



# The Abu Dhabi Global Market Foundations Regime

## FOUNDATION FACTSHEET

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### The Abu Dhabi Global Market Foundations Regime

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#### IN BRIEF

The ADGM Foundations Regime was introduced in 2017 as a common law alternative to trusts for financial planning and structuring purposes. Foundations, like trusts, are utilized for a variety of purposes including wealth management, family wealth preservation, succession and tax planning, asset protection, corporate structuring, and for public interest foundations (**excluding charities**) across generations.

Unlike trusts however, Foundations are incorporated as a separate legal entity with their own distinct attributes and legal personality. In this respect, foundations are similar to companies but without shareholders (orphan entities) and offer clients the opportunity of using a local structure within a regulated Tier 1 financial center in the UAE instead of having to rely on vehicles from outside the region.

**“Foundation is to be the go to structure to fulfill needs of HNWI & business owners to mitigate uncertainty & protect Wealth”**

## 1. WHY CHOOSING ADGM ?

**ABU DHABI GLOBAL MARKET (ADGM)** is an international and well-regulated financial center which was established in 2013 as a financial free zone in compliance with international financial standards and having its own common law judicial system and courts distinct from mainland ones.

ADGM is supervised by three independent regulatory and jurisdictional authorities: the Financial Services Regulatory Authority (FSRA), the Global Market's Registration Bureau and AGDM Courts.

- ADGM companies benefit from a full English common law environment, a 0% corporate income tax rate, no foreign ownership restrictions, no limits on repatriation of profits and no withholding taxes, as well as independent courts and financial services regulator.
- ADGM benefits from the extensive UAE tax treaty network with 90 in force and a further 41 in various stages of negotiation, signature or ratification
- ADGM opened its first overseas representative office in Beijing, capital of the People's Republic of China on 11 May 2018. ADGM's presence in China demonstrates the UAE's commitment to the country's Belt and Road initiative that aims to enhance connectivity and economic co-operation by linking the markets of Europe, Africa, the Middle East and Asia. The strategy focuses on infrastructure; trade and investment; internationalisation of the renminbi; and policy co-operation and co-ordination.
- ADGM plays a pivotal role in positioning the city as a global centre for business and finance, connecting the economies of the Middle East, Africa and South Asia.

## 2. WHAT TYPE OF ENTITIES ARE AVAILABLE IN ADGM

In Addition to the standard financial institutions type, three types of entities are mostly used in ADGM:

**A substantiated entity (LLC, limited liability company)** to conduct activities such as holding shares, carrying out proprietary investments;

**A non-substantiated vehicle (SPV\*, special purpose vehicle)**, which is a free zone company, to conduct "Exempt activities" pursuant to the ADGM Special Company Regulations such as:

- Acquisition, holding or disposal of any asset;
- Securitising assets, Investing in real estate property;
- Issuing investments;
- Redeeming or terminating or repurchasing, whether with a view to re-issue or to cancellation, an issue in whole or in part, of investments;
- Entering into transactions or terminating transactions involving investments in connection with the issue, redemption, termination or re-purchase of investments.

