

Key Takeaways: Family Office Roundtable on Asset Protection

Update prepared by Jersey Finance, May 2021

On 11 May 2021, Jersey Finance hosted the third roundtable event in its 2021 series, focussed on family offices. These events are intended to encourage dynamic debates and explorations into what is important for private clients when it comes to establishing, redomiciling or relocating family offices around the globe. This virtual roundtable was held online and focussed on asset protection. The event started with a welcome note from the moderator, Robert Moore, UK Director at Jersey Finance followed by an open discussion among all attendees.

Attendees

- **Amanda Chapman**, Partner, GSC Solicitors LLP
- **Nancy Chien**, Partner, Bedell Cristin
- **Christopher Cook**, Senior Associate, Baker McKenzie
- **Steven Footer**, Relationship Manager - Private Banking, Standard Chartered
- **Louise O'Toole**, Senior Associate, Gateley PLC
- **Nicholas Holland**, Partner, McDermott Will & Emery UK LLP
- **Joanna McAviney**, Legal and Technical Manager, Jersey Finance Limited
- **Robert Moore**, Director - UK, Jersey Finance Limited
- **Craig Neilson**, Wealth Manager, LGT Vestra LLP
- **James Ramsden**, Director - Head of Client Services, Trident Trust Company Limited
- **Louise Richardson**, Advocate, Government of Jersey
- **Sana Sheikh**, Senior Associate, GSC Solicitors LLP
- **Tristan Smale**, Senior Associate, Penningtons Manches Cooper LLP
- **Anthony Turner**, Partner, Farrer & Co LLP
- **Simon Voisin**, Director, Forward Group Trust & Corporate Services
- **Joyce Zhou**, Private Banker, Barclays

Asset protection definition and why Jersey

“Quite a lot of our new clients are looking at jurisdictions for their offshore structures, not for tax reasons, but actually because of the fact that they come from countries where the political environment is relatively unstable. Jersey does not have any specific asset-protection legislation. However, it does have robust firewall provisions in its trusts and foundations legislation, any question concerning the validity or interpretation of a trust shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such a question.” - Nancy Chien

- Jersey’s firewall legislation, set up under Article 9 of the Jersey Trust Law, provides that matters in relation to a trust must be determined in accordance with Jersey Law; making it difficult for foreign courts to attack assets of the Jersey trust.

www.jerseyfinance.je

Jersey Finance Limited, Sir Walter Raleigh House, 48-50 Esplanade, St Helier, Jersey, Channel Islands JE2 3QB T: +44 (0)1534 836000 E: jersey@jerseyfinance.je



www.linkedin.com/company/jersey-finance



[@jerseyfinance](https://twitter.com/@jerseyfinance)



www.youtube.com/jerseyfinance

- Jersey’s firewall legislation would not apply if assets or trust companies are held outside of Jersey.
- A clear distinction should be made when discussing asset protection. For the purposes of this roundtable discussion, asset protection relates to how advisors can protect a family’s assets for succession purposes; it is not about shielding those assets from creditors.

“On the asset protection front, I am always hugely nervous whenever anybody talks about ‘asset protection trusts’ or ‘asset protection structures’ because all of the offshore jurisdictions and most, if not all, of the onshore English-speaking jurisdictions have something that approaches the Statute of Elizabeth.

“The Statute of Elizabeth is an intention-driven statute that says if you are entering into a transaction for the purpose, and it doesn’t have to be the predominant purpose, but one of the purposes is to defeat or interfere with or hinder creditor claims, then that transaction is void or voidable.” – Nick Holland

Sources of concern for clients considering asset protection

“Not all clients are going to have the same risk. One risk can be family risk, or family fallout – where there’s a concern that maybe different branches of the family are going in different directions. Probably the biggest thing we see now is confidentiality risk, so it’s asset protection, but what it really is, is preserving confidentiality.” – Christopher Cook

- Level of disclosure in the public domain and the extent to which clients can keep their affairs private is a key concern.
- Clients are keen to preserve ‘rainy day funds’ as a source of wealth or asset protection, separate to their usual scope of business interests. Trusts can be particularly useful for this purpose.
- Families use purpose trusts for multiple purposes such as a family’s healthcare, education and even litigation–fighting funds to fund litigation costs should a family member be sued.

Succession planning and the next generation

“I speak to a lot of next generation clients who are trying to pose a discussion with the matriarch, patriarch and a good way of maybe avoiding an issue – which normally comes up on the death of the patriarch – is for the next generation to try and bring the issue up sooner.

“They can do this by talking about succession planning and introducing a family charter –stimulating a conversation around these areas. That conversation can lead to a better understanding of how the trust works in terms of asset protection” – Sana Sheikh

- Self-interest and concerns about inheritance tend to drive interest in asset protection for next generation clients.

- In practical terms, asset protection issues arise through intra-family disputes; not just creditors and other governments.

“Governance is a really good thing. It gets the discussion going – between different generations, hearing their different views and aspirations as well as how they want to invest their money. As advisors, we should be encouraging governance conversations, plus it’s a very good thing to do to head off litigation.” – Anthony Turner

- Larger HNW families, for example in India, are known to discuss the general principles of family business at an early age. Culturally and naturally these families typically do not have a strong separation between work and family life.
- If next generation wealth owners are encouraged to forge their own path, this can result in less discussion around the family assets and later down the line, unexpected responsibilities held by the next generation.

“With bigger families, you do need to work towards a representational element or a council with representation from the different strands because – although the ideal is to bring the next generation in and introduce new family members – sometimes that can be more of a hindrance than a help.

“Sometimes, before you even get to the fundamentals of constitution, you need to have an agreement as to who is going to be involved and know their responsibilities; otherwise, you can have months of meeting with different family members and potential conflict before you even get going.” – Amanda Chapman

Asset protection strategies

- Communicating early is key to support families in deciding to identify the future leaders or decision-makers in the family.

“Families are getting far more philanthropic and actively participate in community projects. The children, of such families, are actively encouraged to participate and witness how those less fortunate live and survive. By getting involved with these foundations and initiatives those children see the impact of business decisions, in that context, that they make.”- Simon Voisin

- In Asia, investment decisions based on wealth creation are no longer the norm, compared to a few years ago.
- Asset protection and wealth preservation – the steady and sustainable accumulation of wealth – are key goals for today’s private banking clients in Asia.

“I think it’s a sign of a maturing client group [private banking clients in Asia]. It goes hand-in-hand with asset protection, because they realise that in terms of wealth creation, they have now gone past the fast growth phase. Now that they’ve actually accumulated a large amount of wealth which was created within a very short period of time, they now need to consider: what is the sensible way to preserve that?” – Joyce Zhou

- Data security – cyber security and how firms protect client data, how an organisation operates in terms of data protection and data transfer are all key asks from family offices/private clients of their service providers.
- Asset protection and succession of family wealth is more emotive and problematic when considering how to sustain a longer-term family business. To remedy this some families are extracting wealth from the family business and allocating it to different ‘pots’ for various ventures.
- Family business structures can take the form of a structure with a charitable arm and an entrepreneurial arm.
- The scope provided by Jersey structures and mechanisms can work to alleviate client concerns over ‘loss of control’.

“A phrase I heard recently, which isn't mine, was *‘moving from a family business to a business family’*. Family businesses need structures, they need to diversify – there are so many good reasons not to just stay within the family business. And I think it solves a lot of the problems around succession and engagement.” – Anthony Turner