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PUTTING THE FAMILY FIRST

1st EDITION

BUSINESS DEVELOPMENT & MARKETING

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Introduction

Welcome

Welcome to Al Tamimi & Company's guide on navigating the intricate landscape of private wealth in the Middle East. As one of the most dynamic and rapidly evolving regions in the world, the Middle East offers unparalleled opportunities for individuals and families to generate wealth and secure their financial legacies.

In recent years, the Middle East has witnessed unprecedented economic growth, fueled by diverse sectors ranging from, inter alia, oil and gas to finance, real estate, tourism and technology. This surge in economic activity has not only propelled indigenous businesses to new heights but has also attracted a significant influx of High Net Worth Individuals (HNWIs) and Ultra-High Net Worth Individuals (UHNWIs) from around the globe, seeking to capitalize on the region's prosperity.

As economic activity in the Middle East has increased and family business owners and high net worth individuals have capitalized on the dynamic growth opportunities in the region, those owners have faced multifaceted considerations - from navigating complex legal frameworks and taxation systems to ensuring effective asset protection and succession planning, in order to consolidate and protect the fruits of their labours. Without a culture of asset protection, a lack of laws and legal structures to facilitate the maintenance of capital, and a lack of effective means to enable successors to benefit from their elders' success, the ability for a family and HNWIs to preserve the benefits of their hard work has in the past been challenging.

However, due to the dynamism and innovation of governments in the region that situation has been changing fast. As appropriate laws and regulation have been implemented, a nascent private wealth industry has developed to provide families with effective means of preserving wealth in their home markets within the Middle East region. Due to the evolving geopolitical landscape and the ongoing success of the region as an economic powerhouse, it is not just homegrown families and individuals who

are looking to the Middle East as home to their wealth, but thousands of HNWs and UHNWs who are increasingly looking to migrate mind, body and management to the region for the same purpose.

Private wealth advisory has many aspects, but increasingly the ability to provide for best in class legal arrangements within a permissive tax environment, robust structures, solid rule of law and sensitive dispute resolution processes can all be facilitated in the same jurisdiction where the wealth is generated. This publication showcases these aspects and provides a snapshot of current possibilities in the region. At Al Tamimi we have an enviable record of advising the leading families and individuals for multiple decades. We are proud to provide tailored and nuanced advice to stewards of private wealth from the region and those looking to venture here as they seek to grow and nurture their businesses and assets, not only for the here and now, but increasingly, for their enduring legacy.

Against this backdrop, this publication serves as a comprehensive resource, offering insights, strategies, and expert advice from industry leaders, tailored to the specific needs and nuances of private wealth management in the Middle East. Whether you are a seasoned investor, a family business owner, or a newcomer exploring opportunities in the region, our goal is to equip you with the knowledge and tools necessary to thrive in this dynamic landscape.



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UAE's Initiatives for Family Business Growth

Legislation and Support Centres



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Acknowledging family businesses' essential economic role, the UAE has proactively introduced a series of legislative reforms and initiatives aimed at bolstering the growth, sustainability, and generational transition of these businesses. This article will delve into some of these key measures, including the establishment of specialist entities such as the Dubai Centre for Family Businesses ("DCFB") and the DIFC Family Wealth Centre ("DFWC"), the launch of the Thabat Venture Builder initiative, and legislation like Federal Decree Law No. 31 of 2023 ("Onshore Trust Law") and Federal Decree-Law No. 37 of 2022 on Family Companies ("Family Companies Law"). Through these, the UAE has underscored its commitment to nurturing an environment conducive to the prosperity and longevity of family businesses.

Dubai Centre for Family Businesses

Strategically positioned at the core of Dubai's support framework for family enterprises is the Dubai Centre for Family Businesses. This institution sponsored by the Dubai Chamber of Commerce, symbolizes the city's deep comprehension of the unique challenges that family-owned entities encounter. Offering a comprehensive suite of services, the Centre focuses on enhancing governance, succession planning, and overall business management. The Centre provides workshops, consultancy services, and resources designed to strengthen the foundational aspects of these businesses. Emphasizing the development of effective governance frameworks that balance the interests of the family with those of the business, strategic planning for business continuity,

and the cultivation of the next generation of leaders are among the Centre's foremost priorities.

Furthermore, while the Centre's specific success stories are guarded by client confidentiality, its impact is evident in the increasing number of family businesses that are engaging in structured succession planning and governance. By furnishing these enterprises with the tools and expertise necessary for contemporary business practices, the Dubai Centre for Family Businesses ensures they are well-equipped to compete and succeed on the global stage.

DIFC Family Wealth Centre

Complementing the efforts of the Dubai Centre is the Dubai International Financial Centre Family Wealth Centre, which serves as a hub for families managing substantial assets

and seeking to secure their wealth for future generations. The Centre distinguishes itself through its strategic emphasis on wealth preservation, succession planning, and family governance within the DIFC's sophisticated ecosystem.

The DIFC Family Wealth Centre is committed to providing world-class legal and regulatory frameworks for family businesses, facilitating wealth management, and offering advisory services that are customized for the unique requirements of high-net-worth families. It recognizes the intricacies of managing family wealth and is dedicated to offering solutions that are both pragmatic and forward-thinking. The Centre's advisory services encompass the establishment of family offices, trust structures, and foundations, all within the secure regulatory environment of the DIFC. Additionally, it hosts educational programs and workshops aimed at boosting the financial literacy of family members and preparing them for their roles in wealth management and business leadership.

By providing a mix of financial services, legal guidance, and educational programs, the DIFC Family Wealth Centre has made a significant impact on the way family businesses approach wealth management. It has enabled numerous businesses to adopt structured and strategic approaches to wealth preservation, ensuring their longevity and stability through generations.

The DIFC Family Wealth Centre offers tailored advisory services and legal frameworks, enabling high-net-worth families to preserve wealth, manage assets, and plan for succession within a secure regulatory environment.

Thabat Venture Builder

In a move to encourage innovation and diversification among family businesses, the UAE has introduced the Thabat Venture Builder. This initiative is particularly notable for its emphasis on propelling family-owned enterprises to venture into new businesses and markets, thereby ensuring their adaptability and sustainability amidst the fast-paced changes of the global economy.

Thabat Venture Builder is designed to bridge the gap between traditional family business models and the dynamic demands of the global market. By fostering the creation of startups and new ventures, the initiative equips families with the essential tools and resources required to innovate and expand their business interests effectively.

Through mentoring, financial support, and strategic advice, Thabat Venture Builder seeks to play a crucial role in facilitating the launch of various new ventures by family businesses. These ventures not only contribute to the UAE's broader economic diversification goals but also help to secure the future of these family businesses by broadening their portfolios and reducing their dependence on traditional industry sectors.

Legislative reform

The UAE's legislative landscape witnessed a substantial evolution in 2022 with the introduction of two key laws aimed at reinforcing the operational framework of family businesses. The Family Companies Law created a legal structure for Family Companies to centralize family assets, necessitating a majority family shareholding and registration in a newly created unified registry. The law introduced succession planning enhancements through flexible share classifications, aiming to safeguard family ownership by controlling share disposals to non-family members, and allowing

Legislative reforms like the Family Companies Law and Onshore Trust Law signify the UAE's commitment to modernizing economic infrastructure, streamlining operations, and facilitating successful generational transitions for family businesses.

Family Companies the option to repurchase shares.

Simultaneously, the UAE embraced the Onshore Trust Law, bringing the trust structure concept into the mainland jurisdiction. This legislation bolsters wealth management and asset protection for family businesses, granting legal personality to trusts at the point of initial registration. The Onshore Trust Law lays out a detailed registration



process for trusts, assigning the responsibility to a “competent government authority” in each Emirate.

These laws underscore the UAE’s commitment to adapting its economic infrastructure to better accommodate and support the needs of family enterprises, and to ensure their continuity in a contemporary financial landscape. As the complete practical application of these laws is still unfolding, they represent strategic advancements towards a more sophisticated and structured approach to

economic planning for family businesses within the UAE.

These legislative reforms are poised to streamline family business operations, with the business community expecting further details to be announced via forthcoming regulations. The UAE’s strategic approach reflects a keen understanding of the unique needs of family businesses and a readiness to equip them with the necessary tools for future-proofed wealth management and successful generational transition.



landscape. The enactment of the Family Companies Law and the Onshore Trust Law reflects the UAE's visionary approach, fostering an environment conducive to the prosperity and sustainability of family businesses. With a forward-thinking perspective, the UAE has laid a solid foundation for the flourishing of family businesses, signaling a promising future supported by a government firmly dedicated to nurturing their success and ensuring their enduring contribution to the economy.

In conclusion, the UAE's concerted initiatives and legislative reforms underscore a deep understanding of the pivotal role family businesses play in the national economy. The DCFB and the DFWC serve as cornerstones of this supportive ecosystem, providing vital resources and expertise to empower family businesses for future challenges and opportunities. Particularly commendable is the Thabat Venture Builder initiative, which drives innovation and fosters diversification crucial for family businesses to thrive in a rapidly evolving global

Wealth Architects

Family Offices in the UAE



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With an estimated USD 1 trillion in assets being transferred to the next generation in the Middle East by 2030, there is a growing desire for sophisticated solutions that serve the unique needs of multi-generational families, ensuring the security, growth, and responsible management of their assets.

An increasingly popular strategic wealth management tool in the region is the “Family Office”, with the UAE in particular positioning itself as a hub for Family Offices.

By embracing structured wealth management, families can benefit from clear oversight and management of their assets, ensuring alignment with their financial goals and values.

Moreover, a structured approach to private asset holding can enhance tax efficiency, safeguard assets against risks,

and facilitate seamless generational succession planning. Through defined governance structures, families are able to promote transparency, accountability, and can enable prudent wealth management practices, to ensure the stability and longevity of their financial legacy.

What is a Family Office?

A Family Office is an entity that provides services to a family or families, such as:

- **Family services:** including succession and legacy planning, household assistance and property acquisition management;
- **Strategic services:** including Family Business/Family Entity/Family Structure advisory, strategic business advisory, and business management and oversight;
- **Wealth and succession planning;**
- **Investment management:** including portfolio monitoring, asset allocation strategy and investment due diligence;
- **Finance:** including budgeting and forecasting, procurement and accounting;
- **Legal:** including regulatory and compliance assistance, contracts management and company secretarial assistance;
- **Risk management:** including fraud prevention, cyber-security, and insurance; and
- **Fiduciary:** including acting as a holding company or a proprietary investment acting as a trustee for a family entity.

What are the different types of Family Offices?

Family Offices can be classified into two types:

- **Single-Family Offices (“SFOs”)**, which are entities that serve only one family; or
- **Multi-Family offices (“MFOs”)**, which are entities that serve more than one family, either by pooling resources or by offering services to multiple clients.

How can a Family Office be set up?

Family Offices can be set up as general companies or as specialized entities with specific activities and licenses, depending on the needs and preferences of the family. There are various options for setting up a Family Office in the UAE, including in the free zones, which are designated areas that offer incentives and benefits for businesses, such as preferential tax rates, 100% foreign ownership, and simplified procedures.

There are several free zone jurisdictions that provide for Family Offices, being:

1. the Dubai International Financial Centre (“DIFC”),
2. the Dubai World Trade Centre (“DWTC”),
3. the Abu Dhabi Global Market (“ADGM”); and
4. the Dubai Multi Commodities Centre (“DMCC”).

DIFC Family Office

Recognizing the prominent role that family businesses play in accelerating the

growth of the UAE’s economy, the DIFC has recently enhanced its regulations to attract and support them. The DIFC Family Arrangements Regulations 2023 (“DIFC Family Regulations”) also promote good governance in the context of family businesses.

The DIFC Family Regulations provide comprehensive guidelines for family businesses holding assets and operating in or from the DIFC. They were designed to allow families to manage their businesses and preserve wealth through succession and legacy planning within the DIFC, in a manner that will also assure recognition and enforceability in the rest of the UAE and elsewhere.

Under the DIFC Family Regulations, a Family Office is a DIFC entity (such as a private company, a recognised company, a general partnership or a foundation) that is licensed as such by the Registrar. Any public and private company, partnership, foundation or other legal vehicle registered in the DIFC can be licensed as a Family Office in the DIFC, provided that the DIFC entity in question can evidence that the net asset value of the family, in aggregate, is at least USD 50 million.

DWTC Family Office

The DWTC also continues its efforts in providing an attractive environment that supports Family Offices to operate successfully, offering the options of structuring a Family Office as an SFO or an MFO in the free zone.

Both SFOs and MFOs can be established as regular Free Zone Establishments (“FZEs”) or Free Zone Companies (“FZCOs”) with a specific license for the management of professional services and the provision of administrative services to the families, their members, businesses, entities, trusts, or foundations.

The benefits of setting up a Family Office in the DWTC include 100% foreign ownership, 100% repatriation of capital and profits, dual licensing flexibility, no restriction on currency and repatriation of funds, no restriction on hiring foreign employees, and freedom to initiate multiple options for legal structures.

The minimum capital requirement for an SFO is AED 500,000 in proven liquid assets. Importantly, there are no restrictions on the number of family generations or the ability to employ non-family members. The MFO regulations do not place any restrictions on the ownership, structure, board requirements, and minimum capital requirements of MFOs, other than the standard guidelines applicable to FZEs or FZCOs.

