

UAE PRIVATE WEALTH SERIES (IV) STRUCTURING DUBAI REAL ESTATE

Who can own real estate in Dubai?

Ever since Dubai real estate ownership was opened to non-locals in 2006 in so-called “designated areas”, the Dubai Land Department (“DLD”) has been re-assessing its interpretation of what constitutes a “foreign person”.

After initially applying a broad-based approach, the DLD stuck to a constant practice in 2012, accepting Jebel Ali Free Zone Authority (“JAFZA”) IBCs as the only type of “offshore” entities entitled to directly own real estate in Dubai, and restricting foreign-owned JAFZA IBCs to dual-layer corporate structures until an individual shareholder/ultimate beneficial owner is identified.

The DLD practice was a challenge, as it prevented investors to use sophisticated structures without intense lobbying of the DLD for a special approval. Decisions of the DLD are discretionary by nature and entertained on a case by case basis; negative decisions cannot be appealed.

What’s new?

The DLD entered in a series of Memorandum of Understanding (“MoU”) with the Dubai International Financial Centre (DIFC), Abu Dhabi Global Market (ADGM) and most recently, both Ras Al Khaimah International Corporate Centre (RAKICC) and Ras Al Khaimah Economic Zone (RAKEZ) allowing certain DIFC, ADGM and RAKICC/RAKEZ companies and other establishments to own real estate within the Emirate of Dubai.

In practice, investors can now, when investing into Dubai real estate, use the DIFC’s/ADGM’s common law regulatory framework and their sophisticated structures: companies, partnerships, funds and foundations. They can also opt for the popular light-touch RAK ICC IBC tool, whether or not in combination with a DIFC WPR will – see our fact sheet “[DIFC Wills](#)”

Foundations: What and for whom?

A foundation is an independent legal entity with a distinct personality, separate from the founder. This allows the foundation to enter into contracts or hold assets in its own name.

A foundation is governed by its charter and by-laws, reflecting the desires of the founder. It is managed by a council composed of several members and may be supervised by a guardian.

Unlike a company, a foundation has no shareholders. It is a so-called ‘orphan’ structure.

Both ADGM and the DIFC have extended their structuring offering with the adaption of the civil law-based foundation regime. For more information on the regimes available in the UAE, see our [Foundation comparison factsheet](#).

Impact in practice

The use of ADGM and DIFC structures, and foundations in particular, addresses two key issues with respect to investment in Dubai real estate: local probate and red tape inherent to the use of complex structures.

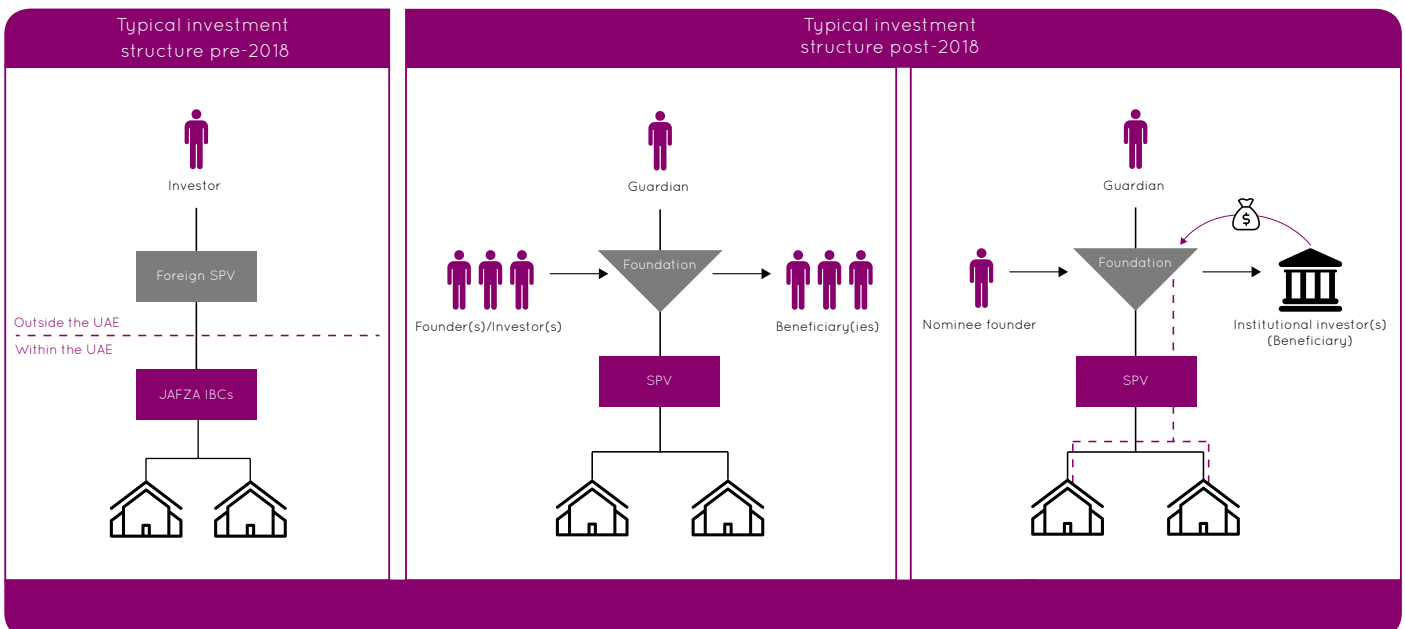
A local probate – i.e. the legal process that takes place after someone’s death – will take place in the event that the deceased directly holds assets in the UAE or, irrespective of the location of the assets, if he passed away in the jurisdiction.

