The International Family Offices Journal

Editor: Nicola Saccardo

September 2023 • www.globelawandbusiness.com

STEP ADVISING FAMILIES ACROSS GENERATIONS

Globe Law and Business

The International Family Offices Journal

Contents

Volume 8, Issue 1, September 2023

Welcome to the 29th issue of The International Family Offices Journal!

Nicola Saccardo

Welcome back from the summer break and to the 29th issue of *The International Family Offices Journal*. We have another excellent selection of articles in this issue for your consideration. The return after the summer months often has a back-to-school feel for both families and professionals in the family office space, as we look to the challenges and opportunities ahead.

This issue includes interesting insights on family enterprises. Jill Barber, Torsten M Pieper and Greg McCann examine dynamics affecting family enterprises and those who serve them, including the assumptions that can hurt the dynamics and distract from the fulfilment of a family's desires. In his article "Why does family governance fail?", Dominik v Eynern looks at the importance of family governance and why family systems are more prone to behavioural risks than non-family businesses.

Barbara Ruth Hauser and Winnie Qian Peng focus on how traditionally Western-facing family offices might be tailored to meet Eastern values. They explore research undertaken by the Bank DBS Singapore and set out a thought-provoking new family office model, drawing on Confucian values from the East.

On the other side of the world, we focus on Spain. While Spain has not traditionally been thought of as an attractive jurisdiction for high and ultra-high-net-worth individuals, Florentino Carreño and Beatriz San Basilio of Cuatrecasas in Madrid, set out details of why it is a more favourable jurisdiction than people might initially assume. They focus on the 'impatriates regime', introduced for those moving to Spain for employment or investment purposes, and its interaction with other taxes.

As family offices grow and become more sophisticated so do their requirements for the families they serve.

How to engage with families on environmental, social and governance (ESG) factors is the focus of Shelly Meerovitch's article, where she draws on her experience in this space. She looks at how to integrate ESG factors when the outlook of family members to such matters can vary significantly, with a focus on the Investment Policy Statement as a key tool.

The use of private trust companies is something we see more and more in the family office sphere. A new Swiss alternative has entered the market, the dedicated trust company (DTC). Jessica Schaedler introduces this structure and provides a helpful comparison of PTCs and DTCs in the Swiss environment.

Litigation in and around wealthy families continues to be an important topic and provides lessons for those advising them. Marcus Parker and Judith Swinhoe-Standen look at recent litigation trends focusing on mental capacity and the restructuring of trusts in the UK context. They go on to examine conflicting global cases focusing on the use of trust powers for improper purposes.

As family offices grow and become more sophisticated so do their requirements for the families they serve. Christian Stewart explores the role of a chief learning officer (CLO) and how they can add to family offices and human capital of the families they serve. This article explains the purpose and function of a CLO.

Tsitsi M Mutendi then builds on earlier articles she has written for the Journal on diversity and the challenges raised by more global families. In her latest article, she looks at multigenerational family environments and how these result in constant flux for families and those who advise them. Her article includes an interesting case study for our consideration.

Lastly, Rebecca Eastmond and Peter Goddard draw on their vast experience of working in the philanthropic space to look at how to develop a successful philanthropic strategy. Including a discussion by Peter of his responsibility for a new foundation focusing on mental health.

The Journal closes with the usual highlights from the recent STEP News Digest.

To conclude, I am pleased to report that the third edition of the book *Family Offices: The STEP Handbook for Advisers*, edited by Barbara H Hauser and myself, has just been published by Globe Law and Business. We would like to thank all the contributors.

New regulated solutions in Switzerland – embedding the family office within a dedicated or private trust company

Jessica Schaedler

Introduction

Private trust companies (PTCs) have gained significant popularity as wealth management tools among high-net-worth families worldwide. PTCs are particularly appealing to families with intricate assets as they offer enhanced control, flexibility and protection compared to conventional trust structures. Switzerland, renowned for its favourable regulatory and tax environment and its long-standing expertise in family wealth custody and management, stands as a prominent jurisdiction for PTCs. Furthermore, in light of the new licensing requirements for Swiss professional trustees, the Swiss legislator has introduced a specialised variant of the private trustee called the dedicated trust company (DTC). DTCs deliver similar – and arguably additional – advantages to PTCs by being owned by, and operating under, the regulatory umbrella and professional infrastructure of professional, licensed Swiss trustees.

