the challenges in supporting family members spread over multiple jurisdictions. As a transport hub, the UK is accessible in roughly seven hours from both New York and Dubai, and in less than four hours from Moscow. Also, and often

a key motivator, it provides a long established and highly regarded legal and regulatory infrastructure, along with a substantive network of highly skilled professionals, that are well equipped for supporting the demands of the global family.

Widely regarded as one of the financial capitals of the world, London also has an enviable reputation for wealth management and is second to none in terms of enabling access to markets and investment opportunities to suit all risk strategies.

Relationships with third parties

A family office will typically blend a mix of external professional service support and internal family decision making. It will be important to ensure the appropriate balance between the family office retaining sufficient control over those areas that matter most and delegating to specialist third party service providers as appropriate. This will clearly also be relevant in determining the overall structure.

Whether providing or receiving services, it is extremely important to document exactly how they are to be provided and remunerated.

Commercial benefits can be secured in portfolios, costs minimised and value maximised all through agreeing appropriate services and structures. Done correctly, this can enable the family office to benefit from:

- incentives for positive investment return
- transparency as to fees
- limitation of liability
- minimisation of risk eg separation of client assets from assets of others, separation of geographic territories where assets are held, using politically sound jurisdictions for asset holding
- facilitation of bank lending (whilst avoiding cross collateralisation)
- allowing assets to be bought or sold easily
- mitigation of tax.

Regulatory framework in the UK

When looking to establish (all or part of) a family office platform in the UK, it is necessary to consider whether the activities of the family office fall within the financial services regulatory framework.

It is important to analyse at the outset how the proposed family office structure interacts with the regulatory framework. This will allow the family office to operate in the most efficient and flexible way, avoiding unnecessary business and regulatory risk where possible.

The UK regulates certain activities carried out in relation to certain specified investments and, as a rule, a person requires approval by the UK regulator, the Financial Conduct Authority, before they carry out such 'regulated activities' in the UK.

The regulated activities of direct relevance to a family office located in the UK include:

- managing investment assets belonging to another person where the management involves the exercise of discretion
- providing advice to an investor (or potential investor) on the merits of buying or selling investments
- arranging for investments to be bought and sold
- managing (or operating) an investment fund
- dealing as principal, when carried out in relation to investments such as shares, bonds, units in funds and derivatives.





Is authorisation required?

It will be a question of fact for each family office structure as to whether UK authorisation is required. The UK regime only catches regulated activities carried out 'by way of business', and some of the activities only fall within the scope of regulation where they are carried out in relation to third party assets. Factors which may indicate that the family office is being operated by way of business include:

- the assets managed by the family office not being exclusively family assets
- the assets being managed for a broad family group or held via distinct legal entities and/or
- the likelihood that a person will be remunerated for running the family office.

In addition, there are a number of exclusions to the requirement to be authorised that may be applicable to the family office such as the group exclusion whereby certain activities conducted entirely within a group of companies are not considered to amount to regulated activities. The application of the exclusions is highly fact specific, and so the proposed operations would need to be carefully analysed in order to determine whether the criteria of any relevant exclusions would be satisfied.

The outcome of this analysis may impact on the structure of the family office. Taylor Wessing can assist in determining the appropriate regulatory structure, factoring into account other legal and tax considerations.

Achieving authorisation

If a family office falls within the scope of regulation and needs authorisation to perform its intended activities, it would need to apply to the UK regulator and receive approval prior to carrying out these activities. The application process for a family office need not be overly difficult or intrusive and Taylor Wessing can help you manage the process. However, as with any properly regulated system, certain disclosures and availability of resources are required before authorisation is granted. In our experience it is sensible to allow six to eight weeks to prepare the application. Once a completed application has been submitted, the UK regulator has six months to determine the application.

There are three general phases to becoming an authorised firm:

Phase 1 – Preliminary assessment

A key initial step is to identify what regulatory category the family office will fall into. This allows determination of what permissions need to be applied for and what the capital, staffing and general conduct of business requirements will be.

By way of example, thought will need to be given as to whether the family office will want to give investment advice, merely transmit orders, exercise discretion over investments and/or provide custody services.

It will also be necessary to identify the 'controllers' of the family office as the UK regulator will require information about the parties who will ultimately own or control the family office.

The identity of the controllers is not typically the same as the identity of the family members although there is likely to be some overlap across senior members. Taylor Wessing is well placed to advise you on both the scope and the limits on usage of personal information disclosed as part of an application and can help you make the right decisions in this regard.

Phase 2 – Application to the UK regulator

The application involves completing certain forms and submitting supporting documents/information such as a business plan, balance sheet, and regulatory capital forecasts.