ADGM Family Office

Significantly, the ADGM has strategically opted to refrain from imposing minimum investment requirements for Family Offices, in contrast to most jurisdictions. Families can therefore tailor their investments to their unique financial goals. Further, as having an office in ADGM is optional, families have the added benefit of being able to operate remotely.

To establish a Family Office, a family must consist of closely connected individuals united by blood, marriage, or adoption, with a shared interest in wealth management. While there are currently no specific regulations in ADGM tailored for SFOs, they are allowed under the ADGM Commercial Licensing Regulations.

An SFO in ADGM typically takes the form of a private company limited by shares, limiting shareholders' liability to the SFO's share capital. SFOs offer services such as wealth and asset management, concierge services, day-to-day accounting and legal affairs management, corporate governance support, and administrative services. However, SFOs are restricted from providing these services to any third party beyond the family's members, entities, businesses, trusts, or foundations.

Alongside special purpose vehicles ("SPVs") and foundations, SFOs represent one of the various family wealth solutions and structures available in ADGM. Strategically combining these options enables families to safeguard their wealth over the long term in a tax-efficient manner.

DMCC Family Offices

The DMCC has put in place a licence structure for SFOs to enable families to consolidate and transfer wealth across generations.

Accordingly, a DMCC Family Office operates as a standard Free Zone Limited Liability Company ("FZ-LLC") structure with a specific



license to allow wealth, asset and legal affairs management of a single family and the provision of other administrative or concierge services related to that single family (which can be a family member, family business, family entity (corporate structure) or family trust or foundation).

There is a prohibition on offering any of the above-mentioned services to any third party other than the family's own members, entities, businesses, trusts or foundations. For the purposes of the DMCC, a single family includes individuals who are direct descendants of a common parent or their spouses, which can go up to three preceding generations (and includes adopted children).

The DMCC Family Office must be 100% owned by the same family. This means either that the DMCC Family Office is

owned by the individual family member(s), or by a corporate entity provided that the ultimate beneficial owners are the same family members.

What are the tax considerations?

Under the recently issued Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses in the UAE (the Corporate Tax Law), corporate tax applies at the following rates:

- 0% on the taxable income not exceeding AED 375,000; and
- 9% on the taxable income exceeding AED 375,000.

As an exception to the above, a SFO or MFO established in certain free zones are potentially eligible to be treated as



Under certain conditions, Family Offices established in certain free zones may benefit from a corporate tax rate of 0% on their 'Qualifying Income'.

a "Qualifying Free Zone Person" which benefits from a corporate tax rate of 0% on their "Qualifying Income". In order to be treated as a Qualifying Free Zone Person, one of the key conditions to be satisfied is that the SFO or MFO should derive "qualifying income".

When assessing the SFO's or MFO's eligibility to be considered a Qualifying Free Zone Person, there are multiple factors and considerations to take into account. Such key considerations include, inter alia, whether the scope of the activities performed by the SFO or MFO actually fall within the prescribed categories of qualifying activities for the purposes of deriving "qualifying income" or the free zone that the SFO or MFO is established in.

Further, potential VAT implications of the SFO or MFO's services, the tax

residency of the family members, location of the portfolio assets and economic substance requirements are just some of the other essential considerations to be borne in mind. By carefully analysing these considerations, families can ensure that the structure of the family businesses are tax efficient and remain aligned with the objectives of the family's wealth and succession planning.

How will wealth structuring continue to evolve in the UAE?

Looking ahead, the future of wealth structuring in the UAE is poised for continued growth and evolution as the industry matures. We have observed a surge in interest from local and international clients seeking expert solutions for safeguarding family assets and private wealth.

Anticipated trends include a heightened demand for customized solutions, integration of technology, and adaptation to evolving regulatory landscapes. With its commitment to innovation and robust financial infrastructure, the UAE is well-positioned to emerge as a leading global hub for sophisticated wealth structuring solutions.

Foundations for the Future

Structuring Your Family Business



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Since their inception in the UAE in 2017, foundations have become a popular tool for wealth and estate planning, such that they are now an integral part of the UAE's wealth management offering, with several free zones offering the possibility of setting up a foundation.

What is a Foundation?

Foundations are legal entities that have been in existence in civil law jurisdictions, particularly Western Europe, for centuries and are often seen as an alternative to trusts. They can be established for charitable purposes but can also hold assets for the benefit of beneficiaries. They are distinct from trusts in that they do not involve a transfer of ownership or a fiduciary relationship between the settlor and the trustee. Foundations typically have:

- a constitution consisting of a charter and by-laws, which set out the Foundation's objects, rules, and governance; and
- a council, which is responsible for managing the Foundation's affairs, and
- a registered office, which is the address for communication and service of documents.

Where can I establish a Foundation in the UAE?

In the UAE, Foundations can be established in the following jurisdictions:

- The Dubai International Financial Centre ("DIFC");
- The Abu Dhabi Global Market ("ADGM"); and
- The Ras Al Khaimah International Corporate Centre ("RAKICC").

What are the generic constructs of Foundations in the UAE?

A 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' and for that reason it is often described as an orphan entity. The Foundation in turn is considered the legal owner of its assets and is managed according to its stated purposes and objectives.

A Foundation must have a "charter" which typically sets out the name, objects, description, identity of founders, council members and duration of the Foundation. A Foundation may also be required to have a set of "by-laws", which address matters including the duties and functions of the council members, identity of beneficiaries and/or residuary beneficiaries, as well as the manner in which the assets of the Foundation may be distributed and

accumulated. Together, the charter and by-laws make up the constitution of a Foundation.

In this structure, a council of at least two members (the equivalent of a company's board) are 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 can include the founder or a body corporate).

A Foundation may be required to have a guardian, who oversees the council's performance of its functions and protects the interests of the Foundation's objects or beneficiaries. A Foundation may also need to have a registered agent, who provides certain services to the Foundation, such as filing documents with the registrar or keeping records.

Foundations can generally hold any movable or immovable property, including rights and interests, whether present or future and whether vested or contingent, that are contributed to or acquired by the Foundation. This means that a Foundation can hold assets such as shares in underlying companies, money, bank accounts, investments, land, intellectual property, or contractual rights, always subject to local ownership rules and regulations. However, a Foundation may not carry out any commercial activities, except those necessary for, and ancillary or incidental to, its objects.

The property of a Foundation is not held by it upon trust for any other person, but rather is owned by and registered in the

name of the Foundation directly. The property of a Foundation may be distributed, accumulated or applied in accordance with the by-laws of the Foundation, which may also detail whether and how further property may be endowed upon the Foundation.

DIFC Foundations

The key characteristics of a DIFC Foundation are as follows:

- A DIFC Foundation is a type of legal entity that can be established in the DIFC for various purposes, such as charitable or non-charitable objects, or to benefit persons by name, category or class.
- A Foundation could serve as a Family Office as well.
- A DIFC Foundation has a separate legal personality from its founder(s) and any other person, and has the capacity, rights and privileges of a natural person.
- A DIFC Foundation can be formed for a variety of purposes, including wealth management and preservation, family succession planning, tax planning, asset protection, corporate structuring, public interest purpose and philanthropic activities.

To set up a DIFC Foundation, the founder(s) must apply to the Registrar by signing and filing an application that includes the required information and documents, such as the name, address, objects, initial capital, founder(s), council

member(s), and constitution of the proposed Foundation.

Foundations in the UAE have their own legal personality, separate from founders and beneficiaries, making them 'self-owned' entities.

The constitution of a Foundation comprises its charter and its by-laws. The charter and the by-laws may be amended only in accordance with the terms set out in the charter and/or "by-laws" or by court order.

The Foundation may, but need not, have a registered agent. A registered agent is a qualified person who acts as the representative of the Foundation in the DIFC and who must have a business address in the DIFC, which can be used as the Foundation's registered office address. The agent's responsibilities can include filing the charter and "by-laws" with the Registrar, and any amendments thereto. In addition, a Foundation that appoints a registered agent must provide a copy of its annual accounts to its registered agent, while a Foundation that does not appoint a registered agent must file its annual accounts with the Registrar.

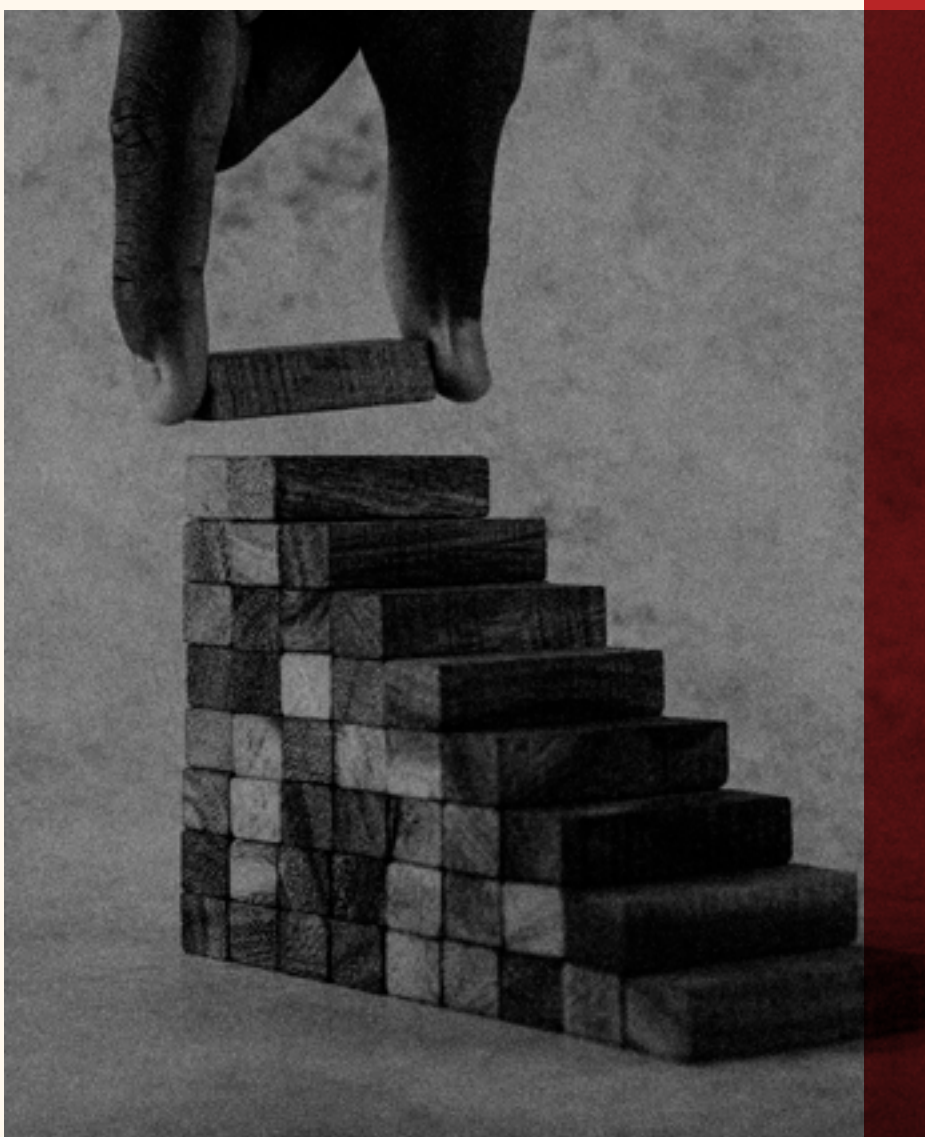
Foundations may, but need not, have a guardian, who must ensure that the council carries out its functions and who may have certain powers to approve, sanction, or authorise the council's actions. The charter and "by-laws" can also provide the guardian with the power to remove council members and appoint new ones.

The Foundation does not have to maintain office space in the DIFC to be registered. However, if it chooses to have no physical office, it cannot hire employees and it must engage a corporate service provider to grant the Foundation its registered address. A registered office is the address of the Foundation in the DIFC, where it must keep certain records and documents and where it may receive communications and notices.

ADGM Foundations

Key characteristics of an ADGM Foundation are as follows:

- An ADGM Foundation allows the consolidation of family assets into a single entity with clear succession plans and asset protection.
- Under the ADGM Foundations, a Foundation is a legal entity with separate personality from its founder.
- An ADGM Foundation may be formed for various purposes, such as wealth management and preservation, family succession planning, tax planning, asset protection, corporate structuring, and for public interest purposes.



To set up an ADGM Foundation, an application must be made to the Registrar. There are two distinct types of Foundations in the ADGM: exempt and non-exempt. The type of Foundation will directly affect the application to form the Foundation, mainly because exempt applicants are not required to appoint a Corporate Service Provider ("CSP"), whereas a non-exempt Foundation is required to do so.

Upon establishing which type of Foundation the entity will be, the application requires the same disclosures: details of the founder, council member(s), guardian, beneficiaries and

designee (if applicable), the charter (a model charter is available for use), details of the registered office address in ADGM, details of the CSP for non-exempt Foundations, and certain declarations in relation to each founder, council member and guardian.

If the charter does not address certain prescribed matters, including the functions of the council and the procedures for appointing and removing councillors and guardians, they must be set out in the by-laws. Further, while appointment of a guardian is optional during the lifetime of the founder, it is compulsory upon their death.

ADGM Foundations require full disclosure of information to the Registrar, however the information is not accessible publicly, including the identity of beneficiaries. This is to ensure transparency of ownership whilst also ensuring client confidentiality.

