Family offices in a New Zealand context[1]

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The term 'family office' has been part of the vernacular of international wealth advisers for several generations. However, it has only recently started to be used noticeably in a New Zealand context. It is not a term of art, can mean different things to different people, and is often misunderstood and misused.

To some extent, all wealthy families in New Zealand have a platform to manage and administer the property and activities of family members. In some cases, the platform will be managed and administered by family members and in other cases external functionaries such as employees of the family business, bankers, book keepers, accountants, lawyers, executive assistants, financial advisers and trustees will have defined roles to play in the system.

These types of arrangements, while essential to the preservation and enhancement of private wealth in New Zealand, are not family offices in the sense generally used in more mature private wealth markets such as the United States, Europe and the United Kingdom.

Objective

The objective of this article is to answer the following essential questions for the New Zealand private wealth sector:

- What is a family office?
- Why have a family office?
- What does a family office do?
- How is a family office set up and run?

This article will also address some other matters relevant to the subject. Importantly, this article is drafted for the New Zealand private wealth sector. There is much literature available about family offices in a global context. However, the New Zealand private wealth sector is nascent and operates in a quite different eco-system to other developed countries. It is also changing rapidly both in terms of an increasing size and scale and the way in which the market is being serviced and wealth is being structured. New Zealand is also very different to many other developed countries in that – at least for the time being – capital is not typically subject to taxation on gains made, and there are no wealth taxes or inheritance taxes. It is therefore important to consider local nuances at the same time as examining best practice in other countries.

This article is drafted principally for the benefit of trusted advisers to wealthy private clients (eg, lawyers, accountants, bankers, investment advisers and managers of the family business). It is not intended to suggest that because such trusted advisers may not have experience with setting up and running family offices they should be replaced or usurped by those who do.

Advising wealthy families is a niche specialism in an ever-changing and complicated legal, regulatory and fiscal environment. It requires technical skills and experience that are not widely available in New Zealand. With the growth and increasing complexity of the private wealth sector and the greatest transfer of wealth in human history occurring right now, the need for genuine expertise has never been greater. However, private client work is almost always more strategic than transactional and as a consequence it is essential for there to be a foundation of trust and some chemistry between the family and the advisers.

In the author's experience, the best outcomes arise where long-standing, trusted advisers are retained and engaged to work alongside specialist technicians. In many cases, existing and established legal structures set up for a family will be fit for purpose or can be re-purposed. Often it is only the process applied to and the governance of those structures that needs to be optimised.

What is the family office?

A family office is a privately controlled and dedicated structure that supports a wealthy family with the governance, administration, investment and use of its assets, the management of risk and the organisation of certain aspects of its lifestyle.

Origins of the family office concept

The family office concept apparently originated in the days of the Roman empire. The first modern family offices were established in the mid-19th century as private banks and trust companies evolved to manage the wealth of the entrepreneurs of the Industrial Revolution. The objective then, as it is today, is principally to preserve and enhance a family's wealth for both current and future generations of the family.

Types of family office

The main types of family office are:

- Single-family office (SFO): where a single wealthy family employs an in-house team of experts to serve a single family.
- Multi-family office (MFO): where a number of wealthy families have joined together to employ a team of experts to serve their families in order

to gain economies of scale and efficiencies that might not yet be available to those families on an individual basis under an SFO structure.

There are two sub-categories of the SFO.[2] These are more common in New Zealand, albeit the arrangements are not typically referred to in the terms used below:

- Embedded family office: where staff within a family business also manage the private affairs of the owners. The main responsibility of the staff is the business and the family element is incidental.
- Virtual family office: where a group of independent professional (and/or family members) collaborate closely to manage the private affairs of a family.

The family offices that exist in New Zealand are most commonly either embedded family offices or virtual family offices. However, they are generally all described as a 'family office'.

The role of family offices in modern economies

Family offices that are well known in global terms include:

- Multi-generation: Rockefeller Family Office, Rothschild Family Office, Oppenheimer Family Office, etc.
- First generation: Vulcan (Paul Allen), Iconiq Capital (Mark Zuckerberg), Bayshore Global Management (Sergey Brin), Cascade Investment (Bill Gates), Hillspire (Eric Schmidt) and Clarium (Peter Thiel).