Having a suitable business model is at the centre of how the UK regulator regulates firms. However, the UK regulator's scrutiny of the business model is likely to be less intrusive than it is for non private business offerings that seek to engage with the public at large. The UK regulator will want to be satisfied that the needs of the users of the family office can be met and that there is a sensible plan for regulatory compliance, budget, and necessary resources.

Before granting a licence, the regulator will want to see that certain requirements are satisfied, such as capital resources and system needs. Certain internal compliance policies and procedures will also need to be in place. It is important to balance fixed costs against proportionate resourcing needs. One option can be to use consultants and third parties to provide compliance support.

Phase 3 – Implications post authorisation

Once authorisation has been granted, a family office will need to ensure compliance with a number of rules and requirements. It is possible to outsource certain functions to third parties to assist compliance with these rules in a proportionate but satisfactory manner.

Appointed representative model

As an interim step prior to obtaining authorisation, it is possible to use an 'appointed representative' model whereby the family office relies on the regulatory permissions of an authorised firm (referred to as the 'principal'). This model would allow the family office to begin its operations quickly and with minimum effort. However, these arrangements are expensive, do not cover all regulated activities (managing investment assets and dealing as principal cannot be undertaken as part of an appointed representative model), still require compliance with certain FCA rules, and can be intrusive as the principal firm will need to review the transactions and records of the family office in order to comply with its regulatory requirements.

Immigration and employment in the UK

Arranging visas for family members or other hires that will work in the UK for the family office, plus any of their accompanying dependants, is a key gateway issue and needs early planning.

Until 30 December 2020, citizens of the European Economic Area ('EEA') and Switzerland have the right to live and work in the UK without restriction. With the exception of Irish nationals, from 1 January 2021 EEA and Swiss citizens wishing to live in the UK will be required to apply for a visa. Depending on the visa type, the role may need to meet a certain skill level and salary requirements. More information about the new visa requirements are expected to be published by the UK government in Autumn 2020.

Some non EEA citizens may be able to live and work in the UK immediately if they have certain types of UK visa already, such as a partner/spouse visa or an investor visa. If not, they will need to apply for a new work visa prior to arrival. Citizens of certain countries need a prior UK visa just to visit the UK.

The UK has various immigration routes, depending on the proposed UK activities to be performed and the length of stay required. Many UK visas are based on a points system, which means that there is little or no discretion given to the UK immigration authorities, so taking appropriate advice to ensure that applications are compliant with the detailed rules is essential.

The types of visa available include:

- Tier 1 Investor visas for applicants willing to invest a significant amount into the UK
- Sponsored Tier 2 work visas, once the family office has been issued with a sponsor licence
- Domestic Worker visa for domestic staff accompanying their employer on temporary visits to the UK
- Student visas for children or family members attending UK school or university.

Generally, the main applicant's family members (meaning spouse or long-term co-habiting unmarried partner and children under 18) can obtain dependant visas for the same duration as the main applicant without any restriction on their work or UK activity.

Some UK visas lead to permanent residency after a minimum period of UK stay, which is ideal for long-term residence and also a stepping stone to (optional) British citizenship for the main applicant and their family.

The employment contract

All UK employees have minimum legal rights that as an employer the family office will need to ensure, including for:

- pay
- hours of work
- vacation
- sick pay
- family leave
- notice on termination.

Each employee has a right to a written statement of their terms, usually best done as a contract of employment. The contract must include basic terms including pay, sickness absence provisions, a minimum of 28 days' paid vacation (for full time employees), notice periods and applicable grievance and disciplinary procedures. A well-drafted employment contract will include comprehensive confidentiality provisions that protect the privacy of the family office's business and the family themselves.

Many employers also establish an Employee Handbook, which sets out policies and procedures relating to the employees' employment, governing anything from dress code to use of social media.

Employment tax

Employees earning over a certain amount are required to pay income tax on their salary. Both employees and employers are also required to pay National Insurance contributions on that salary. For the employer, in the 2020/2021 tax year this is 13.8% of the employee's gross salary.

Employers will usually be required to pay their employees through 'Pay As You Earn' (PAYE). PAYE is HMRC's method of collecting income tax and National Insurance contributions, so that tax is deducted before the employee is paid. Payroll administrators can assist with setting this up.

Pensions and benefits

Employers are required to enrol eligible employees into a qualifying pension scheme within three months of the employee starting work, unless the employee opts out. There are minimum contribution requirements, usually determined on a percentage of the employee's basic salary.

There are no requirements to provide additional benefits such as healthcare or life assurance in the UK, however many employers choose to do so.

Hiring self-employed contractors or consultants

This can seem an attractive option, especially if it means saving or delaying costs such as those involved in setting up an entity or registering for payroll. However, it is important to ensure that the relationship is that of a genuine consultancy and that the individual is truly self-employed. If, in fact, the relationship is one of employer and employee, then the individual would have employment law rights and, as employer, the family office would be responsible for the deduction of income tax and National Insurance contributions from payments. This can quickly become a significant amount.