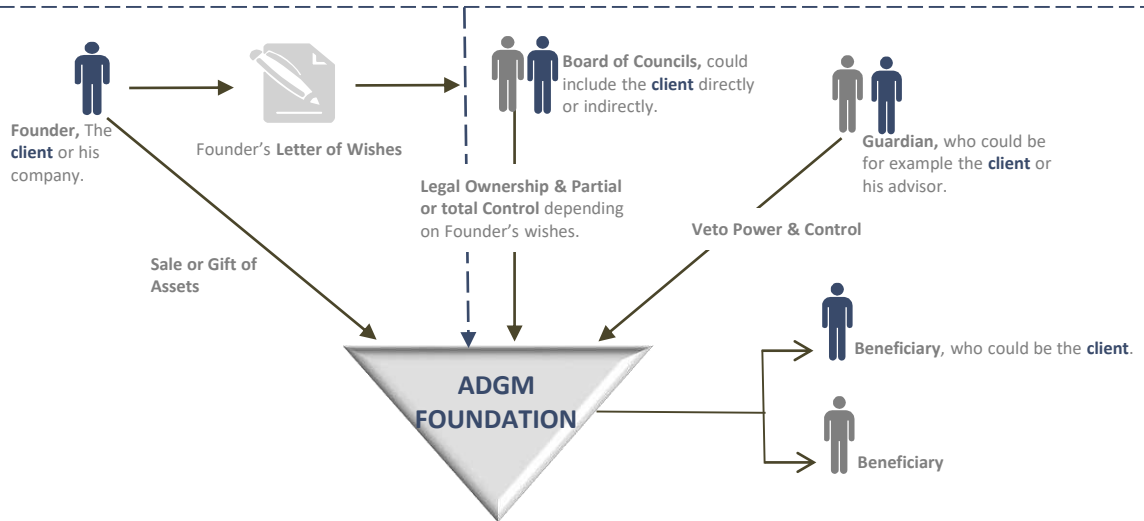
**A Foundation** to shelter all type of assets such as shares, properties, intellectual property rights for estate and governance planning and asset protection strategies (against bankruptcy, detrimental financial Divorce consequences, Forced heirship rights etc.).

### 3. WHO ARE THE STAKEHOLDERS OF A FOUNDATION?

#### ADGM Foundation Key Elements

**Unlike a Company,** It does not have shares or shareholders: **It is not own by anyone but instead created by law to fulfil a mission and own assets.** The Foundation is an **Orphan Sheltering entity.** The entity is incorporated and exists for a purpose: **to have its assets managed by its Board for the benefit of its beneficiaries and not to share wealth (equity interests/shares) amongst shareholders.** This **asset protection & succession planning feature avoids inheritance distribution** of shares, related succession law application / disputes and dilution of wealth which are applicable to the shares of a company at the death of its shareholders amongst their heirs. Furthermore, **for continuity purpose to fulfil the wishes of its Founder through generations** , the entity has a perpetual existence until its assets are exhausted / fully distributed or it is dissolved.

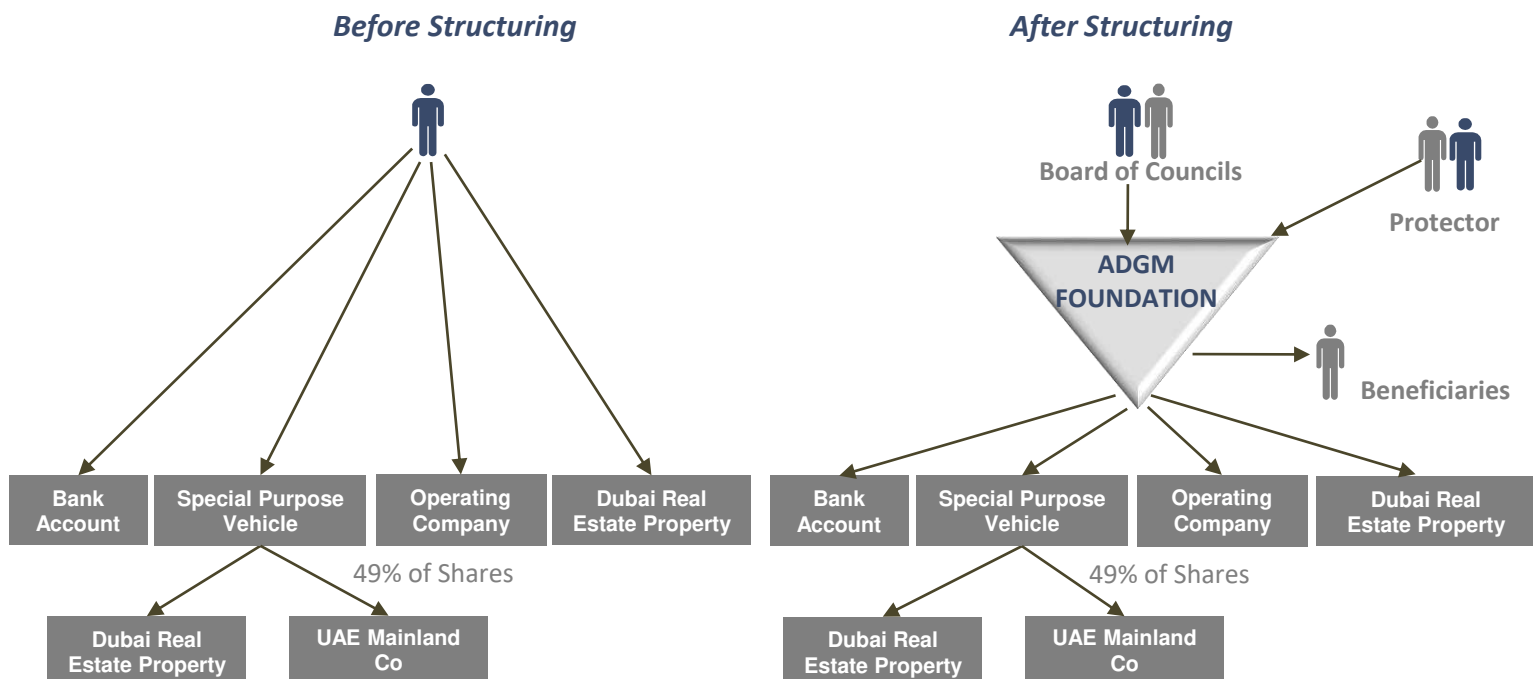
**Like A Company,** It has a **legal personality (can contract and own assets by its own),** a Board, a registered agent & a registered address (not an office). It is strictly subject to **bounding governance rules (Public Charters and Private Bylaws similar to the Memorandum and Articles of Associations of a company)** that define the Board of Councils 'duties and responsibilities and the way the Foundation Fund must be managed for the benefit of the sole beneficiaries.



