

Legacy

PUTTING THE FAMILY FIRST

VOLUME 2

Contents

07	Introduction
08	Mediation in Family Businesses Resolving Disputes for Long-Term Success
13	Richard Catling in Conversation With a Professional Trustee
17	Family Foundations Refined Navigating Ministerial Decision No. (261) of 2024
20	Safeguarding Wealth in the UAE Strategies Before and After Marriage
23	Enforcing Foreign Family Court Orders or Judgments in the UAE
26	Navigating Financial Crime Risks for Family Businesses/Offices and Ultra High Net Worth Individuals in the Middle East
29	<i>In Collaboration with Farrer & Co</i> UK Real Estate Navigating UK Tax Issues
34	IPOs for Family Businesses in the UAE Unlocking Growth and Legacy
37	Financing Deals – Guarantees Legal Considerations and Practical Insights
40	Corporate Governance for Family Businesses
42	Cybersecurity and Reputation Risks for Family Offices Safeguarding Wealth in the Digital Age
46	A New Era in UAE Family Law Comprehensive Reform of Personal Status Laws
49	Succession Planning and Wealth Preservation in Uncertain Times <i>By Mourant Ozannes (Jersey) LLP</i>

2nd EDITION

**BUSINESS DEVELOPMENT
& MARKETING**

Shahida Khalid
Head of Business Development
sha.khalid@tamimi.com

PROJECT MANAGEMENT

Joanna Thomas
Senior Marketing & BD Project Manager
jo.thomas@tamimi.com

BRAND & DESIGN

Shriya Sanjeev
Senior Brand Manager
s.sanjeev@tamimi.com

For more information:

info@tamimi.com
www.tamimi.com

The contents of this publication are not intended to be a substitute for specific legal advice on any individual matters. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except for individual use and other non-commercial uses permitted by copyright law. The permission to recopy by an individual does not allow for incorporation of the material in part or in whole of any work or publication, whether in hard copy, electronic or any other form, unless specific mention is made to the source, "Legacy: Family Business & Private Wealth Publication published by Al Tamimi & Company" and written permission is granted by the firm. For more information, please contact us.

Introduction

Welcome

It gives me great pleasure to introduce the second edition of Legacy, Al Tamimi & Company's dedicated publication on private wealth in the Middle East.

Since the launch of our first edition, the pace of legislative reform and strategic development across the region has only accelerated. Family businesses continue to be recognised as a central pillar of the region's economic fabric, and we have seen a growing commitment by governments and regulators to provide the legal clarity, structures, and tools needed to ensure these businesses can thrive, not only today, but for generations to come.

One of the most encouraging developments over the past year has been the increasing willingness of families to embrace and invest in local private wealth structures. Mirroring the sophistication with which overseas assets have traditionally been managed, families are now leveraging world-class expertise available here in the Middle East to structure, govern and grow their wealth at home. A new ecosystem of professionals, advisors, and financial institutions has emerged to support this evolution, and the region's offering is now more robust, more attractive, and more aligned with global best practices than ever before.

Governments in the region have recognized this trend and consequentially we have seen improvements to the regulatory environment, legislative innovation and adoption of new models designed to support families in this crucial time of transition.

In this second edition of Legacy, we explore the changing landscape through a collection of articles that reflect both the progress achieved and the opportunities ahead. From navigating new legislation affecting family foundations, to safeguarding wealth in marriage and

divorce, to the growing use of IPOs as a strategic tool for family business expansion, this publication brings together insight from across our firm and beyond to offer a comprehensive view of what matters in private wealth today.

We also delve into key areas that reflect the increasing complexity of family wealth management: cybersecurity, financial crime compliance, governance, and cross-border enforcement. These are issues that families, family offices, and private wealth professionals are confronting in real time—and which demand thoughtful, practical, and forward-looking solutions.

We remain proud of our legacy of advising leading families, business owners, and individuals across the region for more than three decades. It is a privilege to stand alongside those who are not only building wealth, but shaping their legacies with intention, clarity, and purpose.

Whether you are an established investor, a family business principal, or a new entrant to the region, I trust that the insights in this edition will support your journey and spark new conversations.

We look forward to continuing this dialogue and walking alongside you in the years to come.



Essam Al Tamimi
Chairman,
Al Tamimi & Company

Mediation in Family Businesses

Resolving Disputes for Long-Term Success



Christine Maksoud
Senior Counsel
c.maksoud@tamimi.com

In family businesses the overlap of personal relationships and business responsibilities can create tensions that jeopardize both operational success and family harmony; an overlap that traditional businesses do not face. Recognizing the need for a more collaborative and tailored approach, mediation has emerged as a fundamental tool for creating safe environments that promote open dialogue, preserving family unity, and ensuring business continuity.

As family enterprises continue to evolve, understanding the psychological roots of these conflicts becomes essential for their resolution as they are often the primary cause of these conflicts. This article explores the psychological dynamics that fuel family business disputes, the effectiveness of mediation in family business disputes, and how the UAE has developed specialized mediation frameworks to address the unique challenges faced by family businesses.

Understanding the core of Family Business Disputes

History is riddled with stories of family business disputes that have led to the downfall of powerful enterprises despite their size and success. This is because family business disputes are rarely just about money or strategy. These conflicts often stem from deeply ingrained emotional dynamics such as sibling rivalry, parental favoritism, succession concerns, and differences in personal values. The overlap of personal and professional relationships means that disputes can quickly escalate and harm both professional and familial relations.

Some disputes arise due to generational clashes. Family members often view the business as an extension of their personal and familial identity. This deep emotional attachment can lead to resistance when changes are proposed, especially during succession planning. The desire to uphold a legacy may cause senior

family members to cling to traditional practices, while younger members push for innovation and progress, resulting in tension. A study published in the Management Research Review highlighted that many business owners wish to remain involved in post-retirement due to their emotional connection to the enterprise, complicating succession processes and in some cases, causing businesses to stagnate and fail.

Disputes also arise from differing beliefs about what is fair concerning compensation, leadership roles, and decision-making authority. Some family members may feel entitled to certain positions due to criteria that may be culturally influenced, such as age, gender or tenure, while others advocate for merit-based advancement. These conflicting perceptions can lead to feelings of resentment and injustice from both family seniors and juniors, fueling internal conflicts. Furthermore, the avoidance of these sensitive

topics is common in family settings to preserve momentary peace, which leads to further unresolved issues and greater resentment that causes exceptional difficulties in business operation and management. This lack of open communication also fuels misunderstandings and weakens personal relationships, which can result in irreparable harm to family dynamics, and this harm undoubtedly reflects on business performance.

A prominent historical example of how a family business dispute ended in the family losing control of their company is the Gucci feud. During the 1980s and 1990s, the Gucci family became embroiled in intense disputes over control and direction of the company. Legal claims, charges of tax evasion, mismanagement, and breach of trust that were filed caused major instability and pressure on Gucci executives and family members. This contributed to why the family ended up selling approximately half of the company's shares to an investment firm and losing control of the company.

The Role of Mediation

In the context of these delicate and potentially volatile relationships that are integral and inseparable from family businesses, mediation is a powerful tool for navigating the complexity of family business disputes. By addressing both personal and professional concerns and tailoring itself to the specific needs and considerations of each unique family and dispute,

mediation offers long-term solutions that benefit all stakeholders.

The UAE has been at the forefront of developing specialized mediation frameworks for family business disputes in MENA, offering mechanisms that prioritize confidentiality, efficiency, and harmony. These frameworks provide flexible and personalized resolutions that account for both business and familial concerns. Several key aspects make mediation particularly effective in this jurisdiction.

Freedom to Opt Out of Mediation at Any Stage

A key feature of the UAE's mediation framework in the UAE is that the process is completely voluntary and non-binding until a settlement agreement is reached. Parties can opt out at any time without facing penalties or legal constraints and can choose whichever dispute resolution mechanism they wish afterwards.

This flexibility ensures that mediation remains an attractive first step for resolving disputes without forcing parties into prolonged negotiations if they feel that the process is ineffective. If one or more parties believe that a resolution is not achievable through mediation, they can withdraw and pursue other legal avenues such as arbitration or litigation. This approach fosters trust in the mediation process because participants are not legally tied to any process or outcome unless they voluntarily agree to it.

Tailored Settlements for Business and Personal Conflicts

Another advantage of mediation in family business disputes is the ability to provide highly customized solutions that traditional dispute resolution methods cannot. Unlike litigation, which focuses primarily on legal arguments and financial damages, mediation considers both business-related and personal aspects of a conflict.

- **Business Considerations:** Mediation can address succession planning, governance structures, profit distribution, and strategic direction while keeping the business's operational stability in mind.
- **Personal and Emotional Considerations:** Mediation allows for the resolution of personal grievances, misunderstandings, and trust issues among family members that could otherwise lead to long-term rifts.

By addressing both aspects simultaneously, mediation creates holistic settlements that not only resolve the immediate dispute but also prevent future tensions. This tailored approach ensures that the solutions are practical, sustainable, and aligned with the family's long-term vision.

Suspension of Limitation Period and Precautionary Measures

One of the most significant advantages of opting for mediation is the suspension of the limitation period

while the mediation process is ongoing. In legal disputes, a limitation period refers to the maximum time a party must initiate legal proceedings after an issue arises. In family business disputes, where negotiations can be delicate and require extensive time for thoughtful and practical resolution, this limitation period can be restrictive.

By suspending the limitation period once mediation begins, the UAE allows family members to engage in meaningful discussions without the pressure of looming legal deadlines. This ensures that mediation is not rushed and that all parties have ample time to explore mutually beneficial solutions before resorting to litigation. Furthermore, under the Mediation and Conciliation Law, the court has the power to implement protective measures to uphold the rights of the parties involved. This includes the ability to issue urgent or interim decisions as required during the mediation process. These safeguards are designed to preserve the legal interests of all parties, ensuring that mediation proceedings do not compromise their rights or lead to unjust disadvantages while discussions are ongoing.

Preemptive Mediation for Preventing Disputes

A unique feature of mediation in the UAE is its ability to intervene before a disagreement fully develops into a dispute. Even minor friction points, such as differences in management style, strategic decisions, or financial expectations—can be referred to mediation before they escalate into

legal disputes under Federal Law by Decree No. 40 of 2023 (“Mediation and Conciliation Law”).

This preemptive approach serves several purposes:

- 1. **Early Resolution:** Resolving disagreements at an early stage prevents long-term damage to business relationships.
- 2. **Maintaining Business Continuity:** Addressing concerns before they become disruptive ensures that the business operates smoothly.
- 3. **Strengthening Communication:** Mediation fosters open dialogue, improving the family’s ability to collaborate and manage future challenges constructively.

Further, the Family Law in the UAE allows a family business to form a family council within itself, and this council may include third parties whose role is to help resolve disputes. This means that family businesses can formalize mediation within their own governance structures by including a requirement in their constitutional documents that disputes be resolved through mediation before the Family Council prior to being referred to any external body.

To make this process effective, the Family Council could be composed of mediators with expertise in relevant fields such as law, finance, or business management, ensuring that disputes are handled professionally and efficiently. By adopting

this internal mediation mechanism, family businesses eliminate the need to seek outside dispute resolution, streamlining the process and ensuring that conflicts are resolved swiftly and effectively without disrupting business operations.

Without Prejudice Communications

In support and encouragement of mediation, the UAE Federal Mediation Law enshrines the principle of ‘without prejudice communications’, ensuring that family business disputes remain confidential and that discussions during mediation cannot be used against parties in future proceedings. This

provision aligns seamlessly with the Family Business Law and the Resolution, reinforcing the importance of privacy and discretion in resolving internal conflicts. In a significant legal development, a recent court ruling has formally recognized the ‘without prejudice’ principle in mediation for the first time, potentially setting a judicial precedent that could further solidify mediation as a trusted and enforceable mechanism for family business dispute resolution.

Court-Annexed Schemes

The UAE operates under a hybrid judicial system, consisting of both local and federal courts. This system includes court-annexed mediation centers at both levels, providing structured platforms for conciliation and alternative dispute resolution.

At the federal level, the Mediation and Conciliation Law governs the use of court-annexed mediation in civil and commercial disputes. This law applies to Sharjah, Ajman, Fujairah, and Umm Al Quwain, where it mandates the establishment of Mediation and Conciliation Centers within their jurisdiction.

This law mandates conciliation for disputes valued at AED 5,000,000 or less and family-related disputes involving spouses or relatives up to the fourth degree, insofar as the dispute is of civil or commercial nature.

If a dispute falls within the center’s jurisdiction, it cannot be brought before a court unless it has first been referred to mediation

or conciliation. Only if conciliation attempts fail will the dispute proceed to litigation. Therefore, it is recommended that families take the opportunity to voluntarily seek mediation prior to initiating legal proceedings as if mediation is sought voluntarily, the medium of mediation (whether institutional or ad hoc) is decided by the family.

In addition to federal mediation frameworks, Dubai and Abu Dhabi operate under distinct local mediation laws and centres. In Dubai, mediation is governed by the Centre for Amicable Settlement of Disputes Law (Dubai Law No. 18 of 2021). However, following the enactment of the Mediation and Conciliation Law, the CASD Law is expected to be repealed and replaced by a new law establishing a Mediation and Conciliation Centre in Dubai.

In Abu Dhabi, like Dubai, the operation of local mediation and conciliation centers is locally regulated under the Judicial Department Chairman’s Resolution No. 39 of 2023 and attached regulations. The AD Resolution is also expected to be repealed and replaced by a new mediation and conciliation resolution in alignment with the Mediation and Conciliation Law.

To further enhance mediation accessibility in offshore jurisdictions, the Abu Dhabi Global Market (ADGM) Courts in the UAE have established court-annexed mediation schemes under Part 36 of the ADGM Court Procedure Rules 2016 that integrate mediation within the judicial system. ADGM Arbitration

Centre has also established a panel of accredited and experienced mediators to assist parties wishing to engage in mediation for a settlement of their dispute.

Dubai International Financial Centre Courts use a general discretion under Practical Guidance Note No. 1 of 2021 to refer parties to mandatory mediation at any time, upon the application of one or more of the parties, or of its own initiative. Further, the recent DIFC Courts Law No. 2 of 2025 provides that a Mediation Centre shall be established to consider disputes and resolve them amicably.

The Dubai International Arbitration Centre (DIAC) Mediation Rules play a crucial role in strengthening mediation as a structured and effective dispute resolution mechanism in the UAE. DIAC, one of the leading arbitration and mediation institutions in the region, has comprehensive mediation rules that ensures neutrality, confidentiality, and efficiency in resolving disputes.