There are, however, fewer implied rights for an office that engages a self-employed contractor. For example, if a contractor creates any intellectual property it usually belongs to them unless expressly assigned to the business. Contractor terms would need careful drafting to fill these gaps.





| Taxation in the UK

A family office located in the UK would be subject to income tax or corporation tax (depending on the form of structure used) on its profits less deductible expenses such as salaries, office rental costs and fees of external advisers.

For those families whose wealth extends beyond the UK, the main focus for tax structuring on the establishment of a family office in the UK is to minimise 'tax leakage' – that is, additional tax costs arising for family members or the family's asset holding structures as a result of the presence and operations of the family office in the UK.

Particular care would need to be taken to ensure that the activities of the family office:

- does not give rise to the central management and control of any non-UK entities (such as asset holding structures) being carried on in the UK – if this were to be the case, such non-UK entity would be regarded as tax resident in the UK and subject to corporation tax
- does not give rise to a taxable presence or permanent establishment of any non-UK resident family members or non-UK entities – if this were to be the case, then to the extent that the activities of the family office on its behalf constituted a trade, the profits of such trade would be subject to income tax or corporation tax
- does not give rise to any irrecoverable value added tax costs – this would be relevant where the family office is providing services to individuals or entities located in the UK or the European Union.

It is possible, with the adoption and application of carefully documented service agreements and operational protocols to set out the activities and decision making of the wider family wealth structure, to mitigate the risks of such UK tax leakage arising. In addition, in the context of the performance of investment management activities that give rise to a permanent establishment, the long standing 'investment manager exemption' may be available.

Non-UK domiciled families

For family members who have a non-UK domicile moving to the UK, a beneficial tax regime is available whereby UK taxation on non-UK income and gains is deferred (potentially indefinitely) until such income or gains are brought, used or enjoyed, in the UK. This is referred to as the remittance basis of taxation.

With proper structuring, tax planning opportunities are available for non-UK domiciled family members who

are tax resident in the UK to take advantage of family office services in the UK but without exposing the income and gains generated on non-UK assets to unnecessary UK tax leakage.

This may include:

- keeping custody and ownership of the investments outside the UK through offshore trusts, foundations or other asset holding structures
- where appropriate, maintaining primary management responsibility outside the UK, with the UK family office only being delegated specific functions reflecting the desired level of management duties.

The use of any non-UK income or gains to pay for the services provided by the UK family office would also need to be carefully considered as to whether it would give rise to a taxable 'remittance'.

UK domiciled families

For UK domiciled family members, UK based investment and asset holding structures are likely to be more appropriate, such as a limited company structured as a family investment company, limited partnerships and tax advantaged investment vehicles such as open ended investment companies and investment trusts. A trust may also be a potential option in some circumstances, for instance to hold business assets or assets with significant anticipated growth, but of initial low value, for the benefit of future generations.

Remuneration and incentives

In order to attract the best candidates to join the family office, consideration should be given as to what incentives could be offered to employees. Even where the

family office is an 'internal' team of family members, the composition of remuneration should still be considered as a potential means to recognise the additional contribution provided by those family members actively involved in the family office.

A range of incentive options are available with varying treatment in relation to employment taxes (income tax and National Insurance contributions) and capital gains tax. Special reliefs are also available for employees with a non-UK domicile moving to the UK who may be performing part of their duties outside of the UK. In addition, where the family office is performing an investment management function, the UK has specific tax rules on management fees and incentive returns (such as carried interest) which need careful consideration so as to avoid any unanticipated tax costs.

| Ongoing support

As you will have already seen throughout this guide, our team will provide cohesive advice which will meet the initial requirements when looking to set up a family office.

Our experts continue to work with high net worth individuals and their families on the setting up and running of family offices. Our support is not limited to what is covered in this guide; we can also assist on a number of other areas such as:

Asset protection

We understand the importance of wealth preservation and what it means to all generations of families. Asset protection strategies are key to ensuring longevity in a successful family office; therefore, having robust legal protection in place is vital.

Residency and tax status

The residence status of a family member will determine, from a tax perspective, the level of segregation which their assets require from the assets of other family members. It may also determine the type of investment structure which would be most appropriate to invest in and the manner in which value could be extracted in order to transfer liquid funds to the family member in a tax efficient manner. It could even impact on the structure of the family office and which person or entity should hold title to their assets.

Transparency and reporting

Family members resident in different jurisdictions will have different tax liabilities and reporting obligations in relation to the assets managed by the family office. It is important that family office personnel liaise with advisers in the relevant jurisdictions in order to have predictability as to the areas of liability (if any), and awareness of what information is required in order to assist in discharging any liabilities and reporting obligations by their due dates.

