



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

DOHA CHAPTER



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OVERVIEW OF SUCCESSION PLANNING THROUGH PRIVATE FOUNDATION - MIDDLE EAST

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Topics

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- What happens in the absence of a succession plan?
- Tools for Succession Planning
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- Trust vs Foundation
- Key Jurisdictions
- Setting up a foundation in QFC



INTRODUCTION



**“By failing to prepare, you are preparing to fail.”
— Benjamin Franklin.**

With the world’s wealth rising, 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 for strategizing their succession plan. 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 globalization, families and their wealth are spread across the globe. The family members, as well as the assets, are located in different jurisdictions, this leads to the applicability of inheritance laws of such jurisdictions making the process of inheritance extremely complex and time-consuming. Therefore, in order to cope with the changing family trends, it is important that a proper succession plan is in place.

According to a “Economist” article, “the Family Business Institute calculates that only 30% of family owned businesses survive into the second generation, only 12% into the third generation, and only 3% into the fourth”.

PROMINENT & WEALTHY FAMILY-OWNED BUSINESSES IN MENA REGION

- **MANSOUR GROUP - EGYPT**
- **AL-FUTTAIM GROUP - UAE**
- **OLAYAN GROUP - KSA**
- **RASHED ABDUL REHMAN AL RASHED & SONS GROUP - KSA**
- **AL GHURAIR - UAE**
- **ALGHANIM INDUSTRIES - KUWAIT**
- **AL SHAYA GROUP - KUWAIT**
- **AL FARDAN GROUP - QATAR**
- **AL FAISAL HOLDING - QATAR**
- **SUHAIL BAHWAN GROUP - OMAN**
- **& VARIOUS OTHERS**

The above business have a combined wealth of more than \$ 31 Billion (Approx)



BENEFITS OF FAMILY SUCCESSION PLANNING

Succession planning is an ongoing process, which needs careful preparation for the smooth transition of ownership, leadership and management of the family business and family's personal assets to the future successive generations.

A good continuity plan anticipates the challenges faced by the siblings, relatives, and large groups of business owners and shareholders. Structures are put in place to ensure strong leadership and effective decision-making for protecting family wealth and family relationships. Without a succession plan, the business may have high structural risk and family relationships could be at stake.

The Ultimate vision of the individual is to create a legacy. A legacy that will be passed on and will continue for generations to come.



Succession planning is key to achieving a long-term legacy in a family business by, among other things deciding:

- Asset Protection
- Estate Planning
- Tax Benefits
- Ringfencing of Assets
- Governance
- Ownership stakes and Voting rights.
- other matters such as how profits should be distributed, who may serve on the Board, future leadership, etc

If a family business leader suddenly wants to leave the business or unexpectedly becomes incapacitated or passes away, the business needs to have the ability to remain stable during such unpredictable times.

Family business owners need to identify such members and implement smooth election/exit strategies for them to avoid any succession planning-related complications.

To reap the benefits of hard-earned wealth, it is imperative to have a sound succession plan that aids in flourishing your legacy.

WHAT HAPPENS IN THE ABSENCE OF A SUCCESSION PLAN ?

In the absence of a succession plan, the laws of the respective jurisdiction apply. In most of the cases in the middle east the Sharia Law applies.

- Qatar being a civil law jurisdiction is majorly influenced by the Shari'a Law. In Qatar the law of inheritance governed in accordance with **Qatari Family Law No. 22 of 2006**.
- **Article 23 of Qatari Civil Code** stipulates that “Inheritance shall be governed by the law of nationality of the deceased at the time of death.” In other words, when expatriates die in Qatar, the law of the country that issued their passport will be honored.
- Qatari law will apply only if the deceased expats have assets in Qatar but no heirs in the country. **Article 251 of Qatari Family Law (Law 22 of 2006)** lists seven categories of people who have inheritance rights over a deceased's assets, in order of priority. Lacking these beneficiaries, the assets of the deceased will be devolved to the State.



- Article 17 of the UAE Civil Code and Article 1(2) of the Law of Personal Status govern the provisions for inheritance in UAE.
- In the absence of a will or a succession plan, in UAE the Shari'a Law shall apply. The concept of survivorship is not practiced in UAE . The majority of the assets are passed down to the closest male relative .
- It is also pertinent to note that if a non-muslim expat dies intestate, all transactions in UAE are kept on hold before the law interferes and decides on the asset distribution. and inheritance shall be governed by the law of the deceased at the time of his death.