Moreover, the Dubai Chambers Family Business Center was established to provide advisory services and guidance on best practices, leadership, succession planning, governance, and business

operations. It would be interesting to see whether the Center will be establishing the necessary framework for resolving family business disputes through mediation.

Conclusion

Mediation provides an essential bridge between tradition and progress, offering a conflict-resolution mechanism that respects the emotional and historical significance of family businesses while ensuring their continued success. Unlike rigid legal proceedings that often deepen divides, mediation fosters collaborative dialogue, preserves privacy, and encourages practical solutions tailored to both business needs and personal interests. It empowers families to resolve conflicts in a way that strengthens rather than fractures relationships, ensuring that businesses can transition smoothly across generations.

In an era where economic landscapes are rapidly shifting, family businesses must evolve, not just in their business strategies but also in how they resolve conflicts. Mediation is not just a tool for dispute resolution; it is a proactive strategy for safeguarding the future of family enterprises, ensuring that legacies are preserved and passed down without the fractures of unresolved disputes.



Richard Catling in Conversation With a Professional Trustee

As the regional wealth structuring industry evolves, family businesses have a growing eco-system of professionals at their disposal, which now also includes locally regulated trustees. Here we explore the benefits of working with professional trustees, together with a JTC group company, FFP Trust and Funds (DIFC) Limited, which is regulated by the Dubai Financial Services Authority (DFSA) to provide trust services in the Dubai International Financial Centre (DIFC).

Al Tamimi & Company



Richard Catling
Partner
r.catling@tamimi.com

JTC



Richard Lewis



Tom Kimber



Karen Carre



Al Tamimi & Company: *What benefits do you see generally in using a professional company to administer a trust (whether it be directly or through a PTC structure)?*

JTC: Using a professional trustee to administer a trust, whether directly or through a private trust company (PTC) structure, offers a number of benefits:

- 1. Expertise and Experience:** Professional trustees have extensive knowledge and experience in managing trusts. They understand the legal, tax, and administrative complexities involved, ensuring compliance with all relevant regulations.
- 2. Impartiality:** A professional trustee can act impartially, having no vested interest in how the

assets are administered, operating in line with the Settlor's wishes and avoiding potential conflicts of interest that might arise if a family member or friend were to serve as trustee.

- 3. Continuity:** Trustees provide continuity in trust administration, which is particularly important for long-term trusts. They ensure that the trust's objectives

are met consistently over time, regardless of changes in individual trustees.

- 4. **Efficiency:** Professional trustees have established processes and systems in place, which can lead to more efficient administration of the trust. This can save time and reduce the risk of errors.
- 5. **Risk Management:** Trustees are well-versed in risk management and can help protect the trust's assets from various risks, including legal challenges and market fluctuations.
- 6. **Fiduciary Responsibility:** Professional trustees are bound by fiduciary duties, meaning they are legally obligated to act in the best interests of the beneficiaries. This provides an additional layer of segregation for the trust's assets.
- 7. **Access to Resources:** Trustees often have access to a wide range of resources at their disposal, including legal, tax, and investment professionals, which can be beneficial in managing the trust's assets effectively.
- 8. **Customization:** Through a PTC structure, families can have more control over the trust while still benefiting from the expertise and resources of a professional trust services company. This allows for a more tailored approach to trust administration.

Al Tamimi & Company:
Traditionally trusts in the UAE have been set up using

a PTC – partly no doubt because there wasn't much choice of persons holding the necessary trust license to administer trusts directly. Now that JTC Group has a DFSA Regulated trust services company in the UAE, FFP Trust and Funds (DIFC) Limited, do you envisage more trusts being administered directly by professional trust companies or do you think PTCs will still be the predominant structure?

JTC: PTCs were traditionally the preferred vehicle for administering trusts in the UAE due to the absence of well-established local trust service providers. However, with the introduction of trust services license regimes in the DIFC and ADGM, there is a regulatory framework within which professional trustees can operate locally. This development, along with the ever-increasing regulatory burden being placed on PTCs, is likely to drive an increase of trusts being administered by professional trustees, especially for Settlers' seeking local expertise, regulatory certainty/ compliance, and alignment with UAE based assets and family offices. In addition, direct administration by professional trust companies might be more cost-effective compared to setting up and maintaining a PTC structure.

That being said, the decision of whether to use professional trust companies or PTCs will ultimately depend on the specific needs of Settlers. PTCs may still remain popular for certain families and businesses due to the following reasons:

- 1. **Customization and Control:** PTCs allow families to retain more control over the trust administration process, which can be important for complex or highly personalized trust arrangements.
- 2. **Privacy:** PTCs can offer a higher level of privacy and confidentiality, which might be preferred by some settlors.
- 3. **Flexibility:** PTCs can provide greater flexibility in terms of governance and decision-making, which can be advantageous in certain situations.

Overall, while the availability of licensed professional trust companies like FFP will likely lead to an increase in direct trust administration, PTCs will still have their place, especially for those seeking more control and customization.

Al Tamimi & Company:
There are some cases where it makes sense to have the trust administered directly by a professional trust company (rather than a PTC) e.g., where there is a risk of a family dispute (or there is already an inter-family dispute) or potential litigation against the trust. How can having a professional trust company as trustee assist in these situations?

JTC: A professional trustee can play a crucial role in mitigating risks associated with family disputes or litigation by acting as an independent, impartial fiduciary. In high-risk scenarios, appointing a professional trustee

can reduce emotional decision making, ensure compliance with fiduciary responsibilities and enhance asset segregation measures. Courts and Regulators may view a professional trustee as a more credible and competent administrator than a PTC controlled by family members. This credibility can be advantageous in defending the trust's structure and decisions, when things have gone badly, and preferably mitigate circumstances where conflict could arise, whilst avoiding disputes all together.

However, if and when a dispute were to arise, having a professional trust company administer a trust directly can be particularly beneficial in situations involving family disputes or potential litigation for the following reasons:

- 1. **Impartiality and Neutrality:** Professional trust companies act as neutral parties, which is crucial in resolving conflicts. They can make decisions based on the trust's terms and the best interests of the beneficiaries without being influenced by personal relationships or emotions.
- 2. **Conflict Resolution:** Trust companies (especially the team at FFP) have experience in managing disputes and can serve as mediators. Their impartial stance helps in negotiating and resolving conflicts more effectively, reducing the emotional strain on family members
- 3. **Expertise in Litigation:** Professional trustees are well-versed in legal

matters and can handle litigation efficiently. They understand the complexities of trust law and can navigate legal challenges to the fullest extent, whilst their fiduciary obligations mean they are legally obligated to protect the trust's assets and act in the best interests of the beneficiaries.

- 4. **Consistency and Stability:** Trustees provide continuity in trust administration, which is essential during disputes or litigation. They ensure that the trust's objectives are consistently met, regardless of changes in individual trustees.

In summary, having a professional trust company administer a trust directly can provide impartiality, expertise, and stability, which are crucial in managing family disputes and potential litigation.

Al Tamimi & Company:
You have experience of setting up trusts in other jurisdictions – FFP has offices in Cayman and BVI (JTC – offices around the world including Jersey). What advantages does the DIFC and ADGM offer as jurisdictions for setting up trusts over Jersey or Cayman (say)?

JTC: Establishing trusts in the DIFC and ADGM offer several advantages over traditional jurisdictions. The DIFC was established in Dubai in 2004 and ADGM in Abu Dhabi in 2015. Both financial freezones offer a contemporary and robust legal and regulatory environment in line with international standards,

applying the principles of English Common Law and Equity. They are strategically located, benefitting from global connectivity and vibrant business ecosystem serving as a bridge between the East and West. While Jersey and the Cayman Islands have long been favored for trust establishments, the DIFC and ADGM now present compelling alternatives. Having a Trustee in the same time zone and geographic region enhances responsiveness and relationship management, which is particularly advantageous for families and businesses with significant interests in the Middle East, enabling interaction with their Trustees in person.

Al Tamimi & Company:
If families wished to migrate their trust structure into, or out of, the DIFC or ADGM from other jurisdictions, say Jersey or Cayman, would that be possible and how can FFP assist in this regard?

JTC: It is possible to migrate trust structures into or out of the DIFC and ADGM from jurisdictions like Jersey or the Cayman Islands but with careful structuring. Both DIFC and ADGM have developed sophisticated trust regimes based on common law principles, making them attractive options for families looking to relocate their trusts and have them administered locally. DIFC and ADGM allow for the recognition and re-domiciliation of foreign trusts providing they comply with local regulatory and legal requirements. We have the ability to review existing trust deeds and

firstly assess if the terms of the Trust Deed would permit a migration of the Trust. Working with external legal counsel we can propose the best method for migration, whether through a change of governing law, resettlement or change of trustee. We would also ensure compliance with DIFC / ADGM trust laws and handle any legal and regulatory filings or approvals that may be required.

AI Tamimi & Company: There is greater tendency to use foundations rather than trusts for succession planning and asset segregation in the UAE – particularly for holding real estate which is open to ownership by foreigners. Do you see that situation changing? Do you think that trusts will become more popular for this purpose in the future?

JTC: Given the benefits we see in establishing trusts with independent, professional and regulated trustees, we do believe that trusts will always play a useful role in the UAE. However, given their background in common law, often government authorities have been hesitant to allow and regulate for trusts in asset holding structures, particularly with regard to real estate. For that reason, foundation structures are a popular alternative for structuring purposes. However, even in the case of foundations there is a role for professional fiduciaries to play, either as guardian or as an independent councilor on the council of the foundation. Also in sophisticated structures, the possibility of having

a Trust being a qualified recipient of a Foundation and forming part a wider multijurisdictional overarching succession planning structure means as the regulatory environment becomes more permissive, the options available in asset structuring will increasingly benefit those looking to the DIFC and ADGM for their structuring solutions.

AI Tamimi & Company: Are there any changes you would like to see in legislative or regulatory terms in the DIFC/ADGM or the UAE more broadly to encourage the use of professional trustees?

JTC: The UAE has in recent years undergone extensive regulatory reforms in a number of areas and this has attracted and continues to attract significant private wealth, corporate structuring and financial transactions, reinforcing its reputation and position in the global market. The recent changes to the DIFC Prescribed Companies regime, whereby rules to qualify for Prescribed Companies have been broadened to more investors, is a prime example of UAE authorities being very proactive and nimble to appeal to international investors and also aligning more closely with the ADGM SPV regime to create consistency across both UAE financial centers on this specific matter.

In terms of areas that might require further attention and continued reform, the corporate tax regime may benefit from further clarifications on its treatment of trusts and other free zone financial holding vehicles.

It may also be beneficial to see some clarifications and emphasis on the distinction between unregulated corporate services and regulated trust activities. They both play a role in wealth structuring and in practice work together hand in hand, but in terms of licensing requirements and oversight, the regulatory authorities are rightly much more stringent on trustees. In this context, the lines are sometimes blurred in terms of what constitutes the provision of trust services. Aspects such as cross-border arranging of trust services, or some corporate services that may be akin to trust services, should perhaps be more closely supervised in order to protect clients from unregulated providers potentially marketing and offering regulated trust services, and to therefore encourage the use of properly regulated trustees.

JTC is a publicly listed, global professional services business with deep expertise in fund, corporate and private client services. In November 2024 JTC plc successfully completed the acquisition of FFP, a leading provider of specialist fiduciary services headquartered in the Cayman Islands. This strategic move enhances JTC's global footprint, leveraging FFP's expertise, including FFP Trust and Funds (DIFC) Limited, a licensed trust company operating in the Dubai International Financial Centre (DIFC) and regulated by the Dubai Financial Services Authority (DFSA).

Family Foundations Refined

Navigating Ministerial Decision No. (261) of 2024



Midya Omar
Senior Tax Advisor
m.omar@tamimi.com



Emma Rubidge
Paralegal
e.rubidge@tamimi.com

In recent years, the United Arab Emirates (“UAE”) has emerged as a key hub for wealth management and estate planning strategies for families, particularly through UAE-based foundation structures. These foundations, designed to hold and protect family wealth across generations, are gaining significant traction in the region. The foundation structures provide substantial flexibility, help align governance with families’ long-term philanthropic objectives and protect assets against external and internal risks.

In light of the UAE’s introduction of corporate taxation under Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (the “Corporate Tax Law”), Ministerial Decision No. (261) of 2024 (“MD261/2024”) plays a

pivotal role in clarifying how foundations may obtain favourable tax treatment. This article examines MD261/2024’s significance and explains how a foundation structure, and certain entities it may own, can seek recognition as an “Unincorporated Partnership”.

Introduction

Within the UAE, several jurisdictions allow for the establishment of foundations, most notably the Dubai International Financial Centre (“DIFC”), Abu Dhabi Global Market (“ADGM”), and Ras Al Khaimah International Corporate Centre (“RAKICC”). Although each jurisdiction’s regulations vary in their procedural and governance requirements, they share a common principle: a foundation is a distinct legal entity without shareholders or

partners, in which assets are transferred by a founder (or founders) and administered by a council. Foundations can serve multiple purposes, ranging from estate and succession planning to philanthropic endeavours or long-term wealth consolidation.

Historically, these entities have operated in a tax efficient environment without any taxation. However, the UAE’s adoption of corporate taxation—with a 0% rate on taxable income up to AED 375,000 and 9% on amounts exceeding that threshold—raises new questions about how foundations should be treated for tax purposes. The Corporate Tax Law recognises that certain structures set up for family or philanthropic objectives may be better served by “tax-transparent” status, leading to the introduction of more detailed requirements under MD261/2024.

Corporate Tax Backdrop

The Corporate Tax Law introduced the UAE's first formal corporate tax regime, applying to financial years commencing on or after 1 June 2023. As foundations enjoy distinct legal personality, they generally qualify as "taxable persons". If a foundation exceeds the threshold of AED 375,000 in annual taxable income, it may face a 9% tax rate. Hence, a foundation could be subject to the same registration, compliance, and filing requirements as any other corporate taxpayer.