### 4. HOW TO USE AN ADGM FOUNDATION?

The **ADGM FOUNDATION REGIME** was introduced in 2017 as a common law alternative to trusts for financial planning and structuring purposes. Foundations, like trusts, are utilized for a variety of purposes including wealth management, family wealth preservation, succession and tax planning, asset protection, corporate structuring, and for public interest foundations (**excluding charities**) across generations.

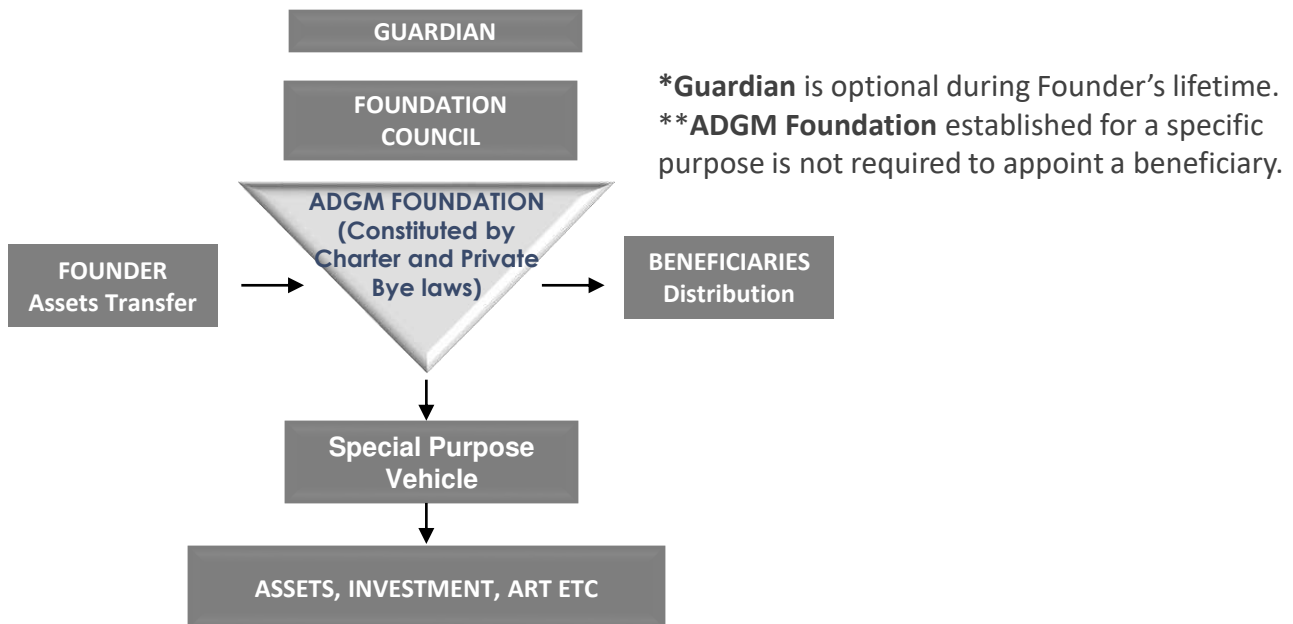
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## 5. WHAT ARE THE KEY BENEFITS OF AN ADGM FOUNDATION?