- The Kingdom of Saudi Arabia (**KSA**) laws are largely based on the principles of Quran and the Shari'a Law. Accordingly, there is no separate statute pertaining to the family law.
- Shari'a Law is applied to the inheritance in KSA.
- Ex-patriates are not allowed to buy property in KSA. However, ex-patriates can inherit the property or a house (as owning a property was previously allowed). However, the process of such inheritance is quite ambiguous.



Why is it so important to have a succession plan?

Even if a person dies intestate the Assets are distributed to one's family member only. However, by planning succession one can ensure that the family legacy subsists thereby creating a multigenerational vision.

Whether inheritance law also achieves the object of continuity of business or governance/management?



TOOLS FOR SUCCESSION PLANNING

There are quite a few tools that help plan for family succession and strategize for a stable future for family businesses.

Will

Trust

Foundation



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 executor of the will.

- **Will as per Middle Eastern Norms**

Wills executed before the a Middle Eastern Notary can partly structure one's estate to the extent permitted by Shari'a and address guardianship matters. Muslims are usually governed under the Shari'a 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 Shari'a law.

From the non-Muslim perspective, Many Gulf countries like UAE , Qatar etc. 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.

Benefits of a Will:

- As per the desire of the person
- Protection (Family)
- Protect your Assets and Estate from being contested (assets spread across the globe can be protected by preparation of cross border wills)

Drawbacks of a Will:

- Procedural Complexities
- Prone to Inheritance Tax
- In the middle east the wills have to be in accordance with the Shari'a Law (i.e. 2/3 of the Assets cannot be protected)
- Lack of flexibility
- Families spread across the globe, enforcement of will is often time consuming.
- Prone to Litigation



CHALLENGES

Does a 'will' benefit a family business in transition of Management/Board of Directors/Governing Council?

Does a will benefits a foreign national in protecting his/her assets in multiple jurisdictions?