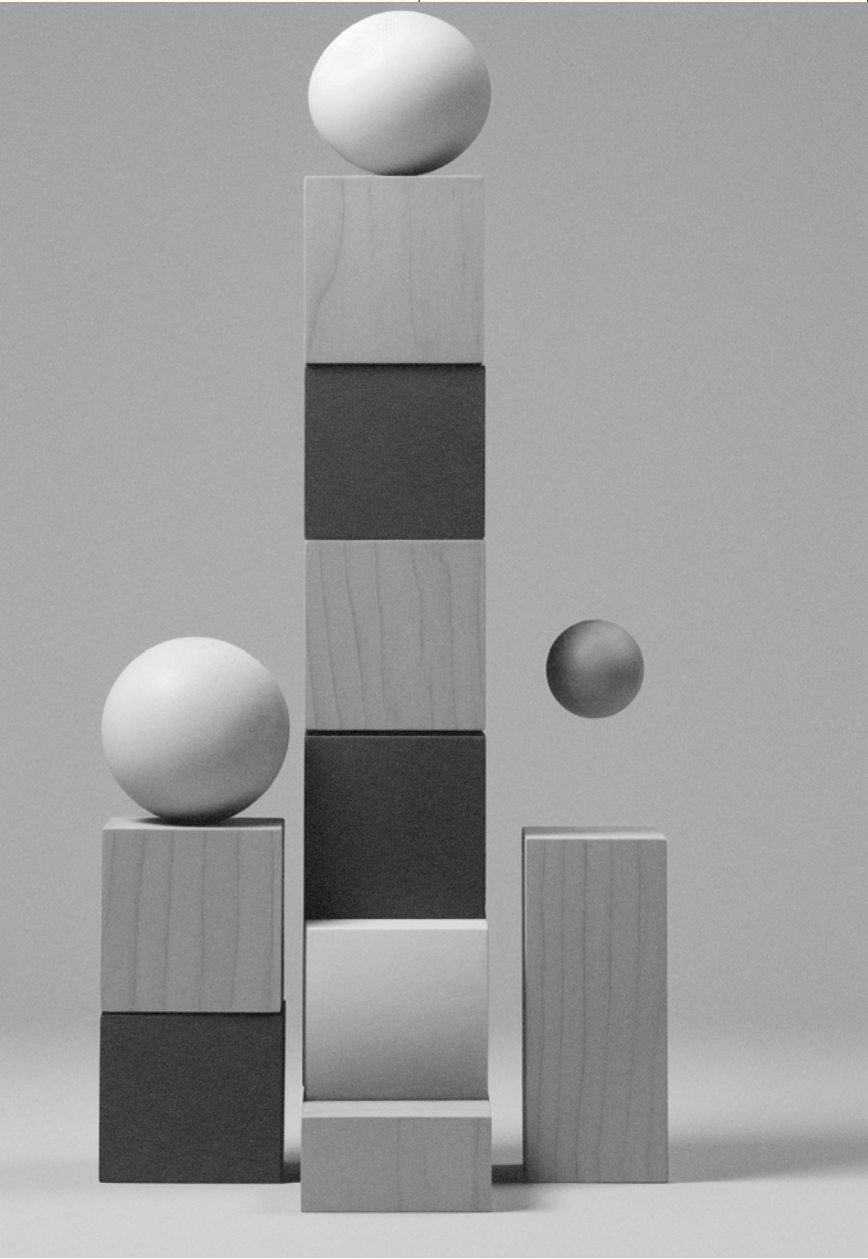
However, the Corporate Tax Law provides for advantageous provisions for structures designed to enable succession and inheritance planning, governance and asset protection under the designation of "Family Foundation". Family Foundations are not considered taxable persons under the Corporate Tax Law. Thus, MD261/2024 provides an avenue for favourable tax treatment for Family Foundations that are strictly focused on passive asset management and family succession.

Ministerial Decision No. (261) of 2024: Key Highlights

MD261/2024 addresses Unincorporated Partnerships, Foreign Partnerships, and Family Foundations. An "Unincorporated Partnership" is generally a legal arrangement recognised by the Federal Tax Authority ("FTA") under the Corporate Tax Law, such that the vehicle itself is not subject to corporate tax at the entity level. Instead, income, gains, and losses flow directly to the partners or beneficiaries.

Under the framework of MD261/2024, a foundation that satisfies the "Family Foundation" criteria may apply for recognition as an Unincorporated Partnership, allowing income and gains to flow through to the beneficiaries rather than incurring corporate tax at the foundation level. Specifically, the foundation must:

1. Operate primarily to hold, invest, and manage assets on behalf of identified or identifiable natural persons (i.e., family members) or for a public benefit entity, or both.
2. Refrain from engaging in commercial activities that would ordinarily be considered a taxable business if undertaken directly by its founders or beneficiaries.
3. Demonstrate that it was not established primarily for the avoidance of corporate tax.
4. Satisfy any other conditions set out by the Corporate Tax Law and the UAE Minister of Finance.



Following a review by the FTA, approved foundations gain tax-transparent status, sparing them from direct corporate taxation. They must, however, continue to confirm their alignment with the stated passive investment objectives, file periodic disclosures (as required), and avoid commercial undertakings that might compromise their eligibility.

Extension to Juridical Persons Owned by A Family Foundation

An additional nuance of MD261/2024 is its confirmation that certain entities owned by a Family Foundation can also seek Unincorporated Partnership status under Article 17 of the Corporate Tax Law. A juridical person that is wholly owned and controlled by a Family Foundation already treated as an Unincorporated Partnership may itself submit an application to the FTA, provided it meets all conditions under Clause 1 of Article 17. This means that if a Family Foundation wholly owns a company, either directly or indirectly through a chain of other entities each treated as an Unincorporated Partnership, that subsidiary company may also be recognised as tax-transparent. In practice, this allows families to establish a "look-through" approach not just at the foundation level, but also at subsequent tiers of ownership, ensuring that multiple layers of holding entities can mitigate corporate tax at each intermediate level.

This amendment allows for the creation of multi-layered foundation structures that can take advantage of transparent tax treatment. It also facilitates the consolidation of holding entities under a foundation, without the need to directly hold assets, as long as the holding entities themselves can qualify for Family Foundation status.

An important factor in retaining Family Foundation status is ongoing regulatory compliance. Foundations recognised as Family Foundations or entities owned by them must diligently track the type of assets / income deriving, their governance, asset management decisions, and ultimate beneficiary interests to satisfy the FTA's disclosure and reporting obligations. Additionally, founders and beneficiaries residing outside the UAE should consider the potential consequences in their home jurisdictions, as income or gains attributed to them may create additional filing or tax obligations abroad.

Conclusion

MD261/2024 refines the UAE corporate tax landscape for family-oriented structures by providing a clear pathway to tax transparency. This decision further extends this advantage to wholly owned entities under the foundation's umbrella, allowing multiple levels of ownership to be recognised as a Family Foundation / Unincorporated Partnerships if all relevant criteria are met.

For many family enterprises, leveraging these provisions can help preserve wealth within a flexible legal vehicle while mitigating tax exposure at the entity level. Yet the bar for compliance remains high, underscoring the need for precise governance, robust record-keeping, and adherence to passive investment principles. Families aiming to benefit from this new regime should closely evaluate the foundation's objectives, its operational scope, and the tax implications for domestic and international stakeholders. Where executed correctly, a Family Foundation structure, paired with the MD261/2024's transparency provisions, can offer a uniquely tailored and forward-looking solution to long-term wealth management in the UAE.

Safeguarding Wealth in the UAE

Strategies Before and After Marriage



Dipali Maldonado
Partner
d.maldonado@tamimi.com



Shabana Saleem
Senior Associate
shabana.saleem@tamimi.com

As wealthy, internationally mobile couples and families increasingly lead cross-border lives, the need for effective wealth protection strategies has increased. Among the most effective tools for safeguarding assets in the context of a marital breakdown are prenuptial and postnuptial agreements. However, ensuring these agreements are enforceable in a jurisdiction like the UAE requires careful consideration and advice.

Many couples seek to protect business interests, personal wealth, and assets for children from previous relationships through prenuptial and postnuptial agreements. Past experiences with divorce or concerns about future inheritance, especially when relocating to a new jurisdiction, have prompted a proactive approach to wealth protection. For wealth advisors, it is essential to understand how such agreements can be structured to minimise the risk of future litigation,

particularly in complex cross-border scenarios where couples may be multi-national and, multi-faith, with homes, assets and residencies in more than one jurisdiction.

Understanding Prenuptial and Postnuptial Agreements

Prenuptial agreements, made before marriage, and postnuptial agreements, executed during marriage, outline the financial rights and responsibilities of each party in the event of divorce or separation. Though not always automatically legally binding, these agreements can provide clarity, be highly persuasive to a court and serve as a critical tool in preventing protracted legal disputes. When drafted correctly, they are very likely to be upheld by courts, particularly if they adhere to the legal standards and execution/registration requirements of the jurisdiction.

The enforceability of these agreements varies across

jurisdictions, with cross-border family law specialists often required to ensure the agreements are tailored to withstand scrutiny in multiple countries. In the UAE, the recognition of prenuptial and postnuptial agreements hinges on several legal considerations, making it essential for advisors to craft bespoke solutions that align with the relevant legal systems.

Non-Muslims and Foreign Muslims

In the UAE, the enforceability of these agreements differs significantly between non-Muslim and Muslim couples. Under Sharia law, which governs personal status matters for Muslims, marriage is a religious contract, and financial obligations are generally dictated by religious principles, rather than private agreements. However, recent legal reforms have provided a more flexible approach for non-Muslims.

The introduction of Abu Dhabi Laws 14 and 15 of 2021 as well as Federal Decree-Law No. (41) of 2022 on Civil Personal Status ("Civil Family Law") has expanded the legal landscape for non-Muslim couples, offering provisions for civil marriage, divorce, and asset distribution. The Civil Family Law allows couples to prescribe their financial rights and obligations, including post-divorce claims, at the time of marriage registration. Article 6(2) of the Civil Family Law specifically provides that "the married couple have the right to agree on the terms of the contract, and that both married couples shall invoke the provisions of this contract concerning the rights of the husband and wife during the marriage period and the post-divorce rights, and in particular the joint custody of the children."¹

Further, the establishment of the Abu Dhabi Civil Family Court in 2022 has made it easier for non-Muslims and Muslims expats to register marriage and divorce agreements. The court now serves a broader jurisdiction, extending beyond non-Muslims to include Muslim foreigners, giving rise to a significant increase in the civil marriages and agreements being registered.² This expansion underscores the UAE's commitment to offering a robust legal framework that aligns more closely with home country law of many expats and that ensures agreements are enforceable across the country.

UAE's Approach to Muslim Marriage Contracts

For Muslims, the UAE's Personal Status Law has recently been updated with previous Federal Law No. 28 of 2005 being replaced by Federal Law No. 41 of 2024, which comes into effect on 15 April 2025 ("PSL"). The PSL governs marriage and divorce but does not explicitly recognise prenuptial or postnuptial agreements. Instead, the Islamic marriage contract, or a Continuation of Marriage Contract, plays a crucial role in structuring financial arrangements, noting that any clauses in these contracts that conflict with Sharia principles may not be upheld.

Careful legal drafting, informed by expertise in both local and international law, is essential, especially for individuals with assets across multiple jurisdictions. In some cases, the Islamic marriage contract must be drafted in a way that accommodates potential conflicts between Sharia law and foreign jurisdictions. In certain European countries like France, marriage contracts are legally binding. However, if a couple were to get divorced in France with a resulting judgment that reflected the terms of their marriage contract, the UAE courts may not recognise a foreign divorce settlement if it conflicts with local public policy, particularly in family law matters. For instance, the UAE judiciary does not permit parents to waive claims

for child support, as this is considered a right of the child rather than the parent.

Cross-Border Considerations

For HNWI's with assets across multiple jurisdictions, managing cross-border wealth is a key concern. Each jurisdiction has its own approach to asset division, and the enforceability of prenuptial and postnuptial agreements varies widely. It is crucial that these agreements are aligned with the legal systems of the countries where assets are held or where the couple may potentially face divorce proceedings.

For instance, in England and Wales, prenuptial agreements are not automatically binding, but courts give considerable weight to them if properly executed, especially when they align with the principles set out in the *Radmacher v Granatino* Supreme Court judgment. In the United States, the enforceability of these agreements depends on state law, with some states enforcing them strictly while others only enforcing after strict conditions such as full financial disclosure have been met. Countries such as Brazil and Germany recognise and enforce such agreements if they comply with local legal requirements at the time of signing. In stark contrast, financial disclosure and the minimum 28 day cooling off period (required in other jurisdictions) is not required under UAE law.

¹New Federal Decree Law No (41) of 2024 on Civil Personal Status due to come into effect in April 2025 codifies the existing provisions at article 15(2), 17, 46, and 66(3).

²<https://www.thenationalnews.com/news/uae/2025/02/14/more-than-140-couples-expected-to-tie-the-knot-at-abu-dhabi-civil-family-court-for-valentines-day/>

Therefore, it is essential for private wealth advisors to ensure that marital agreements are tailored to withstand scrutiny in multiple jurisdictions, considering local laws and recent judicial judgments to inform the strategy and terms of the agreement.

Enforceability of Agreements in UAE Divorce Proceedings

UAE courts exercise significant discretion when assessing prenuptial or postnuptial agreements during divorce proceedings. They evaluate the fairness of the agreements, their compliance with local laws, and their compatibility with Sharia principles or public policy. If an agreement is found to be unfair, coercive, or in violation of public interest, it may be disregarded.

Under the Civil Family Law, post-divorce alimony is determined by factors such as the duration of the marriage and the financial circumstances of both parties. While an agreement can define spousal support and maintenance, UAE courts retain the authority to modify financial obligations to ensure fairness. Similarly, while custody arrangements can be outlined in an agreement, decisions are ultimately at the discretion of the court, with the child's best interests as the guiding principle. The terms must, therefore, consider the likely approach of the court in divorce in addressing any financial and/or custody disputes to determine the terms of the agreement.



Supplementing Cross-Border Strategies

When drafting international prenuptial or postnuptial agreements, selecting the right jurisdiction is vital, not only to protect assets in different locations but also from the perspective of local enforceability. Some couples choose to execute multiple mirror agreements in different jurisdictions or leave the jurisdiction unspecified to allow for more flexibility.

To further bolster asset protection - trusts, foundations, offshore holdings, wills and other international wealth protection strategies are commonly utilised. In our experience, requiring beneficiaries to execute agreements or marriage contracts before receiving or continuing to receive any benefits or distributions from any structures such as trusts or foundations is key to protecting wealth for future generations.

Conclusion

In the UAE, prenuptial and postnuptial agreements are indispensable tools for wealth protection, particularly for internationally mobile couples. The recent changes and modernisation to the legal framework governing personal status matters has expanded flexibility, allowing individuals to define their financial rights more comprehensively. However, caution and up to date legal advice (based on law, court practice and case precedent) is necessary to ensure compliance with local laws and to consider cross-border implications. As the UAE continues to innovate, advisors will need to deploy these agreements to provide the best protection to clients navigating wealth protection in this dynamic region.