RAKICC Foundation

The key characteristics of a RAKICC Foundation are as follows:

- RAKICC Foundation is a corporate body created with a legal personality separate from that of its Founder(s) registered at RAKICC. The Foundation acts through its council to administer its assets and carry out its objects.
- The governing law applicable to the Foundation can be decided between two common law jurisdictions, and the founder can opt into either ADGM or DIFC governing law and to give exclusive jurisdiction to either the ADGM courts or the DIFC courts.
- Similar to the DIFC and ADGM Foundations, a RAKICC Foundation serves a multitude of purposes which range from succession planning wealth management and preservation, tax planning, asset protection, corporate structuring to distributing dividends from operating companies.

To set up a RAKICC Foundation, an application must be submitted to the Registrar. The criteria

required by RAKICC for the purposes of incorporating a Foundation include the details of the founder, council members, registered agent, as well as the constitution and the address of the UAE registered office. The constitution consists of the charter and, if the charter does not contain certain prescribed information, the by-laws.

Corporate tax considerations apply to UAE foundations, with potential benefits for those established as 'Family Foundations' under specific criteria.

There are some further requirements in the event the RAKICC Foundation has a charitable object, or a specified non-charitable object, which is that they must appoint a guardian. A guardian can be either an individual or body corporate.

In contrast with the ADGM and DIFC, it is mandatory for a RAKICC Foundation to have a registered agent who is registered and certified by RAKICC to act as such. As alluded to above, a RAKICC Foundation must

at all times have a registered office in the UAE to which all communications and notices may be addressed, which may be the registered office of its registered agent.

The RAKICC Registrar must maintain a Foundations register, which shall contain details of each Foundation, including the name and date of registration, details of the Founder, council members, and registered agent. All other information which has not been mentioned, is treated as private and shall not be disclosed unless required by relevant authorities.

What are the corporate tax considerations?

The UAE has recently issued the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses ("Corporate Tax Law"), which imposes corporate tax on the taxable income of businesses. The Corporate Tax Law applies to taxable persons with respect to financial years commencing on or after 1 June 2023. Generally, corporate tax applies at the following rates:

- 0% on the taxable income not exceeding AED 375,000; and
- 9% on the taxable income exceeding AED 375,000.

From a UAE corporate tax perspective, given that a Foundation has a separate legal personality, a Foundation is treated as a taxable person in its own right. Therefore, a Foundation's taxable income would ordinarily be subject to corporate tax in the UAE at the rates specified above.

However, a Foundation that is established as a “Family Foundation” could potentially benefit from a different tax treatment.

Under the Corporate Tax Law, a Family Foundation is defined as any Foundation, trust or similar entity that meets all of the following conditions:

- It is established for the benefit of identified or identifiable natural persons, or for the benefit of a public benefit entity, or both.
- Its principal activity is to receive, hold, invest, disburse, or otherwise manage assets or funds associated with savings or investments.
- It does not conduct any activity that would have constituted a business or business activity under the Corporate Tax Law had the activity been undertaken, or its assets been held, directly by its founder, settlor, or any of its beneficiaries.
- The main or principal purpose of the Family Foundation is not the avoidance of corporate tax.
- It meets any other conditions as may be prescribed by the Minister of Finance.

If the above is satisfied, the Family Foundation can apply to the Federal Tax Authority (“FTA”) to be considered as an “unincorporated partnership”. If the FTA approves the application, the Foundation will be treated as tax-transparent. In other words, the Foundation will be “looked through” for

corporate tax purposes and the tax treatment would be the same as the tax treatment which would be applied as if the individual beneficiaries own the investments directly.

9%

corporate tax rate on the taxable income exceeding AED 375,000.

When assessing whether a Family Foundation should apply to be treated as an “unincorporated partnership” for corporate tax purposes, several key considerations come into play including the tax residency of the beneficiaries, the nature of the income, the jurisdiction in which the assets held by the Foundation are located, and the applicability of double tax treaties, if any. By carefully analysing these considerations, your family can make informed choices in ensuring that the overall structure of the Foundation is tax efficient and remains aligned with the objectives of your wealth and succession planning.



Further Considerations

It is important to emphasize that a Foundation has no shareholders. It would have a founder(s) who would initiate the process of its formation, and a council to manage its operations.

Overall, each jurisdiction has its own laws and regulations governing the establishment and administration of Foundations, with each offering distinct advantages and features that may suit different needs and preferences. However, the general purpose and framework that makes a Foundation is uniform across the jurisdictions. Depending on the specific purpose of the desired Foundation, a suitable jurisdiction can be recommended accordingly.

Building Trust

Recent Changes to the DIFC Trust Law



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On the 8th March 2024 the DIFC Amendment Law No.1 of 2023 came into effect which contains various provisions amending the existing DIFC Trust Law No.4 of 2018 (the “Revised Trust Law”). The Revised Trust Law underscores the DIFC’s commitment to bolster asset protection and address the complexities arising from the global nature of trust structures. The amendments seek to accommodate trusts holding property in various jurisdictions, safeguard trusts from creditor claims and foreign judgments, and elucidate legal procedures and provisions for trusts.

A key modification involves allowing trusts to have severable terms governed by separate laws based on the location of the trust property. This flexibility enables trusts to navigate diverse legal requirements across jurisdictions. For instance, a trust could incorporate terms related to jurisdictional requirements imposed by specific laws governing real estate or inheritance, providing greater adaptability and certainty in managing assets across borders.

Another notable change aims to heighten the difficulty for creditors challenging asset transfers to trusts by settlors. Creditors must now demonstrate that the settlor intended fraud and was insolvent during the transfer. The trust would be liable to pay creditors only up to the value of the settlor’s interest in the trust property, discouraging baseless claims against trusts and reinforcing asset protection.

Furthermore, the Revised Trust Law elevates the standards for recognizing and enforcing foreign judgments against trusts or their beneficiaries. If a foreign court issues a judgment against a trustee or protector, they must step down and be replaced, shielding trust assets from foreign legal actions that may not adhere to DIFC trust law or principles.

The changes also bring clarity to trust formation and termination procedures. A written instrument is not required to create a trust, and a beneficiary’s interest can only be terminated in

specific circumstances, such as challenging the trust or acting against the settlor’s or contrary to the trust’s good administration wishes. This enhances certainty and protection for trust beneficiaries adhering to trust terms.

Additionally, new provisions in the Revised Trust Law cover topics such as rights of protective and discretionary trusts, court powers to split or merge trusts, settlor-reserved powers, trustee duties regarding protector directions, and acceptance or rejection of trust-related directions by interested parties. These provisions address gaps and ambiguities in the current trust law, providing guidance and options for interested trust parties and the court in handling various trust issues.

Aligning the definition of “Relevant Percentage” in the Revised Trust Law with the UBO Regulations is also proposed, setting the threshold for ownership and control at 25%. This alignment ensures consistency in the DIFC’s

regulatory framework, facilitating the identification and disclosure of ultimate beneficial owners of trusts and other entities.

- Article 33 has been revised to clarify that the establishment of a trust does not necessitate a written instrument, thereby affirming that the legal framework allows for resulting and constructive trusts. This stands in contrast to the stance taken by Federal law on trusts, which still does not acknowledge the establishment of trusts through verbal agreements or actions alone.

These provisions address gaps and ambiguities in the current trust law, providing guidance and options for interested trust parties and the court in handling various trust issues.



- Additionally, Article 48 has undergone modification to strengthen safeguards for trust beneficiaries. The amendment specifies that a beneficiary's interest can only be terminated if the trust instrument explicitly allows it and the beneficiary challenges the trust or engages in behavior considered detrimental to the settlor or trust's good administration. It may be that such provisions could be useful in protecting beneficiaries if the trust is challenged on grounds of non-compliance with Sharia Law.

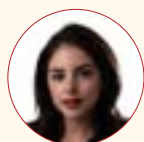
Overall, these proposed changes aim to fortify the legal framework for trusts, enhancing flexibility and responsiveness to the evolving needs of global trust structures. They also contribute to the DIFC's reputation and appeal as a leading trust jurisdiction in the region and beyond.

Navigating the Next Generation

Ensuring Continuity in Family Businesses



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In the tapestry of family businesses, the thread of continuity is woven with care and foresight. As custodians of tradition and visionaries of the future, families grapple with the perennial challenge of ensuring a seamless transition to the next generation. In this article, we explore the evolving dynamics of succession planning and highlight practical approaches to engage the next generation from an early age, drawing upon examples from foundations and trusts as vehicles for inclusion and empowerment.

One of the central concerns facing family businesses is the desire to preserve the legacy while respecting the aspirations of the next generation. It is not uncommon for younger family members to harbour ambitions beyond the confines of the family business, whether pursuing careers in different industries or entrepreneurial ventures of their own. In such instances, families must navigate the delicate balance

of nurturing individual passions while fostering a sense of belonging and purpose within the family enterprise.

The transition from one generation to the next poses unique complexities, as it involves not only transferring ownership and management responsibilities but also preserving the family's values, culture, and vision for the future. One effective strategy embraced by forward-thinking families is the establishment of family foundations, which serve as vehicles for preserving wealth, promoting philanthropy, and fostering intergenerational collaboration. Founders, typically the patriarch or matriarch of the family, can embed provisions within the foundation's charter to ensure the meaningful involvement of the next generation. By delineating clear roles, responsibilities, and decision-making processes tailored to the capabilities and interests of younger family members, foundations serve as platforms for cultivating

leadership skills, promoting collaboration, and imparting values across generations.

For instance, foundations may designate dedicated seats on the board of trustees or advisory committees for the next generation, empowering them to contribute their perspectives and ideas to philanthropic initiatives and strategic planning efforts. By involving younger family members in the governance of the foundation from an early age, families instill a sense of ownership and responsibility, nurturing a shared commitment to advancing the family's philanthropic mission and values.

Moreover, foundations offer a platform for educating the next generation about financial literacy, social responsibility, and the importance of giving back to society. Through mentorship programs, workshops, and experiential learning opportunities, families can impart invaluable lessons to younger members, preparing them for leadership roles within the foundation and beyond.

Beyond foundations, trusts serve as powerful tools for preserving family wealth and engaging the next generation in the management and stewardship of family assets. Through carefully crafted trust structures, families can provide opportunities for younger beneficiaries to participate in decision-making processes related to investment management, wealth preservation, and intergenerational wealth transfer.

The journey of succession in family businesses is not merely about transferring ownership and management responsibilities but about nurturing a legacy of innovation, resilience, and shared purpose.

For example, discretionary trusts may grant beneficiaries the flexibility to pursue educational pursuits,

entrepreneurial endeavors, or charitable endeavors while safeguarding family assets for future generations. By entrusting younger family members with responsibilities commensurate with their abilities and interests, trusts foster a sense of accountability and empowerment, preparing them for leadership roles within the family enterprise.

Furthermore, trusts can be structured to incentivize and reward positive behavior and achievement, motivating younger beneficiaries to uphold the family's values and legacy. Through mechanisms such as incentive trusts or family incentive plans, families can encourage responsible behavior, academic achievement, and entrepreneurial success among younger members, ensuring the preservation of family wealth and values for generations to come.

In conclusion, the journey of succession in family businesses is not merely about transferring ownership and management responsibilities but about nurturing a legacy of innovation, resilience, and shared purpose. By embracing inclusive strategies and leveraging vehicles such as foundations, trusts, mentorship programs, and family retreats, families can engage the next generation in meaningful ways, ensuring continuity and prosperity across generations. As trusted advisors, we stand ready to assist families in charting a course for success and sustainability in an ever-evolving business landscape.

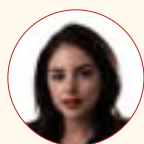


Transforming Family-Owned Businesses

The Evolution of Saudi Arabia's Companies Law



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In a groundbreaking development, Saudi Arabia's Council of Ministers approved a new Companies Law on June 28, 2022, ushering in a new era for businesses across the kingdom. This milestone decision carries profound implications for established family-owned enterprises and high-net-worth individuals seeking to establish or invest in family businesses within Saudi Arabia. The revised Companies Law introduces transformative measures aimed at enhancing governance structures and fostering transparency within the business ecosystem. As businesses adapt to these legislative changes, they're poised to navigate operational complexities with greater clarity and efficiency.

The Introduction of Article 11

Family-owned businesses represent a unique blend of tradition, entrepreneurship, and legacy. Yet, navigating the complexities of family

dynamics while managing a successful enterprise can be challenging. In this context, Article 11, which allows for the introduction of a "family charter" concept emerges as a powerful tool, offering far-reaching benefits beyond mere governance.

The introduction of the family charter concept empowers businesses to regulate critical aspects of their operations, providing a tailored approach to address the unique dynamics of family-owned businesses. Historically, courts have struggled to consistently uphold such arrangements, and the previous Companies Law failed to address this issue

Clarity and Transparency

At the heart of every thriving family business lies a shared vision and set of values. A family charter serves as the compass, providing clarity on these fundamental aspects. By articulating the family's

vision, mission, and goals for the business, it fosters transparency and alignment among family members. This shared understanding not only guides decision-making but also strengthens familial bonds, laying the groundwork for sustainable growth.

Moving forward, family-owned companies gain the authority to govern various facets of their enterprise, including ownership, management, work policies, familial employment, and dividend distribution. Article 11 grants founders, partners, or shareholders the flexibility to establish agreements governing their internal relationships, including mechanisms for engaging legal heirs, either individually or through a dedicated company.

