DIFC FOUNDATIONS - KEY FACTS

Introduction and Governing Law

DIFC Foundations, established under the DIFC Foundations Law No. 3 of 2018, provide a flexible and modern legal framework for managing and protecting assets. These foundations are ideal for succession planning, wealth management, and philanthropic purposes, offering asset protection and confidentiality.

Unlike trusts, DIFC Foundations have separate legal personality, meaning they can hold assets and enter into contracts in their own name, providing greater control and security for founders. With distinct rights, obligations, and governance structures, they offer a robust solution for individuals and businesses within a globally recognised financial hub.

Uses and Purpose

DIFC Foundations offer a highly flexible structure, suitable for a range of objectives, from wealth management and asset protection to corporate structuring and philanthropy. One of the key advantages is the adaptability in defining the class of beneficiaries, allowing a foundation to benefit specific persons, categories, or classes.

A DIFC Foundation may be established for:

- **Succession Planning:**
  Founders can ensure control over the distribution of assets across multiple generations, with the ability to define beneficiaries by name or category, offering tailored and long-term estate planning solutions.
- **Wealth Management:**
  Foundations are commonly used to hold and manage assets for private individuals and families, providing a structured approach to preserving wealth.
- **Corporate Structuring:**
  Businesses can use foundations to hold company structures, manage assets, and ensure asset protection within a secure legal framework.
- **Asset Protection:**
  Foundations provide a structured framework to help safeguard assets, ensuring they are managed and distributed according to the founder's intentions. This structure can also offer a layer of protection by separating personal and foundation assets, helping to preserve wealth for future beneficiaries.
- **Philanthropy:**
  For charitable purposes, DIFC Foundations can be established to manage donations, charitable trusts, or broader nonprofit activities, while maintaining full control over the distribution of funds.

With the flexibility to serve charitable or non-charitable purposes, or to benefit individuals and groups defined by name, class, or category, DIFC Foundations are an ideal vehicle for individuals and businesses seeking tailored, secure, and versatile structures for their objectives.

Common Law

Operating under the DIFC's common law framework, DIFC Foundations benefit from a legal environment that is flexible, transparent, and internationally recognised. The common law system allows for greater freedom in structuring the foundation's governance and operational rules, compared to other civil law jurisdictions.

Key Roles and Governance

DIFC Foundations must have the following key roles:

- **Founder:**
  The individual or entity that establishes the foundation and provides its initial assets (no minimum requirement).
- **Council:**
  The body responsible for managing the foundation's assets and carrying out its purpose. A council must have at least two members and can be an individual or a corporate. It is possible for the Founder to be a council member however you cannot be both a council member and the Guardian.
- **Guardian:**
  This role is optional, but can be used to provide a level of oversight for the council to ensure they carry out their functions in accordance with the founder's wishes. Where the objects or purpose of the foundation are charitable or have a specified non-charitable object, this role is required. The role can be fulfilled by an individual or corporate.
- **Beneficiaries/Qualified Recipients:**
  Individuals or entities designated to benefit from the foundation's activities. The founder can also be a beneficiary.
- **Default Recipient:**
  The individual or entity that will receive the foundation's remaining assets if it is wound up and no specific beneficiaries are identified. The default recipient is often included as a safeguard to ensure assets are properly distributed in the event the foundation no longer serves its original purpose or if beneficiaries are not available.

Governance is established through the foundation's charter and by-laws, which outline the roles, responsibilities, and operational rules of the foundation.

Statutory Filings

DIFC Foundations must meet the following statutory filing requirements:

- **Annual Confirmation Statement:**
  Due **30 days** from the anniversary of incorporation.
- **Data Protection Return:**
  Due annually on the company's incorporation anniversary.
- **FATCA/CRS Reporting:**
  Foreign Account Tax Compliance Act and Common Reporting Standard for global tax reporting compliance.

Accounting and Tax

By default, Foundations must prepare financial statements in accordance with IFRS Standards. However, an application can be made to the Registrar to use an alternative standard to align with group accounting or other reasonable considerations to use an alternative accounting standard.

Foundation Law – Article 33 - Page 16 - **Click here to view**

Companies Law - Article 124 (6)a - Page 73 - **Click here to view**

A Foundation is required within 30 days of the financial statements being approved by the council members to file a copy of its financial statements with the registrar or the registered agent (where one is appointed).

Under the UAE Corporate Tax (CT) regime, it is possible for DIFC Foundations to be registered as tax transparent entities, meaning they would not be subject to corporate tax at the foundation level. Instead, the tax obligations fall on the beneficiaries or the individuals receiving income from the foundation, who would then be taxed based on their respective tax status, where those individuals are UAE residents and subject to no personal taxes this could be highly beneficial and allows for more efficient tax planning.

Constitutional Documents

The core constitutional documents of a DIFC Foundation include:

- **The Charter:**
  This public document defines the foundation's purpose, key roles (founder, council, guardian), and high-level operational structure.
- **The By-laws:**
  A private document that sets out the foundation's internal governance, including detailed rules for decision-making and asset management.

Both documents ensure transparency in purpose while allowing for privacy in operations, this is particularly favourable for establishing family governance protocols in a private manner.

Commercial License

Foundations in the DIFC require an operating license to operate. The license will reflect the activities permitted under the foundation's charter for example 'Objects to benefit persons by name, category or class'.

Naming Requirements

DIFC Foundations must follow specific naming conventions. The foundation's name must include the word "Foundation" to clearly indicate its legal status. Names that imply a connection to the UAE government or a specific emirate, such as "Dubai" or "UAE," are prohibited unless special approval is obtained.

Benefits of DIFC Foundations

DIFC Foundations offer numerous benefits, including:

- **Asset Protection:**
  The foundation's assets are ring-fenced from the founder's personal liabilities, providing strong legal protection.
- **Confidentiality:**
  Only the name and registered office of the Foundation are available to the public, with all other information held privately.
- **Succession Planning:**
  A foundation ensures that assets are managed and distributed according to the founder's wishes, even after death.
- **Tax Neutrality:**
  Possibility for no corporate taxes to apply to the DIFC Foundation.
- **Flexibility:**
  The DIFC's common law framework allows for innovative and customised family governance and asset management solutions.

These advantages make DIFC Foundations an ideal solution for high-net-worth individuals, family offices, and corporate clients seeking to protect and manage their assets within a globally recognised financial centre.