Family offices are increasingly influential in local and international economies and are often able to conduct their activities outside the supervision of financial markets regulators. This means that they often have privileged access to information and business opportunities before others in the market.

There are varying views on whether or not this is a good thing for society. There is compelling evidence that family offices are, much like banks, economic accelerators and sources of liquidity which then fuels commerce, tax revenues and employment. Others might argue that this ability to operate without scrutiny leads to oligopolies and increases inequality.

The reality is nuanced but there is no argument that the opportunities presented by a family office can be very beneficial for the family concerned and the areas of the economy in which they are active. It is also proven by research that family offices contribute significant amounts to philanthropic causes and their interest in sustainable and impact investing is increasing. The evidence suggests that the next generation of family offices are likely to increase allocations to environmental, social and governance investing.[3]

Family offices in New Zealand

There are very few pure SFOs in New Zealand, but the Todd Family Office is perhaps the best-known example. The SFOs in New Zealand maintain very low public profiles, perhaps because historically New Zealand was a very egalitarian society where it was considered distasteful to celebrate and promote success, let alone wealth. Arguably, that is changing but it remains part of New Zealand's cultural identity.

There are a few family office service providers and networks in New Zealand, some of which are within the major banks or connected to organisations that run from Australia, Asia or the United Kingdom. There are very few genuine MFOs in New Zealand.

The family office advisory sector in New Zealand is very nascent and largely influenced by Kiwis who have returned from working overseas, the private banks who service affluent individuals and families and a few wealthy migrants to New Zealand.

Why have a family office?

There many reasons why an individual or family may consider setting up a family office:

- *To manage risk*
  Risk to private wealth can manifest itself in many forms but in a New Zealand context often arises from:
  - business activities (eg, creditors and statutory liabilities);
  - family disharmony (eg, relationship breakdowns and sibling rivalries);
  - fragmentation (eg, farmland and family businesses);
  - death or incapacity of family members;
  - inflation, taxes, regulations and economic forces;

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A family office should adopt an institutionalised, independent investment approach which is professionalised, systematised, formalised and customised.

  - family members who are spendthrifts, have harmful addictions, are financially uninformed or attract undesired publicity;
  - imprudent investment decisions; and
  - lack of cash flow and/or liquidity.