Succession Planning

One of the greatest challenges facing family businesses is succession planning. Here, the family charter plays a pivotal

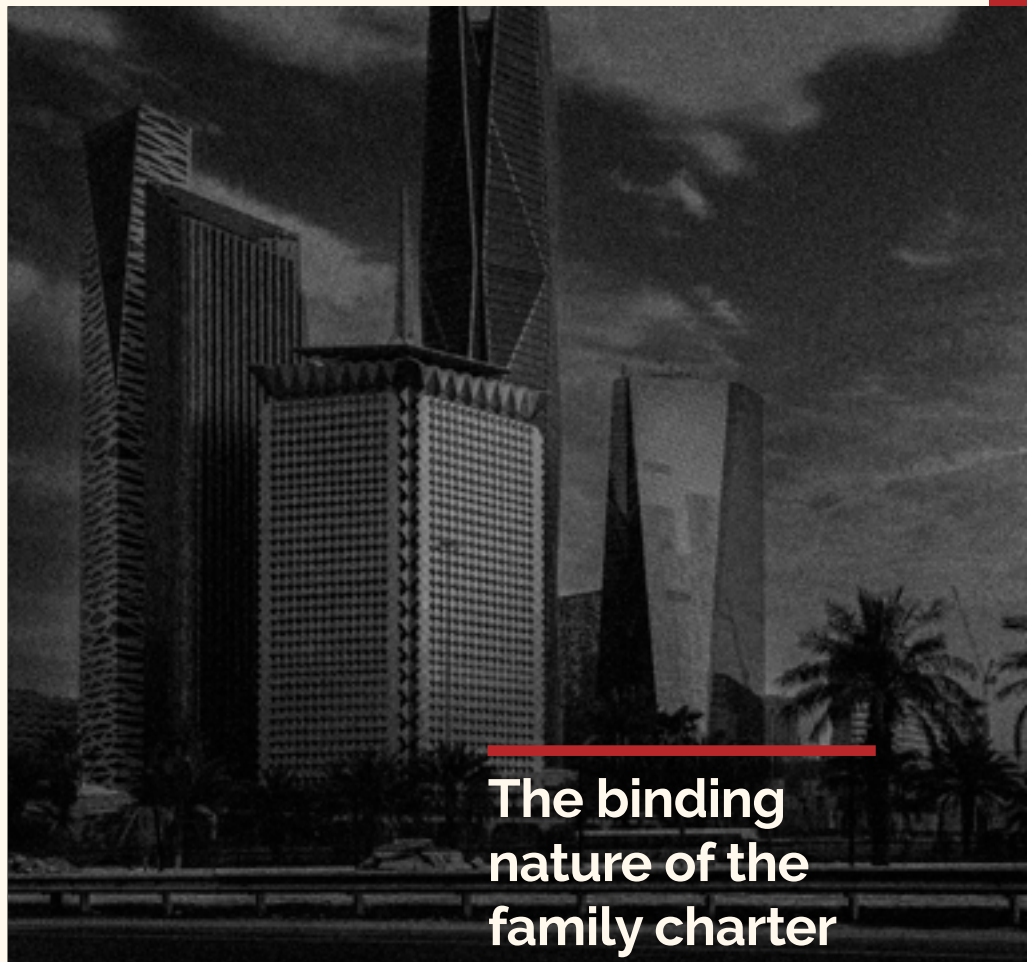
role in ensuring a smooth transition of leadership and ownership to the next generation. By outlining succession protocols and criteria for leadership roles, it minimizes ambiguity and reduces the risk of conflicts arising from unclear expectations. This not only preserves continuity but also safeguards the family's legacy for generations to come.

Asset Protection

Protecting the family business from internal and external threats is paramount for its longevity. Accordingly, the family charter can serve as a protective shield, implementing measures to safeguard the company's assets and interests. Whether through restrictions on share transfers or guidelines for reinvesting profits, it ensures the preservation and growth of wealth, securing the family's financial future and legacy.

Conflict Resolution

In any family enterprise, conflicts are inevitable. However, how these conflicts are managed can make all the difference. A well drafted family charter establishes clear guidelines for resolving disputes, preventing them from escalating and jeopardizing both the business and family relationships. By promoting open communication and constructive problem-solving, it paves the way for harmony and resilience in the face of challenges.



The binding nature of the family charter

ensures alignment with broader legal frameworks, promoting transparency and confidence among family members.

Furthermore, the explicit endorsement of a comprehensive family charter within the Companies Law underscores a commitment to transparency and accountability within family-owned enterprises. This structured framework provides a roadmap for navigating operational challenges while upholding core values and fostering familial cohesion.

However, the enforceability of the family charter is contingent upon its alignment with the company's constitutional documents, underscoring the importance of harmonizing internal agreements with overarching corporate governance principles. While this may impose certain constraints on the flexibility of arrangements,

it also serves as a safeguard against potential conflicts and ensures adherence to legal frameworks.

Simplified Joint Stock Company

In addition to the pivotal changes outlined in Article 11, the new Companies Law introduces a novel entity, the “Simplified Joint Stock Company,” which was previously non-existent. This innovative structure caters to the evolving demands of entrepreneurs and capital investors alike. It amalgamates the favorable attributes of limited liability companies, such as the absence of a minimum capital requirement and streamlined administrative procedures, with the advantages offered by closed joint-stock companies. For instance, the Simplified Joint Stock Company can issue different classes of shares with varied rights like voting, dividend, or liquidation rights, provided these are specified in the articles of association.

The introduction of the Simplified Joint Stock Company presents an opportunity for family enterprises, offering a level of flexibility previously unseen in traditional business models. This adaptability is particularly appealing given the unique nature of family-owned businesses, where intricate dynamics often govern decision-making processes. The newfound ability to tailor company structures to align with familial goals and operational strategies heralds a promising era of growth and sustainability for these enterprises.

LLC amendments

Similarly, the new Companies Law introduces amendments pertaining to limited liability companies (LLCs), offering high-net-worth individuals additional avenues to structure their investments in alignment with their unique needs.

the preservation of family values and long-term strategic vision.

The Companies Law also includes provisions aimed at balancing the interests of majority and minority partners within family-owned LLCs. It grants the majority the authority to compel the minority to

LLC amendments under the new law provide family-owned businesses with customizable share transfer restrictions, promoting stability and orderly transitions within ownership structures.

Partners now possess rights to reclaim shares offered to external parties, a provision particularly pertinent to family enterprises seeking to maintain control within the family circle. Furthermore, the law empowers partners to collaborate in setting specific restrictions on share transfers within the company’s articles of association, allowing for

accept a buyer’s offer for all shares of the company, alongside affording the minority the ability to demand that the majority guarantee the sale of their shares under identical terms as those applied to the majority’s shares. This ensures equitable treatment of all partners, fostering trust and cohesion within the family business structure.



The customization of share transfer restrictions emerges as a crucial facet, particularly for family-owned enterprises seeking to align these provisions with their unique requirements.

Additionally, LLCs now have the option to incorporate clauses allowing the company to repurchase its own shares or accept them as collateral. This mechanism not only safeguards family ownership and its stability but also furnishes the requisite flexibility for family members to exit, thus mitigating potential conflicts within the familial sphere.

Conclusion

The approval of Saudi Arabia's new Companies Law represents a significant advancement, particularly for family-owned businesses. Article 11's introduction of the "family charter" marks a notable shift in governance, granting businesses the autonomy to regulate crucial aspects of their operations with precision. As these

enterprises gain newfound authority in governing various facets, including ownership and succession planning, they're poised to navigate challenges with increased flexibility and transparency. The engagement of legal heirs underscores a commitment to sustainability across generations. This transformative legislation signals a promising era for family enterprises in Saudi Arabia, as they embark on a journey towards growth and sustainability bolstered by tailored governance mechanisms and a commitment to familial cohesion.

Safeguarding Legacy

Navigating Family Business Disputes in the GCC



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Family businesses are the backbone of the GCC economies, accounting for around 60 percent of GDP and 80 percent of the workforce. However, they also face unique challenges and risks, especially when it comes to resolving disputes among family members over the ownership, management and direction of the business. Such disputes can have serious consequences for the survival and growth of the family business, as well as the harmony and legacy of the family itself. Therefore, it is vital for family businesses to adopt proactive and effective strategies to prevent and manage disputes, and to explore alternative forms of dispute resolution that can offer more flexibility, confidentiality and potentially better outcomes than litigation.

Defining Family Business and Family Business Disputes

Family businesses are generally defined as business in which a single family owns the majority of shares in, or controls the business, and which has the distinguishing features of blood relations between those who own and/or manage the company and the generational transfer of ownership and management. A family business dispute is a form of dispute distinct from (but with elements of) family litigation, commercial litigation and business negotiation, but with intense interpersonal and familial relationships at its heart.

Roots of Conflict

Some of the common causes and triggers of family business disputes relate to succession,

leadership, assignment of management and control rights, distribution of profits, roles and responsibility within the company, family dynamics, competition between family members, and shareholders entering or exiting. Family business disputes can escalate through four stages: minor disagreement, serious dispute, destabilizing conflict and open warfare.

The Path to Peace

Family businesses can proactively prevent and manage disputes by taking pre-emptive and resolution measures. Pre-emptive measures include designing an appropriate legal structure or constitution for the family business that covers essential relationships, rights and governance, including clear and appropriate dispute resolution provisions, and implementing proper succession planning

that provides clarity and certainty over the future leadership and ownership of the business.

Resolution measures follow from the choices made in the legal structure of the family business, most notably the dispute resolution provisions. These should ultimately include a robust dispute resolution mechanism which will deliver clarity and certainty over the future leadership and ownership of the business.

From Courts to Conciliation

The effectiveness of different forms of dispute resolution for family businesses, namely litigation, arbitration and mediation, is assessed comparing their advantages and disadvantages in relation to various factors, such as cost, time, confidentiality, flexibility, enforceability and preservation of family harmony.

Litigation is often considered an unsatisfactory form of dispute resolution for many family businesses, as it is costly, time-consuming, adversarial, inflexible and potentially damaging to the family relationships and reputation. Litigation also requires lawyers, who may have a negative impact on the dispute by being too aggressive or giving false expectations to their clients. Moreover, the litigation system may not have the sophisticated measures to differentiate a purely commercial dispute from a family business dispute, and to provide special treatment for the latter. Where the business is international in nature, cross border

elements can make litigation increasingly uncertain and costly. These factors suggest that litigation should only be used as a last resort (or in the absence of an alternative).

Arbitration, on the other hand, allows parties to choose the decision maker (arbitrator) and the rules under which the dispute will be resolved, and to benefit from greater confidentiality, flexibility, and enforceability of the outcome (which is of great importance in disputes with a cross border element). Arbitration also enables parties to select arbitrators who have the appropriate legal and other specialized competencies, and who may be permitted to act as counsellors or negotiators as well as adjudicators.

in making submissions, and the reduced scope for challenging the decisions of a Tribunal (there are typically no rights of appeal against decisions which are perceived to be wrong). The privacy of the process sometimes can make it difficult to obtain accurate information about available arbitrators with specific expertise in family business matters.

Given the obvious benefits of arbitration in family business disputes, it is generally recommended that family businesses consider incorporating arbitration clauses in their constitutions or agreements. It is also worth noting that national legal systems often provide limited classes of disputes which cannot be resolved

60%

**of GDP in GCC comprises
of family businesses.**

However, arbitration also has some limitations, such as the need for agreement to refer to this procedure (the need to incorporate clear and legally binding provisions in legal instruments such as trust deeds or the constitutive documents of companies), the risk of an unpredictable award, the possibility of arbitrator bias, the lack of transparency

by arbitration by virtue of national public policy rules). Appropriate arbitration provisions should be considered carefully in the context of choosing the appropriate legal structure for the family business.

Mediation is closely aligned with GCC culture and history, as it is based on the principles of peace and reconciliation, and involves a

well-respected and trusted third party who aims at re-establishing communal harmony. Mediation can be very effective in resolving family business disputes and preventing existing disputes from escalating. Mediation also allows parties to address the non-legal side of the dispute, such as emotional relations, and to reach a mutually satisfactory solution under the guidance of a qualified mediator. It is seen as a particularly effective form of dispute resolution where the disputing parties have long term relationships, a key aspect of family business relationships.

However, mediation also requires the cooperation and good faith of the parties, and does not guarantee a binding settlement agreement, unless the process leads to a successful resolution of the dispute. Mediation also depends on the personality and skills of the mediator.

Given the obvious benefits of mediation, it is often advisable that dispute resolution provisions for the family business should incorporate the requirement to attempt to resolve disputes by ADR before having recourse to more formal mechanisms like arbitration.

In our experience we note that there is a lack of Arabic speaking mediators who understand the cultural, emotional and psychological aspects of family business in the Middle East. Courts and arbitration bodies should also continue efforts to provide better education and training for lawyers, mediators and judges, particularly in relation to family business disputes.



Conclusion

Family business disputes are a distinct form of dispute that require different forms of dispute resolution than conventional commercial disputes. Alternative dispute resolution, especially mediation and arbitration, generally provide better frameworks for family businesses than litigation.

