Why family offices choose Bermuda

FLY HIGH MEDIA

Families are on the lookout for well-situated jurisdictions that combine strong professional infrastructure with a robust regulatory environment

By *Thomas J Handler and Barbara R Hauser*

Advisors around the world enjoy repeating the maxim: 'If you've seen one family office, you've seen one family office.' In other words, all families are different, and so family offices (FOs),[1] which are designed around the family they serve, are all different, too. However, there are some commonalities.

If we define 'family office' as the staff who attend to the needs of a particular family, it is clear that FOs have been around for as long as families could afford to hire staff. The FO label is relatively new, however, its origin often credited to US industrial barons such as the Rockefellers, Mellons, Morgans and Pitcairns.

In most cases, the FO is a very private entity; loyalty and confidentiality are key values. As such, it is impossible to count the number of FOs.

It is usually assumed that an essential feature of an FO is to manage the investable wealth of a family. That is not always true. We know some FOs whose main function is to manage a sizeable household staff and multiple residences, with relatively small amounts of traditional liquid wealth. In any event, those families who can afford to hire dedicated staff are fortunate members of the growing FO community.

Before looking at Bermuda, we should mention the increasing global growth of FOs. The market-leading *Family Offices: The STEP Handbook for Advisers*, first published in 2015, is now in its second edition. More than a dozen jurisdictions are represented, from the UK to the Gulf region, all showing remarkable growth in their FOs, as reported by advisors. According to estimates, there are more than 10,000 single-family offices (SFOs) worldwide, but the actual number may be substantially larger.[2] This growth results from a decrease in the number of trusted financial institutions and an increase in the number of very wealthy families.[3]

Evolution of a family office

Many families with an operating business are quite likely to have the functions of an FO provided to them by the executives in the family business. FOs of this kind are known as 'embedded' FOs.

At some point, often for tax, compliance or management reasons, personal services are moved outside the family business into a stand-alone FO entity. When this move happened several generations earlier, the continuing FOs, including many well-known examples in Europe, can be thought of as 'heritage' FOs. These offices have managed to serve and survive across several generations, a topic of great interest today. In some cases, the younger family members of these heritage offices begin to question the economics of the continuing luxury of their own office. Without the original funding and subsidies from the senior generation, the younger generation often decides that the FO is a fairly expensive operation.

At this point, a number of SFOs are persuaded that their costs could be reduced if they could find other families to join and share the overhead expense. This became quite a trend in the US during the 1990s. Traditional FOs would announce that they were 'opening their doors' to other families. In many cases, however, the families found that it was harder than they thought to

'According to estimates, there are more than 10,000 single-family offices worldwide, but the actual number may be substantially larger' make an FO into a consistently profit-generating entity. The resulting 'multi-family offices' have been quite challenging in our experience, because they typically began as a service cost entity, not as a profit centre.

Choice of jurisdiction

For a family choosing the location/jurisdiction for its FO, there are a number of factors to take into account:

- Where are the family members located? Are they all in one jurisdiction or, as is more common, do they live in a number of different jurisdictions?
- Where are key family assets located? What local management or oversight is required?
- Which jurisdictions have a strong professional infrastructure?
- Is there a reliable body of law that would apply, especially to family trusts?
- Would it be easy to hire and train local staff?
- Are the time zones close enough to simplify travel and communications?
- What are the tax and regulatory impacts?
- How strong is data protection and privacy?
- Are there any physical risks or dangers, such as kidnapping?
- Does the jurisdiction have a blue-ribbon reputation or is it one of the offshore centres that raise a red flag?[4]

For some families, no one jurisdiction suits their purposes. We have worked with a number of families who decided to split their FO into two jurisdictions. Usually, one of the jurisdictions is that which is closest to the largest number of key family members. The second or 'subsidiary' FO is usually chosen for its investment environment or proximity to key family investments.