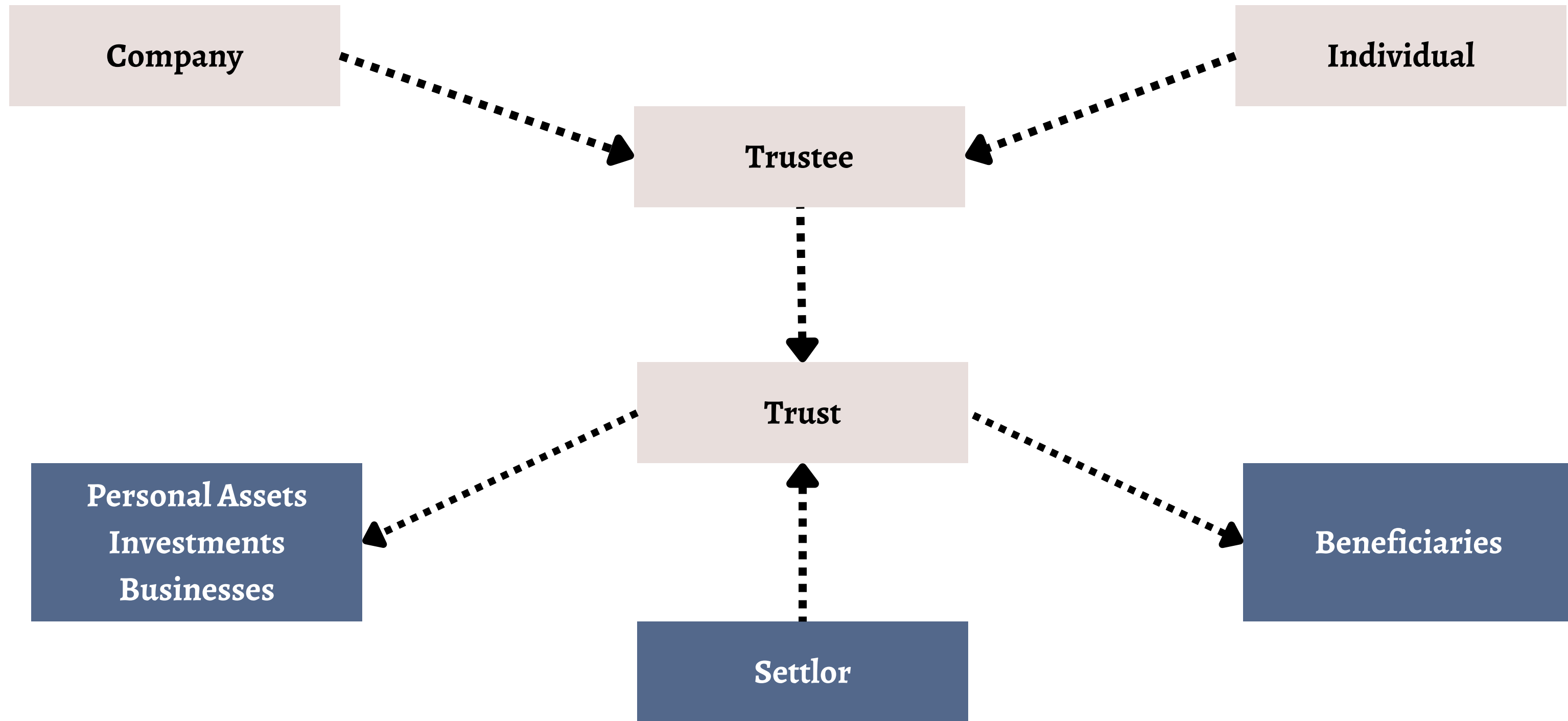
Trust

Trust is a legal arrangement that can provide incredible flexibility for the ownership of certain assets, thereby enabling you and your heirs to achieve a number of significant personal goals that cannot be achieved otherwise. The term trust describes the holding of property by a trustee, which may be one or more persons or a corporate trust company or bank, in accordance with the provisions of a contract, the written trust instrument, for the benefit of one or more persons called beneficiaries. The trustee is the legal owner of the trust property, and the beneficiaries are the equitable owners of the trust property. A person may be both a trustee and a beneficiary of the same trust.

Types of Trusts:

- Discretionary Trust.
- Non-Discretionary Trust.
- Revocable Trust
- Irrevocable Trust

Typical Structure for a Trust



Trusts are not only for the wealthy. Many young parents with limited assets choose to create trusts either during life or in their wills for the benefit of their children in case both parents die before all their children have reached an age deemed by the parents to indicate sufficient maturity to handle property (which often is older than the age of majority under state law). Trusts permits the trust assets to be held as a single undivided fund to be used for the support and education of minor children according to their respective needs, with eventual division of the trust among the children when the youngest has reached a specified age. This type of arrangement has an obvious advantage over an inflexible division of property among children of different ages without regard to their level of maturity or individual needs at the time of such distribution.

Benefits of Trusts :

- Privacy
- Various asset classes may be included
- Ability of ringfencing the assets
- Flexibility
- Anti-forced heirship

Drawback of Trusts :

- Not a separate legal entity
- Assets held by a trustee as a custodian
- No universal recognition
- Time consuming (setting up)
- Rigid Compliance

In Qatar, in accordance with the laws of QFC (QFC Reg No 12 – QFC Trust Regulations) Trust can also choose to be governed by Foreign Law by having reference in this regard in its Trust instrument and which is also one of the key benefits of setting up a trust in Qatar.*

Prominent Jurisdictions for setting up Trusts

Five most prominent jurisdictions for setting up of Trust globally are:

1. Cayman
2. Switzerland
3. UAE
4. Luxembourg
5. Singapore
6. Jersey

There are various other offshore jurisdiction options which may also be considered.

In the middle east Trusts are prominently set up in:

1. UAE
2. Qatar
3. Bahrain



Challenges

Can an offshore trust cover assets across various jurisdictions within & outside Gulf region?