Dispute avoidance and effective and efficient dispute resolution provisions can play an important role in the effective management of family businesses. Given the importance of family business in the economic and social development of the region, supporting their continuity and prosperity should be a matter of priority for all stakeholders: family businesses themselves and their professional staff, legal practitioners, and government bodies alike.

For family businesses themselves, it is vital that appropriate dispute resolution provisions are incorporated into their agreements and/or the constitution or constitutive documents of the family business. It is equally vital that stakeholders are aware of these provisions and how they operate.

For legal professionals, it is important to continue to develop expertise in the laws which are of particular importance to family businesses (in which there is a rapid pace of change) and to be proficient in the various methods of dispute resolution which are particularly relevant to family business (such as negotiation skills and mediation advocacy skills).

For dispute resolution bodies it is important to offer services which cater to the needs of family businesses, the increase the availability and effectiveness of ADR, to facilitate training in relevant areas of law and practice and to ensure access to information (for example as to the expertise of arbitrators and mediators).

Securing Wealth and Navigating Divorce

A Guide for High-Net-Worth Individuals in the UAE



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In the realm of high net worth divorces, understanding the intricate legal landscape is paramount. High net worth individuals often face unique challenges in divorce proceedings, including complex asset division, international jurisdictional issues, and the need for sophisticated asset protection strategies. By examining the legal framework and practical considerations involved in UAE divorces, this article aims to empower clients to make informed decisions and protect their financial interests.

Overview of Family Law in the UAE

A Jurisdictional Framework

Family law matters in the UAE are governed by a combination of federal and local laws, with each Emirate having its own family courts to adjudicate disputes. There are three main systems that encapsulate the majority of the relevant family laws

in the UAE today. The first is UAE Federal Law No. 28 of 2005, or the “Federal Personal Status Law” (“PSL”), which governs personal status matters of UAE citizens including marriage, divorce, inheritance, and child custody. It applies across the UAE, and in some cases non-citizen residents may also be subject to its provisions.

The second law is Federal Decree No. 41 of 2022 that is the UAE’s “Federal Civil Personal Status law for non-Muslims” (“Federal Civil Law”). It governs marriage, divorce, inheritance, and child custody for non-Muslim residents of the UAE. This law provides the option to follow its secular provisions while also allowing the application of an individual’s home country laws in certain circumstances.

Lastly, Abu Dhabi Law No. 14 of 2021, known as “Civil Personal Status for Expats in Abu Dhabi” (“AUD Civil Law”), specifically deals with civil marriage and its effects within the Emirate

of Abu Dhabi. It outlines procedures for getting married, divorced, and deals with child custody and inheritance for foreigners in the emirate of Abu Dhabi. This law offers a more secular framework and also has its own court, being the Abu Dhabi Civil Family Court, responsible for implementing the AUD Civil Law.

Key Features of UAE Family Laws

The personal status laws in the UAE are predominantly based on both Islamic Sharia principles and secular principles set out in the Federal Civil law and AUD Civil Law. Understanding the key features of the various laws is essential for individuals navigating marriage, divorce, child custody, alimony, and property division.

Here, we delve into the fundamental aspects:

- **Marriage:** UAE family law regulates the process of marriage, including

the requirements for a valid marriage contract, the minimum age for marriage, and the rights and obligations of spouses. In particular the PSL sets minimum marriage age, requires contracts and guardian consent, and ensures mental/physical capacity for marriage for UAE citizens. Both the Federal Civil Law and AUD Civil Law allow for non-Muslim residents to get married under a civil process with no reference to religion, no guardianship consent or medical test required.

- **Divorce:** The UAE provides varying legal avenues for divorce. For Muslim residents, Sharia courts adjudicate divorce cases and consider factors such as grounds for divorce, custody of children, and financial settlements. Both the Federal Civil Law and the AUD Civil Law allow for no fault divorce and automatic joint custody of children, effectively paving the way for a quicker and more efficient divorce process.
- **Child Custody:** In matters of child custody, Sharia law prioritizes the best interests of the child. Generally, custody of young children is awarded to the mother, while the father retains guardianship rights. However, custody arrangements may vary depending on the circumstances of each case, with the court considering factors such as the child's age, gender, and the parents' ability to provide care. PSL generally always grants custody to mothers for young

children except where doing so would not be in the best interests of the child and can be evidentially supported. The Federal Civil Law and AUD Civil Law on the other hand grant both parents joint custody, equal rights, and support the decision that best preserves the psychological health of the child.

- **Alimony:** UAE family law, including the PSL, mandates that husbands provide financial support to their dependents, including wives, children, and other family members in need. The amount of alimony is determined based on factors such as the financial capabilities of the husband and the standard of living during the marriage. Failure to provide adequate financial support can result in legal consequences. On the other hand, the Federal Civil Law and the AUD Civil Law award alimony based on factors such as financial need and capacity to pay for spousal support. It is most commonly noted that the courts usually hold fathers liable for the costs of the mother's custody and general family support.

Understanding these key features of UAE family law is essential in order to best protect assets and navigate family planning in the UAE. Actively planning in advance for divorce, through enforceable and court registered prenuptial and postnuptial agreements, is highly recommended for those moving or relocating to the UAE.

Divorce Laws in the UAE

Legal Grounds for Divorce

In the UAE, the legal grounds for divorce vary based on the laws applying to Muslims and Non-Muslims. While Islamic Sharia principles predominantly guide family law matters for Muslims in the UAE as laid out in the PSL, the Federal Civil law provides a framework for Non-Muslims, including expatriates and foreigners residing in the country.

Divorces filed under the PSL require evidence of harm whereas both the Federal Civil Law and AUD Civil Law offer no fault divorces to allow for more flexibility; this means that any spouse may file for divorce without the need to demonstrate any harm or damage suffered.

The PSL, which is largely based on Sharia principles, takes a fault-based approach when considering the grant of a divorce. Divorce under this framework takes into consideration marital misconduct and situations

Enforcing foreign divorce decrees in the UAE may pose challenges, requiring early cross-border asset protection evaluations.

causing harm such as adultery, abandonment, physical or mental harm, imprisonment, as well as failure to fulfil financial obligations.

Asset Division and Financial Settlements

The UAE recognizes the concept of independent financial liability between married couples. This ensures that neither spouse can assert ownership over the assets, property, or funds of the other solely on the basis of the matrimonial relationship. Unlike some other jurisdictions, there are no equitable claims that a spouse can make to assets registered solely in their partner's name.

With regards to alimony, the PSL makes very specific provisions of what is required under Sharia. This includes considerations such as "Idda" period, which is a compulsory waiting period for the wife after separation during which she cannot remarry. The husband is normally obliged to provide financial support (mut'aa) to the wife after divorce. Factors for the value of alimony that will be taken into account by the personal status court include the wife's financial needs, the husband's ability to pay, the marriage's duration, his financial resources, and their marital lifestyle. The relevant courts have wide discretion to decide on the amount owed to the wife for the alimony as well as maintenance for the children based on the aforementioned factors.

Both the Federal Civil Law and AUD Civil Law stipulate that if the parties are unable to reach an agreement on alimony, the court will

determine the amount of alimony to be awarded to the wife. Factors considered in this determination include the duration of the marriage, the wife's age at the time of the divorce proceedings, the financial circumstances of both parties, any harm suffered, and the number and ages of children involved. It's noteworthy that the UAE emphasizes the financial responsibility of fathers towards their children. The Abu Dhabi Civil Law reinforces these principles.

Asset division and alimony in the UAE are contingent upon the legal jurisdiction, emphasizing the importance of proactive planning.

It is imperative for all residents of the UAE to be aware of the legal regimes that apply to them in order to effectively plan and implement appropriate measures to safeguard their personal assets in case of marriage dissolution.

Enforcement of divorce judgments

There are two common ways that foreign divorce or ancillary judgements are enforced in the UAE. The

first route is via the principle of reciprocity - the origin country must also allow for UAE judgements to be enforced in their countries. However, proving reciprocity under UAE law for recognizing and enforcing foreign judgments can be challenging.

To ratify a foreign judgment, the execution judge must ensure reciprocity between the foreign state and the UAE regarding judgment enforcement. Additionally, certain conditions must be met, including jurisdictional compatibility, proper representation of parties, legal certification of the judgment, adherence to res judicata principles, and alignment with UAE public order and morality. Most notably, the UAE courts will not enforce foreign decrees if they contradict local law and public policy. A good example would be any judgements that contradict the UAE's family values. With regards to alimony and child custody, it is standard practice for the UAE courts to uphold stringent standards on the wellbeing of children and place financial liability for children on the father.

The second route to enforcing foreign judgements would be via the Dubai International Financial Centre Courts ("DIFC Courts"). Once a decree has been recognized by the DIFC courts by the common law test, they can be deputized through onshore courts. In order to be recognized, the judgment must meet the requirements of finality under common law rules and it is important to note that whilst DIFC courts typically hear matters concerning civil

and commercial law, the exception would be to enforce a foreign court judgment relating solely to financial orders. For example, the DIFC courts recently handled the enforcement matter of distributing a Dubai docked yacht as part of a divorce settlement. DIFC courts would also execute financial orders from a divorce settlement but not execute or enforce the divorce agreement itself.

However, it is important to note that the way the UAE judicial system handles execution of foreign decrees has varied from case to case and in some circumstances, it may be required to process a case through the court system with local judges granting a local decree, and in other circumstances a case may be immediately executed by the courts.

Due to the complexity behind enforcement of foreign decrees, it is always advisable to seek not only UAE counsel on the matter but also experts in the country issuing the judgment on how it can be enforced and executed in the UAE. Al Tamimi &

Company's Private Client Services team works closely with overseas lawyers in multiple jurisdictions early on in any divorce process to ensure that legal process and strategies keep in mind final execution of ensuing judgments.

Cross-Border Asset Protection Strategies

Prenuptial and Postnuptial Agreements

The best way to predict the future is to create it – in order to protect assets in the context of divorce it is vital to ensure ironclad prenuptial or postnuptial agreements are in place. It's essential to consider every jurisdiction where an individual resides or holds assets when drafting such agreements. Seeking local legal counsel early in the process is crucial to ensure that a prenuptial agreement registered in one jurisdiction will be recognized and enforceable in others, or can be adapted accordingly.

UAE courts have a relatively long history of registering and executing these agreements in various

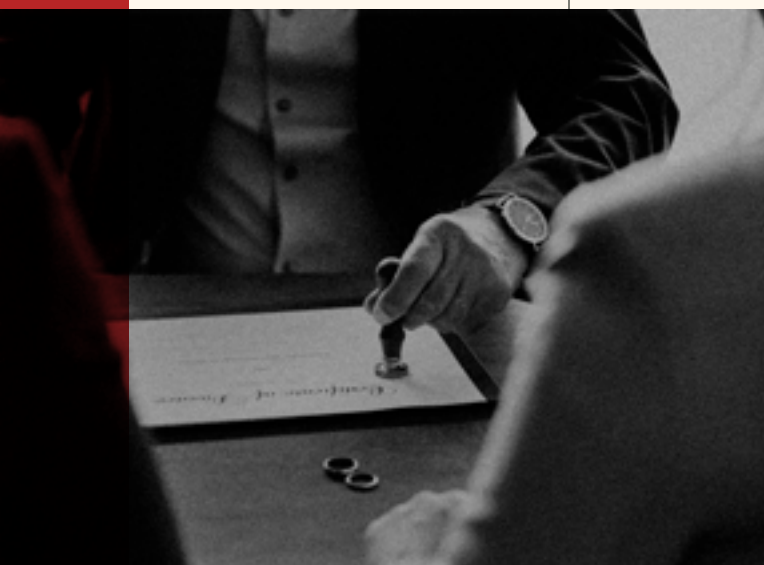
courts, and most recently the Abu Dhabi Civil Family Court has become very popular by both non-Muslim and Muslim expats.

Preventive measures of prenuptial and postnuptial agreements have proven hugely

popular as an asset protection mechanism as well as a means to minimize disputes, ensure clarity and transparency; both during a marriage and in the event of a divorce.

Conclusion

Navigating divorce proceedings in the UAE, particularly for high-net-worth individuals, demands meticulous attention due to the intricacies of its legal framework. The interaction between federal legislation, emirate-specific laws, recent civil enactments, and Sharia principles necessitates a nuanced comprehension of which legal structure applies in each scenario. While “no-fault divorce” options are available, critical elements such as asset division and alimony are contingent upon the pertinent legal jurisdiction. Prenuptial agreements, crafted by UAE legal specialists, play a pivotal role in asset protection. Enforcing foreign divorce decrees may pose challenges, underscoring the importance of early cross-border asset protection evaluations.



A Comprehensive Guide to Will Registration for Muslims and Non-Muslims in the UAE

Testamentary Freedom and Protection



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A Will is a legal document that allows individuals to outline their preferences and wishes for asset distribution and guardianship posthumously, ensuring clarity and preventing potential disputes among heirs. In the UAE, both Muslims and non-Muslims have access to various jurisdictions and platforms for registering Wills, reflecting the nation's commitment to providing comprehensive legal solutions for one of the simplest of estate planning tools – a will. This article explores the diverse options available for Will registration in the UAE, highlighting the specific requirements for and benefits of each option, ultimately enhancing testamentary freedom and legal protection for individuals.

