

Why high net-worth families in the Middle East are looking to Guernsey for private wealth solutions

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Guernsey's fiduciary companies continue to win substantive mandates for new private wealth structures, and a growing stream of new business is coming from the Middle East. Here we consider the key drivers for ultra-high net worth families from the Middle East choosing to structure, and reflect on why these families and their advisers are choosing Guernsey structures over and above other options.

Protecting assets in the face of political instability

In recent times protection of assets against seizure by political means has been high on the agenda. Material concerns with political instability and nation state sovereignty have acted as a catalyst in prompting settlors to scrutinise where and how they want to structure their assets.

This is particularly the case following the Arab Spring and the continuing turmoil in Iraq, Libya and more recently Syria. Recent political tensions in the Kingdom of Saudi Arabia have also prompted new structuring and restructuring mandates. Many settlors who are resident in politically sensitive countries find that a trust, by removing the assets from their ownership, can protect against the risk of the assets being seized by political means.

Clients and their advisers motivated by asset protection considerations are naturally concerned whether the sanctity of a Guernsey trust will be upheld by the Royal Court in Guernsey. They can be assured that where the rationale for a trust or further accretions to a trust is legitimate (e.g. for the purpose of the preservation of wealth and estate planning), and not designed to defeat known or anticipated creditors, then the Royal Court of Guernsey has made it very clear that it will uphold the sanctity of a trust arrangement.

Avoiding forced heirship

Another key driver in the Middle East is the avoidance of forced heirship requirements. Many

systems of law (including many countries in the Middle East founded on Sharia Law) impose upon individuals a requirement that upon their death they must leave a proportion of their assets to certain heirs. A Guernsey trust can avoid this. Broadly subject to certain limited exceptions where assets are held in a Guernsey trust, the Royal Court will not entertain a claim to set aside any trust which is based on forced heirship rights of a foreign jurisdiction.

Protecting the next generation

Guernsey trusts can avoid estate duties and probate formalities. Assets transferred into a trust during the settlor's lifetime will not generally form a part of her estate on death. Likewise a Guernsey trust can protect assets against profligacy by younger members of the family who might otherwise inherit large sums of money at an early age (e.g. under the Sharia laws of succession). A settlor may want assets to be distributed to his children once they have achieved a certain age or perhaps displayed a responsible and mature attitude and the flexibility of a Guernsey trust can achieve this.

Reserved powers and Private Trust Companies

Another trend we are seeing is that clients from the Middle East wish to retain significant control over key aspects of the trust, notably investment. For the most part clients have no personal link with a Guernsey fiduciary, who is situated many thousands of miles away and administers the trust on entirely commercial terms. In light of this, the client's desire to retain control over key aspects of the trust is understandable.

Reserving powers should be considered very carefully on a case by case basis however. Sufficient thought should be given to the fact that reserved powers could be exercised by third parties at some point in the future (e.g. in cases where a liquidator is appointed as trustee in bankruptcy or insolvency, or a matrimonial court exercises a reserved power in relation to a divorce).

Certain high net worth families may prefer to establish their own Private Trust Company (PTC) entity, rather than transfer assets to a service provider's corporate trustee. The board of the PTC can comprise of family members, trusted family advisors and third party professional advisors. We are seeing a steady flow of mandates in this area.

The rising demand for complex and bespoke structuring

While the overall volume of new trusts being created in Guernsey has decreased over the last few decades, the work that is coming in now is significantly bigger and more bespoke. Often these structures require advice from outside Ogier's private wealth team (notably corporate, funds and regulatory advice). It is increasingly common for private wealth teams to be working with corporate colleagues on new structures and restructuring exercises where there is a need for both trust and corporate advice. For these larger structures it is fundamental to be able to provide joined up and cohesive legal advice from all relevant service lines.

A final word on demographics and global wealth trends. The Capgemini World Wealth Report 2018 highlighted some startling statistics for 2017, which witnessed a continued increase in the HNWI population and wealth growth which grew 10.6% and surpassed the US\$70 trillion threshold for the first time, registering its sixth consecutive year of gains. HNWI wealth was also stated to be on course to reach US\$100 trillion by 2025.

The flexibility of Guernsey trusts means that they can be put to all manner of uses. Add into the mix Guernsey's status as a major financial centre with an established track record, its political stability, its strong legal foundations (it is crucial for trustees to have access to court where circumstances arise) and the strong professional services on offer, and it is clear to see why Guernsey's offering in private wealth management is compelling for Middle Eastern clients and indeed clients across the globe.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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