In this article we argue that embedding traditional family office services into a PTC, and especially into a Swiss DTC, may not only raise efficiency in the administration of family wealth but also bring sustainability to the family wealth stewardship.

The family office

A family office is a professional institution that provides a comprehensive range of services tailored to the unique needs of a family. While each family office possesses its own distinct characteristics, there are several key priorities and service offerings commonly found within a family office:

- *Long-term wealth management:* This involves strategic planning and the establishment of formal governance structures to support the family's long-term wealth objectives;
- *Promotion of family values and purpose:* Ensuring that all decisions and actions align with the family's agreed-upon mission statements and constitution;
- *Investment planning:* Ensuring that asset allocation and portfolios align with investment policy statements and impact objectives while adhering to due diligence processes;
- *Privacy and confidentiality:* Safeguarding personal information, family activities, and financial matters to maintain a high level of security;
- *Tax and financial planning:* Managing cash flow, providing individual budgeting guidance, and offering expertise in personal and business tax returns;
- *Compliance and regulatory support:* Ensuring strict adherence to regulations governing investments, assets, and business operations; and
- *Succession planning and trust management:* Overseeing trusts and estates, and facilitating smooth transitions of wealth and leadership.

Considerations before setting up a family office

Family offices should be regarded as distinct entities operating as legitimate businesses. A proactive approach should be taken during the planning phase, prior to commencing operations. Engaging local experts in wealth planning, legal matters, taxation and regulatory affairs right from the project's inception will help to set the right basis and framework for sustainable family office operations.

To start with, a clearly defined purpose is indispensable for a family office. Establishing a well-defined vision and long-term strategy ensures the structure's longevity and facilitates coherent decision-making in alignment with the predetermined strategy. Critical domains such as choice of location, ownership structure, services to be provided in-house and services to be outsourced, staffing, governance, technology integration and operational procedures can all be orchestrated to support and advance the family's overarching vision and objectives.

A family office represents a genuine business entity that necessitates operationalisation, strict adherence to policies and procedures, the establishment of performance metrics and that requires appropriately trained, specialised and experienced staff. It is imperative to select the appropriate legal framework and seek localised counsel to guide the formal setup process, while also considering the tax implications involved.

Instituting robust governance rules is paramount for an effective family office. Thoroughly delineating roles, responsibilities, authority levels, decision-making processes, and strategic planning procedures is essential to pre-empt inefficiencies and suboptimal decision-making outcomes.

Adequate management of risks and data security constitutes a fundamental requirement for a family office. Implementing comprehensive policies and systems is imperative to mitigate the potential hazards associated with data breaches.

Finally, the intricacy and associated costs of establishing a family office should not be underestimated. Thus, it is prudent to seek professional guidance from experts, particularly during the initial stages and framework development. This entails:

- conducting a comprehensive review of the family structure, succession plans and wealth outlook;
- selecting the appropriate corporate vehicle for the family office;
- formulating a sound funding strategy;
- ensuring compliance with regulatory prerequisites, such as anti-money laundering obligations and licensing requirements;
- making informed decisions regarding IT infrastructure;
- appointing executive and management personnel; and
- deliberating the scope of in-house operations versus outsourced services.

Private and dedicated trust companies in Switzerland

Under Swiss regulations, Swiss trustees providing services on a commercial basis are subject to authorisation by the Financial Market Supervisory Authority (FINMA). There are two exemptions from this requirement: the PTC and the DTC.

The Swiss PTC is a type of trust company that assumes the role of trustee for one or several trusts established by the same settlor, exclusively for the benefit of the same family. A PTC is usually directly or indirectly family owned.

The Swiss DTC is neither owned nor significantly controlled by the family for whom the trusts are established. Instead, the DTC is owned and must be substantially controlled by an authorised trustee. This distinctive characteristic renders DTCs particularly appealing for families residing in jurisdictions that impose limitations on family control within trust structures but who still want to benefit from tailored trustee services for their family trusts. Additionally, unlike for PTCs, there is no specific requirement for a familial relationship for the DTC between the settlor and the beneficiaries. Instead, the trusts must either benefit the same family or be established by the same settlor. Consequently, this exemption encompasses relationships beyond those solely tied by family connections (as opposed to what is the case for the PTC).