By settling an asset onto a foundation during the founder’s lifetime, the asset becomes property of the foundation and is no longer part of the estate of an individual owner. It becomes off-limit from succession claims and – added benefit – creditors’ claims.

As mentioned above, the DLD authorizes dual-layer corporate structures involving a JAFZA IBCs as direct owner of Dubai real estate. However, such a structure triggers substantial red-tape.

Where the top-up SPV is based abroad, corporate documents and resolutions need to follow the cumbersome and costly double-legalization process.

Such red-tape can be circumvented by consolidating the real estate assets onto a foundation (or ADGM SPV, itself owned by a UAE foundation) which can be controlled securely and remotely by the foreign investor. Please refer to our fact sheet on [UAE Foundations: The Gateway to Middle East Assets for Foreign Fiduciaries](#).





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What is the procedure to register Dubai real estate under a foundation?

A No Objection Certificate (“NOC”) has to be applied for from the DIFC Registrar of Companies (the “ROC”). The ROC will verify the notarization and legalization of the documents up until the identification of the individual beneficial owner(s).

Following such verifications – and the issuance of the NOC –, the foundation will be registered as an establishment on a separate register for tracking of any future transfer by or changes of beneficial ownership into the foundation.

The NOC will be submitted to the DLD by the ROC. Subject to payment of the applicable transfer/registration fees, the DLD will register the unit under foundation’s name and issue the Title Deed.

Transfer/registration fees

A transfer fee of 4% of the market value of the property is levied at the local level on any registration or transfer.

This general rule has exceptions: e.g. when one/several individual(s) transfer a unit to a corporate structure held by that same individual(s) with the same share percentage, or vice-versa, a special fee of 0.125% is applicable – subject always to the DLD’s discretion.

The MoU between the DIFC and the DLD extends this exception for DIFC and ADGM establishments. Where a transfer involves a) a DIFC or ADGM establishment, b) the same shareholder(s) or ultimate beneficial owner(s), and c) the same percentage(s), a special fee of 0.125% of the value of the real estate owned by the DIFC or ADGM establishment is applicable.

Indirect transfers of shares (i.e. outside the DIFC or ADGM level) or beneficial ownership into DIFC or ADGM establishments also trigger payment of DLD fees and must be reported to the DIFC and ADGM Registrars. A DIFC or ADGM establishment failing to comply with the aforementioned requirement shall be subject to payment of fines and penalties as well as suspension of its commercial license.

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 expertise in structuring domestic and foreign real estate ownership and advising on related legacy planning/asset protection issues. We are routinely assisting clients with real estate conveyancing – especially involving complex corporate structures – and tenancy related matters.

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

Who will assist you



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