Enforcing Foreign Family Court Orders or Judgments in the UAE



Georgina Munnik
Senior Counsel
g.munnik@tamimi.com



Shabana Saleem
Senior Associate
shabana.saleem@tamimi.com

Understanding the enforcement of foreign family court orders in the United Arab Emirates (UAE) is essential, especially given the complex financial matters that often arise in cross-border family disputes. Whether it involves the enforcement of divorce settlements, child custody arrangements, or financial orders post-divorce, the UAE's legal framework is evolving to better accommodate foreign family judgments, particularly considering the country's growing expatriate population. With the introduction of the new Civil Procedure Code (CPC) in 2023, the UAE has streamlined the process of enforcing foreign judgments, including family court orders, which previously faced significant obstacles.

This article explores the mechanisms available to enforce foreign family court orders in the UAE, emphasising the legal

landscape and practical aspects wealth advisors should be aware of when advising clients involved in cross-border family disputes, particularly those concerning wealth and assets.

Introduction

The UAE's legal system has long been known for its strict interpretation of Sharia law in family matters. However, the country's growing international stature and large expatriate population have necessitated reforms to ensure that the legal system can address complex cross-border issues, particularly in family law. The enactment of the new Civil Procedure Code (CPC) in January 2023 marked a significant shift, particularly for wealth advisors dealing with clients who may have assets and financial interests both within and outside the UAE.

The recognition and enforcement of foreign family court orders, such

as divorce, child custody, and financial orders are critical considerations for expatriates in the UAE. Historically, foreign judgments faced significant hurdles due to conflicts with the UAE's public policy and moral values, particularly concerning divorce settlements and child custody arrangements. This article aims to provide wealth advisors with an understanding of how foreign family court orders are treated in the UAE and how they can assist clients in navigating the increasingly favorable environment for the enforcement of such judgments.

The Evolution of Foreign Judgment Enforcement in the UAE

Before the enactment of the new CPC, the enforcement of foreign family court orders was governed by the old Civil Procedure Code, which presented several challenges for those seeking to enforce foreign

judgments in the UAE. These challenges included the requirement of reciprocity between the UAE and the jurisdiction where the foreign judgment was issued, the stringent application of public policy exceptions, and the complex procedural steps involved in filing an enforcement application.

The 2023 reforms under Federal Decree Law No. 42/2022, which introduced the new CPC, have brought significant improvements to the enforcement process. The law now allows foreign family court orders to be recognised and enforced in the UAE with greater efficiency, provided the orders do not conflict with UAE public policy or moral values. This legal shift is of particular importance for wealth advisors, as the enforcement of foreign financial settlements, child custody arrangements, and divorce orders can directly impact the financial well-being of their clients, especially in high-net-worth divorce cases.

Key Provisions of the New Civil Procedure Code (CPC)

The CPC introduced a more structured and predictable framework for the enforcement of foreign family court orders. Several key provisions in the new law are particularly relevant to wealth advisors:

1. **Article 4** establishes that foreign judgments are recognised in the UAE unless they violate public policy or the fundamental principles of UAE law. This principle opens the door for greater recognition of foreign family court orders, particularly

in relation to divorce settlements and child custody arrangements.

- 2. Under **Article 5**, foreign judgments from jurisdictions with reciprocal enforcement agreements with the UAE are automatically enforceable. This makes the process more efficient for judgments originating from countries that have formal agreements with the UAE.
- 3. **Article 6** stipulates that foreign judgments will be enforced unless valid grounds for refusal exist, such as lack of jurisdiction of the foreign court or a conflict with UAE public policy. This provision reduces uncertainty and allows wealth advisors to better advise clients on the likelihood of enforcement.
- 4. **Article 7** encourages the expediting of enforcement procedures to reduce delays, which is crucial in time-sensitive financial matters, such as asset division and maintenance payments in divorce cases.
- 5. **Article 222** specifically outlines the conditions under which a foreign judgment may be enforced:
 - **Jurisdiction:** The foreign court must have jurisdiction according to its own laws.
 - **Finality:** The judgment must be final and conclusive.
 - **Fair Trial:** Both parties must have been duly summoned and represented in court.

- **Public Policy:** The foreign judgment must not contravene UAE public policy.

These provisions create a clear framework for enforcing foreign judgments, providing wealth advisors with the tools needed to evaluate the enforceability of family court orders in the UAE.

Recognition and Enforcement of Foreign Family Court Orders

Historically, UAE courts have been hesitant to recognise foreign divorce decrees, especially due to concerns about compatibility with Sharia law. However, recent case law shows a more progressive approach, particularly in high-net-worth divorce cases.

In Dubai Court of Cassation Case No. 5 of 2020, the UAE court recognised a United Kingdom (UK) divorce decree, emphasising the importance of not undermining children’s welfare. This case signals a shift towards prioritising child welfare in family law decisions while respecting individuals’ rights. For wealth advisors, it highlights the need to understand how foreign divorce orders will be interpreted. If the foreign order aligns with UAE law, including provisions for asset division and child welfare, it increases the chances of enforcement.

Foreign Child Custody Orders

Foreign child custody orders have traditionally faced enforcement challenges due to differences between UAE Sharia-based family

law and Western legal systems, which may support joint custody. In the UAE, custody is typically awarded to the mother, with guardianship remaining with the father, which complicates the recognition of joint custody arrangements.

Under the new CPC, UAE courts now place more emphasis on the best interests of the child, aligning with international principles. This shift makes it more likely that foreign child custody orders, prioritising child welfare, will be enforced. Wealth advisors should consider the potential impact of foreign custody arrangements on clients’ financial plans, particularly when international relocation or asset division is involved. Enforcement of such orders requires filing an application with the relevant UAE court, and understanding the procedural steps is critical in high-stakes family disputes.

Enforcement of Foreign Financial Orders Post-Divorce

Similarly, UAE courts were reluctant to enforce foreign financial orders (such as maintenance regiments, alimony and property division), especially regarding assets within the UAE. However, recent reforms have made the UAE judiciary more receptive to enforcing foreign financial orders.

In Dubai Court of Cassation Case No. 15 of 2021, the court enforced a foreign financial settlement, highlighting that foreign financial orders are enforceable as long as they do not contradict UAE public policy or morals. This

trend was further confirmed in the Smith v. Jones case (2024), where a UK financial order involving UAE-based matrimonial property was enforced. For wealth advisors, this growing trend is important as it provides clients with greater certainty. Non-compliance could result in asset seizure or even imprisonment, emphasising the importance of understanding the enforcement process.

Practical Considerations for Wealth Advisors

Wealth advisors should take several practical steps when assisting clients with cross-border family disputes involving foreign judgments in the UAE:

- 1. **Understand the Jurisdictional and Procedural Requirements:** Engage advisors to ensure that the foreign judgment meets the jurisdictional criteria outlined in the CPC, including finality and fairness. Steering clients to proactively address the procedural steps involved in filing for enforcement can help manage expectations and reduce delays.
- 2. **Evaluate Public Policy Considerations:** Be cautious about the terms of the settlement agreement and/or foreign family court order aligning with UAE public policy considerations, particularly in matters involving financial settlements or child custody. If it contravenes UAE law or public morals, it may not be enforced.

3. **Assist in Filing Enforcement Applications:** Ensure clients have advisors to effectively navigate filing an enforcement application with the relevant UAE court, ensuring that all necessary documentation, including the foreign judgment and proof of compliance with UAE law, is submitted.

4. **Consider the Implications of Non-Compliance:** Be wary of clients on the potential legal consequences of non-compliance with foreign judgments, including asset attachment, travel bans, or imprisonment. This can help clients avoid costly and damaging legal disputes.

Conclusion

The UAE’s legal reforms have made it easier for wealth advisors to navigate the complexities of enforcing foreign family court orders, particularly in high-net-worth divorce cases. By understanding the evolving legal framework, wealth advisors can better assist clients in enforcing foreign judgments related to divorce, child custody, and financial matters, ensuring that their clients’ financial interests are protected. Given the UAE’s increasing status as a home for foreign high net worth individuals, it is essential for wealth advisors to stay informed about the latest developments in family law to effectively support their clients in cross-border family disputes.

Navigating Financial Crime Risks

for Family Businesses/Offices and Ultra High Net Worth Individuals (UHNWIs) in the Middle East.



Ibtissem Lassoued
Partner, Co-Head of
White Collar Crime & Investigations
i.lassoued@tamimi.com

The Middle East has solidified its status as a global wealth hub, attracting Ultra High Net Worth Individuals (UHNWIs) and family businesses with favourable tax regimes, strong financial markets, and strategic economic policies. The UHNWI population in the region is projected to grow by 28.3% by 2028 (Knight Frank 2024), leading to an unprecedented expansion of private wealth. As per the estimates by Deloitte, in 2024 alone there were more than 8,000 single family offices globally, managing \$3.1 trillion worth of assets.

However, as the region strengthens its regulatory frameworks, financial crime risks have become a growing concern for UHNWIs and family offices. Family offices can act as a latent source of risk in the financial system outside of the view of the regulators. For example, authorities across the UAE, Saudi Arabia, and Qatar are tightening controls on financial crime, money

laundering, tax evasion, and corruption, leveraging AI-driven forensic tools and cross-border intelligence-sharing to track illicit transactions.

Amongst a host of aspects for UHNWIs and family enterprises to factor in, as depicted below, compliance remains a top priority. It is not just a regulatory requirement, it is a strategic necessity to protect wealth, reputation, and business continuity. The failure to address emerging financial crime risks can lead to regulatory investigations, frozen assets, and legal liabilities in an increasingly interconnected global financial system.

Heightened Financial Crime Risks

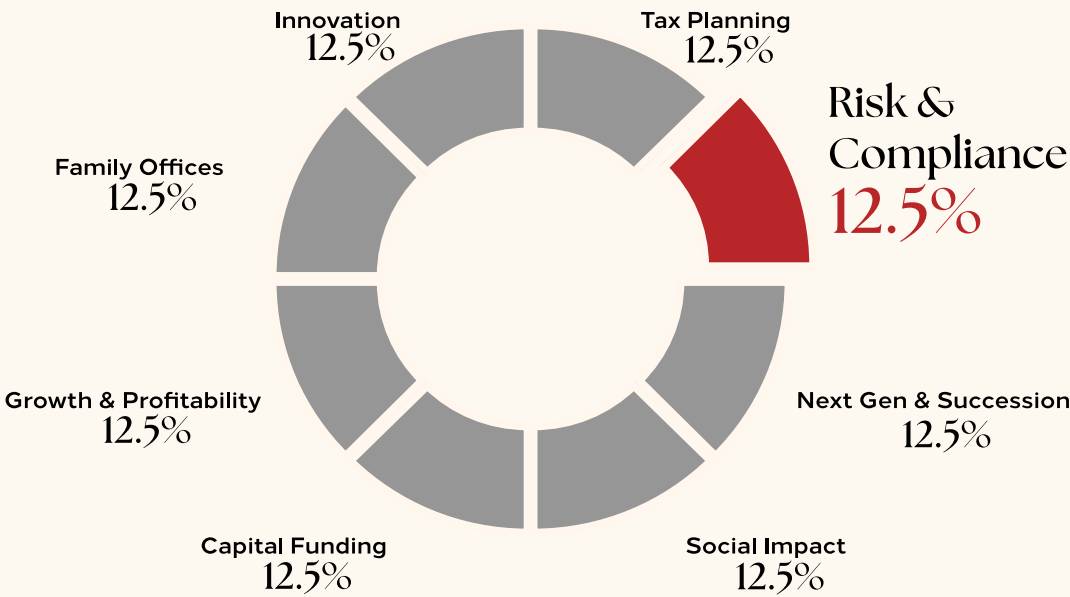
Cross-Border Asset Transfers & Tax Compliance

Global tax transparency laws have made offshore wealth structuring more

complex. Under CRS and FATCA, financial institutions must report cross-border transactions. Regulators now use AI-driven financial surveillance to detect undisclosed assets and tax evasion. Maintaining clear financial documentation, conducting tax audits, and ensuring compliance with disclosure requirements are key to mitigating risk.

Corporate Structures & Beneficial Ownership Transparency

Many Family Businesses/ Offices, and UHNWIs rely on trusts, offshore entities, and holding companies for asset protection and tax efficiency. However, regulators—including FATF, OECD, and the EU—are enforcing stricter beneficial ownership transparency laws, reducing the ability to shield assets behind complex structures. Failure to comply can lead to regulatory investigations, banking restrictions, and reputational damage.



Bribery, Corruption & Political Exposure

Family businesses/ Offices, and UHNWIs involved in government contracts, infrastructure projects, and public-private partnerships face heightened scrutiny under US FCPA, the UK Bribery Act, and regional anti-corruption laws. Regulators are targeting improper payments and undisclosed commissions, making enhanced due diligence (EDD), third-party contract vetting, and whistleblower protections essential safeguards.

Insider Trading & Market Manipulation

Those with significant stakes in publicly traded companies face increasing oversight on the use of non-public information in trading activities. Regulators in the UAE, Saudi Arabia, and the GCC have tightened securities laws, emphasizing pre-clearance mechanisms, governance policies, and independent compliance oversight to mitigate insider trading risks.

Sanctions Violations & High-Risk Transactions

With expanding global sanctions enforcement, financial institutions are blocking transactions linked to sanctioned entities and high-risk jurisdiction. Secondary sanctions from the US, UK, and EU create additional risks, in particular for international dealings. Real-time sanctions screening and enhanced due diligence are crucial to avoiding regulatory penalties.

Cyber Fraud & Financial Crime Targeting UHNWIs

UHNWIs and Family Businesses/ Offices remain prime targets for cyber fraud, identity theft, and AI-powered phishing scams. Cybercriminals increasingly use deepfake technology and social engineering to manipulate financial transactions. Biometric authentication, AI-driven fraud detection, and secure communication protocols are now essential for protecting wealth in the digital age.

Extradition Risks & Cross-Border Legal Exposure

Stronger extradition treaties between Middle Eastern jurisdictions, the US, UK, and EU make UHNWIs more vulnerable to legal action for financial crimes. High-profile cases have shown that relocating abroad does not guarantee immunity. Legal risk assessments, strict adherence to AML, tax, and anti-bribery laws, and expert legal counsel in cross-border compliance help mitigate exposure.

