

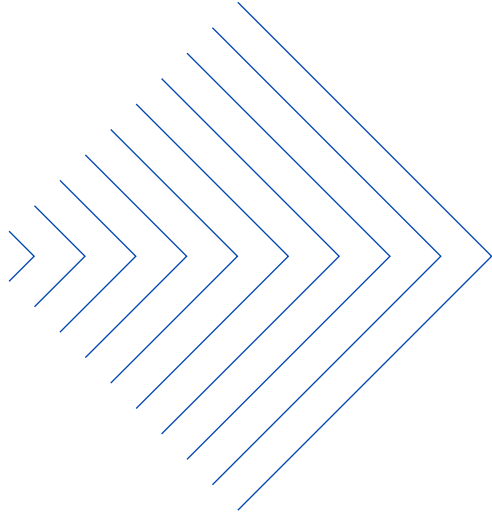
DIFC Family Wealth Centre
Guide Series:

Understanding DIFC Foundations

A Key Tool for Wealth Structuring and Legacy Planning



Message from our CEO



DIFC Foundations have emerged as a premier choice for regional wealth structuring and inter-generational legacy planning. They blend the functional characteristics of both companies and trusts, creating a unique and versatile tool for asset management.

DIFC Family Wealth Centre and M/HQ have produced a guide that helps families learn about DIFC Foundations as a wealth and estate planning tool.

We cover a range of commonly asked questions such as: What is a DIFC Foundation? What are the purposes and benefits of setting up a DIFC Foundation? What are the different roles and responsibilities within the Foundation, such as a Founder, Council Member, Guardian and Registered Agent? What are the ongoing regulatory and compliance requirements for a DIFC Foundation?

The guide provides an in-depth look at DIFC Foundations, explaining their structure, advantages, and the regulatory framework that supports them. It is an essential read for those considering the structuring of 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. And as always, we will be supporting you and your family throughout the process.

Arif Amiri
Chief Executive Officer
DIFC Authority



About M/HQ

M/HQ is a multi-services platform catering to successful individuals and international families. Our one-stop-shop offering is unique in the Middle East: a holistic and cross-disciplinary combination of a market-leading corporate services firm, a private client specialist team and a regulatory & compliance services practice, all through one single platform.

M/HQ have extensive experience advising on a broad range of wealth structuring and legacy planning issues. We particularly assist

in establishing and servicing Family- and Group- Holdings, Single- and Multi- Family offices, Foundations and other asset consolidation/ protection and intergenerational wealth management structures.

Headquartered in the United Arab Emirates, M/HQ is an entrepreneurial firm for entrepreneurial clients.

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Introduction: What is a DIFC Foundation?

A Foundation is an independent legal entity with its own distinct legal personality, similar to a company but without shareholders or owners. It does not issue shares or other legal titles of ownership, making it an 'orphan' structure. Governed by its Charter and By-Laws, a DIFC Foundation is typically managed by a Foundation Council and/or by the Founder, if the latter wishes to have reserved powers. If a Foundation is established for a purpose (e.g. a charitable purpose) it must also be supervised by a Guardian.

DIFC Foundations are governed by the DIFC Foundation Law No. 3 of 2018 ("DIFC Foundations Law") and offer a flexible, secure, and effective solution for asset protection, legacy planning and wealth management. DIFC Foundations also enable families to achieve goals such

as supporting philanthropic causes and specific estate planning objectives, making them an invaluable tool for both regional and international families.

Beyond the bespoke laws such as the DIFC Foundations Law, DIFC has developed its ecosystem with privacy at its core. This ecosystem includes best in class data protection legislation, a Private Register enabling qualified family businesses to keep key stakeholder information confidential, a globally unique privacy vault (in lieu of a UBO register) and statutory recognition of private dispute resolution in relation to family businesses. This emphasis on privacy is a significant draw for those seeking secure wealth management solutions.

