

# The DIFC's New Private Wealth Management and Succession Planning Regime

Private Client



## Introduction

The Dubai International Financial Centre (the “**DIFC**”) has recently enacted two new sets of laws with the aim of improving and expanding the existing private wealth management and succession planning platforms.

The Foundations Law DIFC Law No. 3 of 2018 (the “**Foundations Law**”); and the Trust Law DIFC Law No. 4 of 2018 (the “**Trust Law**”) both came into force on 21 March 2018 and are aimed at serving:

- (1) families in their wealth and succession planning; and/or
- (2) other entities such as family offices, entrepreneurs, and companies who may have a particular objective in respect of their charitable objectives.

## Trust Law

The Trust Law repeals and replaces the Trust Law 2005 (DIFC Law No. 11 of 2005) and is an enhancement to the previous trust law in order to bring it in line with international best practice.

The new Trust Law provides the basic legal framework for the creation, administration and operation of trusts in the DIFC. In addition, and in particular it takes into account the requirements of families in respect of its succession plans.

## The Foundations Law

The Foundations Law promotes the protection of creditors, succession planning, and lifetime private

wealth planning solutions for family business and charitable entities. The Foundations Law is on par with international ‘best practice’ standards and provides for a regulated environment for the establishment of Foundations<sup>1</sup> in or from the DIFC.

## The Establishment/Categories and Structure of Foundations

The Foundations Law provides that a Foundation may be established:

- (i) to serve objects which are exclusively charitable; and
- (ii) one or more of the following:
  - (a) objects which are not charitable; and
  - (b) objects to benefit persons by name, category or class.<sup>2</sup>

## Application

The founder of a Foundation may apply for the establishment of a Foundation by signing and filing with the DIFC Registrar of Companies (the “**DIFC ROC**”) the relevant application for its establishment.

This application will need to be signed by each

<sup>1</sup> In essence a Foundation is an entity that will be established in the DIFC to undertake specific activities, i.e. their objectives. A Foundation is defined in the Foundations Law, as: (a) a foundation established in accordance with the Foundations Law; and (b) and foreign foundation which is established in another jurisdiction and which has transferred its registration to the DIFC in accordance with the Foundations Law.

<sup>2</sup> Article 12 of the Foundations Law

founder and is required to set out specific information in respect of the Foundation such as the name of the proposed Foundation and the full name, nationality and address of each founder.<sup>3</sup>

### Appointment of a Council

A Foundation must have a council to administer its property and to carry out its objectives. The council is required to comprise of at least two members. There are various duties imposed on the council of a Foundation which include:

- (i) to act honestly and in good faith with a view to act in the best interests of the Foundation;
- (ii) exercise the care, diligence and skill that a reasonable prudent person would exercise in similar circumstances; and
- (iii) declare any interest in a transaction of the Foundation.

In addition, depending on the objects of the Foundation, the Foundations Law stipulates requirements for the appointment of a guardian, and a registered agent.

### Types of Property of the Foundation

The Foundations Law specifies various types of property which the Foundation can hold, the circumstances in which it may hold that property and to whom it can be distributed.

### Administration of the Foundation

A Foundation is required to have at all times, a registered office in the DIFC, and may carry out its activities in the DIFC and elsewhere as permitted by the laws of the DIFC. A Foundation is required to keep and maintain its accounts and accounting records. A Foundation which fails to adhere to this requirement will be liable to a fine.

### A Foreign Foundation

A foreign foundation may (if it is not prohibited in its home jurisdiction under which it is organised) apply to the DIFC ROC for a certificate of continuance under the Foundations Law.

### Dissolution of Foundations

A Foundation can be dissolved where:

- (a) the Foundation is established for a definitive period and that period has expired;
- (b) the objects of the Foundation have been fulfilled or become incapable of fulfillment

- and the council member unanimously decide to dissolve the Foundation;
- (c) the courts of the DIFC order the dissolution of the Foundation; or
- (d) the DIFC ROC strikes the Foundation off the Register.

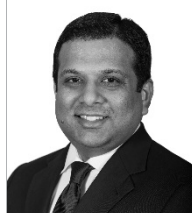
### Penalties

A Foundation which breaches the Foundations Law and/or other laws of the DIFC will be subject to a fine.

***The information mentioned in this article is current at the date of publication of this article and available from public sources. Nothing in this article constitutes legal advice and should not be construed as any form of advice.***

***For further information and assistance with any aspect of the DIFC and DFSA regulatory framework and licensing process, please do not hesitate to contact us.***

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<sup>3</sup> Article 17 of the Foundations Law