DIFC

DIFC Family Wealth Centre
Thought-Leadership Series:

Understanding DIFC Trusts
A Comprehensive Guide

Message **from our CEO**

DIFC is home to more than 600 active entities affiliated with top family businesses. Among them are over 120 of the world's wealthiest families with a total net worth that exceeds USD 1trn.

These families value DIFC's platform to help them manage their wealth, protect assets and plan for succession. A DIFC Trust is an option that can benefit families in their legacy and wealth planning.

Whilst DIFC Trusts are growing in popularity, there is more we can do to raise awareness of what they are and why families should consider them. Therefore, the DIFC Family Wealth Centre and Equiom have produced this guide to help families learn about the trust structures in DIFC as a wealth and estate planning tool.

What is a trust? When does it make sense to set up a trust, for whom, and what are its benefits? Who is a trustee and settlor? How can you trust and enlist so much authority in the hands of a trustee? What is a trust deed and how should it be developed? We have ensured the guide covers these commonly asked questions so families feel more confident about considering a DIFC Trust.

The guide provides an in-depth look at DIFC trusts, explaining their structure, advantages, and the regulatory framework that supports them. It is an essential read for those considering the trust structures in their wealth management strategy to safeguard family assets and ensure smooth succession planning.

We trust this guide will empower families embarking on their legacy planning journey. As always, we are here to support you and your family.

Arif Amiri
Chief Executive Officer
DIFC Authority

About Equiom

For over four decades, Equiom has supported international corporations, high net worth individuals, and families worldwide with their fiduciary and related business support needs. With offices in numerous international finance centres, we operate as a truly global entity, offering a comprehensive suite of professional and business support services. We deliver those services 'The Equiom Way' – with passion, reliability, and responsiveness.

We take pride in using our global expertise, knowledge, and insight to create innovative and tailored solutions that drive our corporate and private clients towards their objectives. Upholding our vision to excel in trust and corporate services across key markets, we are renowned for our top-quality service, expertise, integrity, efficiency, and industry-leading business performance.

We aim to go beyond exceptional service to develop deep and long term client relationships, providing an unrivalled breadth of end -to -end solutions including trust services, foundations, Prescribed Companies, Private Trust Companies (PTCs), incorporation and entity maintenance, entity management, governance, risk & compliance advisory and solutions, and structuring.

Calling on the expertise and experience of Equiom's global team, the DFWC has selected us to partner with them to produce this four-part 'Thought-Leadership' Trust edition series which we hope you find informative. This initiative will delve into wealth management, inheritance and succession planning, legacy and estate planning, governance, and wealth structuring.

For information on the regulatory status of our companies, please visit **https://www.equiomgroup.com/regulatory**.

For more information or specific inquiries, please contact Akeela Bharuchi.

Akeela Bharuchi
Head of Middle East

akeelabharuchi@equiomgroup.com

Akeela is regional lead for Equiom in the Middle East, a member of the Middle East Boards and Authorised Individual for Equiom Fiduciary Services (Middle East) Limited. She has overall responsibility for the management, strategic direction and operation of the Middle East businesses across DIFC, ADGM, Dubai, Abu Dhabi, Qatar and KSA and ensuring that the businesses align with Equiom's group strategy.

A UK solicitor with over 12 years' experience in UK and the Middle East, Akeela specialises in advising international businesses and investors on a broad range of corporate commercial matters including market entry, company formation, structuring and restructuring, corporate governance, risk, and compliance.

She has worked with multinational clients and leading intermediaries from across the globe and has established herself as a trusted and resourceful advisor and leader.

She is committed to developing and growing Equiom's existing and new corporate service lines, supporting the wider business and building on Equiom's position as a market leader in the region.

Akeela is a member of the Association of Certified Counsel, STEP, SRA registered solicitor in England & Wales and member of The Law Society of England & Wales.

Introduction: **What is a trust?**

A trust is a legal arrangement in which one party, known as the settlor or grantor, transfers assets to another party, known as the trustee, to be managed for the benefit of one or more third parties, known as the beneficiaries. The reference to "legal arrangement" means that a trust, in a conventional sense and unless stipulated otherwise by applicable law, does not have legal personality itself. The trustee is charged with the fiduciary responsibility for protecting and managing these assets in the best interest of the beneficiaries.

