GUIDE

Family Offices – Launching an Investment Fund

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Extending the remit of a Family Office to establish a bona fide fund presents many challenges. One challenge is balancing the right investment fund structure for the Family Office and its beneficiaries whilst making it attractive for outside investors. This guide considers the benefits of using Jersey or Guernsey and explores the key steps needed to launch an investment fund within your Family Office.

An investment fund structure can offer many benefits for a Family Office, namely:

- the pooling of family wealth into a single managed structure;
- concentrating investment capital to make a larger impact;
- allowing family members (as the fund's investors) to select their level of participation;
- allowing family members to invest confidentially;
- centralising decision making and administration which can lead to cost savings;
- providing flexibility to admit outside third party capital/investors;
- modernising the way in which the interests of the Family Office team are aligned and/or are incentivised.

For a Family Office considering this option, key decisions will need to be made on the fund's domicile, structure, and its service providers.

Jersey and Guernsey have long been popular domiciles for fund vehicles and are attractive jurisdictions for a Family Office looking to establish a fund. The Channel Islands' strengths lie in their stability, their proven reputation with investors and fund managers alike and their flexibility when it comes to choosing a fund structure and the appropriate fund regulation to be applied to your fund.

This guide explores the key steps needed to launch your Family Office fund in Jersey or Guernsey.

Step One – Choosing your Service Providers and Directors

As a first step to launching your Family Office fund (the **fund**), you will need to appoint certain key service providers. These include:

- **Onshore legal advisor:** Typically, you will need to appoint a lead legal advisor with specific investment fund experience (usually an international firm) to help you structure the fund and to provide advice in the places where your fund will be offered/marketed or in the jurisdictions where the family's beneficiaries are based (your **Onshore Advisor**). This advisor may be the Family Office's existing legal advisor if they have this experience, otherwise the Family Office may need to appoint a new firm with specific investment fund experience. The role of the Onshore Advisor will be to advise on the fund structuring, and they will usually lead on the key fund documents. They will also assist you with documenting the commercial terms of your fund to best suit the needs of the family whose money will be invested, as well as any co-investment, any side letters, the drafting of an offer document (where required) and they can also advise on carried interest/performance fees/hurdles for the Family Office staff. They will also usually project manage the fund launch and co-ordinate with your other service providers, including Mourant.

- Offshore legal advisor: Mourant's role in the fund launch process is to act as your advisor in Jersey or Guernsey (as applicable) on legal and regulatory matters and to provide support to your Onshore Advisor. Mourant has been a leading advisor to investment funds in the Channel Islands for many years and can provide the necessary legal support to you and your Onshore Advisors when establishing your chosen fund structure in Jersey or Guernsey. Our role will usually be to assist with the establishment of the fund vehicles in Jersey or Guernsey and, in conjunction with the fund administrator, we will obtain the relevant licences/approvals from the local regulator (where required).
- Fund administrator: You will need a fund administrator to provide local services for your fund (the Fund Administrator). The role of the Fund Administrator will be to provide the fund with services such as registered office, secretarial services, compliance services, local directors as well as back-office fund administration and accounting services and interacting with the local regulator. Almost always, the Fund Administrator can provide all of the fund administration functions needed to establish and maintain your fund for its entire term.
- Directors: The Fund Administrator will usually provide one or two individuals resident in Jersey or Guernsey to act as members of the board of the fund's governing entity. They will be experienced in governance and fund management and operation. You should also consider whether the board needs any additional directors to ensure it has the appropriate expertise, either by appointing an appropriate individual from the Family Office or an appropriately qualified and experienced non-executive director (noting that Jersey and Guernsey both have a number of qualified and regulated individuals who provide non–executive director services). The board should be constituted and managed in such a way that it makes its strategic decisions in respect of the fund in Jersey or Guernsey (as applicable).
- Investment advisor: If the board of directors does not have the investment experience in the asset class in which the fund will invest, you should consider whether the fund should appoint an appropriately experienced professional from the Family Office to the board, subject to tax and regulatory advice, or alternatively appoint an investment advisor to provide recommendations in respect of investments (either an appropriately experienced entity connected with the Family Office or a third party advisor known by the Family Office).
- Auditors: If your fund requires audit services (which might be mandatory if your beneficiaries are based in the European Economic Area (EEA)), local auditors are available to provide audit services.

Step Two - What structure will the fund take?

Your fund can take any form (e.g., a corporate, unit trust or limited partnership). The fund does not have to take a prescribed structure in Jersey or Guernsey. More unique structures are also available if needed, such as a 'protected cell company' (similar to a Cayman segregated portfolio company), incorporated cell company, incorporated limited partnership or limited partnership with separate legal personality.

