

UAE: Foundation and Family Succession.

The Ever Growing Benefits of Establishing a Foundation in UAE



Preface

With the world's wealth on rise it is more important for high-net-worth Individuals to manage their wealth which is spread across the world so that they can grow and preserve as well as protect and pass it on to their heirs in a tax efficient manner as per their wishes.

The High-Net-Worth Individuals or a normal individual who wants their assets and wealth to be separate from their legal entity should find the best Jurisdiction for themselves to set up their foundation. This is to safeguard their wealth with flexible estate and succession planning laws, privacy laws and tax benefits to hold their wealth and strong asset protection.

Due to changes in the Global Regulatory system finding the suitable jurisdiction poses a great challenge. Many Jurisdictions and authorities have adopted policies that impose certain restrictions as well as levy the burden of complex statutory compliances and legality measures in the process.

In contrast, United Arab Emirates (UAE) is well positioned to benefit from what has damaged other jurisdiction because of its Unique and linear structuring of the matter.

Being a world leader and internationally renowned tourist destination. UAE is considered as an Important Centre of the business world located in the Middle East.

Why should you choose UAE for foundation planning?

The following are the key factors which makes UAE a unique jurisdiction for setting up a Foundation –

- Reputation of the jurisdiction;
- Regulatory framework;
- Tax regime (applicable tax rate and access to double taxation treaties);
- Confidentiality;
- Governance controls;
- Firewall provisions (i.e., foreign forced heirship rules and creditor claims); and
- Ease of registration.

Applicability of Economic Substance Regulation on Foundations

The Economic Substance Regulation was formed to ensure that actual profits were being reported which aligned with the activities undertaken with in the UAE.

The Economic Substance Regulation was issued by Cabinet Decision No 57 of 2020 concerning Economic Substance Requirements and Ministerial Decision No 100 of 2020 for the Implementation of the Provisions of the Economic Substance Regulation. Natural persons, sole proprietors, trusts, and foundations do not fall within the scope of the Economics Substance Regulations in UAE.

A Will

❖ What is a Will?

A will is a legal document by which a person (Testator) express his/her desire to legally distribute their wealth or assets after their death among those they wish to pass it on to. The manner of which will be mentioned by the testator and shall be executed by the assigned executer of the will.

❖ Will as per Middle Eastern Norms

Wills executed before the UAE Notary can partly structure one's estate to the extent permitted by Sharia and address guardianship matters.

Muslims are usually governed under the Sharia law. There exists a general rule that a Muslim person can initiate a will to the extent of 1/3rd of their total net assets to any person they desire. The remaining 2/3rd belongs to the natural legal heirs and cannot be attached to a will unless these natural heirs provide their consent. The execution of the will is to be carried out as per the Sharia law.

From the non-Muslim perspective, UAE protects the freedom of non-Muslims to elect their own laws governing inheritance, and that measure can be taken only through the execution of a will. Hence, wills executed by non-Muslims may be governed by the law of the country of which he/she is a citizen at the time of his death. If the individual has dual nationality, the will must clearly state which law shall govern the testator's inheritance and will. This does not extend to immovable assets located in the UAE to which UAE laws will be applied regardless.

❖ Drawbacks of a will

Wills fail to address certain key concerns:

- Assets (real estate, shares) remain held in an individual capacity, thus subject to probate procedure in case of demise;
- Assets are exposed to 3rd party attacks.
- Nationality
- Privacy

Foundation over Will, the better choice.

| | <u>Notarial Will</u> | <u>Foundation</u> |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <u>For Whom</u> | Muslim and Non-Muslim | Muslim and Non-Muslim |
| <u>Assets Covered</u> | Muslim 1/3 rd of Testator's Assets Non-Muslim – 100% | 100% |
| <u>Guardianship</u> | <u>Yes</u> | <u>No</u> |
| <u>Enforceability</u> | After Death | Immediate (After Settlement Of Assets onto Foundation) |
| <u>Legacy Planning</u> | Muslim Partial – 1/3rs of Assets Non-Muslim - Yes | Yes |
| <u>Assets Consolidation</u> | No (Assets are held in Individual Capacity) | Yes |
| <u>Assets Protection</u> | None (Assets subject to 3 rd parties attack) | Yes (Firewall against 3 rd party attack) |
| <u>Privacy</u> | Limited (Will filed in court as a part of probate procedure) | Yes (Beneficiaries/ Foundation/ By-laws not public) |
| <u>Probate</u> | Yes (Can be lengthy and costly, may delay assets distribution) | None (Foundation assets are no longer part of personal estate) |
| <u>Dilution Risk</u> | High (Assets subject to probate procedure) | None (Assets remain consolidated under Foundation) |
| <u>Regulatory Framework</u> | UAE personal status affair law (Codification of shariah Law) federal laws on public customs i.e Guardianship | DIFC/ADGM common law |
| <u>Applicable Law</u> | Muslim: UAE personal status affair law, non-Muslim- law of nationality of the testator | DIFC/ADGM common law |