Succession Planning & Wealth Protection Risks

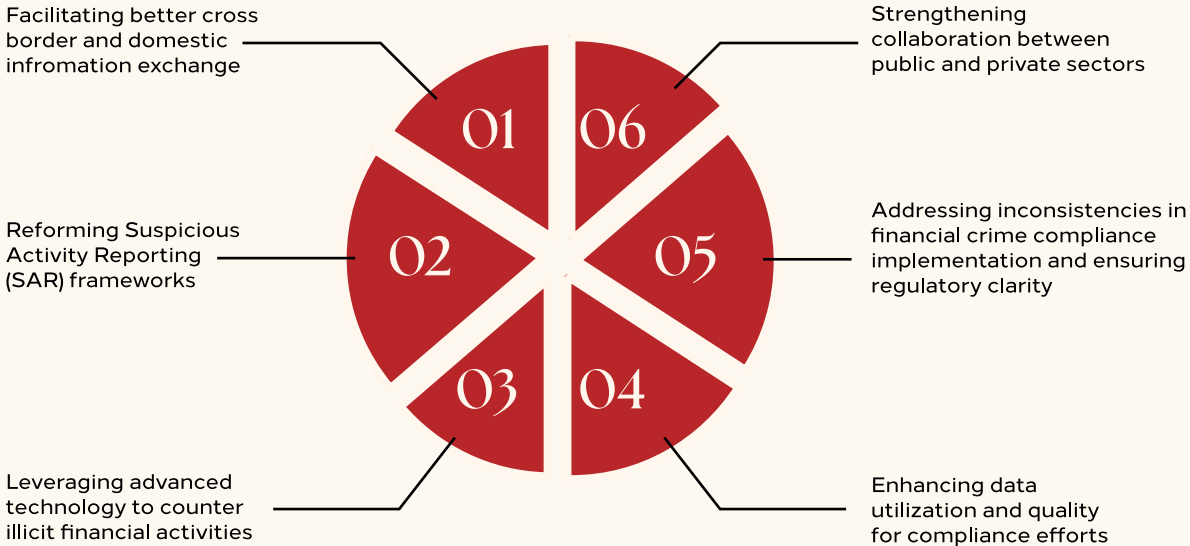
Poor succession planning can expose Family Businesses and UHNWIs to legal disputes, tax liabilities, and regulatory scrutiny. Without a clear governance framework, wealth transfer can become entangled in litigation and tax audits. Structured trusts, regulatory-compliant asset protection, and a well-defined family governance charter are critical for preserving wealth across generations.

Strengthening Compliance & Financial Crime Defenses

As financial oversight frameworks evolve, family businesses and UHNWIs must align their wealth management strategies with international compliance standards to protect their assets, uphold reputational integrity, and ensure seamless financial mobility. Adopting key compliance measures is essential to navigating this landscape effectively, including but not limited to:

financial risks requires a strategic approach to compliance. As regulations evolve and enforcement becomes more proactive, integrating compliance into wealth management and business operations is essential for stability and long-term success. Proactive risk management has become increasingly important as authorities adopt AI-driven transaction monitoring, blockchain forensics, and global data-sharing. Many UHNWIs and

help protect against regulatory complications that could impact liquidity and operations. Corporate governance and due diligence provide an additional layer of protection. Independent compliance officers, strong third-party vetting, and whistleblower protections help mitigate exposure to financial misconduct and regulatory scrutiny, reinforcing the integrity of family enterprises.



Cracking Down on Financial Crime: Essential Compliance Strategies

As highlighted above, with Middle Eastern regulators aligning with global financial crime frameworks, UHNWIs and Family Businesses must view compliance as a core pillar of financial strategy rather than a legal burden. In an era of increased financial transparency and cross-border legal enforcement, those who integrate compliance into their wealth management strategies will be best positioned for long-term success. For UHNWIs and family enterprises, navigating

family offices are turning to automated compliance systems, regular forensic audits, and centralized oversight to ensure their financial structures remain secure and fully compliant. Cross-border compliance alignment is key to maintaining seamless access to banking and investment markets. Adhering to CRS, FATCA, and OECD tax transparency requirements, ensuring proper AML documentation, and staying engaged with global financial crime enforcement agencies

Beyond safeguarding wealth, compliance also creates a competitive advantage. A strong regulatory track record helps maintain uninterrupted banking and investment access, reduces exposure to extradition risks and asset seizures, and strengthens relationships with financial institutions and business partners. For multi-generational wealth, well-structured compliance ensures smooth succession planning and protection from tax and legal disputes.

In collaboration with **FARRER&Co**

UK Real Estate

Navigating UK Tax Issues



Dipali Maldonado
Partner,
Al Tamimi & Company



Oliver Piper
Partner,
Farrer & Co



Jonathon Goldstone
Associate,
Farrer & Co

For decades, Middle Eastern families and high-net-worth individuals (“HNWIs”) have been drawn to the UK property market, viewing it as a safe and attractive investment destination. Some seek a summer retreat from the Arabian heat, a gateway to prestigious real estate assets in a mature market, or a means of capitalising on favourable exchange rates and strong ownership rights with the ability to hold absolute title in prime locations such as the capital, London.

The UK government has brought in a number of tax reforms recently affecting HNWIs (particularly those residing in the UK), but the rules affecting residential property are broadly unchanged.

There are three main ways to hold UK property: (a) directly, (b) via a company, or (c) via a trust, with different tax implications for each. The

key UK taxes to consider are set out below.

Stamp Duty Land Tax (SDLT)

SDLT applies at the point of purchase and is paid by the buyer. For residential property, SDLT rates are banded according to the consideration (price paid). The standard rates for an individual UK resident buyer with only one property are set out below:

Rates from 1 April 2025

Property or lease premium or transfer value	SDLT rate (per cent)
Up to £125,000	0
From £125,001 to £250,000	2
From £250,001 to £925,000	5
From £925,001 to £1.5 million	10
Exceeding £1.5 million	12

There are also surcharges if:

- The purchaser (or their spouse) owns another residential property anywhere in the world – 5% surcharge.
- The purchaser is non-resident for SDLT purposes (a day-count test) – 2% surcharge.

This means the top rate for a non-resident buyer with additional residential property is 19%.

Where a non-resident trust / company purchases UK residential property, the SDLT rate is a flat 19% (or 17% if the trust / company is UK resident). However, for a corporate buyer that qualifies for ATED relief for letting out the property (see below), the SDLT rate will be banded so the top rate does not apply against the whole value of the property. In practice, this may only result in modest savings.

The correct SDLT analysis requires carefully understanding the buyer’s individual circumstances, so bespoke advice should

always be sought as part of a UK residential property purchase.

Annual Tax on Enveloped Dwellings (ATED)

A residential property held in a company is an “enveloped dwelling”, ie, it is held via a corporate entity (envelope). If the value of the property is over £500,000, then it is within the scope for ATED. ATED was introduced in 2013 and is a banded tax, with ATED charge depending on the value of the property at acquisition or at a point in a five-year cycle.

Charges for 1 April 2025 to 31 March 2026

Property Value	Annual charge
More than £500,000 up to £1 million	£4,450
More than £1 million up to £2 million	£9,150
More than £2 million up to £5 million	£31,050
More than £5 million up to £10 million	£72,700
More than £10 million up to £20 million	£145,950
More than £20 million	£292,350

There are certain reliefs from ATED, the most common one being full relief (ie, no ATED payable) if the property is part of a property rental business, let out on commercial terms to an unconnected third party

(ie, not family members of the owner of the company). The relief also applies where steps are being taken to let it out commercially (eg, marketing it with a property letting agent).

Capital Gains Tax (CGT)

Historically, non-residents did not generally pay CGT on the gains realised when disposing of UK assets. However, non-residents are now exposed to CGT on any gains relating to UK residential property, at 24% for individuals or trusts. Companies incur corporation tax instead, at 25% on the gain.

If the owner can show that the UK residential property was their main residence (or, in certain cases, the main residence of the principal beneficiary of a trust), then the sale may be exempt from CGT. However, this will usually be a challenge if wider circumstances require that the occupier does not become UK resident for general tax purposes in the process.

For trusts distributing UK property to beneficiaries, this will trigger a deemed disposal at open market value and potentially a taxable gain. However, the trustees and the beneficiary may jointly claim CGT holdover relief since the distribution is also taxable to IHT (see below). This means that there is no CGT to pay on the distribution, but the beneficiary receives the property at the trustee’s original base cost, potentially exposing them to a greater taxable gain in future.

A final CGT point to note is the uplift of value on death. Where property is directly

or indirectly included in the taxable estate of the deceased for inheritance tax (see below), the base cost of that property for CGT purposes is uplifted to the open market value at the date of their death. This can create planning opportunities to mitigate exposure to CGT. For example, a husband may die and leave a UK property to his wife. The property is exempt from IHT as this is a gift between spouses, and the CGT base cost is uplifted to the value at his date of death. If the wife later sells the property, any gain is calculated from that uplifted value, rather than the original acquisition price paid by the husband.

Inheritance Tax (IHT)

Since April 2017, UK residential property is directly or indirectly within scope for IHT. That is the case even if the property is held in an offshore company. If a property is worth more than the nil-rate allowance of £325,000, IHT could apply at a rate of 40% of the market value of the property (over that nil-rate allowance) at the time of passing of the owner.

If the property is acquired with debt, then the benefit of the debt (ie, the loan itself) may also be within scope for IHT. Generally, if the loan comes from a commercial lender, it effectively falls outside the scope of IHT, but not if it comes from a family trust, a closely held company or another individual.

Since July 2013, for all practical purposes for a debt to be deductible against the estate of an individual domiciled outside

the UK (thereby reducing the value on which IHT is charged), it has to be incurred at the time of purchase. (From 6 April 2025, the reference to being domiciled outside the UK no longer applies and is replaced with not being a long-term UK resident, broadly defined as whether an individual has been UK resident for at least 10 years in a 20-year period, or has left the UK after becoming long-term UK resident and is still within an IHT tail period – the detailed changes are beyond the scope of this article.)

A debt taken out after the purchase (unless it is to improve the property) is not deductible unless the sums borrowed remain within the scope of IHT. In other words, it is not possible for a foreign domiciled individual to borrow against the property to reduce its

taxable value and place the sums borrowed outside the UK. The same goes for properties held in trust.

It is therefore increasingly common for overseas buyers whose wealth remains outside the UK to purchase using mortgage finance rather than cash, or to consider life insurance written in trust to cover a potential future IHT bill.

UK residential property held in trust is subject to the “relevant property regime” (also sometimes referred to as the “10-yearly charge regime”). This broadly means that the trust will have to pay anniversary charges at up to 6% of the value of its relevant property (including UK residential property) on each 10-year anniversary relative to the start of the trust. Additionally, if a UK residential property is

distributed from a trust, this may trigger an “exit charge”, again at up to 6% depending on when the distribution takes place relative to a 10-year anniversary date.

An increasing number of people are taking advantage of gift allowances and the “seven-year rule” to transfer property (or shares in their property) to their children or grandchildren. Under this rule, any assets gifted at least seven years before the donor’s passing fall outside the scope of inheritance tax. If the donor dies within those seven years, the recipients may still face an inheritance tax bill. The tax rate starts at 40% but decreases on a sliding scale after the first three years, potentially reducing the financial burden on heirs.

A word of caution though: the inheritance tax benefits of gifting the whole



property to other family members can be undone if the person making the gift continues to use the property. Also, those family members who receive property will themselves be exposed to inheritance tax on their passing.

However, by planning ahead and understanding these rules, families can take strategic steps to minimize inheritance tax liabilities.

Income tax for properties rented out

Net rent from a UK property rental business is always taxed in the UK, likely at the individual's top rate of income tax, ie, up to 45%.

However, where the individual buys the property through a company, the net rent is subject to corporation tax rates at 25%. If the individual is non-UK resident for tax purposes but the company is UK resident, the liability is capped at the corporation tax rate of the company, and any dividend from the company is not subject to UK tax. There is therefore a relative advantage to using a company to buy a property in these circumstances.

Planning considerations and options

The UK tax rules are broadly designed to encourage direct ownership of residential property. In addition to the tax issues outlined above, corporate or trust ownership can bring additional compliance obligations with the UK's Register of Overseas Entities (ROE) and Trust Registration Service (TRS)

– these are beyond the scope of this briefing but both add to the costs of indirect ownership. All else being equal, the simpler the structure of ownership, the better as an individual will generally face lower taxes and running costs during the course of ownership.

There are options available to mitigate the tax exposure (eg, reliance on the IHT exemption for assets passing between spouses, using debt at the point of purchase to offset the taxable value of the property, obtaining life or term insurance written in trust to cover the future potential tax or, as referred to above, splitting the beneficial ownership between non-spouses to obtain a discounted valuation or gifting property outright), but these will be more or less appropriate according to the individual's set of circumstances.

Notwithstanding the tax and cost benefits of direct ownership, indirect ownership may still be attractive for non-tax reasons, eg, for asset protection or to control the succession of property under the terms of a trust rather than under the rules applicable to an individual's directly held property (which can vary according to their domicile). It can be too easy to lose sight of the bigger picture in pursuit of the best "tax" answer, so it is always important to consider the wider context.



Conveyancing Covered.

Al Wakeel by Al Tamimi & Company offers a premium conveyancing service backed by the region's leading law firm. With the largest real estate legal practice in MENA, we ensure every step of your property transaction is secure, seamless, and stress-free.

www.tamimi.com • wakeel@tamimi.com • Al Wakeel 

IPOs for Family Businesses in the UAE

Unlocking Growth and Legacy



Andrew Tarbuck
Partner, Head of
Corporate Commercial
a.tarbuck@tamimi.com



Carla Saliba
Senior Counsel
c.saliba@tamimi.com



Haya Al Barqawi
Associate
h.albarqawi@tamimi.com

For decades, family businesses have formed the backbone of the UAE economy. Many of these businesses have grown into major conglomerates, spanning multiple industries and markets. Yet, despite their success, few have taken the step of going public. The idea of an initial public offering (“IPO”) has often been met with hesitation, largely due to concerns around control, governance, and regulatory requirements. However, recent legislative and market changes have created new opportunities for family businesses to consider an IPO as a viable option for long-term growth and sustainability.

Challenges That Have Held Family Businesses Back from an IPO

Traditionally, several factors have discouraged family-owned enterprises from listing on the stock

exchange. One of the biggest concerns has been the fear of losing control. Many families worry that by selling shares to the public, they may dilute their influence over strategic decision-making. Founders were previously required to offer at least 55% of their shares to investors, raising concerns that outside investors might gain too much influence over business decisions. Additionally, the only way to go public was by increasing capital rather than allowing founders to sell their existing shares, making an IPO less attractive as a liquidity event.