The structuring decision is not determined by the Jersey or Guernsey service providers; this is usually determined by the tax advisors based on other factors, such as:

- Investors and their residence: The particular vehicle and its tax opaqueness/transparency may have some bearing on how the fund investments and its proceeds are treated in the hands of the family members (and/or third-party investors) who will ultimately benefit from the fund. This can therefore be influential on whether the fund will take the form of a corporate, unit trust or limited partnership.
- Target investments: The investments of the fund will also have some bearing on the chosen jurisdiction and corresponding vehicle. Certain assets are better suited to certain structures. For example, investing in UK real estate is usually better housed in a property unit trust due to the elections/exemptions available in the UK for non-resident capital gains tax purposes.
- Liquidity profile: The liquidity profile of the fund will influence the decision as to the most appropriate vehicle. For example, corporates are better suited to open-ended funds (such as hedge funds), whereas limited partnerships are better suited to closed-ended funds (such as private equity funds).

Other factors such as confidentiality and debt may, but not always, have some bearing on the structure.

For funds investing in private equity and venture capital investments, the use of a limited partnership is common. The partnership structure provides flexibility for dealing with the admission of further investors (if, for example, the fund will be offered to outside investors) and can provide flexibility with carried interest performance/incentive arrangements for the Family Office team.

For more information, please see our guides, Limited Partnerships in Guernsey and Jersey limited partnerships.

It is important to understand how your fund will operate on a practical level, how decisions will be made and how you, as the Family Office, will interact with the fund and what your role will be. Discussing and agreeing this with your service providers (including your tax advisors) will be a key upfront task.

Step Three - What Fund Regulation will apply in Jersey or Guernsey?

One of the next steps will be to determine what level of regulation your fund will be subject to in your chosen jurisdiction. Mourant can help you with that analysis. We will need to understand the minimum investment required from investors and whether the fund will be reserved solely to family members (and their estate planning vehicles) or if it will also be offered to external investors and, if so, how many and what type. That will have some bearing on the fund's regulation in Jersey or Guernsey.

Both jurisdictions offer a broad range of fund regulatory regimes which could apply to your fund.

In Jersey, it could be an 'unregulated fund' all the way to a regulated unclassified fund (highly regulated). In Guernsey, the equivalent options extend from private investment funds through to authorised funds. As a rule of thumb, the more sophisticated the investor base, the less likely that investor-protective regulation will be needed.

In our experience, first time fund managers will typically opt for the 'Jersey Private Fund' regime (the **JPF regime**) which is a popular choice that will allow up to 50 offers/investors whilst imposing only a light-touch level of regulation. It is a cost-effective solution for Family Offices who deal with sophisticated, non-institutional investors that can invest a minimum of at least £250,000.

The corresponding regime in Guernsey is the 'private investment fund' (the **PIF regime**), which is also a fast-to-market option, with a light-touch level of regulation. There are three routes to establishing a PIF in Guernsey, including one dedicated to family structures.

For more information about the JPF regime and the PIF regime, see our guides on The Guernsey Private Investment Fund and Jersey Private Funds.

Step Four – Will you be marketing to external investors?

You may know of some external parties who you feel would be interested in co-investing in the fund. If you wish to approach potential investors, then you may choose to produce (or, depending on the chosen fund regime, be required to produce) an offer document setting out the key terms of your fund and the Family Office's track record with investments. Your Onshore Advisor, together with Mourant, would be able to advise you on the right information to include in this document.

You will need to decide early on (and in conjunction with your Onshore Advisor) as to whether you will want to approach potential investors in the EEA. Importantly, if you do not wish to target investors in the EEA then you would not require any additional EEA-related regulatory licences in Jersey (or need to make any EEA-related notifications in Guernsey) to proceed.

The European Union (the **EU**) regulates marketing to any professional investor based in the EEA which imposes additional requirements for fund managers outside of the EU (known as 'third countries'). There are some instances in which you may deal with investors who approach you without this being treated as marketing (known as 'reverse solicitation'), but this is an increasingly complex area and advice will be needed from your Onshore Advisor on the local rules in each EEA jurisdiction.