A trust can be declared in a variety of forms but during the lifetime of the settlor this is done by way of a legal document, known as a "trust deed", that outlines the terms and conditions of the trust, including the powers and duties of the trustee, the identity and rights of the beneficiaries, the trust's purpose, the trust assets and the rules for managing and distributing the trust assets. The trust assets may include any movable or immovable property, and includes and rights and interests thereto, whether present or future and whether vested or contingent.

Key features of a DIFC trust

Selecting an appropriate jurisdiction is crucial, as it determines the regulatory framework, level of asset protection, confidentiality, and tax treatment, influencing the overall effectiveness of the trust.

The DIFC as a jurisdiction offers a robust legal framework for the establishment and administration of trusts, providing families and wealth managers with a sophisticated tool for asset protection, estate planning, and succession management. The DIFC Trust Law has been widely recognised by leading practitioners and academics as one of the best globally and, as a consequence, offers strong asset protection features, also safeguarding trust assets from creditors' claims and legal disputes. In addition, the DIFC's privacy framework also ensures high levels of confidentiality, protecting the privacy of the settlor and beneficiaries.

Trusts subject to DIFC law are created by any one of the following methods: (i) the transfer of property to another person as trustee during the settlor's lifetime, or by will or other disposition taking effect upon the settlor's death, (ii) by the transfer of property from one trust to another, (iii) by declaration by the owner of identifiable property that he or she is holding the property as trustee, (iv) by the exercise of a power of appointment to do so in favour of a trustee, or (v) by way of an instrument in writing including a will or codicil. Most importantly, DIFC trusts are not registered in the DIFC and no register of trusts is kept in the DIFC.

However, where a trustee of a DIFC trust is required to produce documentation, confirmation or certification evidencing the status of a DIFC trust or its beneficial ownership, control or beneficiaries, the DIFC Registrar of Companies can issue a certificate under Article 8 of the DIFC's Operating Regulations to a trustee evidencing the same. This is a unique feature of the DIFC trusts and very useful when dealing with licensing authorities or land

registries. For example, beneficiaries of a trustee of DIFC trust can request the Registrar of Companies in the DIFC to place the trust's beneficiaries on a separate private register and certified to this extent to other authorities. Any changes of beneficiaries by the trust outside what is certified with the Registrar will then be null and void, which provide authorities with certainty of beneficial ownership in this regard.

DIFC law has no formal requirements as to who can serve as a trustee of a DIFC trust and can be individuals, corporate entities, or professional firms. There are also no local presence or specific director requirements of corporate trustees.

Where a person acts as a trustee by way of business in or from the DIFC (typically when it acts as trustee for two or more trusts), it requires authorisation by the DFSA as a trust services provider. Also, a trustee of a DIFC trust must take reasonable steps to identify the ultimate beneficial owners of any party to the trust which is a body corporate, including the settlor, enforcer, protector, beneficiaries and any other person exercising effective ultimate control over the trust, keep records of the names and contact details of the agents and service providers engaged on behalf of the trust and disclose its status as trustee to financial institutions, lawyers and corporate service providers when engaging services on behalf of the trust.

Other key features of DIFC trusts include:

→ **Governance, Flexibility & Control**

DIFC trusts offer a high degree of flexibility, allowing settlors to tailor the trust to their specific needs and circumstances. For instance, settlors can retain certain powers, such as the power to appoint or remove trustees, amend the trust deed, or direct investments. This flexibility ensures that the trust can adapt to changing family dynamics and financial situations.

The settlor can reserve and restrict powers and interests to manage and control all investments and company activities (Part 10, Article 84).

The settlor can let the trust last in perpetuity or revoke the trust at any time (Part 10, Article 84).

DIFC trusts can enhance family governance by providing a formal structure for managing family wealth. Trust deeds can include provisions for family councils or committees, ensuring that family members are involved in decision-making processes. This promotes unity and reduces the likelihood of disputes over family assets.