| | | |
|------------------------|-------------------------------------------------|----------------------------------------------------|
| <u>Competent Court</u> | Civil Court | DIFC/ADGM common law |
| <u>Cost</u> | One time registration, then the cost of probate | Ongoing structure Maintenance (No cost of probate) |

This table neatly depicts how valuable it is to open a foundation in terms of multi facet benefits that range from privacy to asset protection and more.

Why is UAE Emerging as a Favorable Jurisdiction for setting up a foundation?

UAE is currently the most preferred place to set up a foundation due to the vast variety of economical as well as psychological benefits that it offers. To highlight a few, it has several free zones offering trusts and foundations, namely the Dubai International Financial Center (DIFC), Abu Dhabi Global Market (ADGM), and Ras Al Khaimah International Corporate Center (RAKICC). (Note that not all of these free zones offer both trusts and foundations.)

The most notable feature is that these free zones have researched multiple jurisdictions from all across the globe to achieve a foundation with the most modern outreach. The laws in these jurisdiction are based off on the law implemented and adopted by the world's leading jurisdictions and offer the most favorable and advantageous aspects.

UAE free zones offer flexible estate planning, succession planning, and wealth protection laws. But unlike most they still offer privacy and unparalleled tax benefits. Every human being highly treasures their privacy and always wishes to live a peaceful life without the constant fear of being monitored.

High Net worth Individuals who wish to manage their financial affairs outside the purview of the public can set up a trust or foundation in the free zones as they aid in greatly enhancing their privacy. UAE free zones do not have trust registers which means the trust documents are private.

Did you know that UAE is one of the few nations which has a very diverse expat population? As per recent studies, 90 percent of the demography of UAE consists of expats making it one of the largest multi-cultural and diverse locations in the world

UAE has more tax treaties than Switzerland in addition to offering zero income tax like most trust and Foundation planning jurisdiction and also it has a robust tax treaty network.

HNWIs who wish relocate staff there likely won't have an issue convincing staff to relocate, since UAE is a desirable place to live and it's easy to obtain residency permits. It has a modern infrastructure with the most up to date technology, ample office space, and a large professional workforce. The UAE is also geographically convenient and easy to travel to which is important for any business, these are the factors that highly tip the scale of balance towards choosing UAE for Foundation/Trust formation.



Migration of Foundations

The main attraction for setting up a foundation in UAE is that it allows migration of foundation from other jurisdictions to UAE where and which has a well-developed infrastructure to accommodate underlying companies

The cost for setting up a foundation in UAE is very low, Registration of foundation can also be done through online portals and there is no need for physical submission of documents. However, each foundation needs to have a registered office address in the jurisdiction, which can be provided by any company based in that free zone. Such simple procedure can lead you to a secure future.

To provide more clarity on the subject matter, let's look at a comparison of a Trust and Foundation.

❖ Comparison between trust and foundation

| | <u>Trust</u> | <u>Foundation</u> |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Description:</u> | A triangular relationship wherever a “settlor,” (a.k.a. “grantor” or “trustor,”) transfers assets to a “trustee,” who hold assets for the “beneficiaries.” The trustee should follow the terms of the trust and act within the best interest of the opposite. Reckoning on the trust purpose, one party will hold one or additional of 3 roles. | A foundation is a legal entity that is separate from the assets of the founder. It is not a company. It does not issue shares. Does not have owners. Is a nonprofit organization. It usually gives support to others through grants directly or to other charities. Some foundations engage in other activities besides grant making. besides grant making. |
| <u>Shares or members</u> | No Shares or members | No Shares or members |
| <u>Distinct legal entity and ownership of assets:</u> | A trust is a contractual agreement in a trust relationship; trustee legally owns the assets and enters into contracts on behalf of the beneficiaries. | Foundations form a distinct legal entity. Foundation legally owns assets in its own name and can enter into contracts |
| <u>Use for the benefit of Beneficiaries:</u> | Mandatory for trust | Optional for foundation |
| <u>Use for commercial purposes:</u> | Allowed for trust. | Impossible for foundation (may hold shares in a commercial company though) |
| <u>Registration and lifespan:</u> | Trusts are not registered often limited in time. | Foundation must be registered (with few exceptions) and have unlimited lifespan |