Key features of a DIFC Foundation: wealth preservation, succession and philanthropy

Foundations serve several crucial functions in wealth preservation. Firstly, they establish a legal structure separate from the personal assets of the Founder, shielding the Foundation's assets from personal liabilities, lawsuits, and creditors. This segregation ensures the safeguarding of wealth from potential risks. Moreover, Foundations are designed to exist in perpetuity, ensuring the preservation and growth of wealth across generations. By establishing clear guidelines and governance structures, Founders can ensure that the Foundation's assets are managed prudently to sustain its mission over time.

Successful family governance and succession planning is achieved when introducing Foundations to the family business structure. Engaging family members in the Foundation's operations and decision-making processes helps instill shared values and ensures continuity in wealth management.

Foundations also serve as educational tools for future generations, providing opportunities for family members to learn about philanthropy, financial management, and social responsibility. By involving family members in the Foundation's activities, Founders can impart valuable lessons and prepare them for responsible stewardship of wealth.

One of the most valuable features of Foundations is the possibility of them being qualified as tax transparent vehicles, thereby enjoying corporate tax-exempt status.

This tax advantage allows wealth to grow efficiently within the Foundation, maximizing the impact of charitable giving and other wealth preservation and succession strategies.

Foundations can play a vital role in wealth preservation by offering a secure and tax-efficient structure for managing assets, supporting philanthropic endeavours, and preserving a family's legacy for generations to come. Through careful planning and governance, Foundations ensure that wealth is protected, grown, and used to make a meaningful impact on society while fostering family unity and values.

Foundations provide a robust solution for navigating the complexities inherent in managing complex family structures. They not only serve as guardians of assets but also as facilitators of inter-generational wealth transfer and the realization of philanthropic aspirations. Through meticulous planning and governance, Foundations stand as beacons of security, continuity, and a legacy that endures across generations.

Foundation members: roles and responsibilities

In the structure of a DIFC Foundation, various stakeholders play critical roles, each with distinct responsibilities that ensure the Foundation operates effectively and fulfills its objectives.

Founder:

The Founder is the individual or entity that establishes the Foundation. The Founder's primary responsibilities include defining the Foundation's purpose, setting up its Charter and By-Laws, and determining the initial governance structure. The Founder may also retain significant control over the Foundation, by retaining certain powers over the management of the Foundation.

Foundation Council:

The Foundation Council acts as the governing body, similar to a board of Directors in a company. Members of the Council are responsible for the overall management and administration of the Foundation's affairs. Their duties include implementing the Foundation's Charter and By-Laws, making decisions regarding the Foundation's investments, disbursements, and other activities, ensuring compliance with relevant laws and regulations, and protecting the Foundation's assets.

Guardian:

The Guardian is an individual or entity appointed to oversee the Foundation Council and ensure that the Foundation adheres to its stated purpose and governance principles. A Guardian must be appointed if a Foundation is established for a purpose, e.g. a charitable purpose, but may also be appointed to provide an additional layer of governance for other types of Foundations (i.e. those that benefit a specific person or class of persons, such as family members). The Guardian's responsibilities include monitoring the Council's activities and decisions, ensuring that the Council carries out its functions, and providing an additional layer of oversight and accountability.

Registered Agent:

A registered agent is a corporate service provider, licensed by the DIFC Authority to facilitate the registration and ongoing compliance of the Foundation, and that is also registered with the DIFC Financial Services Authority as DNFPB (designated non-financial business or profession). A Foundation may appoint a Registered Agent to assist with the incorporation and registration of the Foundation; to ensure that the Foundation meets all regulatory and compliance requirements; and to serving as a point of contact between the Foundation and regulatory authorities.

Qualified Recipients:

Qualified Recipients are the individuals or entities that benefit from the Foundation's assets and activities. They can be specific people named by the Founder or broader groups defined in the Foundation's purpose. Qualified Recipients' roles are generally passive, but they are central to the Foundation's mission and objectives.



Case Study: DIFC Foundations for complex family structures

Family background and situation (example)

The family branch is led by a patriarch and includes children from his deceased wife, along with their respective children, and his current wife, along with her respective children. The patriarch establishes a DIFC Foundation to manage and protect the family wealth and assets for current and future generations.

