



**Linda Beidler-D'Aguilar, Glinton Sweeting O'Brien Legal**

Linda Beidler-D'Aguilar joined Glinton Sweeting O'Brien (GSO) legal in 2015, both as a partner and as head of the firm's financial services practice in 2015. She specialises in the creation and structuring of investment funds for both institutional and private clients. Linda also advises on corporate transactions, insurance, regulatory compliance, banking and securities law, public and private offerings, structured financing and general commercial matters. Linda served as a director of the Bahamas Financial Services Board (BFSB) from 2010 to 2014, and continues to be active in BFSB's regulatory, legislative and product development initiatives.

# FAMILY OFFICES: SUBSTANCE AND ROBUST GOVERNANCE

Linda Beidler-D'Aguilar

**F**amily offices are generally recognised as integral to the cohesive and coherent management of a family's diverse business interests in tandem with its domestic and personal affairs, and this article examines here the opportunities afforded by the establishment of such offices, the substance and governance requirements applicable to them and the advantages of establishing such offices in The Bahamas.

## What is a family office?

A family office is a vehicle that can provide a broad range of services to the family or families it represents, from domestic administrative matters (for example, travel arrangements, staffing and household upkeep) to sophisticated support of long-range business, tax and estate planning including the supervision of trusts and oversight of investments that may be outside the family's core operating businesses.

## Reasons to establish a family office

The formation of a single, comprehensive structure allows sophisticated and structured oversight of a family's overarching objectives and opportunities. Creation of centralised control and responsibility for integral functions around the family's various interests and obligations provides long term stability; equally, it affords the op-

portunity to undertake comprehensive succession and generational planning in a single environment.

Consolidation of oversight enhances the ability to provide specific direction as to services sought from external providers and to monitor the services received. Substantive efficiencies can be gained through strategic deployment of assets and advisors, leading to more efficient and cost-effective management. Also includes, immediate access to integrated information from both systems and persons using consistent standards within an integrated setting facilitates the compilation of information required for internal evaluation and external reporting requirements. It also supports the active oversight and management of fiscal, residency and immigration requirements.

In sum, a family office permits the holistic overview and oversight of a family's wealth, rather viewing disparate elements in isolation from one another.

## Family offices aren't a 'one size fits all' proposition

One of the most intriguing elements about the establishment of a family office is the freedom to utilise the structural components best suited to achieve immediate and long term goals, because there aren't prescriptive requirements regarding the components of which a family office is comprised. From a simple company to a sophisticated private trust company, the planning opportunities are vast, allowing for entities which have active and passive holdings, with wide-ranging

roles encompassing administrative, advisory, supervisory, fiduciary and office-holding obligations.

In fact, while the term ‘family office’ may commonly bring to mind a structure created to assist a single family, it is equally feasible (and common) to create multi-family offices which manage the business and affairs of family groups (for example, those of several siblings) or closely knit friends, business partners and colleagues. Economies of scale have made it more attractive to consider an office which handles several families’ affairs, allowing them to leverage their aggregate interests in a manner which affords access to sophisticated and professional planning on a level which mightn’t have been achieved individually.

### Enhancing substance: Operations and governance

Family offices must take into account permanent establishment, Base Erosion and Profit Shifting (BEPS) and Controlled Foreign Corporation (CFC) rules necessitating that physical presence and transparency requirements be respected.

To that end, The Bahamas’ Commercial Entities (Substance Requirements) Act, 2018 (as amended) (“CESRA”) provides a roadmap for family offices to follow in this regard. Not only does CESRA provide direction as to the level of staffing, office premises and the like which are required in order for a family office to serve as a ‘headquarters’ and conduct core income generating activities in The Bahamas, it also provides direction on the specific governance requirements which must be met by the family office.

### Operations in The Bahamas

In order to assert that ‘core income generating activities’ are carried in The Bahamas, CESRA requires that adequate amounts of annual operating expenditure be undertaken locally, that adequate full time employees are brought on board and local physical premises be maintained.

Families may also elect to seek regulatory oversight for purposes of enhancing transparency within the family itself as well as an additional, elective means of demonstrating substance within The Bahamas. There are a variety of licensing options available for consideration. For instance, it’s possible to assuage inter-family concerns about the administration and management of investments by the establishment of a Bahamian investment fund. Such an investment funds must be licensed and thereafter meet designated financial reporting requirements including, in certain instances, the production of semi-annual performance reports whereas in other circumstances annual audited financial statements are required. It may utilise with in-house administration or an independent third party administrator, depending on the internal availability of the requisite skills and knowledge.

Similarly, advisory roles – for the office itself or for

a fund may be fulfilled internally, but it is equally possible for consideration to be given to the establishment and licensing of a financial and corporate service provider or an independent asset management entity in The Bahamas. Parameters for capitalisation and professional indemnification are set by law; physical facilities within the jurisdiction are required and, where necessary, can be satisfied through appointment of an approved representative. Reporting requirements (financial and otherwise) are also designated along with on- and off-site supervisory requirements.

### Robust governance of family offices and associated structures

While there is considerable debate and discussion around optimal forms of governance for family offices and their associated structures, it must be acknowledged that in light of recent legislative enactments such as CESRA the current atmosphere strongly favours substance over form. Moreover, the statutory and regulatory regime in The Bahamas – as well as its case law and common law antecedents – encourages the establishment and maintenance of effective governance systems within and around Private trust companies (PTCs), foundations, funds, investment condominiums, executive entities, companies and partnerships.

If a family office elects to be treated as headquarters within The Bahamas, in addition to the core income generating activities it must also demonstrate that there is substance as to its direction and management within The Bahamas as well. To that end, CESRA mandates that board meetings for the purpose of taking strategic decisions, among other things, be held in The Bahamas, with a quorum of directors physically present for such meetings; books and records for the family office must be maintained locally as well. CESRA also directs that the board members have the ‘necessary knowledge and expertise’ to discharge their duties.

Therefore, while family members themselves often wish to play a significant role in their family office structure, it is now immensely important that the family – and their advisors – critically assess prospective appointees to determine if they possess (or can obtain) appropriate skill sets and expertise to serve in these capacities. After all, responsible and effective oversight and regular reviews of the various activities undertaken through the family office and its structures will be a critical feature of a successful operation.

A thoughtful approach to governance – and to the substance requirements also recognises that it is not solely the purview of the directors, notwithstanding that such persons may have the ultimate obligation to oversee it; there are substantive functions taking place at other levels of corporate operations. The proper management of books and records through the family office is of the utmost importance, and to that end consider, inter alia, the now critical nature of adequate accounting records



#### The quote

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and comprehensive compilation of information (internal and external) required to meet multitudinous reporting requirements. Hiring qualified staff members to provide the necessary support as well as the use of third party consultants to review compliance and risk management procedures, as well as to hone reporting skills, is on the rise in order to ensure the satisfactory achievement of the sophisticated obligations in an increasingly complex regulatory environment.

The ready availability of financial institutions, qualified professionals and skilled staff on the ground, as well as the opportunity for family members, their trusted advisors and executives to establish residence and obtain the right to work within The Bahamas, all provide a framework around which compliant, practical and effective management systems for family offices may be erected. There are certainly sufficient local resources and infrastructure to accommodate the creation of substance in The Bahamas. **FS**