Regulatory requirements have also played a significant role in discouraging IPOs, and losing control of the board is a major issue, as independent directors and institutional investors may have different priorities, leading to decisions that do not fully align with the

family’s long-term vision. Strict rules on board composition, which required a majority of independent directors, and extensive disclosure obligations meant that founders would need to relinquish a level of autonomy they were not accustomed to. Many also worried about public scrutiny, particularly as family businesses often engage in related party transactions, a practice that is closely monitored in listed companies, limiting the flexibility that families previously enjoyed in structuring their business dealings. The financial costs associated with IPO preparation, ongoing reporting, and regulatory compliance were also seen as barriers.

Beyond these technical hurdles, cultural and legacy concerns have been just as significant. Many family businesses take pride in their name and heritage, fearing

that a transition to public ownership could weaken their identity. Additionally, private ownership has allowed families to make strategic decisions with flexibility, without needing to justify them to external shareholders.

Additionally, family businesses often are an aggregation of many business lines and this can be difficult to value (and may lead to a material difference of opinion between the family members and their advisors as to valuation). Thought should be given to carving out synergistic business lines or sole businesses and seek early agreement on rough valuation.

Why Some Family Businesses Are Now Considering an IPO

Despite these past challenges, going public offers undeniable benefits. An IPO allows a business to access new sources of capital, fueling expansion, diversification, and innovation. This is particularly valuable for companies looking to accelerate growth, whether through market expansion, acquisitions, or investments in new technology.

For companies looking to attract and retain top talent, being publicly listed enhances corporate governance and credibility, making them more

appealing to high-caliber executives. Additionally, public companies benefit from increased media and market attention, which can enhance their profile among investors and business partners.

Perhaps most importantly, an IPO can serve as a succession planning tool. Many family businesses struggle when transitioning from one generation to the next, particularly in the absence of a clear heir or leadership structure. Listing on the stock exchange helps create a more structured and professionalized approach to management, ensuring business continuity and long-term sustainability.



Regulatory Changes and Their Impact on Family Business IPOs

Over the past two years, the regulatory environment in the UAE has evolved significantly to accommodate family businesses interested in going public. The new Commercial Companies Law has removed the minimum and maximum offering thresholds, allowing founders to determine the size of the offering in the prospectus. This means that families can now retain majority control by selling a smaller portion of their shares.

Moreover, businesses now have more flexible options for going public. Previously, companies could only convert to a public joint stock company (PJSC) through an increase in capital. Now, they can do so by issuing new shares, selling existing shares, or a combination of both—providing an opportunity for founders to cash out while maintaining control.

Governance requirements have also been adjusted. Under the new corporate governance guidelines, only one-third of the board is required to be independent, allowing families to maintain stronger influence over strategic decision-making.

Corporate Governance: A Challenge or an Opportunity?

Corporate governance has often been viewed as a challenge for family businesses considering an IPO. Public companies are subject to more stringent oversight, requiring businesses to act in the

interest of all shareholders rather than solely the founding family. This shift can feel restrictive for family businesses used to operating with greater flexibility.

However, embracing corporate governance best practices can be a major advantage. Establishing transparent reporting structures and strong governance mechanisms enhances investor confidence and attracts foreign investment. Additionally, a well-governed company is better positioned to adapt to market changes, mitigate risks, and ensure long-term sustainability.

Advice for Family Businesses Considering an IPO

For family businesses evaluating whether an IPO is the right path, careful planning is essential. The decision to go public should align with the company's long-term objectives and growth strategy. Some key considerations include:

- **Clarify Objectives:** Understand what the business aims to achieve through an IPO, whether it is raising capital, succession planning, or expanding into new markets.
- **Assess Readiness:** A company must be prepared to meet regulatory, governance, and reporting obligations before going public.
- **Unanimous Decision:** All relevant family members / shareholders must be unanimously aligned if it is decided to pursue an IPO (stakeholders

with divergent views will hinder or possibly derail the IPO).

- **Understand the Options:** Businesses should explore different listing structures and determine the best approach based on their needs.
- **Timing:** After careful consideration, an IPO may not be the right solution at the right time for the family business. There needs to be an honest appraisal among family members and they should not be afraid to pursue other options.
- **Prepare for the Journey:** An IPO is a transformational process that requires engagement with advisors, regulatory authorities, and investors.

Finding the Right Balance

For family businesses, an IPO is not just a financial decision—it is a strategic one. The key is finding the right balance between accessing capital, maintaining control, and preserving the company's legacy. Careful planning, governance structuring, and understanding the regulatory landscape can help families navigate the transition successfully.

While the decision to go public is significant, it no longer presents the same obstacles it once did. With the right approach, family businesses in the UAE can leverage IPOs to secure long-term growth while maintaining their influence, values, and heritage.

Financing Deals – Guarantees

Legal Considerations and Practical Insights



Mark Brown
Partner, Head of Projects
m.brown@tamimi.com



Mohammed Abouhaligah
Trainee Solicitor
m.abouhaligah@tamimi.com

Family businesses can face different challenges when it comes to securing financing, primarily due to the overlap between personal and corporate interests, and the need to safeguard intergenerational wealth. In this context, guarantees are a common tool used to ensure financial stability.

Both Federal Decree Law No. 23 of 2022 (the “Banking Law”), and Federal Law No. 50 of 2022 (the “Commercial Transactions Law”) emphasise the standards banks must adhere to when lending in the UAE. The Banking Law mandates that licensed financial institutions obtain “adequate securities” when extending facilities to natural persons and sole proprietorships (a common structure for family business). Meanwhile, the Commercial Transactions Law requires banks

to acquire “sufficient securities or guarantees” against the provided loans. Understanding the role of a guarantee in lending transactions is therefore important for family businesses in the UAE. This article explores the role of guarantees in the financing of UAE family businesses, offering insights to help stakeholders manage risks, navigate legal requirements, and explore alternative security arrangements.

Understanding Guarantees

In the UAE, the legal framework governing guarantees is primarily set out in Federal Law No. 5 of 1985 as amended (the “Civil Code”), which defines guarantees as “the joining of the liability of a person called the surety with the liability of the obligor in the performance of his obligations.” Guarantees create a secondary obligation that is contingent upon the existence of a valid primary obligation

between two parties other than the guarantor. In simpler terms, a guarantee is a legal commitment by the guarantor to fulfil the borrower's obligation in the event of non-payment or non-performance. This tool is widely used in financing as it provides lenders with an additional layer of credit support, reducing the risk of loss while facilitating access to credit for the borrower.

In the context of family businesses, guarantees often take the form of personal guarantees provided by senior family members, who commit to ensuring that the borrower (i.e. the family business) meets its obligations, including repayment of the loaned amount,

Guarantees do not last indefinitely; Article 1099 of the Civil Code outlines the circumstances under which a guarantee will terminate or expire, which includes (but is not limited to):

- discharge of the debt;
- loss of the secured asset

- due to force majeure before a claim is made;
- cessation of the contract;
 - discharge by the lender; and
 - upon the death of the borrower.

In addition to the abovementioned grounds, Article 1101 of the Civil Code further provides that if the debtor, creditor, and guarantor agree to a settlement for part of the total debt, the guarantee will be fully discharged, and the remaining balance of the debt will be waived. However, banks will commonly incorporate

two options: either recover the agreed amount from the guarantor and pursue the remaining balance from the debtor, or to forgo action against the guarantor and claim the full debt from the principal.

Legal and financial considerations for family businesses

In family businesses, the provision of guarantees by senior family members can have serious implications. Because family members often act as the guarantors for business debts, their personal assets may be at risk if the business

Moreover, if the guarantor passes away before the debt is repaid, the lender may pursue a claim against the guarantor’s personal estate to recover the outstanding debt, further complicating matters for the family.

Legal Protections for Guarantors

UAE law provides certain legal protections for guarantors.

1. Time limits for claims

Guarantors benefit from a six-month limitation period for claims, which begins when the debt becomes



protections into any settlement to ensure a guarantor is not discharged while a guaranteed debt is outstanding. If the settlement specifically discharges only the guarantor, the creditor has

defaults. This can impact intergenerational wealth where the personal wealth is principally tied up in the family business, affecting not just the individual guarantor but the family’s collective financial security.

due. If a creditor fails to initiate proceedings within this period, the guarantor is generally discharged from liability. In practice, it is common for this limitation period to be waived in any guarantee agreement.

2. “All-monies” guarantees

Under Article 1061 of the Civil Code, guarantees must be issued for a specific debt or specified amount. This provision effectively limits the scope of a guarantor’s liability, as blanket or “all-monies” guarantees are generally not enforceable.

Exploring Alternatives to Personal Guarantees

As a family business matures, it becomes possible to explore alternative financing options that can minimise risk to the family’s personal assets and preserve wealth. Options include:

1. Asset-backed financing

Where a business has grown to a certain size, it may hold sufficient businesses assets to act as collateral in any financing. This could include real estate or the movable assets of the company.

2. Assigning receivables

Another option is to assign receivables, where businesses use their outstanding invoices or future cashflow as collateral.

3. Private Wealth Structures

For added protection, family businesses can explore trusts or foundations to separate personal wealth from business liabilities. These structures can also support succession planning, ensuring that ownership remains distinct from management and protecting family members’ assets from business related risks,

Conclusion

Guarantees can be a valuable tool for securing financing. However, family businesses must carefully weigh the potential risks and benefits. The UAE’s legal framework supports the grant of guarantees, and they are a standard form of credit support. The calling on a guarantee can seriously impact the personal and business assets of a family where it is successfully enforced. A mature family business should therefore explore alternative financing options, to protect both their assets and their long-term legacy.

To effectively manage risks, family businesses should engage in strategic planning, consult legal and financial professionals, and maintain clear communications among family members on how a personal guarantee links to the borrowing obligations of their business. With careful consideration and proper guidance, family businesses can use guarantees in a way that supports sustainable growth while protecting their long-term interests.

Corporate Governance for Family Businesses



Nawal Abdelhadi
Senior Counsel
n.abdelhadi@tamimi.com



Mohammad Haykal
Trainee Solicitor
mo.haykal@tamimi.com

Family businesses, in addition to the standard challenges any business faces, have unique challenges which makes the mission of survival and growth more demanding and difficult than conventional businesses. But like any business, the application of good corporate governance is a key driver of success. It is critical in ensuring the success, sustainability, and ethical operation of the businesses. It provides a framework for decision-making, accountability, and strategic direction, promoting transparency and reducing conflicts of interest. Good corporate governance is vital for all businesses, but it holds particular significance for family-owned enterprises, where the overlap of family and business interests can create unique challenges. By implementing structured governance mechanisms, family businesses can enhance their longevity, refine their management,

and ensure smooth succession planning in line with international standards that preserve wealth for future generations.

The Unique Importance of Corporate Governance in Family Businesses

Successful family businesses, often owe their initial achievements to strong values and a long-term vision, can suffer from conflicts, lack of accountability, and inefficient decision-making if governance structures are weak. The blending of family dynamics with business operations can lead to favouritism, unclear roles, and disputes that hinder growth and stability. Unlike publicly traded companies, which are subject to external regulatory oversight, family businesses must self-regulate through strong governance frameworks to maintain fairness and efficiency.

Key governance elements such as clear ownership structures, defined roles and responsibilities, independent boards, and well-established succession plans are essential for mitigating risks and fostering professional management. When these mechanisms are in place, family businesses can operate with greater stability, ensuring continued success for generations.

Key corporate governance considerations and their benefits

Decision-making must be monitored by implementing adequate governance structures. This is done by (1) appointing advisory boards or independent directors to make objective, strategic decisions rather than emotional or biased ones, (2) establishing clear policies on ownership and management responsibilities to limit disruption to business operations, and (3)

implementing merit-based hiring and performance evaluations to attract and retain top talent. Furthermore, a succession framework is required to ensure that leadership transitions are well-planned, reducing uncertainty and ensuring business continuity across generations.

Family businesses that implement these frameworks will more than likely succeed in their ventures guaranteeing growth and a sustainable future, not by merely ensuring proper internal organisation, but also by fostering increased trust and credibility with foreign investors and potential business partners. Enhanced transparency and accountability fosters trust among both internal (employees and executives) and external stakeholders.

Good governance helps these businesses stay agile, ensuring that decision-making is aligned with industry best practices and long-term sustainability. Additionally, family businesses that adhere to governance principles are more attractive to financial institutions and strategic partners, enabling them to access better funding opportunities and expand their operations.

Moreover, with rising consumer expectations regarding ethical business practices, family enterprises with strong governance are better positioned to garner a positive reputation in the public perception. They can effectively manage environmental, social, and governance (ESG) concerns, ensuring compliance with regulations and fostering goodwill among customers and employees.

From an internal point of view, employees and executives are directly affected by a strong foundation of governance. It is not limited to clarity on authority and responsibility, rather it also impacts their morale, loyalty, and the quality of their work. A family business that tolerates lax behavior from decision-makers lays the ground for an absence of morale, integrity, and commitment within the workforce and the internal environment. Therefore, a governance framework does not only push a family business' success by driving up its revenue; it also increases output and reduces overheads when the workforce is held to a higher standard of operation.

Key Recommendations for Moving Forward

Pre-emptive measures in family businesses are critical in extracting the benefits and harmony of a family business. Existing businesses and newly formed businesses should consider governance early to prevent future complications. A family-business run by competent, transparent, and objective standards provides the opportunity to outperform unorganised family businesses and corporations alike. By adopting these governance improvements, family businesses in the UAE can reinforce their market position, enhance investor confidence, and sustain long-term growth in an increasingly competitive and globalized economy.

Conclusion

Corporate governance is the backbone of any successful business operations, and its importance is magnified in family-owned enterprises. By implementing structured governance mechanisms, family businesses can overcome unique challenges, promote professionalism, and ensure longevity. Strong governance fosters trust, financial stability, and smooth generational transitions, making it a critical investment for family businesses aiming for long-term success. Ensuring that governance frameworks evolve with the business's needs will safeguard its legacy and competitive advantage for years to come.

Cybersecurity and Reputation Risks for Family Office

Safeguarding Wealth in the Digital Age



David Yates
Partner, Head of Digital & Data
d.yates@tamimi.com



Noor Al Wari
Associate
n.wari@tamimi.com

Family offices are entrusted with managing substantial wealth and confidential data, making them lucrative targets for cybercriminals. However, beyond financial losses, a cyberattack can severely damage an ultra-high-net-worth family's reputation, erode trust, and trigger legal liabilities. Unlike large financial institutions with dedicated cybersecurity teams, family offices may operate with lean infrastructures, making them particularly vulnerable to sophisticated cyber threats.

In recent years, the global rise in cyberattacks targeting high-net-worth individuals and private wealth management entities has led to the urgent need for family offices to prioritize cybersecurity. Threats such as phishing, ransomware, and insider attacks can compromise sensitive financial information,

leading to unauthorized transactions, legal disputes, and reputational harm.