Possible structure through a DIFC Foundation

Consolidation and Segregation of Assets:

The family's assets can be managed under a centralised Foundation structure. The Foundation can oversee and administer assets/funds and it may also establish entities beneath it to further segregate assets. For example, the Foundation may establish DIFC PCs to hold specific assets for asset(s) segregation purposes, enabling certain assets to be allocated to each family branch.

Protection from Ownership and Legal Issues:

Assets are shielded from direct familial ownership, offering protection against probate and potential creditor actions. Operational Control: The family, inclusive of the patriarch, can retain operational control over assets and entities housed within the Foundation structure, thereby maintaining familial stewardship.

Distribution Protocol:

Distribution of proceeds adheres to an established distribution policy within the Foundation's Charter/By-Laws, ensuring alignment with predetermined directives.

Efficiency Through Jurisdictional Focus:

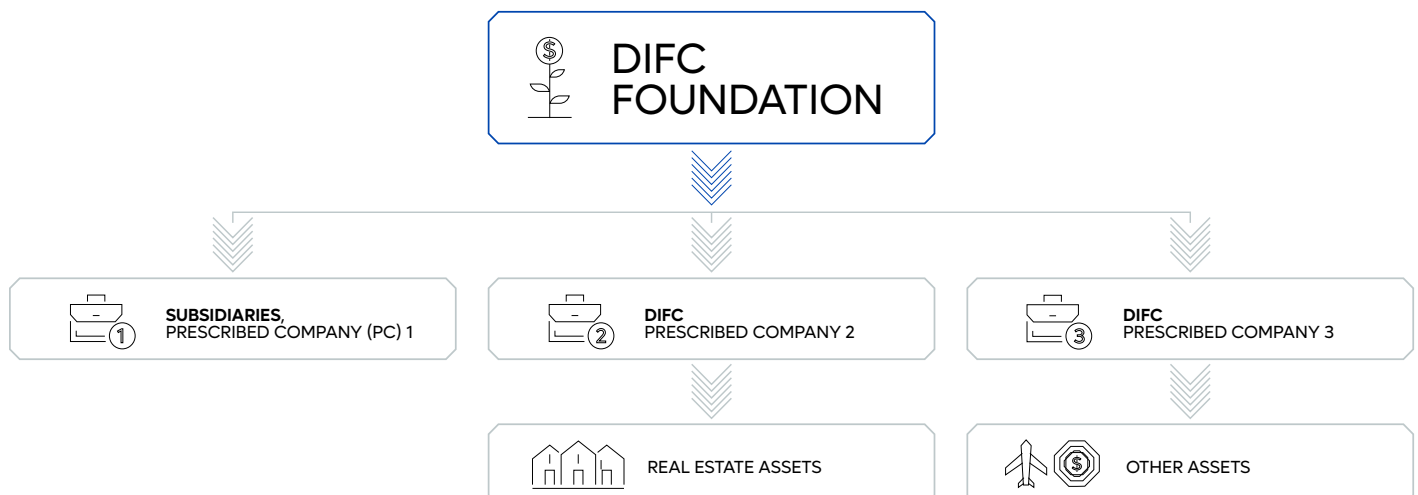
Operating within a single jurisdiction expedites decision-making processes, minimizing bureaucratic delays and fostering operational efficiency.

Mechanics of Asset Allocation:

The Foundation's Charter/By-Laws serve as the bedrock, defining the allocation of assets to each family branch, thereby ensuring transparency and fairness. Oversight of asset management and distribution is entrusted to the Foundation Council, ensuring compliance with the Founder's wishes and legal requirements. Additionally, the appointment of a Guardian, if warranted, ensures alignment between the Council's decisions and the Foundation's overarching objectives.

Ringfencing assets:

The DIFC Foundations Law has recently been updated to include extensive "firewall" provisions, considered as globally best in class, which protect settled assets of the Foundation from foreign judgments and claims that seek to circumvent DIFC laws that would otherwise protect the Foundation's assets.