Non-Muslim Will Registration Options

Abu Dhabi Judicial Department (ADJD)

The Abu Dhabi Judicial Department (ADJD) Wills Registry facilitates the registration of Wills for non-Muslim expatriates under the on-shore Arabic language courts in Abu Dhabi. This registry, governed by civil law, enables the registration of an ADJD Will which can include assets across all seven Emirates, shielding non-Muslim estates from Shariah law application in the UAE. The ADJD has established regulations for inheritance and succession issues for non-Muslim individuals with assets or family ties

in the UAE, offering the option to register Wills either in person at the Wills Registration Office or via video conferencing services. To register a Will with the ADJD certain criteria must be met. The testator must be a non-Muslim, aged 21 or above, possess a valid residency in the UAE, and ensure that any Will not originally drafted in Arabic is officially translated by sworn translators.

Dubai International Financial Centre (DIFC):

The DIFC Wills Service Centre and Probate Registry provide a unique platform for non-Muslims in the UAE to register their Wills. Apart from granting comprehensive

testamentary freedom concerning the distribution of the testator's assets and guardianship for minor children, it boasts its own probate court dedicated to probating all wills registered within the DIFC.

Another notable benefit is the option to create a DIFC Will under the framework of English common law. This enables individuals to tailor their Will to cover assets solely within the UAE or extend its jurisdiction to encompass assets worldwide. This feature proves especially advantageous for individuals navigating jurisdictions outside the UAE where Will registration,

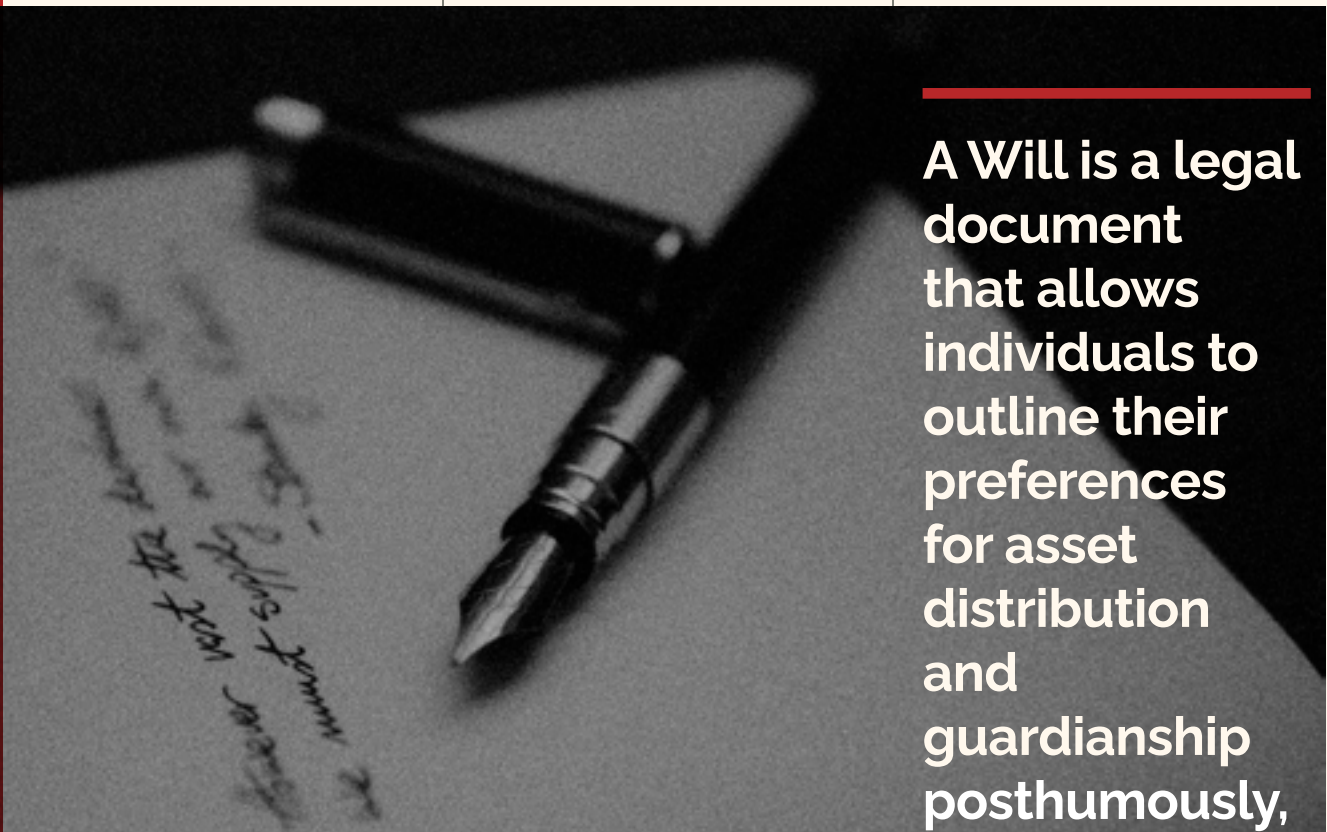
residence and domicile. The collaboration between the Government of Dubai and DIFC Courts further enhances the enforceability and efficiency of DIFC Wills, with a dedicated probate court in the DIFC ensuring fast and efficient probating in the English language.

The DIFC Will offers flexibility by allowing the testator to choose between registering a comprehensive Will covering all aspects such as assets and guardianship, or opting for a more specific focus. This could include a property Will, business owners Will, guardianship Will or financial assets Will.

a robust mechanism for estate planning and administration within the common law DIFC jurisdiction.

Abu Dhabi Civil Family Court

Non-Muslim expatriates residing in Abu Dhabi now have the opportunity to register their Wills through the Abu Dhabi Civil Family Courts, as per the provisions of Law No. 14 of 2021. These specialized courts handle personal status matters, including Will registrations and inheritance issues. To proceed, individuals must adhere to Abu Dhabi



A Will is a legal document that allows individuals to outline their preferences for asset distribution and guardianship posthumously, ensuring clarity and preventing disputes among heirs.

is restricted, as is the case with Switzerland for non-Swiss nationals. In such jurisdictions, if the testator resided in the UAE, UAE law may govern Swiss investments, as Switzerland typically applies the law of the testator's last place of

The system established under Dubai Law No. 15 of 2017 is firmly established and tried and tested, and the accompanying regulations combine operational efficiency, cost-effectiveness, and court enforcement to provide

regulations and submit their applications to the ADJD Civil Wills Section. Despite being a relatively recent option, established in 2022, it has become increasingly popular amongst the expatriate community across the UAE. Importantly, the testator is not required to possess residency or assets in Abu Dhabi to register a Will before the Civil Family Court.

Dubai Courts

The Dubai Courts Notary Will functions as a specialized registry within Dubai's legal system, specifically designed for the registration of Wills intended for non-Muslim expatriates under Dubai's on-shore Arabic language courts. Operating within the civil law framework, this registry has the capacity to encompass assets located across all seven Emirates of the UAE. One of its primary advantages lies

Muslim Will Registration Options

Abu Dhabi Civil Family Court

Muslim expatriates, including those from non-Muslim countries, now have the option to register their Wills with the Abu Dhabi Civil Family court. This progressive move by the Abu Dhabi Government grants Muslim expatriates the freedom to choose their beneficiaries, and appoint guardians for their minor children. The same criteria apply as noted above, and applications must be submitted through the online portal. This initiative not only reflects a significant stride forward by the Abu Dhabi Government but also contributes to attracting expatriates to the capital. Since the court's establishment, there has been a substantial influx of Muslim expatriates registering their Wills.

estate, and this portion cannot be bequeathed to an existing heir under Sharia law. According to Sharia law, the distribution of the estate among heirs is based on predetermined shares determined by their relationship to the deceased. For instance, under Sharia law, a daughter typically receives half of what a son is entitled to.

Dubai Courts

The Personal Status Courts of Dubai extend the opportunity for Muslims to register Wills, provided they adhere to Sharia principles. These principles dictate the legal heirs and their entitlements to the estate, regardless of the Will's existence. However, a testator can allocate up to one-third of their estate to non-family members/heirs, charities, or organizations. Should a testator wish to allocate more than one-third of their estate or

Under Sharia law, the distribution of the estate among heirs is based on predetermined shares, influenced by their relationship to the deceased.

include legal heirs in the Will, explicit consent from each legal heir is required for the will to be applicable to their share at the time of death of the testator. In cases where

in guaranteeing that the estates of non-Muslims are exempt from Shariah law, thereby providing a tailored legal mechanism to safeguard the interests of non-Muslim expatriates and ensure that their estates are distributed according to their intentions. To qualify for this Will, the testator must meet certain criteria: they must be a non-Muslim, be of legal age (21 years), be a UAE resident, and have their Will officially translated into Arabic.

Abu Dhabi Judicial Department

Muslim expatriates also have the option to register a Will with the Abu Dhabi Judicial Department provided it is Sharia compliant. The Will must be drafted in Arabic and requires the presence of two witnesses to sign alongside the testator. However, there are certain limitations to this type of Will: it can only allocate up to one third of the testator's

consent is not unanimous, the Will is not enforceable for dissenting heirs, who receive their full legal share as provided by Sharia, while consenting heirs receive their shares after debts are settled.

The UAE's comprehensive array of Will registration options for both Muslims and non-Muslims reflects the nation's commitment to testamentary freedom and legal protection in

estate planning. With diverse jurisdictions and platforms such as ADJD, DIFC, Abu Dhabi Civil Family Court and Dubai courts, the UAE ensures individuals can register Wills according to their religious beliefs and personal circumstances. These advancements exemplify the UAE's progressive approach in addressing civil personal status needs, contributing to a robust and inclusive legal landscape that safeguards individual rights and intentions posthumously. Such measures also serve to attract expatriates to invest in and settle in the UAE beyond the previously transient 2 to 5 year span.

Given the number of available options for will registration, it is critical to consult a lawyer to ensure that the will is registered in the optimum jurisdiction and remains fit for purpose.

Resolving Family Business Disputes in the UAE

Challenges and Opportunities for Mediation



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Navigating disputes within family businesses presents unique challenges, often entailing far-reaching consequences that extend beyond financial implications. Traditional avenues of dispute resolution exacerbate tensions and prolong resolution processes, jeopardizing relationships vital for family businesses. Recognizing the need for a more collaborative approach, mechanisms must prioritize safeguarding family reputation, fostering harmony, and providing a platform for proactive conflict management.

In the UAE, recent years have witnessed a surge in family-owned businesses seeking resolution through specialized channels tailored to their distinct challenges. As families seek amicable resolutions, exploring the role of mediation emerges as a promising avenue for transforming conflicts into opportunities for constructive dialogue, safeguarding the continuity of family enterprises.

Considerations relating to family business disputes

Traditional dispute resolution methods such as court proceedings are often seen as a win-lose situation that creates a clear victor and a vanquished party. Moreover, the nature of the legal system can exacerbate the toll of disputes, entangling families in long bureaucratic processes and even longer proceedings. Disputes also erode the wealth, reputation, and relationships in family businesses.

Certainly, a mechanism is required for a more amicable approach to conflict resolution. This mechanism should prioritize safeguarding the core principles of family businesses. This includes preserving the reputation of the family, ensuring the ability to reach business-driven solutions, maintaining confidentiality, fostering harmony and resilience, and providing a platform for the parties to communicate openly and manage conflicts proactively to prevent escalation.

Existing dispute resolution bodies for family business disputes

In recent years, the UAE has observed a surge in family-owned businesses seeking resolution through specialised channels. These enterprises are now turning to bespoke dispute resolution bodies designed to address specific challenges that could best navigate sensitive disputes with family businesses.

Special Judicial Committee

Special judicial committees were established through dedicated laws by H.H. the Ruler of Dubai to resolve disputes arising within large family owned businesses. The main notable feature of this special judicial committee is the strict confidentiality of its proceedings. Typically, the proceedings revolve around negotiations and conciliation between the involved parties up until a point where a resolution is required to break an impasse or conclude the

proceedings. However, it is essential to acknowledge that while this mechanism has effectively addressed disputes in the past, it poses challenges in terms of sustainability, allocation of resources, legislation, costs, practicality, time efficiency, and less autonomy for the parties.

Family Business Dispute Resolution Committee

Family businesses in Dubai are governed by Law No 9 of 2020 regulating family ownership in Emirate of Dubai (the “Family Ownership Law”) and Federal Decree by Law No. 37 of 2022 concerning family business companies (the “Family Business Law”).

A family ownership means movable and immovable property that is subject to the family ownership contract entered into between family members to regulate the common ownership and management of such property (“Family Ownership”). A family business company is a company established in accordance with the UAE Commercial Companies Law where the majority of its shares are owned by members of the same family and is registered in the registrar as a Family Company.

In recognition of the unique challenges faced by family businesses in resolving disputes, the Family Business Law, mandates the establishment of a “Family Business Dispute Resolution Committee” in each Emirate.

Resolution No. 14 of 2023 was issued on 18 October 2023 (“Resolution”), addressed the formation of the committee for the settlement of dispute of family businesses and family ownerships in the Emirate of Dubai (“Committee”).

the Committee can hear a dispute that falls under its jurisdiction. Conciliation can be conducted through two channels:

Tier One – Family Council

The Family Business Law provides that the Family Company may form a Council from the partners, members of the family, or third party for the purposes of addressing any potential conflicts that may arise between the partners or between them

The UAE Federal Mediation Law establishes the principle of ‘without prejudice communications’ which provides assurances to family businesses regarding the sensitivity and the confidentiality of their disputes and family dynamics which perfectly aligns with the objectives of the Family Business Law and the Resolution.