→ **Asset Protection & Preservation of Wealth**

One of the primary advantages of DIFC trusts for families is asset protection. Trust assets are segregated from personal assets, protecting them from potential creditors, legal claims, and financial risks associated with the settlor or beneficiaries. This is particularly beneficial for families with business interests, as it mitigates risks associated with entrepreneurship and litigation. (Part 6, Article 50).

Trustees are legally obligated to manage trust assets prudently and in the best interests of beneficiaries.

This professional management ensures that family wealth is preserved and grown over generations. Trusts also protect assets from being dissipated due to poor financial decisions or mismanagement by individual family members.

→ **Succession Planning**

DIFC trusts facilitate seamless succession planning by clearly defining how and when assets are distributed, specifying conditions such as the beneficiary reaching a certain age, say 25, 30, or even 50 years old. It can also be set up to define distributions for specific purposes like education expenses or buying a first home. Distributions can be made in a lump sum or spread over time, for example, as a monthly or annual annuity, ensuring the money is used responsibly. This is particularly useful for children, young adults, or financially inexperienced beneficiaries.

This also avoids the complexities and uncertainties of probate processes, ensuring that family wealth is transferred efficiently and according to the settlor's wishes. This mechanism is especially valuable in jurisdictions where succession laws might otherwise override the settlor's intentions.

A trust can be set up in a way that controls Heirship rights conferred by foreign law shall not be recognised (Parts 2 and 3, Articles 15 and 16).

→ **DIFC Courts' Jurisdiction**

Judicial proceedings in matters of direction, administration, arbitration, and dispute are governed by the DIFC Court (Part 3, Articles 18-32). The DIFC legal framework ensures that sensitive information about the trust, its assets, and beneficiaries is kept confidential, shielding clients from unwanted public scrutiny and potential security risks.

DIFC trusts are particularly beneficial for families with cross-border interests. The legal framework is designed to accommodate international clients, providing flexibility in dealing with assets and beneficiaries located in different jurisdictions. This makes DIFC trusts an attractive option for global families seeking a unified approach to wealth management.

→ UAE Family Business Law Recognition and Protection

The UAE Family Business Law (FBL's) expressly recognises the enforceability of DIFC trusts and the jurisdiction of the DIFC courts in respect of family structures built around them. This recognition coupled with the disapplication of Shari'a succession principles for Muslims that make lifetime dispositions into these structures

→ Tax Efficiency

While DIFC trusts are not immune to the personal tax obligations of a settlor or beneficiaries in a country outside UAE, where they are tax resident (i.e. the UAE has no personal income tax liabilities, so the tax transparency principles have no individual tax consequences in the UAE), they offer significant tax planning opportunities to minimise tax liabilities of families, including inheritance tax, capital gains tax, and income tax.

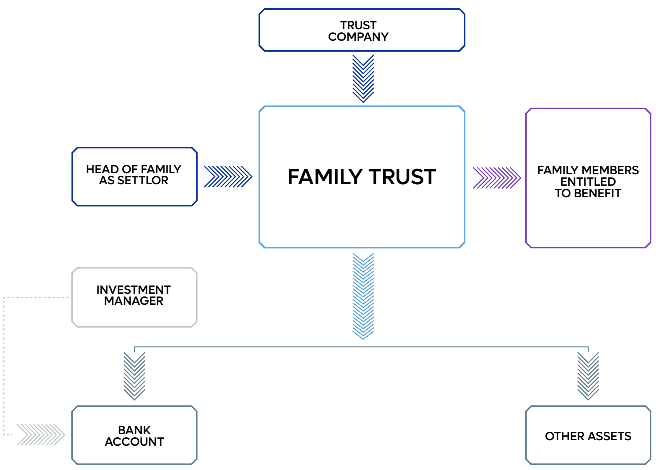
By utilising the UAE's favourable corporate tax regime applicable to "Family Foundations" (that includes trusts) and international treaties, families can optimise their global tax obligations.