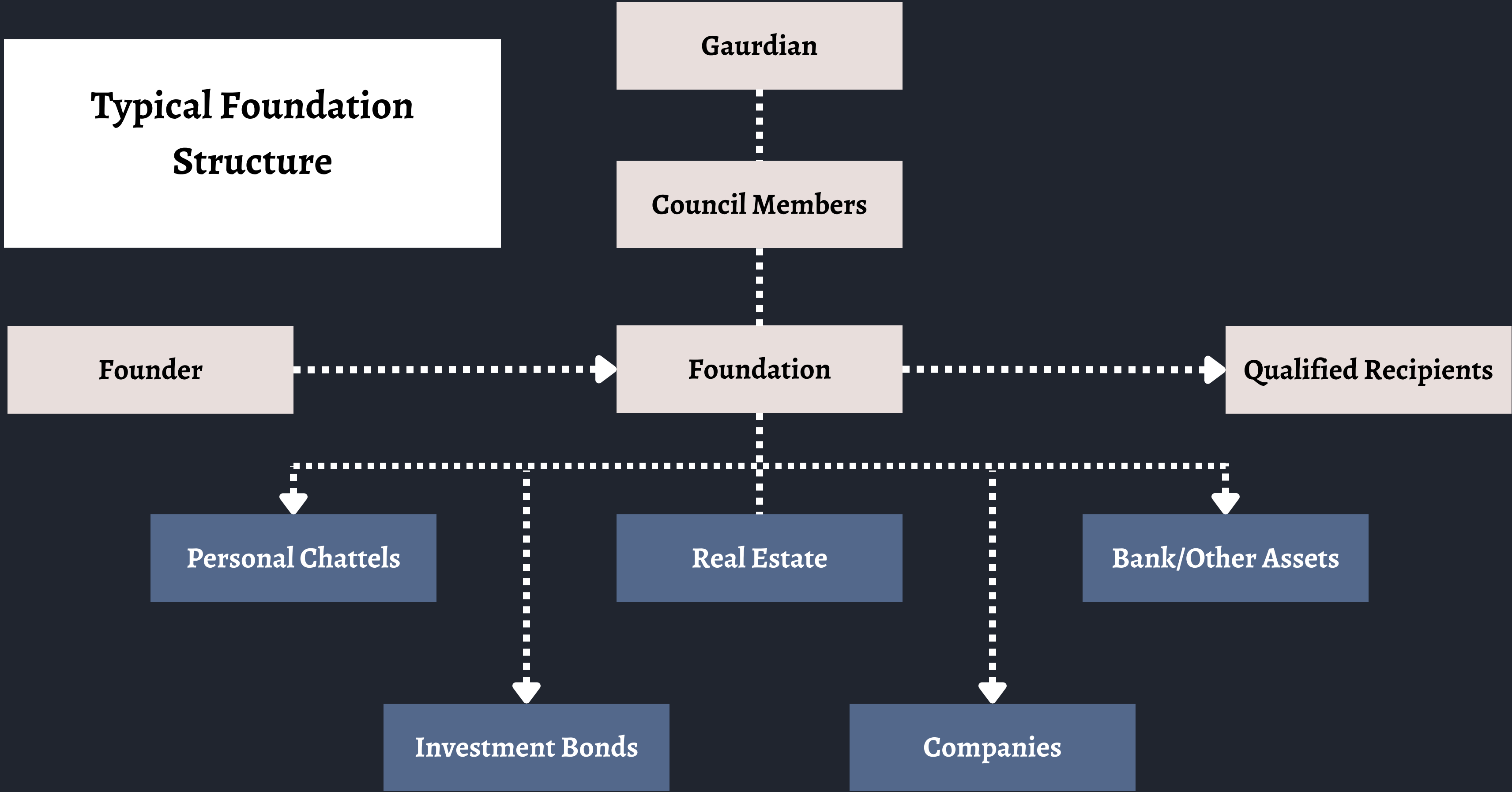
Can an onshore or offshore trusts be shari'a-compliant ?

Can it be structured in a non Shari'a compliant manner?

FAMILY FOUNDATIONS

A foundation is a legal entity that is separate from the assets of the founder. Foundations are governed by a charter or their by-laws. A foundation, whilst an entity with its own legal personality, is not a company and does not issue shares or other titles of legal ownership. Jurisdictions like UAE, Qatar and Bahrain use private interest foundations as a means of succession planning and preserving family wealth.





Benefits of setting up a foundation



The following are the key factors which makes MENA 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 and Compliance.

