

OVERVIEW OF FOUNDATIONS REGIME IN THE UAE

Past two years were marked for UAE legislation by great changes: starting from the first ever implementation of foundations regime in the MENA region by Abu Dhabi Global Market (hereinafter -“ADGM”) in 2017 following to adoption of the same by Dubai International Financial Centre (hereinafter -“DIFC”) in 2018.

Both ADGM and DIFC are the only locations in the UAE allowing set up of trusts and foundations, which are commonly used for any of succession planning, private wealth management, creditor protection, and charitable institutions’ purposes.

While trust is a common law developed mechanism derived from Middle Ages` feudal system, foundations are mostly recognized as a civil law system concept. Nevertheless, both vehicles are widely used in these two law systems by this time and there are tangible reasons for that.

Indeed, trusts and foundations are very often thrown into the same melting pot because both are used as wealth management and assets protection instruments. However, despite both mechanisms are often associated with each other, in fact, essential elements of trusts and foundations completely differ.

Legal personality

The main difference between trusts and foundations is a legal personality. That said, if trust does not have a legal personality and, hence, cannot conduct any transactions on its name or own assets, foundation, on the contrary, is a separate legal entity which holds assets on its name and can directly enter into agreements.

However, in comparison with a company, foundation does not issue shares and/or stocks, therefore, is often considered as an “orphan” structure. This difference allows foundations to separate its liabilities from its founder and be fully autonomous.

Thus, foundations are recognized as more convenient instruments and are often established to protect the founder`s assets against political and other instabilities.

Lifespan

Unlike trusts (which are usually arranged for a certain time period) foundations have no time limit for their existence. Perpetual existence even after the founder`s death allows foundations to continue its mission and serve as a great succession planning vehicle.



Assets protection

DIFC and ADGM Regulations on foundations envisage firewall provisions ensuring protection of the rights of beneficiaries and preserving the foundation's assets from bankruptcy claims, claims in the event of divorce and from the effect of forced heirship rules.

Using a foundation to hold family and business assets, property, financial investments or any other assets, allows very clear instructions to be legalized as to the transfer of assets upon succession. The foundation may be used in a legal structure, or as a vehicle for the ownership of any assets, whether they are moveable or not. As a part of tax optimization one can transfer ownership of all assets that are held under a single top entity to foundation. It also saves cost compared to the complicated process of separate transfer of assets between different subsidiaries. Having clear wishes and plans set out in the foundation's by-laws makes succession arrangements far less challenging.

Why one should consider UAE foundations?

There are several reasons to use DIFC and/or ADGM based foundations in your organizational structure:

- Well-reputed and stable jurisdiction
- English is an official language of business
- Independent court systems based on the best world practices
- 0% corporate tax rate
- Possibility of obtaining UAE tax resident's status/access to all UAE's Double Tax Treaties
- Protection of confidentiality of the founder and beneficiaries
- Protection of assets
- No attestation required for documents and ease of registration
- No tax filing
- Comparatively low set up costs
- Digital landscape
- Allowance of re-domiciliation from and to other jurisdictions
- Low minimum capital requirements (Nil in DIFC and USD 100 in ADGM)
- Neither substance nor physical office are Required

Confidentiality of information

Details on founders and beneficiaries are provided during the registration of foundation to the Registrar. However, one of the advantages of foundations in the UAE is that such information as well as accounting records are not publicly disclosed.



Objects of foundation

A DIFC foundation may be set up for several purposes: (1) for charitable purposes, (2) for the benefit of special person, (3) non charitable purposes, (4) or combination of above. It is expressly prescribed by DIFC laws that foundation may not carry out any commercial activities, except those necessary for, and ancillary or incidental to, its objects.

At the same time the ADGM laws state that foundations can perform any activity not prohibited by ADGM regulations (for instance, foundation in the ADGM cannot be used for charitable purposes and cannot conduct commercial activities).

Foundations are great instruments for any of these purposes:

- Wealth structuring and estate planning;
- Assets protection;
- Tax optimization;
- Holding structuring;
- For specific commercial project;
- Scientific, philanthropic or humanitarian purposes

Rights of Founder:

Following the creation of a foundation, the founder has no more rights towards the foundation or its property unless he proactively reserves such specific rights. The founder may opt to retain (but not bequeath) significant control powers via the By-laws, a great advantage compared to a trust. The founder may notably reserve the right to change by-laws or terminate the foundation. He/she may also appoint him-/her-self as/amongst beneficiary/ies.

Management of Foundation:

Foundation must have a council which consist of at least two members (founder or any individuals or body corporates) to administer its property and carry out its objects pursuant to the foundation documents. Appointing of a guardian is voluntary except for some cases when such appointment is mandatory by regulations (for example, if a foundation has a charitable object, or a specified non-charitable object the guardian must be appointed).



Who we are?

Garant Business Consultancy DMCC is a boutique business advisory firm with wide expertise in business establishment and operation in the UAE market.

Garant has an extensive hands-on experience in advising on worldwide structuring assets as well as estate planning and wealth management.

Having supported establishment of more than hundreds of companies Garant is the best choice for those looking for well-trusted, diligent and quality-oriented business advisors.

Who will support you?



ALEXANDER MARTS

Managing Director

t: +971 4 421 4335

e: a.marts@garant.ae



ASSEM MURATOVA

Senior Associate

t: + 971 4 421 4335

e: assem.m@garant.ae

Business Consultancy

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