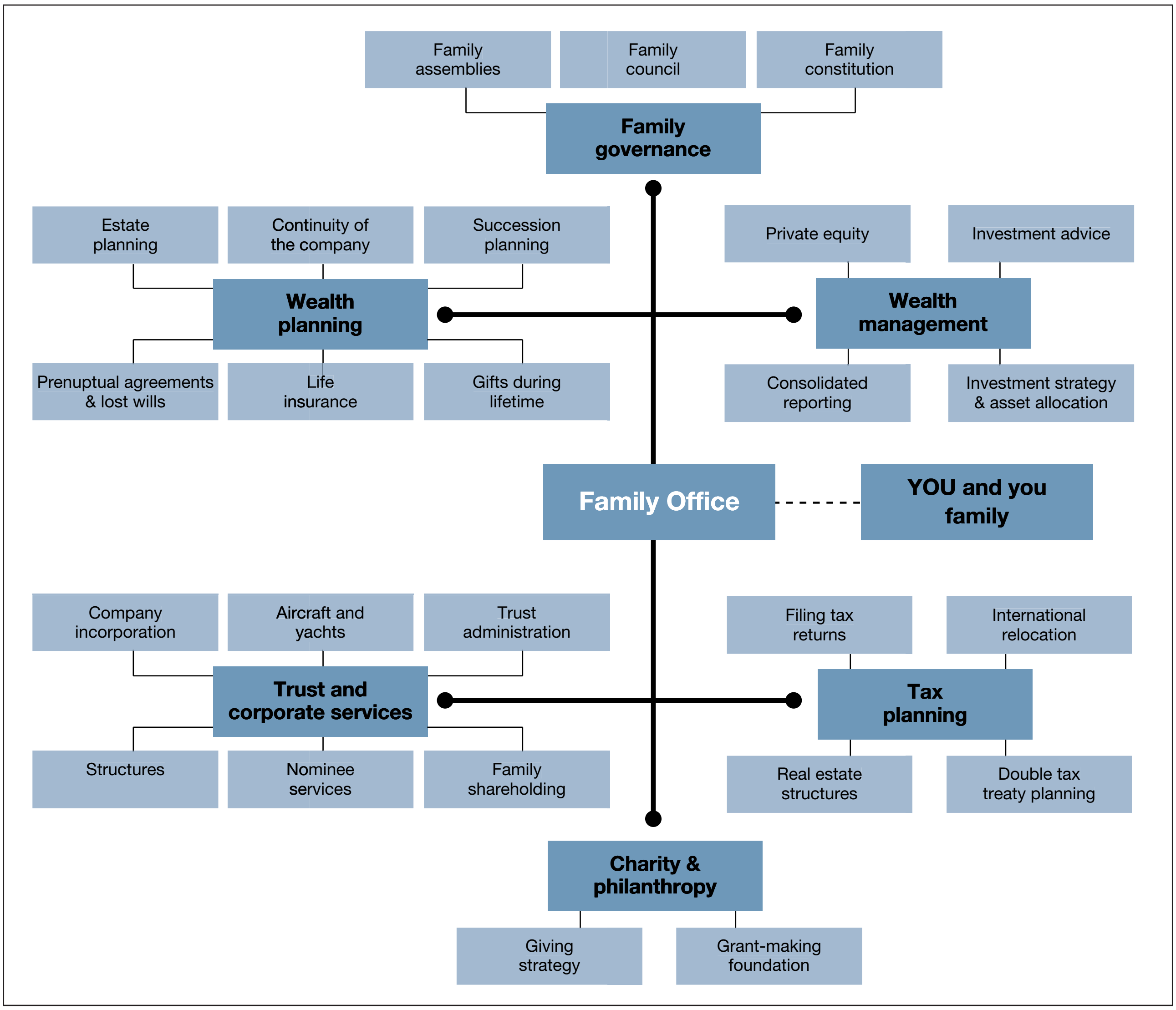
- *To preserve the family legacy*
  This includes not only the property or business but also family values. For many families the business, human, intellectual and social legacy is often just as important as the financial element.
- *To control, coordinate and consolidate family assets*
  As a family's wealth grows, the level of complexity also increases. Administering and managing the assets together with the legal structures through which they may be owned can become more burdensome, inefficient and expensive. A family office can document, control, administer and consolidate all these assets and make sure that they are insured, ownership is registered and all tax and legal requirements are complied with.

  The family office can also execute transactions and coordinate external advisers such as lawyers, tax specialists, surveyors, auditors and property managers. While continuity of core strategic advisers is desirable, all advisers should be accountable to the family office and not be entrenched in their positions (whether through governance roles or otherwise).

  The family office can also take a horses for courses approach to transactional work – such as mergers and acquisitions – to ensure that fees are competitive and the best expertise procured for the transaction. This can also be beneficial to creating deal flow for the family office from a wide range of transactional firms in markets where target assets may be situated.
- *To implement an institutional approach to family governance*
  When a family's objective is to preserve and enhance family wealth over several generations then experience suggests that an institutional approach is required to organising the wealth. The private wealth of a wealthy family should be managed as if it is a business. This involves putting in place structures and adhering to agreed processes.
- *To implement an institutional approach to family investment*
  Investment management is a core activity of most family offices. A family office should adopt an institutionalised, independent investment approach which is professionalised, systematised, formalised and customised. Experience suggests that this results in higher returns on investments, lower costs and more effective risk management. This should also create economies of scale, reduce transaction costs and open up new investment horizons for the family. Family offices can also focus on asset allocation between asset classes.
- *To preserve and enhance the value of family wealth over generations*
  For most families this is one of the most important objectives. However, history suggests that more often than not families fail in this regard by the time the third generation stands to inherit. A family office structure can support the family by putting in place family governance rules, risk management procedures, budgeting, cash-flow forecasting, monitoring and financial reporting and succession planning. Wealth education programmes for family members can help the next generation to become financially aware and responsible stewards of the family wealth. The family office will be a coordinator and create continuity and stability when generations change. All of this can help preserve and enhance the family wealth.
- *To counsel, protect and educate family members*
  Wealthy families often guard their privacy and a family office can help achieve this by taking over many of the tasks performed by individual family members or counterparties and becoming the gatekeeper to the family. In some countries this protection is needed because of threats to personal safety. In New Zealand, avoiding conflict and adverse publicity while promoting wellbeing and education are important considerations.