It is important to note that both the PTC and the DTC authorisation exemptions are not automatically applicable. Both may be exempt by FINMA from the requirement to obtain a licence upon request only. Accordingly, an application for relief from the licensing requirement must be submitted for each PTC and DTC on a case-by-case basis. The same applies to the general structuring of a PTC or a DTC and its activities (eg, composition of the board, employment of officers, co-ownership, activities performed next to acting as trustee), which is always subject to approval by FINMA.

Purpose and use of a PTC or DTC

Effective succession planning is essential for ensuring the long-term success of a PTC or DTC. Succession planning involves identifying and preparing the next generation of family members to take on leadership roles within the private trustee. It also involves developing a plan for the orderly transfer of ownership and control to the next generation.

Further benefits of both the PTC and the DTC are:

- PTCs allow families greater control over the management of their assets than traditional trust structures with a professional trustee. Families can appoint their own directors and officers to manage the PTC, which allows them to tailor the governance structure to their specific needs and goals.
- DTCs allow families to take advantage of a professional, licensed trustee's operational and regulatory environment, thus making the DTC a semi-institutional player with enhanced standing towards certain counterparties such as, for example, banks or co-investors. At the same time, the family may retain a role in the DTC by acting as members of DTC or trust advisory committees.

Implementing comprehensive policies and systems is imperative to mitigate the potential hazards associated with data breaches.

A proper governance model is key for family wealth stewardship. The governance model should be tailored to meet the specific needs of the family while incorporating best practices and principles of effective governance.

- A PTC or DTC can assume risks that would be unacceptable by a professional trustee due to their higher duty of care. Higher risks assets such as shares in trading companies, units in hedge funds, aircraft, vessels, collectibles or real estate can be placed in the trust and managed by the private trustee with appropriate support of expert committees, if required.
- In cases where discretion and expertise are crucial, a PTC or DTC can act as legal owner of family operated businesses, enabling the family to appoint appropriate staff at PTC or DTC level with relevant expertise to manage the ownership of the family business.
- Both the PTC and DTC can be used as an effective estate planning tool. By transferring assets to a PTC or DTC as private trustee, families can ensure that their assets are managed according to their specific goals and values and that they are preserved for future generations.
- Both the PTC and DTC are a long-term project. Should the directors not perform their duties as private trustees to the satisfaction of the family, the respective directors can be replaced rather fast and easily. In contrast, changing a professional trustee is a lengthy and costly process that leads to a change of legal owner of the trust fund from the retiring to the successor trustee and consequently requires the drafting of transfer deeds, the negotiation of indemnities and releases and the vesting of all trust assets in the successor trustee. Especially this last point can prove burdensome and costly since it may involve, for example: executing transfer instruments for shares, novation or assignments of loans, full compliance check on the new trustee and often the entire structure with each bank and in relation to investments (mutual funds, private equity, etc) of the trust, re-registering for FATCA and CRS purposes, and more.
- Next to acting as a private trustee, both the PTC and DTC can assume the role of the family office in which case all services offered to the family will be subsumed within the same vehicle (with clear advantages explained further below).

Embedding family governance in a PTC or DTC
A proper governance model is key for family wealth stewardship. The governance model should be tailored to meet the specific needs of the family while incorporating best practices and principles of effective governance. Especially when built on the basis of a DTC, a family will benefit greatly from the operational setup and the policies and procedures of the licensed trustee shareholder, which allows the family and their advisers to focus on their areas of expertise. The following aspects should become an integral part of the planning before establishing a PTC or DTC (next to the ones mentioned earlier in this article):