Trust vs Foundation

	Trust	Foundation
Description	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. Foundations are governed by a charter or their by-laws. A foundation, whilst an entity with its own legal personality, is not a company and does not issue shares or other titles of legal ownership.
Shares or members	No Shares or members	No Shares or members
Distinct legal entity and ownership of assets:	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
Use for the benefit of Beneficiaries:	Mandatory for trust	Optional for foundation
Use for commercial purposes:	Allowed for trust.	Impossible for foundation (may hold shares in a commercial company though)
Registration and lifespan:	Trusts are not registered often limited in time.	Foundation must be registered (with few exceptions) and have unlimited lifespan

Key Jurisdictions in MENA Region to set up a Family Foundation

	UAE		Qatar
Authority	ADGM/DIFC	RAKICC	QFC
Governed By	The Foundations Regulation, 2017/18	The Foundations Regulations 2019	QFC Foundation Regulations
Currency	USD	USD/AED	USD/QAR
Language	English	English	English
Legal System	ADGM/DIFC - legal system and courts are based on Common Law principles. Its Civil and Commercial Laws are largely based on the laws of England.	Based on the Legal system of ADGM and DIFC.	A legal, judicial and regulatory framework based on English common law and international best practice, with an independent court, regulatory tribunal and dispute-resolution centre.
Advantages	<ul style="list-style-type: none"> • Robust Governance Structure • 0% corporate tax rate • No tax filing • flexibility • Comprehensive tax treaty network • No requirement to file or audit account unless requested by the Registrar. • Low set-up and running costs • Strategic location 	<ul style="list-style-type: none"> • Robust Governance Structure • 0% corporate tax rate • No tax filing • flexibility • Comprehensive tax treaty network • No requirement to file or audit account unless requested by the Registrar. • Low set-up and running costs • Strategic location in the Middle East & towards emerging high growth Markets 	<ul style="list-style-type: none"> • Robust Governance Structure • 0% corporate tax rate • No tax filing • flexibility • Comprehensive tax treaty network • Low set-up and running costs • Strategic location.

Challenges

Can an offshore foundation be Shari'a-compliant (for Qatari nationals as well as ex-pats)?

Can an offshore foundation cover assets across various jurisdictions within & outside Gulf region?

SETTING UP A FOUNDATION IN QATAR FINANCIAL CENTRE (QFC)

The steps for setting up a Foundation in Qatar are as follows:

Application (Article 9 of the Foundation Regulations, 2016)

The Application for setting up a trust can be made online. The information required for the completing the online form are:

i. An Undertaking of Acceptance

ii. Details of the proposed QFC entity

- (Proposed Foundation's Objects)
- Proposed Beneficiary(s) details
- Proposed Dedication of Assets (optional)
- Proposed name in English and transliteration in Arabic
 - Registered office* (which must be in a QFC designated location)
- Term (duration) of the Foundation)



iii. Information on Key persons and registered representative:

- Information on the Founder
- Information on the Members of the Council
- Information on the Enforcer
- Information on the Registered Representative
- Information on the Dedicators

iv. Minimum Documents requirement

- Ultimate Beneficial Ownership (UBO)
- A certified copy of the constitution of the Foundation, duly approved and signed by the Founder

In case of Individual:

- Signed Declaration and Consent Form – CV or business profile,
- Passport copy and/or Qatar ID – A No Objection Certificate (NOC)/letter from the Qatari entity/sponsor for individuals



- Currently under sponsorship in Qatar and/or any Incorporators who have an existing entity either through corporate Ownership or branch in the State of Qatar

In the case of Corporates:

- Signed Declaration and Consent Form
- A copy of the Incorporator's current Certificate of Incorporation or Registration in its place of origin
- A copy of the constitutional document of the Corporate

(Note: Where the document above is not in the English language, this must be accompanied by a translation that is certified as a true and accurate translation of the document by a professional translator)



Conclusion

A number of challenges, such as issues of cross-border laws, taxation of different jurisdictions, personality, hierarchical structure which make succession make succession planning complicated. Since every family is different and has different requirements, the 'one size fits all' approach cannot be adopted.

If the succession planning is done effectively, keeping in mind all the relevant factors such as jurisdiction of the assets, jurisdiction of the inheritor and applicable laws, then the family assets may be protected and the multi-generational vision of the family business can be achieved.

THANK YOU | شكرًا