¹The DIFC Prescribed Company ("PC") is a private company which can be established as a passive holding company vehicle pursuant to the DIFC Prescribed Company Regulations.

Testimonials

Dubai-based Emirati Family

“As a UAE national family, we are grateful for having established our DIFC Foundation at the right time. When our father passed away last year, we were expecting to experience significant challenges and disruption to management of the group’s affairs. However, since all our family’s major assets were transferred to the Foundation during the Patriarch’s lifetime (Hiba), we managed to have a smooth transition. Only a couple of administrative tasks had to be undertaken - e.g. updating the DIFC Authority and Banks, but business management continuity was achieved. The Foundation is managed by all 2nd generation siblings to this day, with the support of the region’s leading multiciliary.”

Foreign Family Dubai nexus

“Our family has established family Trusts abroad more than 10 years ago. Unfortunately, we had to replace our foreign-based Trustees. Following a multi-jurisdiction analytical study, we opted for the DIFC. Following advice from a DIFC Family Wealth Centre accredited advisor, we established a Purpose Foundation in the DIFC, to act as Trustees of our existing Trusts. This structure was highly favorable as it allowed us to transfer funds directly under the Foundation, avoiding significant tax implications.”

Dubai-based Emirati Family

“Our family struggled for years to attempt to find the right structure to protect our wealth. Implementing our DIFC Foundation has been invaluable for our family. It provides a secure framework to safeguard our assets for future generations while allowing us to fulfill our vision. This structure ensures that the Patriarch’s legacy endures with clarity and purpose.”



Frequently Asked Questions

1. What are the options for dispute resolution within the Foundation?

The DIFC provides a variety of options for resolving disputes within a Foundation:

→ Mediation:

This approach involves a neutral third-party mediator who facilitates communication between the parties and assists in reaching a mutually agreeable resolution. Mediation is a non-binding resolution process.

→ Arbitration:

A unique feature of the DIFC Foundations Law is statutory recognition of private arbitration in resolving family disputes. By incorporating binding arbitration provisions in the Foundation's governing documents, parties can opt for a private resolution process conducted by an

arbitrator; and

→ Court Litigation:

Families/Parties can bring disputes before the DIFC Courts, which operate under a common law framework renowned for its efficiency and adherence to international standards.

2. Can I establish different classes of beneficiaries with varying distribution rights?

Yes, DIFC Foundations permit the establishment of different classes of beneficiaries or Qualified Recipients with varying distribution rights. The Foundation's governing documents (the Charter/By-Laws) can specify the classes of beneficiaries, their entitlements, and any conditions for receiving distributions required by the family's patriarch/matriarch or a principal.

3. Can a DIFC Foundation be tailored to accommodate

Islamic inheritance laws for my family?

Yes, a DIFC Foundation can be tailored to accommodate Islamic inheritance laws. It is highly recommended to consult with a lawyer well versed in DIFC Foundations and Islamic inheritance law to ensure proper integration within the Foundation's governing documents and compliance given the DIFC regime.

4. Are there any compliance and regulatory reporting requirements once a DIFC Foundation is established?

DIFC Foundations are subject to ongoing compliance and regulatory reporting requirements, including:

→ Registered Office Address:

A Foundation must maintain a registered office address within the DIFC. The Foundation may either

obtain its own leased premises within the DIFC or alternatively appoint a DIFC registered agent for the purposes of providing a registered office address. The registered agent can provide the required address within the DIFC and may also act as a liaison contact with the DIFC authorities, ensuring the Foundation adheres to all relevant regulations;

→ General Compliance Obligations:

The Foundation Council or registered agent (if any) is responsible for ensuring that the Foundation complies with the DIFC's legal framework, including Anti-Money Laundering ("AML") and Know-Your-Customer ("KYC") requirements.