Another alternative is to avoid the bricks-and-mortar expense of a traditional FO and create a 'virtual' FO (VFO). VFOs can provide an excellent starting point for managing newly liquid wealth, a better platform for embedded FOs and a possible improvement for certain outdated FOs.[5]

Where Bermuda fits in

Bermuda scores very highly on the factors for choosing a jurisdiction. Its long history of excellent professional services and the general absence of income taxes and VAT, coupled with a strong regulatory environment, have won many admirers over the years.

> 'Bermuda offers a smart and culturally respectful venue for local operations that can fit within larger global businesses'

We interviewed a number of professionals and asked why their FO clients choose Bermuda.

Vanessa Schrum TEP, a Partner at Bermuda-based law firm Appleby, reports that FO clients are attracted by Bermuda's reputation as a blue-ribbon jurisdiction and its infrastructure. Other important factors include privacy (there is no register of trusts in Bermuda); the trust environment; and Bermuda's enviable courts, legislation and jurisprudence, with ultimate right of appeal to the Privy Council in London. Schrum adds that 'Bermuda is an ideal location for family members, many of whom are now scattered across the globe, to meet and converge.'

Ashley Fife TEP, Counsel at Carey Olsen Bermuda, says that: 'Bermuda is a top-tier offshore financial centre. It is strong and stable, legally and politically. Its courts have repeatedly demonstrated that they will respect families' privacy. In addition, Bermuda is well serviced by local advisors and has excellent travel links to New York, London and a number of other major centres. It also has good infrastructure, including schools, and is safe, making it a good place to bring up children.'

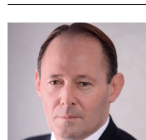
Randall Krebs TEP, Director of Harbour International Trust Company, one of many trust companies in Bermuda, says that his FO clients cite several elements of local trust law as important in their decision to choose Bermuda: 'It is possible to have perpetual trusts in Bermuda, which is attractive for families wishing to create dynastic structures. Bermuda has also introduced a streamlined procedure for extending the perpetuity periods of existing trusts. Further, section 47 of the *Trustee Act 1975* is a unique provision of Bermuda law that facilitates court-approved amendment of trusts, including dispositive provisions. Trusts from other jurisdictions are frequently migrated to Bermuda to utilise this unique variation provision.'

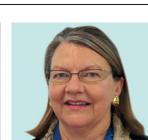
Krebs adds that Bermuda also has state-of-the-art firewall legislation to protect Bermuda trusts and their beneficiaries from matrimonial property/divorce claims and forced heirship, among other issues.

Finally, we spoke with a number of lawyers outside the island and asked why they and their FO clients have chosen Bermuda. Bill Bierce, a New York lawyer, has worked with Bermuda professionals for most of his career.

'I've always liked Bermuda's governmental discipline as a tax-neutral offshore jurisdiction,' he says. 'Bermuda has a well-deserved reputation built on local regulation that, by localising its business entities with duly authorised local management, retains its sovereignty. It offers a smart and culturally respectful venue for local operations that can fit within larger global businesses. It combines regulatory probity, compliance, good principles for corporate governance and a tax-friendly environment. It is not the cheapest, but it may be one of the best offshore jurisdictions.' ■

1 We will be writing about 'single-family offices', not the more marketing-driven 'multi-family offices'. **2** *Family Offices: The STEP Handbook for Advisers* (STEP Handbook), 2nd edn (Globe Law and Business, 2019), p.17 **3** In 2019, *Forbes* estimated that there are more than 2,000 billionaires worldwide (bit.ly/2kYpthK). **4** For an excellent summary of these factors, see J. van Bueren and T. Ming, 'Selecting the Right FO Jurisdiction', STEP Handbook, pp.35–46 **5** See 'Global Virtual Family Offices', STEP Handbook, pp.47–62





Thomas J Handler is a Partner at Handler Thayer LLP, and **Barbara R Hauser TEP** is a global family advisor, author and speaker