Incentives

The importance of reliable and committed employees is key to the smooth maintenance of a family office. We understand that there is difficulty in finding and retaining exceptional employees, especially when discretion and high quality of work is paramount. Having incentives and share schemes in place for employees can help overcome this issue. These packages will differ by client industry but can be incredibly powerful when implemented correctly.

Corporate

Family offices have significantly evolved over time and have developed a huge focus on strategic M&A, making them an organisation to watch. Today, it is known in the market that family offices offer competitive advantages with investments in comparison to traditional private equity investors and other financial institutions. The next generation of wealth is more innovative and bold with their investments in the fast-moving climate of corporate transactions. Choosing the right legal adviser to guide the family office through these commercial contracts is highly recommended. This ensures that the family remains well placed when making any strategic investment decisions.

Reputation management

Reputational risk can happen at both personal and corporate level. There is the possibility that a family office may come under the scrutiny of the media or face defamation, privacy, breach of confidence, harassment, blackmail, breach of copyright and data protection issues. We regularly advise clients on litigation, obtaining injunctive relief, asserting data subject's rights, stopping stories, removing content and regulatory complaints and have obtained many apologies, damages/costs awards, undertakings, online takedowns and corrections.

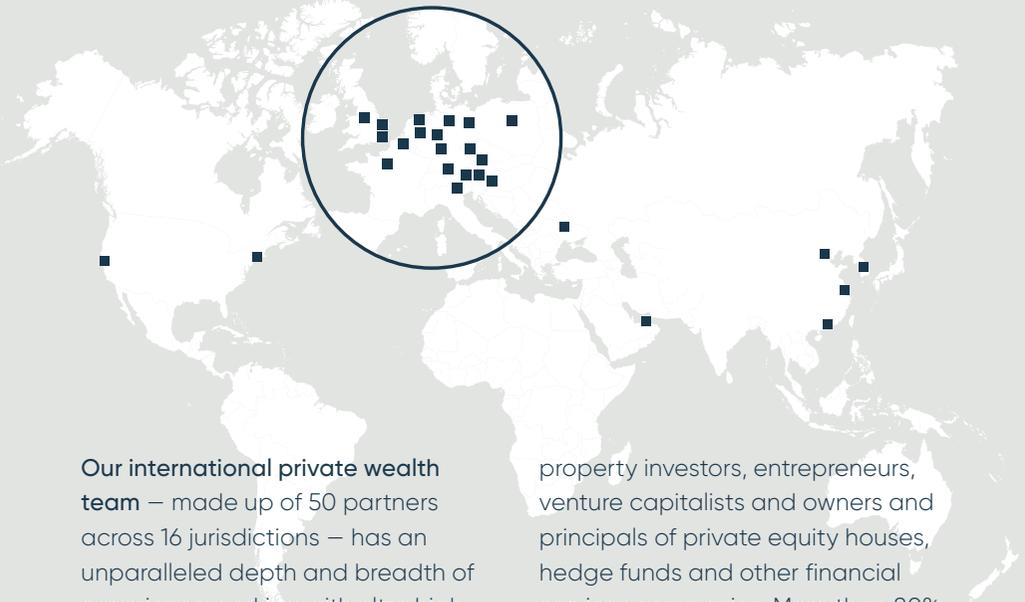
Dispute resolution

Families of all sizes and wealth can face a number of opposing views and challenges when creating their family office. This exercise allows a family to become successful in mitigating any personal and business risk. We live in a world of significant complexity, whether disputes arise in relation to investing in certain assets, working with a number of advisers or the complication of tax and estate planning. Some issues are more contentious than others, so seeking the appropriate chemistry fit to help avoid these issues is key for any family who wants to be successful in establishing a strong family office.

Philanthropy

As wealth moves from one generation to the next, there becomes a significant shift towards being more active in philanthropy and impact investing. We can guide our clients through the most suitable legal options to ensure their family office and philanthropic goals are met to the highest standards.

About our international Private Wealth team



Our international private wealth team – made up of 50 partners across 16 jurisdictions – has an unparalleled depth and breadth of experience working with ultra high net worth families and individuals. We work closely with our clients to help them grow, protect, and when the time is right, transfer their wealth. With the continued rise of economic globalisation, our clients' affairs are equally as complex – working closely with our clients and their advisors, we tailor our advice to help them safely navigate that complexity.

We are proud of the diversity of our client base which includes ultra high net worth individuals and families, family offices, global

property investors, entrepreneurs, venture capitalists and owners and principals of private equity houses, hedge funds and other financial services companies. More than 80% of our client base has connections to more than one jurisdiction and as a result a substantial proportion of our advice is cross-border in nature. We also work closely with, and advise fiduciaries who administer trusts and other asset holding structures for high net worth individuals and their families.

We have market-leading strength across all of the legal services our clients will need as they navigate the complexity of their lives and businesses.

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