However, the consequences extend far beyond monetary losses, it includes data leaks exposing investment strategies, personal affairs, and business dealings that can attract unwanted attention, jeopardizing privacy and security.

The UAE has established a data protection law to enhance privacy and security across various sectors, including private wealth entities and family offices. While the UAE Personal Data Protection Law (PDPL) is not yet enforceable, compliance with its requirements can help strengthen data security frameworks and mitigate risks in the event of a cyber incident. The UAE has also implemented the Cybercrimes Law, which criminalizes cyber offenses; however, it does not impose compliance obligations on

family offices. Instead, family offices must proactively implement robust cybersecurity measures and adhere to relevant data protection regulations to mitigate risks and safeguard sensitive information.

Key Cyber Threats Facing Family Offices

There are various ways in which cyber attackers can take advantage of vulnerabilities to steal sensitive and confidential data, extort money, or access financial resources. Below are some strategies we've seen in recent years:

Phishing & Social Engineering

Attackers use phishing emails and impersonation scams to trick staff into revealing sensitive data or transferring funds. As cyber threats evolve, these tactics are becoming more sophisticated.

Deepfake technology adds a new layer of risk, with AI-generated videos or voices used to deceive victims into sharing information or carrying out transactions.

Ransomware & Data Extortion

Ransomware attacks involve encrypting a company's data and demanding payment to restore access. In many cases, attackers also steal sensitive information before encryption, threatening to leak it unless a ransom is paid. This double-extortion tactic increases pressure on victims, as it not only disrupts business operations but also risks exposing private financial details, leading to public scrutiny, reputational damage, and potential security threats

Insider & Supply Chain Threats

Insider threats can be either intentional or accidental, such as employees mishandling data or falling victim to phishing attacks. Additionally, working with external vendors introduces further risk, especially if their cybersecurity measures are weak. Since these third parties often have access to sensitive information, any vulnerabilities in their systems can become entry points for attackers, underscoring the need for robust due diligence and continuous monitoring of vendor security practices.

What's at Stake?

Cyber breaches can severely damage a family office's reputation, often with long-lasting consequences. Unlike large corporations

that may recover from such incidents through public relations strategies and brand resilience, family offices operate in environments where privacy and discretion are paramount. A single breach can compromise not only financial assets but also personal relationships, social standing, and legal positions.

Exposure of confidential information can reveal how family offices manage vast amounts of sensitive data, making them attractive targets for cybercriminals. A data breach can lead to the exposure of highly confidential information, such as wealth structures, inheritance plans, legal disputes, and personal security details.

Data protection laws across various jurisdictions require organizations, including family offices, to safeguard personal data. Non-compliance can result in regulatory investigations, substantial fines, and potential lawsuits. Family offices must proactively ensure data security, implement effective breach response protocols, and stay informed about evolving legal obligations to minimize legal and reputational exposure.

Data Protection Laws

The UAE among many jurisdictions has established comprehensive data protection laws that impose strict requirements on organizations handling personal data. Key obligations typically include:

- **Robust Data Security Measures:** Organizations must implement appropriate technical and organizational measures to

protect data against unauthorized access, loss, or breaches.

- **Breach Notification Procedures:** Prompt reporting of data breaches to relevant authorities and, in some cases, affected individuals, is often mandatory.
- **Cross-Border Data Transfer Rules:** Restrictions may apply to the transfer of personal data outside national borders, with conditions ensuring that data remains protected in international contexts.
- **Appointment of Data Protection Officers (DPOs):** For organizations engaged in high-risk data processing, appointing a DPO to oversee compliance and manage data protection risks may be required.

Data Protection Breach Notifications

Family offices must be prepared to respond swiftly and effectively to data breaches, not only to mitigate immediate damage but also to comply with legal obligations. Regulatory frameworks are developing beginning to impose strict breach notification requirements, which may include:

- **Prompt Reporting:** Organizations are typically required to notify data protection authorities within a specific timeframe, often between 48 and 72 hours after becoming aware of a breach.
- **Transparency with Affected Individuals:** If a breach presents a

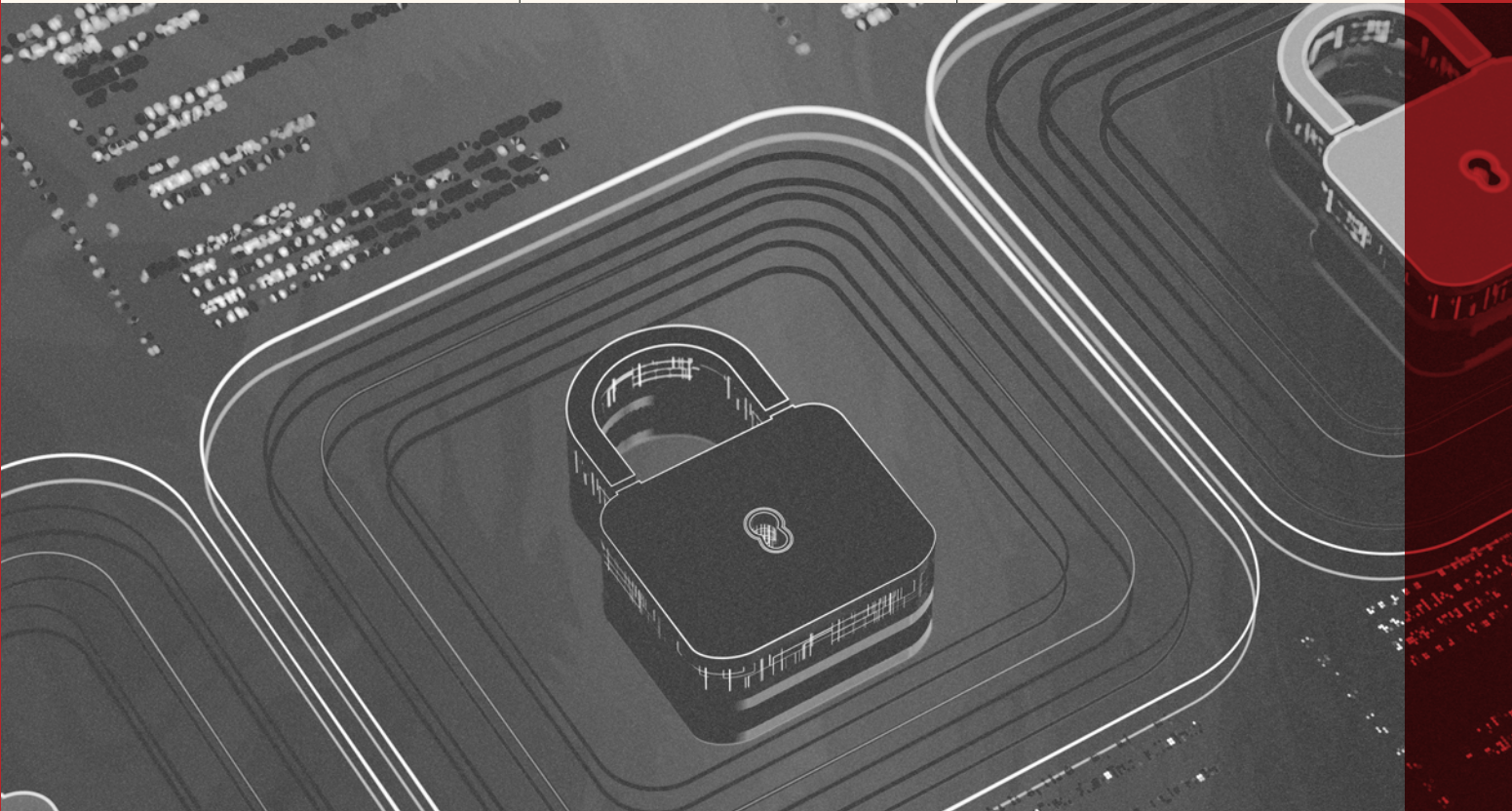
high risk to individuals' rights or freedoms, affected parties may need to be informed promptly. Notifications should include clear information about the breach, its potential consequences, and recommended protective measures.

- **Hacking and Unauthorized System Access:** Gaining unauthorized access to IT systems is a criminal offense, with severe penalties in place.
- **Phishing, Fraud, and Identity Theft:** Deceptive practices aimed at acquiring

imprisonment, reflecting the seriousness of cybercrime in the modern regulatory environment.

Strategies to Reduce Risks

Family offices face unique cybersecurity challenges due to the sensitive nature



- **Incident Documentation:** Maintaining detailed records of data breaches, including timelines, response actions, and decisions regarding notification, is essential for demonstrating compliance during regulatory audits or investigations.

Cybercrime Laws

In addition to data protection regulations, cybersecurity laws deter criminal activities in the digital space. These laws typically criminalize:

sensitive information or defrauding individuals are strictly prohibited.

- **Data Theft and Ransomware Attacks:** Stealing or encrypting data for financial gain is subject to criminal prosecution.
- **Illegal Publication of Confidential Information:** Unauthorized disclosure of private or sensitive data can lead to both criminal charges and civil liabilities.
- Penalties for violations often include substantial fines, asset seizures, and

of the data they manage and the often limited size of their operational teams. A proactive, multi-layered approach to cybersecurity is essential to mitigate risks effectively. This includes implementing robust technical measures, fostering a strong security culture, and preparing for potential incidents.

Strengthening Security

A strong security framework forms the foundation of any effective risk reduction strategy. Key measures include:

- **Adopting a Zero Trust Model:** This security framework operates on the principle of “never trust, always verify.” It assumes that threats can exist both inside and outside the network. Access to systems and data is granted based on strict verification processes, regardless of the user’s location. This minimizes the risk of insider threats and lateral movement within the network if a breach occurs.
- **Deploying AI-Based Threat Detection Tools:** Artificial intelligence (AI) and machine learning (ML) technologies can analyze large volumes of data to detect unusual patterns, suspicious activities, or potential threats in real-time. These tools enhance the ability to identify and respond to threats before they escalate.
- **Implementing Multi-Factor Authentication (MFA):** MFA adds an extra layer of security by requiring users to verify their identity using at least two different factors—such as a password and a mobile authentication app. This significantly reduces the risk of unauthorized access, even if login credentials are compromised.
- **Regular System Updates and Patch Management:** Keeping software, systems, and devices up-to-date with the latest security patches helps close vulnerabilities that attackers could exploit.

Training and Awareness

Human error remains one of the leading causes of cybersecurity breaches. Building a culture of security awareness within the family office is critical:

- **Educating Staff and Family Members:** Regular training sessions should be conducted to help all individuals—whether employees, executives, or family members—recognize common cyber threats such as phishing emails, social engineering tactics, and malicious attachments. Training should be tailored to different roles, with a focus on real-world scenarios.
- **Conducting Cyberattack Drills:** Simulated cyberattacks or “red team” exercises can help test the effectiveness of security protocols and the readiness of staff to respond to incidents. These drills can uncover gaps in security procedures and improve response times during actual breaches.
- **Promoting a Security-First Mindset:** Encourage an environment where security concerns can be raised without fear of blame. Open communication about potential risks helps identify threats early and fosters a proactive approach to cybersecurity.

Incident Response Planning

Despite the best preventive measures, no system is entirely immune to cyber

threats. Having a well-defined incident response plan ensures that family offices can respond swiftly and effectively when a security incident occurs:

- **Developing a Clear Incident Response Plan:** The plan should outline roles and responsibilities, communication protocols, and step-by-step procedures for identifying, containing, and mitigating security incidents. It should cover various scenarios, including data breaches, ransomware attacks, and insider threats.
- **Establishing an Incident Response Team:** Designate specific individuals or external partners responsible for managing security incidents. This may include IT staff, legal advisors, public relations professionals, and cybersecurity consultants.
- **Post-Incident Review and Continuous Improvement:** After an incident, conduct a thorough review to identify lessons learned and implement necessary improvements. This ensures that the response process evolves with emerging threats and organizational changes.

A New Era in UAE Family Law

Comprehensive Reform of Personal Status Laws



Dipali Maldonado
Partner
d.maldonado@tamimi.com



Ali Hiedar
Senior Associate
a.hiedar@tamimi.com

In a historic step that reflects the United Arab Emirates’ ambition to align its legal framework with international norms while addressing the diverse makeup of its society, the UAE has unveiled a sweeping reform of the 20 year old Personal Status Law No. 28 of 2005 (the “2005 Law”) by enacting Federal Decree by Law No. 41 of 2024 (the “2024 Law”), set to take effect on April 15, 2025, bringing significant changes to marriage, divorce, custody, inheritance, and more.

This legislative overhaul marks more than just procedural change—it signals a shift in cultural tone and legal philosophy, emphasizing clarity, fairness, and adaptability to modern realities.

Modernization and Clarity in Scope

Among the first noticeable updates is the formal adoption of the Gregorian calendar, replacing the lunar

calendar previously used in family law matters. Though seemingly administrative, this change aligns family proceedings with the broader UAE legal system and international standards.

More substantively, the 2024 Law clarifies its applicability to different groups. It applies to UAE nationals where both or one party is Muslim, and to non-UAE nationals unless any other law has been agreed to be applied, as permitted by legislation in force in the UAE. This removes previous ambiguity about the “choice of law” principle and opens the door for more personalized, culturally appropriate outcomes.

Marriage and Divorce: Greater Autonomy, Streamlined Process

The 2024 Law introduces progressive measures around marriage consent, age requirements, and divorce procedures. The minimum legal age for

marriage is now set at 18 (Gregorian) years, with court approval required for exceptions. Courts can also override a guardian’s refusal to approve a woman’s marriage, protecting women from undue paternal control.

On the divorce front, the 2024 Law acknowledges revocable and irrevocable divorce, giving couples more defined pathways to separation. It strengthens women’s rights by:

1. Reducing the waiting period for abandonment-related divorce from one year to six months.
2. Requiring verbal divorces to be officially documented within 15 days—failing which, the wife is entitled to alimony from the date of verbal divorce.
3. The 2024 Law introduces specific deadlines for filing a divorce due to lack of financial support: 30 days after a court

warning for payment, and 90 days if the husband is insolvent.

The 2024 also shortens the timeline for women seeking divorce on the grounds of abandonment or lack of intimacy, and it formally recognizes issues like alcoholism and drug abuse as valid legal grounds for divorce offering women more tools to exit unhealthy marriages with dignity and legal standing.

In cases of khula (divorce initiated by the wife), women can now return the dowry or pay a set amount to the husband. However, child custody and financial support cannot be negotiated away in exchange for divorce, reaffirming the UAE’s commitment to prioritizing children’s welfare.