The Committee is competent to settle any dispute arising out of the Family Ownership or between partners in the Family Company, or between these partners and family members. However, prior to assuming jurisdiction to hear the dispute, the Committee shall refer the parties to conciliation.

Two-tiered mandatory conciliation process

The Resolution provides for a mandatory conciliation as a prerequisite before

and family members or the Family Company. The non-managing partners of the Family Ownership have the right to form a Council from the partners. One of the functions of this Council is to promote positive and constructive communication between the partners and the management.

The Resolution provides that if the Family Company or Family Ownership, pursuant to their constitutional documents,

has a Council composed of the partners or family members, that is mandated to amicably resolve the disputes, the Committee shall refer the case to such Council to attempt conciliation between the parties.

Although the concept of having a Council within the Family Company or the Family Ownership has many advantages for maintaining healthy communication between the partners and family members and has other benefits from a governance perspective, we believe that the role of such Council is vulnerable to challenges.

Conciliation as defined by the Federal Mediation and Conciliation Law is an alternative means for the amicable resolution of disputes between parties, which is mandatorily resorted to by the parties before filing a case, in which they seek the assistance of a neutral third party (the Conciliator) to attempt to reach a settlement agreement.

The members of the Council are typically partners or family members or third parties appointed by partners or family members. How can the Council ensure that its members, with inherent ties and loyalties to the disputing parties, will intervene in a fair and impartial manner? Striking a balance between leveraging family members' understanding of dynamics and ensuring the Council's integrity and neutrality is a challenge that requires careful consideration.

In addition to neutrality, a conciliator should possess several competencies and qualities, including certain

technical skills and expertise in the subject matter of the disputes, such as being trustworthy, patient, empathetic, emotionally intelligent, active listener, creative, aware of his or her unconscious bias, and the list goes on.

Considering that the members of the Council are typically family members, it would be challenging for them to have the necessary set of skills that a conciliator should be equipped with to be able to facilitate dialogue and achieve a successful outcome.

Finally, since the Council is usually formed of several members, it might also be practically difficult for the Council as a group to effectively intervene in conducting a dialogue between the disputing parties.

Tier two - the Centre for Amicable Settlement of Disputes (CASD)

If the constitutional documents of the Family Ownership or Family Company do not provide for the formation of a Council or the Council has failed in its amicable settlement attempts, the Committee shall refer the dispute to the CASD.

CASD is the court-annexed conciliation centre which aims to facilitate amicable settlement between the parties before the case proceeds to Court.

The conciliators of CASD are court employees with practical experience in resolving disputes through facilitation of dialogue between the disputant parties. However, family business disputes often

involve complex and sensitive issues that span legal, financial, emotional, and relational dimensions. They demand a high level of skill and expertise in dispute resolution to be handled effectively. Therefore, to ensure the efficiency and suitability of this mandatory stage, either the CASD conciliators should receive enhanced training in accordance with international standards to provide high quality conciliation services, or private mediators from local centres should be allowed to intervene in these types of cases.

One of the challenges of resolving family business disputes through the CASD is that it operates under the supervision of a judge, which may affect the parties' willingness to share information and collaborate freely. Moreover, CASD may not have sufficient resources and time to devote to each case, given its high caseload and the complexity of such disputes.

Finally, with the enactment of Federal Decree Law No. 40 of 2023 on mediation and conciliation in civil and commercial disputes the ("UAE Mediation and Conciliation Law"), it is anticipated that the CASD Law will be repealed and replaced by a new law establishing a Mediation and Conciliation Centre in Dubai.



The role of the Committee

In the absence of a Council or if the Council fails to resolve the Family Company or the Family Ownership disputes within a maximum period of three months, unless extended, the disputes are then referred to the Committee.

The Committee will be formed by a Court of Appeal Judge and two members with expertise in legal and financial management of family business.

The decisions of the Committee can be appealed to the competent courts, as specified by Federal Decree-Law No. 42 of 2022,

The Resolution stipulates that the Committee shall refer the parties to conciliation before assuming jurisdiction to hear the dispute, but it does not specify whether the Committee can also engage in conciliation efforts during the proceedings. Moreover, the Resolution does not indicate whether the Committee can issue decisions based on the parties' consent or settlement agreement, or whether it can only issue binding judgments based on the merits of the case.

Arbitration and financial free zones Courts

As an exception to the jurisdiction of the Committee, the parties to the dispute may opt for arbitration or the financial free zones Courts (i.e., DIFC or ADGM). This is a notable advancement in diversifying the dispute resolution mechanisms available to family businesses, as it gives them the option to choose a forum that suits their preferences and needs. However, it is important to consider that both arbitration and litigation are formal and adversarial processes that may not address the emotional, relational, and cultural aspects of family business disputes, which require a more nuanced and collaborative approach. Furthermore, enforcement and potential challenges of arbitral awards and Court judgments could expose sensitive information related to the family business to the public

The Committee is mandated to resolve grievances within three months, extendable for a similar period upon reasoned request. The Committee may take the necessary preventive measures to maintain the continuity of the family business and prevent adverse impact on its financial situation or reputation.

which implies that the Committee's decisions are not final.

One aspect that requires further clarification is the nature and extent of the Committee's involvement in promoting or assisting the parties to reach an amicable resolution, or whether this function is exclusively assigned to the Council or the CASD.

Why Mediation works

Although the Resolution provides for mandatory conciliation as a pre-litigation requirement, however the exclusions from the jurisdiction of the Committee do not expressly include mediation.

Remarkably, a Family Business Center was established at Dubai Chambers ("Center") which aims at providing advisory and guidance to family businesses on, inter alia, best practices, leadership, succession, governance and commercial operations. We understand that the Center intends to establish a body for settling family disputes through arbitration and mediation, which is a welcome initiative that could address the gap in the current legal framework for family business disputes. The Family Business Law and the Resolution do not explicitly include mediation, as defined in the UAE Mediation and Conciliation Law, as an option for resolving such disputes, either before or after the referral to the Committee.

Mediation is effective in family business disputes for several reasons. First, mediation helps parties understand each other's needs, rather than focusing on their positions or interests. This enables them to explore creative and mutually beneficial solutions that address the underlying causes of the conflict and preserve the relationship. Second, mediation is facilitated by a trained neutral third party, who can manage the complex and sensitive issues that include legal, financial, emotional, and relational dimensions in

family business disputes. The mediator can also leverage his/her knowledge and experience in specific industries or topics.

Mediation helps family business disputes by focusing on understanding each other's needs rather than competing interests, preserving relationships.

Furthermore, the mediator often helps parties reach agreement by appealing to beliefs, values, or morals which carry weight in family disputes. The mediator can also effectively navigate and balance power dynamics or influences among family members that may arise from generational differences or cultural disparities, especially in families with members of mixed nationalities. This capability ensures equitable participation and consideration of all parties' viewpoints and interests during the mediation process. Third, mediation is a confidential and flexible process, which allows the parties to maintain control over the outcome and protect the reputation and continuity of the family business.



Mediation does not result in a win-lose situation or a binding decision imposed by a third party. The mediator's expertise and impartiality can help the parties overcome impasses and reach a voluntary and informed agreement.

The UAE Federal Mediation Law established the principle of 'without prejudice communications' which provides assurances to family businesses regarding the sensitivity and the confidentiality of their disputes and family dynamics which perfectly aligns with the objectives of the Family Business Law and the Resolution. The aforementioned law provides further safeguards to the rights of the disputant parties such as the possibility of taking interim measures, and the suspension of the limitation period during the mediation process.

Despite its potential benefits and suitability, mediation is not yet widely recognized or utilized as an alternative dispute resolution mechanism for family business disputes in the UAE. We hope that the Center established by Dubai Chambers will promote the involvement of private mediators or existing mediation panels and create a suitable framework for facilitating the adoption of mediation by family businesses. This would enhance the efficiency and suitability of the mandatory conciliation/ mediation stage before the Committee can hear a dispute. It would also align with the objective of the Family Business Law and the Resolution to preserve the continuity of the family business and

prevent adverse impact on its financial situation or reputation.

Mediation provides a proactive and strategic approach, effectively turning conflicts into opportunities for productive dialogue and steering family businesses away from the destructive path of conflicts.

If you build it they will come

Investing in Dubai Real Estate



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Once seen as a cautionary tale in the world of real estate investment after the GFC of 2008, the United Arab Emirates (UAE) has emerged since the outbreak of Covid as one of the most attractive markets for institutional investors, as well as high net worth individuals, to purchase residential and commercial real estate.

With its focus on quality of life, financial discretion, open borders and unique cultural offering, the UAE has for the last few years seen an unprecedented increase in population, with thousands of millionaires in particular seeking to settle in Dubai, as well as the capital, Abu Dhabi.

Lay of the Land

When considering real estate investment in the UAE, investors must evaluate several factors, many of which are akin to considerations in other jurisdictions worldwide:

- The decision between purchasing off-plan or completed properties;

- The financing method, whether through cash payment or mortgage (with approximately 70% of purchases in the market being cash transactions); and
- The eligibility of the investor to purchase property in the desired area based on their nationality.

Regarding the final point, land in the UAE can be divided into three distinct categories:

- Land exclusively available for purchase by UAE nationals;
- Land accessible for purchase by nationals from the GCC; and
- Land open for purchase by individuals of any nationality.

The UAE's practice of national preference in land ownership is similar to that of economies like New Zealand, Canada, and Denmark, albeit comparatively more liberal. Additionally, it's worth noting that residential land in the UAE is typically owned on a freehold basis rather than leasehold.

Rigorous Legal Protection

In Abu Dhabi and Dubai, property investors benefit from robust legal protections tailored to the modern real estate market. Both Emirates have enacted legislation aimed at safeguarding the rights of investors, and over time, their legal frameworks have increasingly converged, sharing many common elements.

Each Emirate has its own dedicated real estate regulatory agency: the Land Department/Real Estate Regulatory Agency in Dubai and the Municipality in Abu Dhabi. These agencies oversee the registration of property titles and regulate the real estate industry as a whole, including the conduct of brokers.

When it comes to investing in the UAE, purchasers typically opt for either "off-plan" purchases, involving properties that are still under development, or completed units. The laws governing "off-plan" purchases typically exhibit the following characteristics:

- an escrow account is used (regulated by the authorities) to receive monies from purchasers. This is independent of the developer with developers only being able to take monies out based on construction progress;
- even though the property is 'off plan' the purchaser will receive a record of registration from the authorities which acts as a form of title deed (this being known as interim registration);
- once interim registration has occurred it is possible for mortgages to be registered against that 'title';
- once the property is completed and handed over, the purchaser will receive a title deed and developer will be able to withdraw the monies from the escrow account.

When purchasing completed properties in the UAE, the process is generally familiar to individuals who have invested in various developed jurisdictions:

- a property is identified, normally through a broker;
- a sale and purchase contract is negotiated (either using standard forms issued by the authorities or with bespoke contracts negotiated by agents or lawyers);
- normally, in modern areas open to foreign ownership a 'no objection' certificate is obtained from the original developer to

confirm service charges have been paid up to date;

- on an agreed date, completion takes place at a government mandated service centre (or in Abu Dhabi, the Municipality) where the price is paid and title transferred.

In Dubai, there's a transfer tax of 4% of the property value payable to authorities, while in Abu Dhabi, this figure is 2%. Notably, there's no capital gains tax or inheritance tax on properties. It's common for properties to be owned through corporate vehicles for inheritance and global tax reasons, necessitating locally incorporated entities.

While the system is generally familiar to foreign investors, a few aspects are specific to the UAE market:

- Properties are often paid for with a 'manager's cheque' (similar to a banker's draft) rather than electronic transfer;
- Transaction times can be very short, typically 24-48 hours, due to a streamlined process compared to many European countries;
- Transactions are frequently completed via powers of attorney, as many investors are based overseas;
- Legal adviser usage is increasing but still

sporadic, mainly seen in higher-end transactions; and

- Due diligence is typically lighter compared to older markets, with basic title searches and court searches available, but environmental reports and local authority reports are uncommon.

2%

**transfer tax in
Dubai.**

4%

**transfer tax in
Abu Dhabi.**

A good place to call home

Overall, the real estate investment system in the UAE has developed significantly in the past two decades, comparing favorably with similar global markets. With the UAE attracting expatriates from around the world, its strong legal system enhances its appeal as an investment destination.

Buying a Home Abroad

Navigating Overseas Property Investments



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Several of our clients will inevitably acquire properties overseas, whether in bustling metropolises like London, Paris, Monaco, or even farther afield in the United States. While these ventures can offer lucrative investments and idyllic vacation retreats, it's imperative to ensure they remain assets rather than liabilities in our clients' portfolios. To achieve this, it is essential to follow our top tips.

Avoid blindly following the actions of friends and family when purchasing properties

Your unique tax situation, residency status, and domicile should undergo thorough assessment by a professional advisor. This ensures the property is acquired and managed optimally, considering individual circumstances, relevant laws, local real estate norms, available reliefs, exemptions, and favorable tax treaties.

