UAE FOUNDATIONS: THE GATEWAY TO MIDDLE EAST ASSETS FOR FOREIGN FIDUCIARIES

Most Middle East entrepreneurial families are familiar with foreign offshore trusts and foundations, and have been using these tools to ensure wealth preservation and inter-generational continuity for several generations. These strategies are primarily used in conjunction with assets located abroad. Most of these assets are both non-strategic and non-operational.

At the same time, Middle East entrepreneurial families have historically shielded away from settling regionally, located assets onto the same foreign offshore trusts or foundations, particularly strategic assets such as shares in the family’s corporate vehicle(s) through which the family’s core business is run, or real estate.

One may advance several hypotheses to explain this trend. On the one hand, locally based entrepreneurial families may wish to avoid the potential negative perception accompanying their transferring the control over shares in their core business with which they are closely associated as individuals to a foreign country with which they have no relations or connection to. This is particularly true for citizens of one of the Gulf Cooperation Council (GCC)2 countries who traditionally have strong cultural and religious roots with the region.

On the other hand, setting assets onto a foreign trust/foundation is simply not possible in some instances, due to foreign ownership restrictions applicable in various Gulf jurisdictions. Using a foreign, often multilayers, structure also triggers substantial red tape, additional costs and delays related to the double-legalisation process.

As a result, few are the foreign fiduciaries actively involved in the management of regionally located strategic assets. However, this is about to radically change following the introduction of foundation regimes in the UAE.

The foundation's similarities to a corporate vehicle and relative simplicity makes it an easy tool for entrepreneurial families to understand.

In 2017, both Abu Dhabi Global Market and the Dubai International Financial Centre (DIFC) extended their respective structuring and legacy planning offering with the adoption of the civil law-based foundation tool.

While each regime has a number of unique features, both are modern and forward-thinking pieces of legislation, the result of a comprehensive review of the best practices, models and principles of existing foundation regimes of both common law and civil law backgrounds.

The foundation's similarities to a corporate vehicle and relative simplicity makes it an easy tool for entrepreneurial families to understand. Its ability to meet the families' wealth preservation and inter-generational continuity objectives while providing substantial control to the founder and/or members of the family is one of the many reasons entrepreneurial families are likely to embrace it.

USD 1 trillion is to pass from second generation Gulf business families to millennials within 10 years. At the same time, less than one regional family out of six has a legacy plan in place – not to mention the appropriate structure to meet the family’s wealth preservation and inter-generational continuity objectives.

With UAE foundations, the tool is now available for families to take action. So how can smart foreign fiduciaries capitalise on this opportunity?

UAE foundations do not constitute a threat to existing foreign offshore centres. They are filling a gap for regionally based strategic assets often off-limit for foreign fiduciaries until today.

The foundation tool is simple however some of the fiduciary duty of council and/or guardian(s) may be alien to people with no experience in the fiduciary world. Trustees from established offshore jurisdiction with a long-established tradition of fiduciary services can position themselves as advisors to families in the ongoing administration and management of such structures, be it by the family members themselves or domestically-based third parties such as M/HQ. Those with relevant experience advising families setting up and operating foundations will stand out.

Foreign fiduciaries can take over active functions too – e.g. acting as (co-)council members or guardian – enabling them to have oversight and control over assets often off-limit until today. This can be achieved without having to consolidate the assets under a foreign structure, nor even by having to establish a domestic presence – as a number of support functions may be outsourced.

It is not expected that the Middle East families’ approach to structuring foreign non-operational assets will change going forward. Segregating assets by classes/jurisdictions/objectives remains a sound asset protection/legacy planning strategy.

UAE foundation regimes do not constitute a threat to existing foreign offshore centres. To the contrary, they are filling a necessary gap for regionally based strategic assets.

An entire generation of Middle East families considering strategies to ensure wealth preservation and inter-generational continuity is realising the appeal and potential of domestic foundation. Countless educational initiatives and a number of live projects are on the way – many led by or involving M/HQ.

For smart foreign fiduciaries willing to capitalise on this opportunity and increase their regional footprint and AuM, now is the time.

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1. E.g. real estate, financial investments, cash.
2. GCC consists of the UAE, KSA, Bahrain, Qatar, Kuwait and Oman.
3. Non-GCC nationals often have a different approach and tend to consolidate their Middle Eastern assets into foreign offshore vehicles, the shares of which may eventually be settled onto a foreign trust or foundation.
4. E.g. in the UAE, non-GCC nationals are restricted to own more than 49% in local LLC entities and prohibited to own real estate in the UAE mainland outside of some specially designated freehold areas.
5. For a comparative overview of the ADGM and DIFC foundations’ regimes, read the articles [link] as published in STEP Journal/April 2018 – and [link] as published in The Oath/September 2018. For a comparative overview of the ADGM and DIFC foundation regimes with similar offerings available internationally, see our fact sheet [link] *Foundation comparison sheet*
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Who we are

We are a multi-services platform catering to a broad spectrum of clients – from individual entrepreneurs and local SMEs to wealthy international families, to established blue-chip companies and multinationals. Our one-stop-shop offering is unique in the Middle East: a holistic and cross-disciplinary combination of a market-leading corporate services firm, a law firm’s specialist expertise and a regulatory & compliance services practice, all through one single platform.

We have broad experience advising successful individuals and international families on a broad range of legacy planning and wealth structuring issues, including structuring of operational and non-operational assets. We particularly assist in relation to establishing a foundation, drafting the charter and by-laws, and guiding the founder on the foundation governance strategy and implementation.

Headquartered in the UAE, we are an entrepreneurial firm for entrepreneurial clients.

Who will assist you

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