UAE Free Zones

1. Ras Al Khaimah International Corporate Center (RAKICC)

The UAE Offshore Foundation (RAKICC Foundation) was introduced in 2019 to the suite of investment vehicles and services offered by the United Arab Emirates, and are the latest addition to international asset protection and structuring. The laws and regulations for setting a foundation under RAKICC are globally accepted. As a highlighting point, the legislation of the UAE Offshore Foundation won't acknowledge any foreign judgment against the foundation and its founders as well as foreign heirship rights.

In a world full of lawsuits, creditors, legal battles, and malpractice suits protecting your assets in a safe, tax neutral and political stable jurisdiction is a lot more necessary than you think. Holding assets personally may leave you at a severe disadvantage.

2. Abu Dhabi Global Market (ADGM)

The UAE Offshore Foundation Abu Dhabi Global Market (ADGM) was introduced in 2017. ADGM foundations support native and international families and High Net Worth Individuals to efficiently manage their business and investment interests across multiple generations. ADGM works closely with native and international stakeholders likewise market experts to understand the market's needs. Through that engagement, ADGM developed its Foundations Regime to handle the distinctive necessities of families and asset owners in Abu Dhabi, regionally and globally.

ADGM platform has been widely utilized by native families for structuring a wide range of business interests using holding companies and Special Purpose Vehicles likewise setting up family offices.

3. Dubai International Financial Center (DIFC)

Since March 2018, when the Dubai International Financial Centre ('DIFC') Foundations Law (DIFC Law No. 3 of 2018) ('Foundations Law') came into effect, moreover, in the UAE, the DIFC Foundation is a vehicle more importantly recommended in the context of succession planning and the family wealth management context, where it can be used by families to structure ownership of their assets and properties, as long as the local ownership restriction, as well as Sharia principles, are respected.

The DIFC Foundation concept proves to be suitable in the context of succession due to the fact the founder can remain in control of the assets of the DIFC Foundation during his/her lifetime and beyond, under the terms of the charter and the by-laws of the DIFC Foundation. Once the founder transfers the assets to the DIFC Foundation, those assets cease to form part of his/her private/individual estate. Those assets then form part of the estate of the DIFC Foundation itself.

❖ UAE FOUNDATION COMPARISON SHEET

| | ADGM | DIFC | RAK ICC |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Governed By | The Foundations Regulations, 2017 | The Foundations Regulations, 2018 | RAK ICC Foundations Regulations 2019 |
| Currency | United States Dollar (USD) | United States Dollar (USD) | United States Dollar (USD) (statutory) UAE Dirham (AED) |
| Language | English | English | English |
| Political System | The UAE is a federation of 7 emirates – including Abu Dhabi – which was formed in 1971; Hereditary absolute monarchy | The UAE is a federation of 7 emirates – including Dubai – which was formed in 1971; Hereditary absolute monarchy | The UAE is a federation of 7 emirates – including Dubai – which was formed in 1971; Hereditary absolute monarchy |
| Legal System | ADGM's legal system and courts are based on Common Law principles. Its Civil and Commercial Laws are largely based on the laws of England and Wales, which directly Apply | DIFC's legal system and courts follow a Common Law framework, with its own Civil and Commercial Laws, which refer to English law in case of Ambiguity | Access to ADGM & DIFC Common Law Courts |
| Advantages | <ul style="list-style-type: none"> •Tier 1 international financial center •Robust governance structure •0% corporate tax rate •No tax filing •Comprehensive tax treaty network •Flexibility •No requirement to file or audit account unless requested by the Registrar •Possibility to migrate to ADGM from overseas •Low set-up and running costs •Digital registration process & quick processing •Strategic location in the Middle East & towards emerging high growth Markets | <ul style="list-style-type: none"> •Tier 1 international financial center •Robust governance structure •0% corporate tax rate •No tax filing •Comprehensive tax treaty network •Flexibility •Can issue depository certificates •Possibility to migrate to DIFC from overseas •Possibility to morph company into foundation •Private arbitration of disputes •Strategic location in the Middle East & towards emerging high growth Markets | <ul style="list-style-type: none"> •World class Registry operating in full compliance with international standards •Robust governance structure •0% corporate tax rate •No tax filing •Comprehensive tax treaty network •Flexibility •No requirement to file or audit account •Possibility to migrate to RAK ICC from overseas •Low set-up and running costs •Digital registration process & quick processing •Strategic location in the Middle East & towards emerging high growth |