In practice, if your fund is to be based in Jersey or Guernsey (which are both outside the EU) and you wish to market to EEA professional investors:

- additional licences may be required in Jersey to allow the fund to market into the EEA (as required under the national private placement regime introduced by the EU's Alternative Investment Fund Manager's Directive)
- additional disclosures may be required for EEA investors (known as 'Article 23 disclosures') which in practice means that some form of offering document and the production of audited accounts may be needed; and

- importantly, advice will be required from your Onshore Advisor on the local rules in each EEA jurisdiction (known as the local 'national placement fund rules') on specific requirements. For example, in the UK, a notification is required to be made to the FCA before marketing can take place. In Germany, the local regulator imposes more requirements such as the appointment of a 'depositary'. Each EU jurisdiction has their own requirements, and this may have some bearing as to whether it would be cost effective to market to those investors.

For a Family Office managing a fund that is less than €100m (known as 'sub-threshold managers'), some of the above requirements can be relaxed.

Step Five – How long will establishing a Jersey or Guernsey fund take?

Both Jersey and Guernsey fund structures can be set up relatively quickly when compared to other jurisdictions. The timing will ultimately depend on the type of fund being set up. As a guide:

Process	Time
Establishing a company?	1 to 5 business days (can be fast-tracked if needed)
Establishing a limited partnership?	1 to 5 business days (can be fast-tracked if needed)
Establishing a unit trust?	Typically 5 business days
Regulatory approval as a fund under the JPF regime / PIF regime	48 hours / 1 business day (respectively)
Jersey regulatory approval for EEA marketing	5 to 10 business days (or more)

In our experience, the establishment/approval timelines are unlikely to impact the broader fund launch timetable. Much more time will be spent, for instance, documenting the commercial fund terms, drafting the offer document, and negotiating the documents with investors. This process can usually be measured in weeks when there is a small pool of investors.

Step Six – Considering the costs of launching and operating a fund

Estimating how much it will cost to launch and operate a fund is a key part in assessing the fund's viability for a Family Office. Each fund is unique, and the answer will therefore be different depending on each fund in question. Some of the following key hints/tips might be helpful:

- Understand what fees are involved: For a Family Office looking to establish its first fund, the fees involved might initially come as a surprise. There are a lot of different costs to factor in and accessing the expertise of quality service providers such as Onshore Advisors and tax advisors is likely to be well worth paying for. There may be a temptation to cut costs, however the adage of 'you get what you pay for' is almost certainly true in a fund launch context. You should always surround yourself with service providers who will provide you with the best possible support. This may mean seeking out the service providers that have the best and most relevant experience for your proposed fund, whether that be expertise in working with first-time managers or dealing with specific asset classes, as this will have some bearing on whether your fund launch will ultimately be successful. Please note that fee estimates for such work can vary widely so when reaching out to multiple service providers for quotations, ask them to prepare their estimates in a consistent fashion to help you compare these as accurately as possible.
- Initial costs – pre-fund launch: It will be important to account for the initial one-off costs to establish the fund (e.g., application/incorporation fees, statutory fees/one-off 'take on' fees). If this is your first fund, you may be asked for a payment upfront to cover these. In addition, in the event of a failed fund launch, you may be 'at risk' for these costs (and it is therefore worth bearing in mind). However, assuming all goes well and your fund does launch, these costs can likely be recovered and will be borne by the fund's investors. You should ask for a comprehensive list of initial costs from each of your service providers.
- Running costs: It will be important to account for other running costs for the life of the fund and to have these drawn down from investors and available to the fund in liquid reserves (and this can include

any periodic management/advisor charges). There will be annual statutory costs for maintaining the fund in Jersey or Guernsey and this will differ depending on the type of structure. One of the larger costs will typically be the fund administration service provider costs. Some fund administrators offer annual fixed fee options (which provide a good level of certainty) whilst others offer a lower annual fee with a variable activity- or AUM-based element.

Step Seven – Understanding how your fund will operate in practical terms

Whilst each fund may be different, some of the key ongoing operational items will always be common – i.e., the fund will need to draw down capital, make its investments, undertake distributions and reporting, and the fund's investments will need to be managed throughout.

How you interface with the fund will depend on the form/structure that your fund takes and similarly, how your expertise is translated to the fund making an investment will also depend on how your fund is structured.

To illustrate this point with a case-study – let's assume your fund is set up as a Jersey limited partnership. This type of fund is typically set up with a newly formed Jersey company as general partner. In this example, the general partner will be responsible for the management of the fund and will operate through its board of directors. It is common for the Jersey Fund Administrator to provide at least two or more experienced Jersey resident directors to the board to make decisions on behalf of the general partner. It may be possible, subject to advice from the tax advisors, for a non-Jersey director to join the board, which might be a team member from the Family Office feeding their expertise into board decisions. To ensure that the 'management and control' of the general partner remains in Jersey, the Jersey resident directors usually comprise the majority of the directors. The general partner will usually meet periodically (e.g., quarterly) or when activity/decisions are required. Jersey board meetings are normally convened in person with a majority attending in Jersey. A fund set up as a Guernsey limited partnership would broadly be structured in the same way.