  The family office can also be a counsellor and facilitator for the family in relation to sensitive issues and strategic decisions.

Overview of family office structure



What does a family office do?

A family office can effectively do whatever the family wants it to do. However, this flexibility can cause confusion and it is very important that roles are defined. Families should go through a formal process with an appropriately trained and skilled facilitator to determine what it is they need the family office to provide. There are very few independent and objective advisers in New Zealand with this skillset.

A family office can provide its clients with a broad range of different services. Family offices typically deal with asset management, family governance, financial education, philanthropy and succession planning.

The diagram above illustrates some of the typical services that a family office may provide.[4]

As a family's wealth grows, the family office may become involved in lifestyle management. In particular, assets such as holiday homes, farms, horses, art, boats and even aircraft may become the responsibility of the family office. Family members may also use the family office to arrange travel, pay tuition fees and otherwise act as an executive assistant.

Arguably, the two most important functions of a family office are wealth management and succession planning.

Wealth management

Wealth management is not the same as investment. Wealth management is strategic whereas investment is a process in a wealth management plan.

A family office should develop a wealth management plan which aligns with the risk appetite and the specific requirements of the family (such as liquidity and income). The family office will then coordinate with financial institutions and monitor the assets before reporting to the family on the performance of the investments. A family office should be independent and may maintain relationships with a range of financial institutions. This means it will be well positioned to compare performance across the market.

A sophisticated family office can take on the position of fully managing the assets for a family. In this case, the external financial institution may only be a custodian. An advantage of this approach is protection from counter-party risk and the downside risk of using third-party fund managers with capital call options and whose interests may not always be aligned with the family's interests (during the global financial crisis of 2008 there were many examples where fund managers made capital calls to preserve their performance bonus entitlements rather than cutting losses on distressed investments).

A family office may develop expertise in specific asset classes such as hedge funds, alternative investments, real estate and private equity investments which a traditional financial institution may not have or may be restricted by regulation from providing. As diversification is an essential element to wealth management, especially where significant wealth is involved, this kind of expertise may prove very valuable for a family.

Family offices often have an appetite for co-investing. This is the process whereby families jointly invest in a particular project or asset, sometimes alongside another family office, a private equity fund or with bank finance. This can reduce the fees paid and the risk assumed by the family, but also dilute the potential returns.[5]

Private equity is one of the most common asset classes for family offices to invest in. This is largely due to the expected returns being much higher than listed securities and the private nature of the transactions. While the liquidity of this asset class will always be an issue there is a developing secondary market. As a result, family office investment portfolios are evolving to include collaboration with debt syndicates as lenders. Family offices also participate in venture capital syndicates and equity syndicates formed to participate in leveraged private equity buyouts and in syndicated property arrangements. This enables the family office to reduce the fees they have to pay as co-investors and allow them to gain access to like-minded partners to pool their resources and learn from their expertise.[6]

Succession planning

This is the process by which control and/or ownership of wealth is transferred to the next generation. The objective should be to achieve this as effectively and efficiently as possible. In a New Zealand context this generally means making sure that the assets of the deceased are inherited by the person(s) intended to benefit from them with certainty and without controversy. It is accepted wisdom that it can take up to 10 years to effectively arrange and implement a succession plan.[7] It is sometimes said that the best time to start succession planning was five years ago but the second best time to do this is today.

A will is the most common succession planning device used in New Zealand. However, trusts are frequently used, with varying degrees of success. In New Zealand there are no forced heirship laws, nor inheritance tax or estate duty and individuals have wide testamentary freedom under wills (subject to some rules intended to protect certain family members who may be disinherited in certain circumstances).