- *Family governance framework:* Establish a clear family governance framework that defines the roles, responsibilities and decision-making processes within the family at a PTC or DTC level. This includes defining the family's values, vision and goals, as well as guidelines for family member participation, succession planning and family meetings which can also serve as an educational platform for younger family members or as a forum to discuss and resolve family conflicts.
- *Succession planning:* Plan for the long-term continuity of the PTC or DTC by establishing a clear succession plan. Define the process for transitioning leadership roles within the family office, including the selection and preparation of successors, to ensure a smooth transfer of responsibilities and maintain stability.
- *Management of family trusts:* Administer the family trusts in accordance with the family's broader strategy, implementing the wealth protection strategies and ensure generational transfer of family wealth.
- *Board of directors of the PTC or DTC:* Consider forming a board of directors composed of both family members (only where family control is not an issue, therefore, only in the case of a PTC) and external professionals with expertise in finance, legal and business management. The board provides strategic guidance, oversight and accountability for the corporate and trust operations and investments. In the case of a DTC, the appointment of at least one

representative of the licensed trustee is necessary to bring the required professional trustee expertise to the board of the DTC.
- *Policies and procedures:* Develop and implement comprehensive policies and procedures for the family office's operations, including investment policies, risk management protocols, compliance procedures, data security strategies, operational guidelines and confidentiality policies. These policies help ensure transparency, consistency, safety, efficiency and adherence to best practices. A DTC will act under the operational, risk management and compliance procedures implemented by its licensed shareholder and will benefit from expert staff in these areas. In the case of the PTC, these policies and procedures are developed and administered within the PTC itself in which case finding skilled staff is key.
- *Performance measurement and reporting:* Implement a robust system for monitoring and measuring the performance of the family trust's investments and operations. Establish key performance indicators aligned with the family's objectives and regularly report on the progress and results to the family members and stakeholders.

Ownership and control

As mentioned earlier, control over a PTC is usually exercised by the family who directly or indirectly owns the PTC. In cases where family control could lead to consequences not aligning with the family's asset protection and succession plans, having a purpose trust to own the shares of a PTC is often proposed as a solution. In practice, however, a purpose trust as owner of the PTC shares may not be sufficient to argue that a family, or usually the settlor, has released him or herself from control over a trust and therefore over the trust property.

Unlike the PTC, a DTC must be owned and controlled by a professional, licensed trustee. Should the family wish to retain a role in the management of the DTC and the trusts for which it acts as trustee, such control may be achieved by establishing the selection criteria for the DTC's directors, the members of the advisory committees and for the officers employed by the DTC or – where possible – by acting on advisory committees themselves.

PTC and DTC governance

The governance structure of both a PTC and DTC is tailored to the specific needs and goals of a family. In the case of a PTC, the family usually exerts substantial control over the management of the PTC by appointing, among others, their own family members as directors and officers to manage the PTC. In the case of a DTC, the board is usually composed of representatives of the licensed professional trustee, but not by members of the family themselves (to avoid control issues). Subject to approval by FINMA, additional, external board members may be appointed to a DTC's board. In any case, at least one representative of the professional, licensed trustee must be appointed to the DTC's board to ensure the DTC's operational supervision by a licensed trustee, as required by the Swiss regulatory authorities.

Trustee advisory committees

While the board of the PTC or DTC will have corporate responsibilities towards the company, they will also bear responsibility for their duties as representatives of the PTC or DTC as trustee. These duties are fiduciary in nature and governed by the law under which a trust is established, ie by the governing law of the trust. Fiduciary trustee duties are onerous and require in-depth knowledge and experience in managing trusts under the respective trust laws. While especially in the case of a DTC a representative of the professional trustee will bring this expertise and knowledge to the board of the DTC and while the professional trustee will provide the operational framework and administrative support to the DTC, very often a family will want to ensure that the trusts are administered in accordance with their broader goals. It is therefore usual to have one or more advisory committees supporting the DTC's board in trustee decision making and trust administration matters. Typical committees are:
- *Investment committee:* consisting of investment experts and dealing with the selection of and control over investments;
- *Family committee:* consisting of all generations of a family or of selected family representatives; deals with family internal matters, such as allocation of responsibilities, decision-making, defines and implements the family's values, vision, and goals; acts as an educational platform for younger family members; decides on selection criteria of PTC and DTC directors and officers and of other committee members;
- *Distributions committee:* consisting of senior family members, legal and tax advisers or trusted third parties and advises the board of the PTC or DTC on distributions to be made to beneficiaries.

This extract from the article 'Addressing family entropy in the context of behavioural health challenges – a new paradigm of culturally competent and clinically excellent care', by Paul Hokemeyer, is taken from the 28th issue of *The International Family Offices Journal*, published by Globe Law and Business, www.globelawandbusiness.com/journals/the-international-family-offices-journal.

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ISSN 2398-5402
9 772398 540000

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