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| | | | Markets |
| Minimum Assets | Any property of a minimum value of USD 100 | Any property as initial endowment | Initial capital with a value of 100 USD or its equivalent in any currency |
| Registration Fees | USD 200 | USD 500 | AED 750 equivalent to USD 200 |
| Annual Fees | USD 200 | USD 500 | AED 750 equivalent to USD 200 |
| Parties | <ul style="list-style-type: none"> • Founder: 1 (or more) individual or legal entity • Council: At least 2 members (individuals or a legal entity); Founder may be appointed as Councilor • Guardian: Mandatory if no surviving founder (individual or legal entity) • Beneficiary/ies: Individual(s) or legal entity(ies) (incl. Founder) • Registered Agent: Optional | <ul style="list-style-type: none"> • Founder: 1 (or more) individual or legal entity • Council: At least 2 members (individuals or a legal entity); Founder may be appointed as Councilor • Guardian: Mandatory if charitable or specified purpose (individual or legal entity) • Beneficiary/ies: Person or class of persons (incl. Founder) • Registered Agent: Optional | <ul style="list-style-type: none"> • Founder: 1 (or more) individual or legal entity • Council: At least 2 members (individuals or a legal entity); Founder may be appointed as Councilor • Guardian: Mandatory if charitable or specified purpose (individual or legal entity) • Beneficiary/ies: Individual(s) or legal entity(ies) (incl. Founder) |
| Request for local Representations | Must maintain at all times registered office in ADGM (may use the Registered Agent's address) | Must maintain at all times registered office in DIFC (may use the Registered Agent's address) | Must maintain at all times registered office in UAE (may use the Registered Agent's address) |
| Migration | Allowed | Allowed | Allowed |
| Public Information | <p>The following information is available upon request to the Registrar.</p> <p>Public information:</p> <ul style="list-style-type: none"> • name and address of foundation; • name and address of the founder; foundation charter; and • registered agent <p>The following information is confidential:</p> | <p>The following information is available upon request to the Registrar.</p> <p>Public information:</p> <ul style="list-style-type: none"> • name and address of foundation; • name and address of the founder; • name and address of each councilor; foundation charter; and • registered agent | <p>No Public Information available</p> <p>The Registrar may disclose any material held where such disclosure is permitted or required to be made under the laws, regulations or rules of the UAE; made to:</p> <p>a governmental or regulatory authority exercising powers</p> |

| | | | |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> •name and address of each councilor; ▪ names and addresses of any beneficiaries; •names and addresses of guardian (if any); and •name and address of each beneficial owner of each founder which is a legal person (if any) | <p>The following information is confidential:</p> <ul style="list-style-type: none"> • name and address of each councilor; •names and addresses of any beneficiaries; • names and addresses of guardian (if any); and • name and address of each beneficial owner of each founder which is a legal person (if any) | <p>and performing functions relating to anti-money laundering;</p> <p>a civil or criminal law enforcement agency; or</p> <p>a governmental or other regulatory authority including a self-regulatory body or organization exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers, for the purpose of assisting the performance by any such person of its regulatory functions.</p> <p>made in good faith for the purposes of performance and exercise of the functions and powers of the Registrar.</p> <p>The following information is confidential: The Accounting Records and return</p> |
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Important Note -

Regardless of which nation you decide for your Succession Planning, it is a significant and useful aspect of your general asset insurance plan that you attain the correct beginning and keeping all the appropriate rules and regulations and specific laws in your mind related to that country such as FATCA, ESR etc., where you want to establish your foundation, will and trust and protect your assets that would last indefinitely

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