→ Annual Financial Statements and Reports:

A Foundation Council must ensure that accurate



accounting records are kept for the Foundation. The Foundation must maintain annual financial statements and ensure they are available. Within thirty (30) days after the accounts have been approved by the Council, the Foundation must either:

- a. If it has not appointed a registered agent, file a copy of its annual accounts with the Registrar; or
- b. If it has appointed a registered agent, provide a copy of its annual accounts to the Registered Agent;

→ **Reporting Significant Changes:**

Any significant changes to the Foundation's structure, beneficiaries, or governing documents must be reported to the DIFC Registrar within a period of thirty (30) days after such amendment.

→ **Legal and Regulatory Framework:**

The DIFC jurisdiction is governed by common law principles and has

established common law commercial courts, which operate in English and independently of the civil law onshore courts of the UAE. The DIFC also has its own two-tier court system: the Court of First Instance and the Court of Appeal. Furthermore, the DIFC Courts have their own rules of court procedure, which are broadly based on the English Civil Procedure Rules. A small claims tribunal can also hear claims up to AED500,000.; and

Specific compliance obligations may vary depending on the Foundation's activities. Therefore, it is essential to refer to the DIFC Foundations Law and consult with a lawyer to receive tailored guidance based on the readers' unique circumstances.

5. Is a DIFC foundation prohibited from carrying out any specific types of activity

DIFC Foundations are restricted from engaging in certain activities, including:

a. Commercial activities: DIFC Foundations cannot engage in any commercial activities, other than those necessary for, and ancillary to its purpose/objects. For instance, a Foundation cannot hold itself out to third parties to provide e.g. family consultancy services; and

b. Regulated Activities: Any activities regulated by the Dubai Financial Services Authority ("DFSA"), including banking or insurance activities, are prohibited.

6. Can I collect, buy and sell art via a DIFC foundation?

Yes, a DIFC Foundation can be used to collect, buy, and sell personal art collection/s. This offers benefits such as asset protection and potentially streamlined management of the personal art collection. However, the Foundation cannot engage in commercial art dealing. DIFC Foundations are not intended to run a business

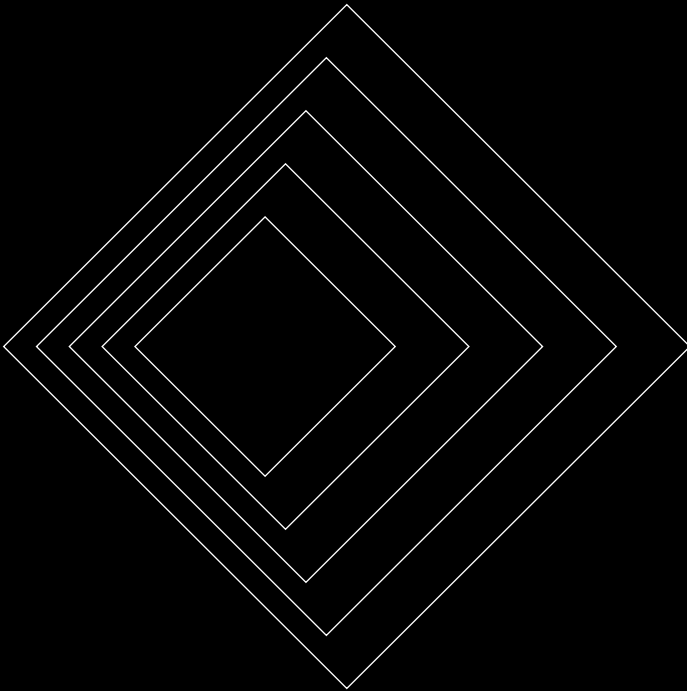
directly. While you can own and manage an art collection, actively buying and selling art primarily to generate profit may be considered a commercial activity and fall outside the scope of the Foundation's permissible activities.

7. Can a DIFC Foundation be used for holding assets for a family business? And can it be used for the succession planning of the family business?

Yes, although DIFC Foundations are not designed for commercial activities they can, hold assets of a family business or investment company.

Moreover, DIFC Foundations are a valuable tool for family business' succession planning. By holding the ownership structure or assets of the business within the Foundation, one can establish clear rules for inheritance and management control ensuring a smooth transition and continuity of the family business.





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