Relationship property (also known as contracting-out, pre-nuptial or post-nuptial) agreements are also important succession planning devices in New Zealand and are used to prevent assets becoming relationship property and family wealth being compromised in the event of death or dissolution of the marriage. This area of the law is evolving rapidly and what may have worked a few years ago may not work today or in the future. As a general proposition, there can be significant risks to family wealth on the dissolution of a relationship or the death of a family member and contracting-out agreements are very important in the New Zealand market.

Enduring powers of attorney are important succession planning devices intended to help families deal with situations where a family member has lost mental capacity. The consequence of this happening can cause financial and business paralysis unless there has been proper planning. This is a particularly relevant issue nowadays with such a large and wealthy ageing population.

Another factor to consider is how to prevent children from living extravagantly and investing imprudently. Some options are to bring the family wealth under the control of a guardian or place the majority of assets in a trust.

A family office can support a family to set up and govern these types of arrangements. If the objective is to create and maintain inter-generational wealth then

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the family office should recognise and prepare the family for the three phases of family succession:[8]

- *The founder phase:* this is the initial stage where the wealth creator(s) entirely own and manage the family wealth with only minimal governance and procedure.
- *The sibling partnership phase:* this is the stage where management and ownership of the family wealth have been transferred to the children of the wealth creator(s). As more family members are now involved, governance issues tend to become more complex and new challenges arise from the diverging interests of siblings.
- *The cousin confederation:* at this stage the family wealth becomes most vulnerable as more family members are directly or indirectly involved in the business, including children, cousins and in-laws. Since many of these members belong to different generations and different branches of the family, they might have diverse and conflicting ideas.

Each of these phases presents different challenges and opportunities for a family. The Rule of 92 states that 92% of a family's wealth is lost by the third generation. The reason for this is that families tend to focus solely on 'hard needs' such as asset allocations or growing the family business, at the expense of recognising the importance of 'soft needs' such as succession planning and educating children in the creation and use of wealth.[9]

Having no succession plan or having one that is poorly designed and/or implemented can contribute significantly to the family losing almost all of its wealth by the third generation. As a result, the family office should have an unrelenting focus on breaking the Rule of 92.

How is a family office set up and run?

Families considering setting up a family office should enter into a period of self-reflection, consultation, deliberation and engagement before making joint family decisions about the design and strategic direction of the family office. This process should be comparable to setting up a new commercial business.

Some of the important considerations are set out below:[10]

- *Appointment of advisers:* the family office should have a panel of external advisers such as lawyers, accountants, tax specialists, property managers, bankers, investment managers, trustees and other professionals. The panel should work collaboratively in open architecture. All panel members should become familiar with the structure of the family office so that they can deliver their services with full knowledge of the objectives of the family. In the author's experience, there are no service providers in the New Zealand market that can provide all of the solutions. Any that purport to do so will be overreaching their capabilities in some specialist areas.
- *Objective:* all relevant family members should agree and decide on the objectives of the family office.
- *Family engagement:* all relevant family members should be involved in the process and agree on such matters as leadership and operational roles.
- *Engagement with the family business:* in circumstances where the family owns a trading business then there should be some engagement with the management of the business about the vision, objectives and expectations of the family over the long term.
- *Assets:* it is necessary to clearly identify and describe the assets intended to be within the scope of the family office. Some differentiation between strategic assets (such as the family business) and non-strategic assets (such as participations in funds) is recommended.
- *Services:* the types of services to be provided by the family office should be clearly defined.
- *Leadership:* there needs to be a leader or group of leaders to drive the set up and running of the family office.
- *Budget:* there needs to be some agreement as to what financial resources will be allocated to the set up and running of the family office.
- *Legal structure:* family offices are typically structured as a company or limited partnership. Sometimes a trust or other type of

unincorporated structure might be used. In either case the mandate to set up a family office is bespoke and requires expertise and experience. Family offices tend to be slightly more flexible than a commercial enterprise but more structured than a typical family trust. There should be a commitment to a higher degree of formality and adherence to policy and procedure than is likely to exist in the arrangements of other families.
- *Recruitment of staff:* there should be some analysis around the number of staff needed and their role in respect of the services the family office intends to provide.
- *Operational infrastructure:* office space, software and IT infrastructure may need to be procured. Cyber-security arrangements should be made.