Seek professional guidance regarding drafting a will in the country of property acquisition

A carefully crafted will guarantees that your wishes are honored, safeguarding your loved ones' well-being in the event of unfortunate circumstances. This comprehensive document should encompass not only the property but all assets within that jurisdiction, spanning bank accounts, vehicles, artwork, and more. Moreover, clients with wills spanning multiple jurisdictions should consult their advisor to prevent conflicts or revocations, particularly regarding clauses nullifying other wills. It's not uncommon for certain wills to include a clause nullifying all previous wills. Therefore, careful consideration and review of such a clause is essential.

Consult experts on your tax obligations

Tax regimes vary across borders, potentially subjecting you to substantial tax liabilities

that strategic planning can mitigate. For instance, in the UK, inheritance tax rates stand at 40%, applicable globally based on domicile. Additionally, many clients grapple with hefty Annual Tax on Enveloped Dwellings (ATED) bills due to outdated ownership structures or overlooking available reliefs and exemptions. Understanding potential income tax, inheritance tax, land tax, and capital gains tax liabilities abroad is paramount.

The method of property acquisition significantly influences future tax obligations, underscoring the importance of seeking specialized advice before finalizing transactions. Additionally, explore life insurance options to cover future tax liabilities, ensuring comprehensive financial protection.

Financing

Explore the array of financing (including refinancing) options with recommended and reliable financial advisors

and mortgage brokers. Initiate this process early to prevent delays in the acquisition process after a seller accepts an offer. While finding and financing property overseas can be challenging and time-consuming, the guidance of the right advisor can help you seize opportunities worldwide.

Buying via an offshore or overseas SPV

Stay mindful of your reporting and filing obligations. For instance, since August 1, 2022, overseas entities involved in buying, selling, or transferring land in the UK must register with UK Companies House and disclose their registrable beneficial owners or managing officers. Each jurisdiction where property is acquired has its own unique set of rules and regulations (legal, regulatory, tax, etc.), necessitating awareness and compliance. This ensures tax-efficient acquisition planning and mitigates risks of penalties and other sanctions for non-compliance.

Golden visas or citizenship by investment

If considering property purchase abroad, you might qualify for citizenship or a “golden visa.” This resident visa is granted in exchange for substantial investments in the country, such as property acquisition. Currently, over 20 countries worldwide offer real estate citizenship or residency programs. It’s crucial to conduct thorough research upfront, examining real estate

markets, country stability, and eligibility requirements for each program, including minimum investment thresholds, property ownership criteria, and other relevant factors.

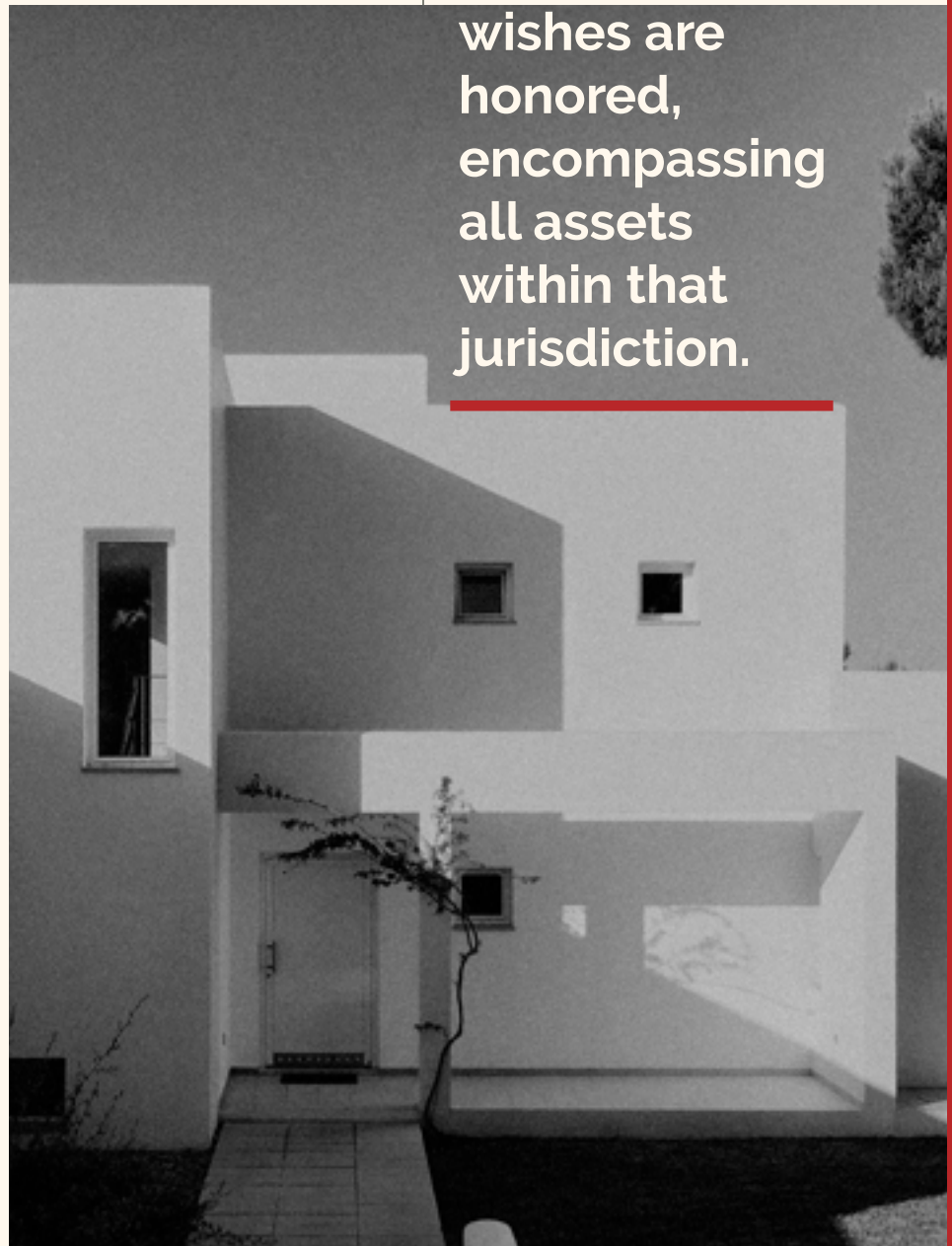
Stay updated

It is also important to stay up to date with developments on tax and other applicable legislation in the country where you have purchased a property since what may have made sense before, may no longer make sense. Clients who

hold real estate through an offshore SPV may no longer need these SPVs given changes in law and so restructuring how assets are held may be something to consider.

Drafting a will in the country of property acquisition ensures your

wishes are honored, encompassing all assets within that jurisdiction.



Tax update for BVI companies owning UAE real estate



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Given the introduction of Corporate Income Tax in the UAE, we would like to alert our clients to the potential impact of CIT even if their real estate assets are held via a company incorporated in the British Virgin Islands ("BVI") or other offshore jurisdiction, in addition to ensuring that clients are complying with their economic substance reporting obligations in the BVI.

From a UAE standpoint, foreign entities come under the scope of UAE CIT if they own real estate in the UAE which are generating an income (rental / sale etc.). Consequently, foreign entities are required to register in the UAE for CIT purposes as well as comply with filing CIT returns on an annual basis, and potentially pay tax on rental income.

Having a home which is used personally by the UAE resident principal and which property is owned by a foreign entity does not in and of itself get around

these CIT requirements. It is particularly important for our clients who use foreign entities, such as a BVI SPV, to note that private use of real estate property held by a foreign entity may also create a tax leakage in the UAE through so called deemed rental income on

Private use of real estate property held by a foreign entity may also create a tax leakage in the UAE through so called deemed rental income.

the basis, inter alia, that the foreign entity is being managed and controlled by an individual (the principal) residing in the UAE.

In terms of economic substance reporting requirements, companies



incorporated in the BVI, which would include passive holding companies that own real estate in the UAE, are required to make annual economic substance filings in the BVI pursuant to the BVI Economic Substance (Companies and Limited Partnerships) Act (the “Act”). As a result of recent changes made by the BVI International Tax Authority to the Economic Substance Guidance Notes which provide guidance on the application of the Act, the questions in the economic substance portal have expanded for these entities. In order to comply with these enhanced obligations and ensure the correct reporting is carried out on BVI entities, it is important to seek BVI legal counsel.

Al Tamimi & Company does not advise on BVI law and the legal update provided herein relating to

BVI economic substance reporting has been provided by BVI law firm, Conyers Dill & Pearman. For all UAE and MENA region tax advice as well as optimizing private wealth holding structures, please do get in touch.

Navigating the UAE's Tax Frontier

Insights for Family Business & Private Wealth



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Family businesses in the UAE stand as pillars of economic resilience, fostering innovation, creating employment opportunities, and driving sustainable growth. They often transcend generations, with deep-rooted ties to the community and a commitment to long-term success. With their agility and adaptability, these enterprises contribute substantially to the diversification efforts championed by the UAE government, bolstering economic stability and prosperity.

This article delves into the tax considerations pertinent to family businesses and the private wealth sector in the UAE, following the publication of the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (the Corporate Tax Law).

Through the Corporate Tax Law, the UAE has introduced corporate tax on the taxable income of businesses effective from 1 June 2023. While certain entities may be exempt from the Corporate Tax Law, corporate tax will generally apply at the rate of 0% on

the taxable income not exceeding AED 375,000 and 9% on the taxable income exceeding AED 375,000. As an exception, free zone entities that meet certain prescribed conditions may be considered a "Qualifying Free Zone Person" can benefit from a corporate tax rate of 0% on their "qualifying income".

Effective from 1 June 2023, all taxable persons are required to register for corporate tax in the form and manner and within the timeline prescribed by the Federal Tax Authority ("FTA"). Once registered, you must electronically file tax returns within 9 months from the end of the relevant tax period and pay the amount due. While the UAE's corporate tax regime is largely favourable, family businesses can further optimise their tax positions through prudent strategies and leveraging available exemptions.

Use of Foundations for Tax Planning

Given that a Foundation has a separate legal personality, it is treated as a taxable person in its own right.

Therefore, a Foundation's taxable income would ordinarily be subject to corporate tax in the UAE at the rates specified above. However, the Corporate Tax Law provides advantageous provisions for structures designed to enable succession planning, inheritance, and governance, under the designation of 'Family Foundations'. Exclusive to fiduciary structures, Family Foundations are not considered taxable persons under the Corporate Tax Law and may leverage favourable treatment, such as tax transparency, contingent upon compliance with specified criteria and refraining from engaging in business activities. For fiduciary structures where individual partners are natural persons, they are exempt from taxation on real estate or personal investment income. Therefore, if individual partners within the qualifying Family Foundation are natural persons, they would also not be liable for tax on real estate or personal investment income. As such, from a corporate tax perspective, families deriving income from

real estate or personal investments may benefit from higher tax efficiency by holding them under a Family Foundation instead of a corporate structure.

Philanthropic Endeavours

Families undertaking philanthropic endeavours may be eligible to apply for treatment as a Qualifying Public Benefit Entity. A “public benefit entity” denotes an organisation established by private individuals, government entities, or non-governmental organisations to conduct charitable, social, cultural, religious, or other public benefit endeavours, without aiming for profit distribution to individuals. Acknowledging their societal significance and their collaborative role with the government in advancing social welfare, communal interests, or group objectives, the Corporate Tax Law grants an exemption from the applicability of corporate tax to Qualifying Public Benefit Entities. This designation offers a strategic avenue for tax optimisation within the framework of the Corporate Tax Law. By aligning with the objectives of public benefit entities, family businesses can enhance their social impact while simultaneously enjoying tax advantages.

Holding Companies

Families can also benefit from tax-efficient holding companies, which can offer a compelling proposition for family businesses, combining operational efficiency, asset protection, and tax optimisation. Under the Corporate Tax Law,

dividends and other profit distributions received from a UAE entity, including a holding vehicle, are exempt from corporate tax. Holding vehicles provide a strategic mechanism for consolidating various assets and investments under a single umbrella, thereby enabling families derive exempt income from a range of underlying assets.

Although the benefits provided under the Corporate Tax Law can significantly enhance the tax efficiency of family businesses, it's crucial to note that these benefits are not automatically applicable. Families seeking to utilise any exemptions or advantages must proactively apply for such treatment with the FTA. Therefore, to ensure their structures are tax-efficient, family businesses should engage in careful planning and consultation with tax professionals to identify the most suitable avenues for optimisation. This may involve conducting a thorough assessments of business activities, ownership structures, and international operations to uncover opportunities for achieving further efficiencies. Additionally, staying abreast of changes in tax regulations and compliance requirements is paramount. Above all, compliance with tax laws and regulations is fundamental, and family businesses should prioritise adherence to ensure ongoing success and mitigate any potential risks associated with non-compliance.

The UAE's family business and private wealth landscape thrives within a tax framework that incentivises

Exempt Persons

Government Entities

Government Controlled Entities

Persons engaged in Extractive Business

Persons Engaged in Non-Extractive Natural Resource Business

Qualifying Public Benefit Entity

Private pension or social security fund

Qualifying Investment Fund

Public pension or social security fund

Entity wholly owned or controlled by an Exempt Person

growth, innovation, and sustainability. As stewards of economic prosperity, family businesses play a pivotal role in shaping the future of the GCC economy. By understanding and strategically navigating the corporate tax laws, these enterprises can optimise their operations, mitigate risks, and unlock new avenues for prosperity. As the UAE continues to evolve as a global business hub, family businesses remain at the forefront, driving progress and embodying the spirit of entrepreneurship and resilience, pushing through to this new paradigm of corporate tax.



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