→ Structure Examples

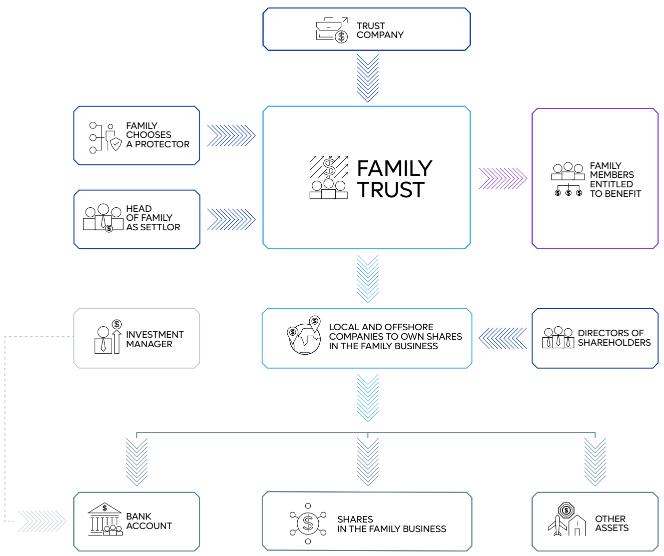
A trust structure can be quite simple when its purpose is to own single asset classes or more complex to provide wider functions, as illustrated below:

Typical Structure for individual family wealth

a. Simple structure



b. Complex structure



Understanding the intricacies of DIFC trusts and the legislative framework governing them is essential for effective family wealth management. DIFC trusts offer a powerful mechanism for families seeking to protect, preserve, and grow their wealth. With a robust legal framework, high levels of confidentiality, and flexibility in trust structures, DIFC trusts address the complex needs of modern families and provide strategic advantages in wealth management. By leveraging the benefits of DIFC trusts, families can ensure that their assets are safeguarded, efficiently transferred across generations, and managed professionally to achieve long-term financial objectives with confidence and security.

Frequently Asked Questions

Is a trust a legal entity?

No, a trust is not a legal entity in the same way that a corporation or a limited liability company (LLC) is. Unlike corporations or LLCs, a trust does not have a separate legal personality. It cannot enter into contracts or sue or be sued in its own name. Instead, the trustee acts on behalf of the trust.

A trust is a fiduciary arrangement in which the trustee holds and manages assets for the benefit of the beneficiaries according to the terms set out in the trust deed. This relationship imposes legal duties on the trustee to act in the best interests of the beneficiaries.

Who is the legal owner of the family assets in a trust?

A trustee is the legal owner of the trust assets, which may be direct ownership or by using holding companies or special purpose vehicles to own the family trading companies or real estate. The trustee is required to administer, manage, and control the trust assets but must do so in accordance with the terms of the trust deed for the benefit of the beneficiaries.

While the trustee holds legal custody of the trust assets, the beneficiaries have beneficial ownership, meaning they have the right to benefit from the assets according to the terms of the trust.

How much legwork should the Settlor do with the family before setting up the trust?

When setting up a trust, the Settlor (the person creating the trust) should consider several important factors and engage in thorough communication with family members. Some of the main factors to consider include the following:

→ **Objectives and Goals:**

The Settlor should clearly define the purpose of the trust. Is it for estate planning, asset protection, or charitable giving? Discuss these goals with family members to ensure alignment.

→ **Beneficiaries:**

Identify who the beneficiaries will be. Discuss their needs, financial situations, and any specific requirements they may have.

→ **Assets and Funding:**

Determine which assets will be transferred into the trust. Discuss this with family members, especially if certain assets are jointly owned or have sentimental value.

→ **Trustee Selection:**

Choose a trustee (the trust company responsible for managing and administering the trust). Discuss this decision with family members, as it impacts the administration of the trust.

→ **Communication:**

Openly discuss the trust's purpose, terms, and expectations with family members as far as is practical. Transparency helps prevent misunderstandings later.

→ **Legal and Tax Implications:**

Consult legal and tax professionals. Discuss potential tax consequences and ensure compliance with relevant laws. Remember that each family's situation is unique, so open dialogue and understanding are essential.

What ensures the trustee performs their duties as per founder/settlor wishes?

The trustee has a fiduciary duty to manage the trust assets prudently, as per the trust deed, and in the best interests of the beneficiaries. This duty includes loyalty, care, and impartiality.