In the author's experience, the best outcomes:
- occur when discussions begin well in advance of any common trigger events (such as death or incapacity);
- require an in-depth understanding of the family dynamics drawn from considerable time and effort in understanding and meticulously documenting all the relevant circumstances;
- involve engagement with all stakeholders, including family members and management;
- are based on a game plan, which is simple, documented and agreed at the outset before any substantive steps are taken;
- are not tax driven;
- involve the founders taking a leap of faith in the advisers, management and family members;
- involve an open architecture approach and the free flow of information between the lawyers, accountants, bankers and other relevant professionals who work together from the outset, rather than alone in silos;
- are often led by professionals trained in the science of human behaviour – rather than lawyers and accountants;
- are predicated on independent valuations and financial reporting;
- take into consideration financial products such as insurance to manage risk and annuities to manage cash flow and services such as investment advice, where there is liquidity;
- distinguish between advice, management and governance; and
- recognise the value of independent governance, whether that be at trust or company level (and in this regard, the family lawyer and accountant may not always be 'independent').

Family charters

A family charter (also known as a family constitution) can be an important element of family office governance. This is a written statement that serves as a record of a family's heritage, culture, hopes and ambitions for future success, as well as a plan for the future. At its core will be the mission statement for the family and some clearly stated aspirations for current and future generations. A family charter will typically set out broad principles around the governance, management and use of family assets and profits. It may also include specific policies on matters such as investment, education, the family business and conflict resolution.

A family charter can be the centrepiece of a framework that engages family members with the business, legal structures and advisers. It can provide for family members to play a role in the governance of the family's affairs and interests, if that is desired. Alternatively, they can step back and rely on the structure and procedure set out in the family charter and the corresponding legal documents. This can help the family avoid disharmony and disputes or events that can be harmful to the family mission.

Family charters can also provide a degree of flexibility in arrangements for families and can be amended to reflect changes in relationships, for example. A family charter should be a living document that is reviewed regularly and evolves over time in a manner that is not always possible with certain legal documents (such as trust deeds and shareholder agreements).

A family charter should be a bespoke document, not a standard form prepared by external advisers without intrinsic knowledge and understanding of the family dynamic and core values. The most important feature of the family charter is that it should be the embodiment of the personal ethos, and closely held principles, which the family all agree between themselves to abide by when dealing with family wealth.

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The content of a family charter will emerge organically as members of the family, business and trustees engage in dialogue with the advisers.

Dispute resolution mechanisms should be included in a family charter that are clear, cost-effective and confidential. Experiences of families who have gone through the process of creating a family charter show that disputes are less severe, and in some cases have been averted altogether by the activation of those mechanisms.

Form and content of a family charter

The content of a family charter will emerge organically as members of the family, business and trustees engage in dialogue with the advisers.

Some of the matters that may be addressed in a family charter include:

- statement of family mission/ethos/values;
- history of the family;
- family tree;
- structure chart;
- strategic assets;
- decision-making protocols;
- committee or board structure;
- allocation of power and responsibility;
- distribution policy;
- statement of investment policies and procedures;
- employment policies in relation to family members;
- information sharing and reporting protocols;
- mechanisms to deal with disposals and transfers of interests in the family wealth;
- dispute resolution processes;
- contingency plans;
- media policies;
- succession plan;
- family meetings;
- directory of external advisers; and
- annexures – copies of trust deeds, letters of wishes, shareholder agreements and family business plan.

Family charters are rare in New Zealand. The author observes that one of the fundamental mistakes made in some of the few family charters that have been drafted for families in New Zealand is the failure by inexperienced advisers to distinguish between rules and principles. Family charters should normally contain principles not rules. If they do contain rules then they should not duplicate, complicate or contradict rules in other documents such as trust deeds or shareholder agreements.

