

A SENSE OF PURPOSE: DIFC EXPANDS SCOPE OF ITS FOUNDATIONS REGIME IN LANDMARK FIRSTS

The Dubai International Financial Centre [DIFC] did it again. Since its establishment as a special economic zone in 2004, the DIFC has been at the forefront of innovation, continuously dedicating itself to improving its proposition and making a positive impact on the regional business ecosystem and beyond.

Over the years, the DIFC has led a legacy planning (r)evolution by introducing an array of innovative wealth management tools aimed at families. The breakthrough DIFC Trust, Foundation regime, Prescribed Company regime, as well as Fund regime all contributed to making the DIFC a globally recognised wealth management centre.

DIFC Regulatory initiatives were aplenty in 2023: the launch of the Family Wealth Centre, the introduction of a simplified Family Office regime – Family Arrangements Regulations –, and anticipated imminently, a further revision of the Trust and Foundations Laws, taking asset protection in the centre to another level.

Yet another significant landmark was achieved in practice: the approval of the **first DIFC Purpose Foundations**. In both these cases, the DIFC Purpose Foundation acts as a Trustee of a DIFC Trust.

No Beneficiaries = plenty of benefits

The main feature that distinguishes a Purpose Foundation¹ from a Private Foundation, as explicitly suggested by its name, lies in its functionality: it is created to fulfil a specific object, e.g. to hold assets for a purpose, without conferring any benefit upon any specific persons. The main objective of a conventional, Private Foundation is to hold and manage assets for the benefit of its Beneficiaries – defined persons, nominated individually or as a class of persons in the Foundation’s documents. A Purpose Foundation is spared of the necessity to have Beneficiaries.



1. Legally formalised by Article 12(2)(b)(i) of the DIFC Foundations Law DIFC Law No. 3 of 2018: a Foundation may be established for objects which are not exclusively charitable, in contrast to objects benefitting persons by name, category or class, which are at the core of Private Foundations, or be a combination of both.

Although having identified or identifiable Beneficiaries is what makes the Private Foundation concept viable, the fiduciary duty of the Foundation's Council is owed to the Foundation rather than the Beneficiaries. Similarly for a Purpose Foundation, since its objective defies the need for it to have defined Beneficiaries [which resonates with the 'non-charitable purpose trust' regime], the fiduciary duty of the Council Members of a Purpose Foundation is owed to the Foundation itself².

Purpose Foundations provide families with an enhanced level of privacy and an additional layer of asset protection

Having no Beneficiaries attached to a Purpose Foundation *de facto* invalidates any claims that any particular person has a vested interest, legal or beneficial, in the property or income of the Foundation, thereby offering an additional layer of asset protection from attacks by creditors and other third parties. Purpose Foundations are an optimal structuring tool in financial transactions, where the isolation of financial risks is essential; they can be effectively used for asset financing or holding the shares of a securitization vehicle or a Private Trust Company – all while providing a greater level of confidentiality.

DIFC Foundations as a Trustee

The ground allowing a DIFC Foundation to act as a Trustee of a Trust was laid in 2020, when the DIFC Court of Appeal ruled on the interpretation³ of DIFC Laws and Regulations, to clarify – among others –

that under Article 10 of the DIFC Foundations Law, a DIFC Foundation, which by Article 10(2) has all the powers of a natural person, is *not* prohibited from acting as a Trustee. In other words, besides being able to conduct its activity of a Foundation, DIFC Foundations are **legally permitted** to hold property as a Trustee of a DIFC Trust or any other Trust.

The assets transferred to a DIFC Foundation that acts as a Trustee are *not* “property of the Foundation”⁴ and are to be dealt with in accordance with the terms of any trust upon which they are held.

First DIFC Purpose Foundations as Trustees

Working hand in hand with the DIFC Registrar of Companies, M/HQ recently acted in **two landmark firsts, implementing DIFC Purpose Foundations** acting as a Trustee.

In the former, the Foundation was established to formally hold the [liquid] assets of a newly-formed DIFC Trust, set up to provide a flexible mechanism to remunerate key employees of the corporate settlor. The Foundation, in its role as the Corporate Trustee, is responsible for overseeing, managing, and approving the release of funds to a class of Trust Beneficiaries, which includes former and current employees of the corporate settlor, upon meeting certain pre-set KPIs.

In the latter, the Foundation was established to address the needs of a sophisticated family for the effective management of family wealth held by the DIFC Trust.

2. *It is pertinent to mention that if circumstances change and/or a necessity arises, a Purpose Foundation retains the flexibility, by amending its Charter, to morph into a Private Foundation with assigned Beneficiaries.*
3. *The Dubai International Financial Centre Authority [2020] DIFC CA 002; <https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/dubai-international-financial-centre-authority-2020-difc-ca-002> - accessed on 24th October 2023.*
4. *As it must be clearly provided for in its Charter.*



Critically, none of the registered Foundations were required by the Authority to nominate Beneficiaries. Utilizing Purpose Foundations rather than Private Foundations to act as a Trustee of a Trust allowed the client/s to benefit from increased asset protection and confidentiality.

Trailblazing the Future

By allowing these landmark firsts - Purpose Foundation acting as a Trustee of a specific Trust or coordinating the administration of several family Trusts -, the DIFC has proven yet again being refreshingly open to innovation and stakeholders' input.

It has also created a model likely to be replicated: an arrangement providing families considering setting up private wealth structures in the UAE with an enhanced level of confidentiality and security [the risks inherent to having an institutional Trustee that typically operates many independent Trusts is eliminated].

Each Family is also flexible in addressing its specific needs. The Council of the Purpose Foundation acting as a Trustee and running the Trust's day-to-day management will usually be composed of family members alongside the family's trusted advisors and fiduciaries, thereby instilling the long-established family's dynamics, values, and goals into the family's structure.



Kath Zagatti,
Lead Partner / Legacy
zagatti@m-hq.com



Ksenia Shvalova,
Relationship Manager - Private Clients
shvalova@m-hq.com

WHO WE ARE

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.

We 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 UAE, we are an entrepreneurial firm for entrepreneurial clients.