Importantly, trustees should be licensed professional firms expert in carrying out the settlor's wishes. In Dubai, DIFC and DFSA authorise, license, and monitor trust companies to ensure they perform their duties according to DIFC trust law and within the regulatory requirements of DFSA.

What laws and rules govern a trust?

Trusts are governed by specific laws and regulations that vary by jurisdiction. In the DIFC, trusts are regulated by DIFC Trust Law and monitored by the DFSA.

What assets can be included in the trust?

A DIFC trust can own various types of assets both within and outside the DIFC jurisdiction. These assets may include:

1. **Cash:** Liquid funds held in bank accounts.
2. **Investments:** Securities, stocks, shares, bonds, and other financial instruments.
3. **Real Estate:** Property holdings, such as land, buildings, or residential/commercial spaces.
4. **Other Valuable Property:** Artwork, jewellery, intellectual property, and any other valuable assets.

Can we use a trust for our art collection and transactions (buying/selling)?

Yes

Can we use a trust for holding and managing our properties spread across mainland UAE, freehold destinations and in Europe?

Yes

Can legal entities also be beneficiaries?

When creating a DIFC trust, the founder (or settlor) has the flexibility to include legal entities as beneficiaries alongside individuals. These legal entities could be corporations, organisations, or other entities.

Trust 101: **Understanding the principles of a DIFC trust**

Components of a trust

A trust typically has these key components:

1. **Settlor/Grantor:** The person who creates the trust by transferring assets into it. They set the terms and conditions under which the trust operates.

2. **Trustee:** The individual or entity responsible for managing the trust assets in accordance with the terms set out by the settlor. Trustees have a fiduciary duty to act in the best interests of the beneficiaries.

3. **Beneficiary:** The person or persons who benefit from the trust. Beneficiaries receive income or assets from the trust according to the terms specified by the settlor.

4. **Trust Deed:** The legal document that outlines the terms and conditions of the trust, including the duties of the trustee, the rights of the beneficiaries, and the rules for managing and distributing the trust assets.

5. **Trust Assets:** The property or assets transferred into the trust by the settlor. These can include cash, investments, real estate, business interests, intellectual property, and more.

6. **Letter of Wishes:** The Settlor may wish to detail his/her particular requirements for the management and/or distribution of trust assets, once the Settlor has passed. The Letter of Wishes provides extra guidance for the trustees to follow, especially in complex or sensitive family circumstances.

7. **Protector:** The Settlor may wish to appoint a family confidant or professional advisor to assist the trustees in carrying out their duties. An example might be at times of family conflicts.

