

DIFC Foundations and ownership of real estate in Dubai

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In recent years it has become increasingly easier and more affordable to own real estate in Dubai compared to years gone by. Dubai continues to attract investors keen to capitalise on its growth and tax advantages and has gradually opened its doors to foreign investors through new legislation.

The introduction of the DIFC Foundations regime (pursuant to the DIFC Law No. 3 of 2018) is one such welcome development which extends Dubai's succession planning and structuring offering. As a relatively recent addition, many investors (both locally and internationally) are not aware of what a DIFC Foundation is and how they may benefit from one: the summary below provides an overview of both the features and benefits of a DIFC foundation.

The key features of a DIFC Foundation

- a foundation is established by a founder(s) in order to allocate certain of their assets to specific individuals or purposes;
- the foundation has its own legal personality, separate from that of its founder(s) and beneficiaries. Unlike a typical company, it has no shareholders or partners; rather it is 'self-owned';
- it must have a "charter" which sets out the name, objects, description and duration of the foundation, as well as a declaration by each founder requesting its "council" to comply with its terms;
- a council of at least two members (the equivalent of a company's board) shall be appointed by the founder(s) to administer the assets held within the foundation and carry out the objectives of the foundation for the benefit of one or more beneficiaries (which may include a founder).
- a set of "by-laws" sets out the duties and functions of the council members, as well as the manner in which the assets of the foundation may be distributed and accumulated; and
- there is no requirement to have a physical presence in DIFC, but there must be a registered office in DIFC (this requirement can be fulfilled through a registered agent).



Why consider a DIFC Foundation?

Flexibility

A foundation provides the utmost flexibility as the management, governance and control of the foundation can be tailor-made to reflect the arrangements the founder(s)' desire through a combination of the provisions set out in the charter and by-laws. The objectives of the foundation may be amended from time to time to reflect changing circumstances or the wishes of the founder(s), for instance to change the beneficiaries or impose conditions on their receipt of the assets in due course.

Succession planning

It provides a means for the founder(s) to separate their personal wealth from their commercial interests and re-structure ownership of those personal assets by moving them into the foundation, provided that local ownership restrictions are respected. Once the founder(s) transfers any assets into the foundation, those assets cease to form part of his or her estate. It allows UAE residents to now include local real estate assets in their legacy planning, rather than just overseas assets.

Retaining control

Although assets may be transferred to the foundation, the founder(s) can continue to retain control of

those assets during his or her lifetime and beyond, through the terms of the foundation's charter and by-laws.

Ownership of real estate assets in Dubai

DIFC has entered into a Memorandum of Understanding ('MOU') with the Dubai Land Department ('DLD') which allows DIFC entities (including foundations) to own real estate assets registered with DLD. Typically speaking, DLD charge a fee of four per cent of the property value when any property is transferred. However, if the ultimate beneficial owner of a property is an individual and he or she transfers that property into a DIFC foundation of which that individual is a founder, it is likely that the transfer will be regarded as a "gifting" transaction and may be subject to a reduced fee of 0.125 per cent of the property value (though this remains at the DLD's discretion and is determined on a case-by-case basis).

The introduction of the DIFC foundations regime is certainly an encouraging development and provides a further viable and flexible option for investors and family businesses to consider in the context of their wealth management, succession planning and corporate structuring. As ever, there is no-one-size-fits-all when it comes to such wealth management, succession planning and corporate structuring, and advice must be sought on a case-by-case basis as to whether a DIFC foundation may help to achieve the intended objective based in specific circumstances. As a relatively recent addition, DIFC foundations also remain untested to a certain extent and how different regulators may recognise and treat them remains to be seen.

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