In this context a principle should internally motivate a family to do or refrain from doing something and in a particular way. A rule, however, should externally compel the family to do the things someone else has deemed good or right. Rules control processes and outcomes but principles guide them. Rules are contained in trust deeds, wills, shareholder agreements, contracts and the general law. Principles should be contained in family charters and letters of wishes. Documents containing binding rules should be identified and recognised but not usurped by the family charter. Instead, the family charter should seek to deal with situations in the governing documents of the family and/or its business where there are no rules or there are rules but they require some interpretation and the exercise of judgement (eg, discretionary powers under trusts).

Comparison with other types of arrangements

In many cases what is referred to as a family office in New Zealand may well be something different altogether:

- *Private investment office:* there are two principal elements that differentiate a private investment office from a family office – the service and the family.

  A private investment office is a formalised structure through which an individual, family or close group of people invest wealth according to an agreed strategy and share in that wealth in an agreed manner. Such an office is fully focused on investing and is highly entrepreneurial and the principals are actively involved.

  A private investment office is, in most cases, a group of people dedicated to the investments of the principals. It is not normally focused on succession planning, family businesses, lifestyle management, education, family employment or otherwise preserving and enhancing family wealth for future generations of the family. Instead, the focus is on maximising the return on the investment made by the investors. It is common, however, for a private investment office to evolve into a more complete family office at a later stage.

Most families and advisers mistakenly view the family office as a cost centre.

- *Family bank:* a family bank is an arrangement whereby the leaders of a family set aside a portion of the family wealth (sometimes known as 'dry powder'). These funds are then designated for loans to family members, to encourage the younger members to pursue their own paths while remaining engaged with the wider family.

  The process can be as formal or informal as desired but it is generally good practice to require a written proposal, business plan and loan application from the borrower, similar to that required by a commercial lender and periodic updates to the family bank.

  Empowering the next generation and making family members feel invested in, rather than entitled to, the family wealth is a proven way of preserving and enhancing wealth between the generations.

  Dry powder is also sometimes used by a family bank to partially self-insure the family against certain risks or finance the redemption of certain rights, shares or other entitlements of family members in family assets.

These types of arrangements provide very specific services and perform no other functions for the family. While they are not family offices in themselves, they are very often components of a family office structure.

Costs

International research suggests that most SFOs would need to manage a minimum of US$100 million to justify the associated costs.[11] However, in a New Zealand context a family with a net worth of NZ$50 million may be able to establish an SFO of some type.[12] Families with a net worth of NZ$25 million may be best served by joining an MFO or operating an embedded family office or a virtual family office. Other aspiring families can procure certain aspects of a family office arrangement from a third party (eg, a bank, trust company, law firm or accounting firm) with experience and expertise in advising wealthy families. In due course those families may transition to an SFO or MFO structure.

In all cases, many of the principles and concepts explained in this article will still be relevant and applicable, albeit the level of investment by the family in advice, infrastructure (physical and legal) and process should be tailored accordingly.

Most families and advisers mistakenly view the family office as a cost centre. This perspective overlooks the opportunity cost or 'value leakage'. The risk of value leakage increases as more assets are acquired and especially where the family is relying on third parties to manage those assets. Value leakage can occur at all stages of the family supply chain – from the operating business (eg, leasing arrangements, asset financing and legal and accounting fees) to lifestyle assets (eg, berthage, fuel procurement and insurance) to real estate (eg, property management fees) to financial assets (eg, treasury, custodian, management and brokerage fees). A well-structured, professionally managed family office can more than cover its overhead costs by being a price setter rather than a price taker, negotiating preferential rates with vendors and monitoring expenditure in a way that most families would not normally have the systems and processes to do.

Traditional asset planning in New Zealand

Asset planning is a term commonly used in New Zealand to describe the design and implementation of a strategy to preserve and enhance the value of assets for a family. It is applicable to all families and is not unique to the family office sector or New Zealand. However, when the general issues set out below are considered in the context of the family office sector then potential problems are magnified.

Often asset planning involves transferring the assets between generations. Sometimes it involves maintaining the status quo. There are usually two key elements to asset planning – wealth management and structure.