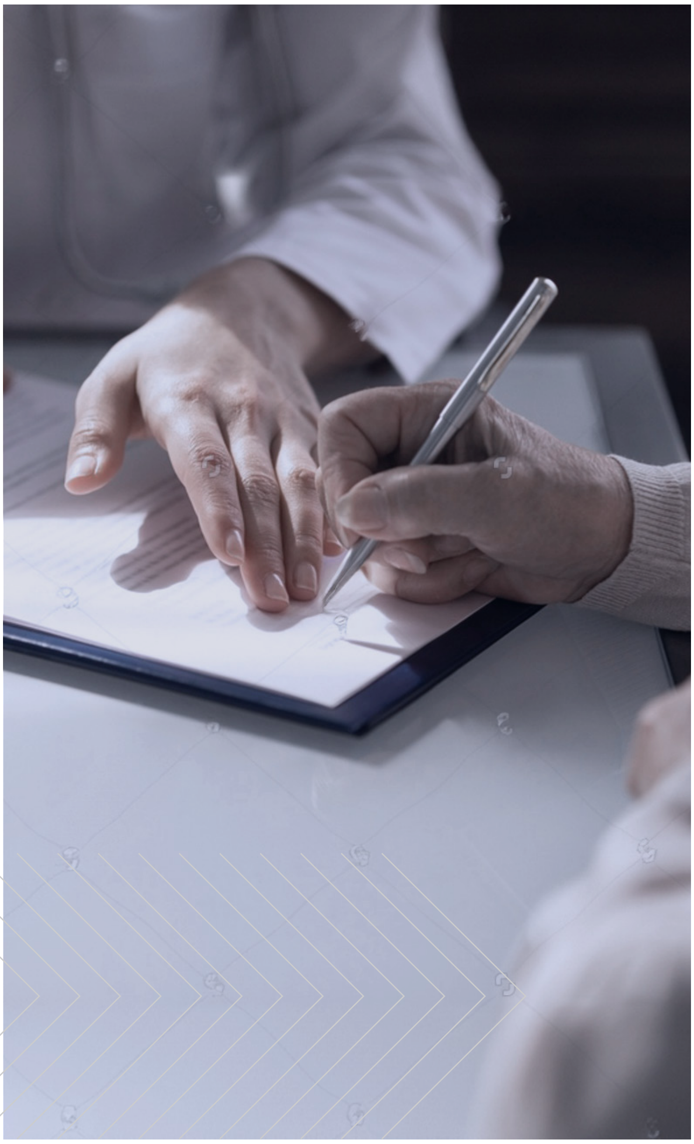
Involved parties in a trust

A trust has a clear separation of roles:

1. **Settlor/Grantor:** The person who creates the trust and transfers assets into it.

2. **Trustee:** The person or entity that holds legal title to the trust assets and is responsible for managing them.

3. **Beneficiary:** The person or persons who have equitable interests in the trust assets and who benefit from the trust.



Types of trusts

A trust has a clear separation of roles:

1. **Revocable Trust:** Also known as a living trust, this type of trust can be altered or revoked by the settlor during their lifetime. It allows for flexible management of assets and can help avoid probate.

2. **Irrevocable Trust:** Once established, this type of trust cannot be easily altered or revoked. It offers greater asset protection and tax benefits, as the assets are no longer considered part of the settlor's estate.

3. **Testamentary Trust:** Created through a will and only comes into effect upon the settlor's death. It is often used to manage and distribute assets to beneficiaries according to the settlor's wishes.

4. **Special Purpose Trusts:** These include charitable trusts, spendthrift trusts, special needs trusts, and others designed for specific purposes or to benefit specific individuals.

Purposes and Benefits of a DIFC trusts

1. **Asset Protection:** Trusts can protect assets from creditors, lawsuits, and other risks, especially when structured as irrevocable trusts.

2. **Estate Planning:** Trusts facilitate the orderly transfer of assets to heirs, helping to avoid probate and potentially reducing estate taxes.

3. **Wealth Management:** Trusts allow for professional management of assets, ensuring they are invested and distributed according to the settlor's wishes.

4. **Tax Planning:** Trusts can provide tax advantages, such as reducing estate and gift taxes, and can also help manage income tax liabilities.

5. **Confidentiality:** Trusts can keep the details of an estate private, as they are not subject to public probate proceedings.

6. **Control and Flexibility:** Trusts give the settlor control over how and when beneficiaries receive assets, which can be especially useful for managing wealth across generations or for beneficiaries who are minors or have special needs.

Additional Considerations

1. **Legal and Regulatory Compliance:** Setting up and managing a trust requires adherence to the DIFC legal and regulatory frameworks.

2. **Professional Advice:** Establishing a trust often requires professional advice from lawyers, financial advisors, and tax professionals to ensure it meets the settlor's goals and complies with relevant DIFC laws.

3. **Costs:** Trusts can involve setup and ongoing management costs, which need to be weighed against the benefits they provide.

DIFC Authority
+9714 362 2222
(Monday to Friday 08:00am - 04:00pm GST)
www.difc.com

DIFC Family Wealth Centre
+971 4 362 2223
(Monday to Friday 08:00am - 04:00pm GST)
familywealth@difc.ae
https://www.difc.com/ecosystem/difc-family-wealth-centre

DIFC Courts
+971 4 427 3333
(Monday to Friday 08:00am - 04:00pm GST)
+971 4 427 3331 (for emergencies)
registry@difccourts.ae
www.difccourts.ae

DIFC Courts Will Service
+971 4 404 8888
(Monday to Friday 08:00am - 04:00pm GST)
willservice@difccourts.ae