It might transpire that no-one from the Family Office is appointed to the board directly, but that the Family Office fulfils the role of 'investment advisor' (either through your existing entity or a newly formed entity) to provide recommendations to the general partner and to provide periodic updates.

In either example, it is key to understand the roles and remits of each party involved, and how decisions are to be made. It would be important to appreciate that there may be more rigour around the decision-making process than you may have been previously used to. This would however be key to maintaining the integrity of the fund throughout its life.

Step Eight – How does the fund launch process work?

The 'launch' of your fund will normally begin when offers to invest in the fund are circulated to investors. In advance of this, a number of key milestones need to be achieved, the timing of which must be carefully managed. These include:

- Finalising the investor documents: If your fund was established on the terms required by the family members represented by your office, specific amendments may be required to make the fund compatible with the commercial terms agreed with any external investors. This will normally be done immediately before 'first closing' (being the time that investors are admitted to the fund) and the fund's constitutional documents will be amended in readiness for the fund to admit its first investors. At this stage, the Fund Administrator will usually have opened the fund's bank accounts.
- Board meetings: The fund will usually hold a board meeting in advance of launch to approve, amongst other things, the offering document to investors, any regulatory and bank account opening applications and the issuance of subscription documents to investors. In advance of 'first closing', Mourant, in conjunction with the Fund Administrator, will ensure that all of the local regulatory approvals are in place for the fund.
- Investor subscription agreements: In advance of 'first closing', investors will be provided with the finalised offer and subscription documentation (together with a request for identification documentation in compliance with anti-money laundering requirements) for returning to the Fund Administrator (who will check and verify the investors).
- Investor acceptance/draw down: Once the investors pass the relevant checks, and the subscription documentation is accepted by the fund; this will typically mark the milestone of the fund's 'first closing'.

It is not uncommon for a fund to then begin the process of immediately drawing down funds for it to deploy into its first investments.

Other things to consider

There are some other initial issues which crop up at the inception stage and it would be helpful for you to bear these in mind when managing your first fund:

- Newer asset classes and non-mainstream investments: The question here is whether your investment objective/strategy is looking to invest in newer asset classes (e.g., digital, crypto, ESG/sustainable assets) or less traditional investments (e.g., fine art, wine, classic cars). The reason this becomes important is that it might give rise to additional requirements, such as more service providers (e.g., custody requirements), or may be subject to a higher level of regulatory scrutiny which might impact the fund launch timetable.
- Carried interest/performance fees: If you are considering sharing the carried interest/performance fee with the Family Office's team members, how that is structured will be a key upfront decision (e.g., allocations, good/bad leaver, vesting). It may be necessary to house those arrangements within a separate carried interest vehicle that will sit alongside the fund. Obtaining advice on this point from the tax and legal advisors is always recommended.
- Know-Your-Client (KYC) and anti-money laundering requirements: You will invariably be asked to provide certified identification documentation and proof-of-address to each of your service providers at the outset of their engagement. Other documents may also be required if you are acting through a company, a partnership or trust. You should expect to be asked for this information as these are required by anti-money laundering legislation (in Jersey, Guernsey and elsewhere). These requirements will also apply to the incoming family members (and/or their investment vehicles, as applicable) and any external investors, and this information will normally be sought by the Fund Administrator before they can be admitted to the fund.
- Will your fund be leveraged? If that is the case, you will likely require additional legal support to assist with the facility and security documentation that will need to be put in place. You should raise this with your legal and tax advisors at an early stage as the debt may affect the fund structuring.
- Ownership of the entity that manages the fund: The ownership of the management entity is also important. Using the 'general partner' case study example above – the general partner is usually liable for all of the debts and liabilities of the limited partnership and housing this within the Family Office's corporate group may not be the optimal approach. There may also be consolidation issues with your group's balance sheet if the general partner is owned by the Family Office's corporate group (as it owns all of the assets of the fund). Getting advice on this point from your accountants as well your tax advisors is recommended.

Mourant would be happy to assist you with any questions you may have on the launch of your Family Office Fund in either Jersey or Guernsey.

Contacts

A full list of contacts specialising in investment and Family Office Funds can be found here.