A unique aspect of the New Zealand private wealth sector is the lack of independent governance of the structures that hold family wealth. In many cases this will be a family trust which is being governed and administered as if it is the personal property of the people who set it up. There is often very little (if any) process to support the structure. In many cases people have overestimated the level of risk to their private wealth and there is too much structure for the type and value of assets held and the needs of the family.

Globally, there is an entire industry dedicated to the independent governance of private wealth. However, in New Zealand advisers (erroneously) tend to conflate the provision of two very distinct functions: professional advice and fiduciary services.

In each case the providers of those services require different skills and have duties which are owed to different classes of people. As the value of the New Zealand private wealth sector has grown exponentially over the past 30 years due to underlying asset inflation, this approach is not working as effectively for many wealthy families and opportunities to aggregate and create inter-generational family wealth are being compromised. A problem is that there are very few qualified, regulated and experienced fiduciary service providers in the New Zealand market. Until that situation changes, this problem is unlikely to be properly resolved.

A trust is typically the centrepiece of a family asset plan in New Zealand. However, trusts are one of the most complex legal relationships. Most lawyers do not properly understand trusts, let alone lay settlors, trustees and beneficiaries. In New Zealand, most families appoint the family lawyer or accountant to be a trustee. A problem with that approach is that the family lawyer or accountant could be conflicted by a long-standing relationship with the people who set up the trust (whose interests may become misaligned with the next generation) and unaware of, or unable to fulfil, fiduciary duties to the wider family. In many cases he or she will not have the specialist skills to perform the role in an increasingly complex and regulated environment.

In more mature markets than New Zealand it is generally considered undesirable for family members to be the trustees and/or have effective control over the trust. Instead, truly independent, professional and licensed trustees in those countries are typically granted wide discretionary powers which they exercise judiciously, while mindful of fiduciary and other duties which are often enforced by the courts and sometimes even by regulators.

Historically, in New Zealand this peculiar way of doing things was probably of only academic relevance, given that the size of the private wealth sector is modest in global terms and the interests of the beneficiaries and the trustees were generally aligned while the second generation was young and uninformed. However, the traditional approach to asset planning in New Zealand is starting to present issues. This can have a catastrophic effect on family wealth, wellbeing and relationships. Furthermore, families are now more likely to be blended and living across different borders, creating additional complexities (such as reporting under the FATCA and CRS global tax information exchange regimes).

In many cases, succession planning and asset protection objectives might be better achieved through legal devices. The options include:

- family investment holding companies;
- family partnerships;
- family charters;
- option agreements;
- insurance policies;
- annuities;
- golden shares;
- redeemable preference shares;
- family share schemes;
- loans (secured/unsecured);
- testamentary trusts;
- wills;
- enduring powers of attorney;
- relationship property agreements;
- contracts for difference;
- property sharing agreements;
- joint tenancies;
- family finance companies (savings, loans and insurance);
- convertible loan notes;
- drag and tag rights; and
- shareholder agreements.

All of these options should be considered by advisers as alternatives to or together with trusts. In certain circumstances a family office can provide the structure, governance and administration necessary for the asset plan to be properly executed.

Conclusion

Family offices are emerging as the last outpost of private capital in the world. Increasing numbers of wealthy families around the world are setting up family offices. This trend is making its way to New Zealand where the private wealth sector is growing exponentially due to underlying asset inflation, foreign investment, migration, and (at least for now) a relatively benign fiscal environment.

Some families are disintermediating third-party service providers by performing many of the roles traditionally fulfilled by lawyers, bankers, investment managers, property managers, travel agents, accountants, quantity surveyors, investment analysts

A problem is that there are very few qualified, regulated and experienced fiduciary service providers in the New Zealand market.

and other professionals and financial institutions. This consolidation and institutional approach to family wealth is a paradigm shift from the traditional lawyer/accountant led approach to asset planning for wealthy families in New Zealand.

When properly implemented, managed and administered, a family office can be mutually beneficial to the family concerned, the local community in which the family lives and carries on business, and the wider New Zealand economy.

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12 At the date of publication US$1 = approximately NZ$1.52.

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