With regards to the Family Guidance Department, the 2005 Law made the reconciliation step at the outset of a divorce mandatory for most cases. The 2024 Law enhances the role of the Family Guidance Department in resolving family disputes amicably before court referral and allows court discretion to refer matters, exempting issues like temporary alimony, custody, and guardianship disputes, thereby streamlining the process.

A Redefined Understanding of Custody and Parental Roles

Where the 2024 Law perhaps takes its most pronounced leap forward is in the realm of custody and alimony via the equalization of custody rights between mothers and fathers, with

custody now extending until the child reaches 18, regardless of gender. Under the 2005 Law, custody rights were limited by age and gender—typically until age 11 for boys and 13 for girls, although we note that in practice, the UAE courts have over the years used the child’s best interests to keep custody with mothers even beyond these ages.

The 2024 law puts children—and their best interests—front and center of the custody conversation. Children aged 15 and above can now express a preference for which parent they wish to live with, and both parents are permitted to travel with the child for up to 60 days per year. These updates recognize the evolving nature of co-parenting and the importance of maintaining strong relationships with both parents post-divorce.



Importantly, the 2024 Law addresses a major source of anxiety for mothers: losing custody due to leaving the matrimonial home. Under the new law, a mother will no longer forfeit custodial rights merely because she exits an unlivable situation—an important acknowledgment of the challenges women may face in post-divorce settings. Non-Muslim mothers also retain custody rights, regardless of religion, a major departure from previous norms that disadvantaged them on religious grounds.

Guardianship, Inheritance, and Financial Ethics

The 2024 Law also revises definitions around guardianship and trusteeship, ensuring that roles are clearly delineated and better aligned with the child's age and maturity level. Meanwhile, changes to wills and inheritance reflect a more modern and inclusive legal outlook:

1. A will is now defined as a legal act with posthumous effect—not merely a document for property devolution.
2. Muslims may now include non-Muslims in their wills meaning non-Muslim spouses married to a Muslim can now inherit from their Muslim spouse — something which was previously prohibited.
3. Inheritance is viewed as a composite of assets and financial rights, not just physical estate.

The 2024 also imposes stricter penalties for offenses like embezzlement of a minor or elder's funds, unauthorized travel with children, neglect of parents, and fraudulent inheritance claims. These provisions bolster the ethical and protective dimensions of family law, reinforcing the UAE's broader commitment to social responsibility.

Conclusion: A Promising Framework, Awaiting Interpretation

The Federal Decree by Law No. 41 of 2024 marks a pivotal evolution in UAE family law. It brings clarity, gender equity, and child-centric priorities to the fore, replacing outdated provisions with a framework that is better suited to today's multicultural and dynamic society.

Yet, with any new law, the true impact will emerge through judicial interpretation. How courts choose to handle family matters such as divorces, financial and custodial disagreements and inheritance matters, will ultimately define the 2024 Law's effectiveness. So, its true test will lie in its application, but its intent is clear: to protect the rights and dignity of families navigating the complexities of modern life in the UAE.

Succession Planning and Wealth Preservation in Uncertain Times

By Mourant Ozannes (Jersey) LLP



Ed Devenport
Partner,
Mourant Ozannes (Jersey) LLP



Fred Milner
Counsel,
Mourant Ozannes (Jersey) LLP

Families have always been concerned to ensure that their assets pass in accordance with their expectations and are protected, and their loved ones are looked after. These concerns have been heightened particularly by recent events which have led to an increased use of offshore¹ trusts and foundations by individuals in the GCC to protect assets against geopolitical risks. But many of their concerns, including the wish to protect those assets from claims by creditors on bankruptcy and former spouses on divorce, are universal.

As regards the type of arrangement, even if someone has a local personal or family office that assists with management and reporting, it may still be helpful to use different legal arrangements to deal with local and foreign assets. This article focuses on the foreign element and in particular, trust structures.

And, as with most things in life, it pays to get the right advice: we look at the importance of this first. We all know people who have saved money on legal fees because it was a 'simple' arrangement, using an offshore company, and everything worked fine... until it didn't. Through our litigation practice we see

an increasing level of fallout resulting from people not having taken proper advice and, frustratingly, albeit not for the litigators, it continues. It is surprising that we still see individuals (often very wealthy ones) whose succession plan is no more than signing blank share transfers or registering shares with a nominee, while leaving instructions to transfer them to others on the owner's death. This type of 'planning' does not work, as any such 'instructions' are not valid after death and anyone who acts on them could find themselves personally liable if the transfers are challenged by the rightful heirs.

¹In this article, we use 'offshore' to refer to four of the jurisdictions on which Mourant Ozannes advises, namely the British Virgin Islands, the Cayman Islands, Guernsey and Jersey, although much of what we say applies equally to many other offshore jurisdictions. Additionally, we advise on Luxembourg law.

The need for local legal advice

Before turning to the options for structuring foreign assets, it is useful to understand why local advice is always important. In fact, when we say local legal advice we mean two different things.

First, it means advice that is relevant to the person who wishes to arrange their personal affairs, particularly when this means either transferring assets into a new structure (such as a trust) or preparing testamentary arrangements, such as a will. In both cases there may be personal laws, in written legislation or other law, such as Sharia principles, that need to be taken into account.

Second, it means advice that is relevant to the asset in question. For example, there may be local laws that govern the ownership of real estate which prevent someone from transferring ownership in a certain way. In relation to business interests, there may be local laws, or shareholder agreements governed by local law, which again prevent certain transactions, and which will require the advice of a locally qualified lawyer. And, of course, advice needs to be implemented carefully and any structure maintained appropriately: governance and compliance are as important for succession planning as they are for a business.

The benefits of structures such as trusts

Subject to personal and local issues being resolved, there may be a high degree of flexibility available to a GCC resident who wishes to structure his or her foreign assets.

Our primary focus is on structures that can be established, and indeed tested, during an individual's lifetime; that planning is sometimes referred to as inter vivos. Inter vivos planning can be contrasted with testamentary planning, which is the use of wills. In fact, the two can be used in conjunction with one another.

Wills dealing with offshore assets can be useful for managing the succession to the shares in offshore companies and, in many cases, their use can accelerate the probate process, as the offshore probate procedure can start immediately. Without an offshore will dealing with assets in that jurisdiction, it is normally necessary to go through the relevant inheritance procedure in the local jurisdiction first, before an application can be made in the offshore jurisdiction. In fact, they can be used for any assets that are directly held by the individual, but it is important to bear in mind that there are limitations to the succession planning that can be achieved using wills. In most offshore jurisdictions, including Jersey, Guernsey, Cayman and BVI, succession to movable assets (such as company shares) is

determined by the law of the deceased's domicile.² That means that, where the deceased died domiciled in a jurisdiction which applies Sharia law, the gifts in a will dealing, for example, with shares in a company in any of those jurisdictions, must therefore comply with the Sharia law applicable in the jurisdiction of the deceased's domicile.

Another reason we see for creating lifetime trusts (rather than using a will) is to stress test the arrangements and, if necessary, amend them so that, once the settlor is no longer alive, they will have had the reassurance that the arrangements are already fit for purpose.

We look at possible different models below, but the potential advantages of a lifetime trust structure include the following:

- The structure will have a degree of separation from the principal's own assets, which may be helpful from an asset protection perspective. (An individual should not create a trust if there is a risk of insolvency, but if creditors appear some time later, or a different threat arises, it is possible that a pre-existing trust may provide a degree of protection.) However, the degree of asset protection which the structure is likely to provide will depend on its terms: a trust which reserves significant powers to the settlor will be less effective for this purpose, other

²Domicile' can be summarised as an individual's 'permanent home' and is determined by the application of a set of legal principles. An individual's domicile is not necessarily the same as their nationality or the country in which they happen to be living. Nationality and country of residence may also be relevant to succession planning.

things being equal, than one which gives all significant decision-making powers to an independent professional trustee.

- Subject to the proviso above regarding asset protection, the settlor³ can have, if required, a high level of involvement with the decision-making even after the assets have been placed into the trust.
- There is a high degree of flexibility around who can benefit and how. This is a key advantage of an offshore trust over a will in that it does not need to be valid under the laws of the settlor's home jurisdiction and it will have the benefit of the relevant firewall legislation (discussed further below) which creates much greater flexibility for succession planning. This can be of great benefit where a settlor does not wish to follow default succession rules precisely. In addition, it is possible to delay the transfer of capital to heirs if there is a concern about them receiving too much, too young.
- There may be an element of tax efficiency. Of course, this depends on the circumstances and specific tax advice must be taken.⁴

At the most fundamental, such arrangements should bring peace of mind: ownership and



management can continue even after the death of the principal, and the succession will happen as planned in accordance with the principal's wishes set down during his or her lifetime, without the need for complex and time-consuming probate processes. If the arrangements are accepted by the family during the settlor's lifetime, it may reduce the potential for disputes after his or her death.

Possible models and structures

Below are three possible models of increasing degrees of sophistication.

Model 1: this contains a trust, holding the assets directly. The trust can contain flexible terms for the management and distribution of the trust property. It can also contain powers for a protector⁵ to exert influence over the trust. At the most basic, that

might be a power to hire and fire trustees. If more sophisticated arrangements are required, there might be detailed powers for the protector to manage the trust's investments.

Model 2: this is as for Model 1, but an offshore holding company has been inserted to hold the assets: this is quite common. Additionally, a private trust company (or 'PTC') has been incorporated to act as trustee just for this family. There is not sufficient space here to discuss the pros and cons of PTCs in detail. In short, however, there has been a trend towards using PTCs with higher value structures (say over USD 50m) where the advisors believe this may provide some additional control and / or protection.

Model 3: this is as for Model 2, but there are multiple holding companies, and a separate entity (possibly a foundation) whose sole purpose is to act as the governance entity. In this

³Settlor' is the term for the person who transfers the assets into the trust.

⁴This article does not deal with tax: it is assumed that tax planning is not a primary motivator for the readers of this article. However, appropriate tax advice should of course be taken whenever it may be an issue.

⁵Protector' is not a legal term of art, but it is the term commonly used for a third party who has some degree of influence over the trust. The settlor of a trust can also be the protector.

way, the protector and PTC protections can still be included, but more complex governance discussions and decisions can take part in an entity that is outside the value structure: the foundation will not hold any assets. This separation of value and control may be useful in certain higher value and / or more complex situations and is similar to some family office arrangements.

Choice of structure and jurisdiction

Certain jurisdictions, for example, Jersey and Guernsey in the Channel Islands and Caribbean jurisdictions including the BVI and the Cayman Islands, have built a strong reputation over many years for the establishment and management of trusts and more recently, foundations.⁶

Key considerations when choosing a jurisdiction for a trust structure in respect of foreign assets may include:

- political and economic stability;
- a well-established legal system and judiciary;
- a strong local talent pool of lawyers, trustees and other advisors;
- ease of communication, to include time zone and air connections.

All four jurisdictions have enacted detailed conflict of laws⁷ provisions. While there are differences between



them, they all broadly provide that, where the law of their jurisdiction is chosen to govern the trust:

- that choice is valid, even if there is no other connection to the jurisdiction;
- all matters in relation to the trust are governed by the law of that jurisdiction;
- the trust cannot be challenged, nor can any transfers of property to the trust be challenged on the ground that a foreign law does not recognise trusts or that the trust defeats any forced heirship rights or rights conferred by a personal relationship to the settlor (such as marriage).

These are sometimes called the ‘firewall’ provisions and they provide a significant

degree of protection against attacks on offshore trusts on the ground that they defeat foreign forced heirship rights, for example.

Modification of information rights

Even with the benefit of the above firewall provisions, a common weakness of trusts established to avoid the application of forced heirship provisions in their local jurisdiction is that the heirs are typically also beneficiaries of the trust, so can normally obtain information about the trust as a beneficiary and use that information to assist in an attack on the validity of the trust in their home jurisdiction. For those clients who want a greater degree of protection in those circumstances, they should consider a structure which allows them to modify

beneficiaries’ information rights. That can be achieved using the STAR⁸ trust regime in the Cayman Islands, a foundation (in Jersey or Guernsey) or a foundation company (in Cayman).

This ability to modify or exclude beneficiary information rights can be a helpful tool in other circumstances as well, such as minimizing the disruption (and cost) that can be caused by a vexatious beneficiary. We have also assisted Muslim clients, who wish to ensure that they comply strictly with Sharia law, by treating the foreign assets in the trust as if they were still owned by the settlor during his or her lifetime, with the trust assets passing to the settlor’s Sharia heirs on death. In those circumstances, we have provided for the calculation and payment of zakat and for paying the settlor’s personal creditors from the trust assets when they pass away. Under normal trust law rules, the zakat beneficiaries and creditors may be treated as beneficiaries in those circumstances, with the rights to information (and rights to bring proceedings against the trustee to enforce their rights) which come with it. Those rights can be excluded or modified using a STAR trust or a foundation. With regard to the distribution after the settlor’s death, the trust deed can provide that the trustee is able to rely on an opinion from a Sharia expert by reference to Sharia inheritance certificate, where relevant, as to how the trust fund should be distributed.

The terms of the trust can also mandate that the trust fund may only be invested in Sharia compliant investments and provide for a Sharia expert or a Sharia investment committee, to investigate and adjudicate on the issue.

The use of foundations

A key distinction is that foundations are incorporated entities with a clear legal existence, whereas a trust is a legal relationship. Foundations are often attractive to those more accustomed to civil law, or to those who want the certainty of an identifiable legal entity.

These factors, and others, used either independently, or in combination, enable clients and their advisors to create bespoke structures, capable of achieving a wide range of outcomes.

Like families themselves, wealth structures are capable of infinite variety.

Conclusions

For GCC residents, it is often helpful to implement different succession arrangements for their local and foreign assets. Local personal advice is critical but where it is appropriate to set up an offshore structure in respect of assets held outside of the GCC, we have the expertise to help.

⁶Foundations may be established in Jersey, Guernsey and (with the foundation company) the Cayman Islands but not yet in the BVI.
⁷These are the rules which specify which laws are to apply to certain issues, in an international context.
⁸‘STAR’ stands for Special Trust – Alternative Regime, which is a creature of Cayman statute.

When you need real results, now.

World-class experts and regional
leaders in transformation, turnaround
and achieving bottom line impact.

AlixPartners



@AITamimiCompany



AI Tamimi & Company

www.tamimi.com



Scan to learn more about
our Family Business &
Private Wealth services

التميمي و مستشاركوه
AL TAMIMI & CO.

www.tamimi.com