ADGM Foundations Regulations follow international best practice and set a legislative standard for the Foundation Council. This standard includes statutory duties, such as those similar to common law and equitable duties of directors pursuant to the ADGM Companies Regulations 2017.

- **Access to UAE's DTA's** is available subject to the Ministry of Finance requirements. Tax residency certificate can be granted provided it meets the substance and effective management requirements of MOF (UAE residency visas for all persons mentioned on License). Note that foundations are not permitted to do business themselves.
- There is no **statute of limitation** on endowment of assets within the foundation. However the usual limitation period in the ADGM for contractual claims is 6 years.
- Assurance through **Guardian oversight**: - Guardian supervises the Foundation Council and ensures that it acts in accordance with the Foundation's Charter and By-Laws. Appointment of the Guardian is compulsory upon Founder's death and optional during Founder's lifetime.
- A Foundation provides a **robust governance structure**: - Foundation Council acts in an equivalent manner to a board of directors. Council members' duties are prescribed in the Foundations Regulations.
- **Distinct legal personality, unlike a Trust**: - Having a legal personality provides Foundations with flexibility to enter into contracts and arrangements directly, as a company would be able to.
- **Separation of liability** whilst maintaining control of assets: - A distinct legal entity which allows for separation of liability between Founder and the Foundation.
- **Perpetual existence after lifetime of Founder**: - Like a company, a Foundation is a perpetual concept, allowing arrangements to continue and therefore providing certainty after the Founder's death.
- **Asset protection mechanisms**: - Increased protection from bankruptcy claims, claims in the event of divorce and from the effect of forced heirship rules depending on additional structuring.



- **Founder:** A natural or legal person who endows the Foundation with a portion of his 'Initial Assets'. At least 1 founder must be appointed.
- **Councilor:** Legal person who manages and administers the assets of the Foundation. At least 2 council members must be appointed.
- **Guardian:** Appointment of a Guardian is optional when the Founder is alive and compulsory on the death of the Founder.
- **Designee:** Appointment of a Designee is compulsory only if a Beneficiary is not nominated by the Foundation.
- A **Council Member** cannot be the same as a Guardian and vice versa + A Council Member can be the same person as a Founder.
- A **Guardian** can be the same person as a founder or a beneficiary, but a sole beneficiary may not be appointed as a Guardian i.e. If there is only 1 active Beneficiary, that same person cannot be a Guardian.
- Appointment of **Registered Agent** is optional. If the Foundation is not taking separate office space, then it is required to appoint a Registered Agent.

## 6. WHAT ARE THE GOVERNING DOCUMENTS OF A FOUNDATION?

- Charter (public information which includes name of the foundation, address and service providers)
- By-Laws (Private and includes constitutional and beneficiary information);
- Model Foundation, Charter and By-Laws are available for guidance purposes only and set out the minimum information which must be provided in accordance with ADGM Foundations Law. **We recommend a bespoke Charter and By-Laws be prepared through lawyers.**

## 7. WHAT ARE THE REQUIRED DOCUMENTS FOR ALL INDIVIDUAL MEMBERS?

- Brief CV – personal, educational and professional details
- Passport Copy (certified by lawyer unless we see original)
- Original proof of residence address – less than 2 months old (i.e. Utility bill)
- Original Bank statements (3 months) or Bank Reference letter addressed to WAG Limited
- UAE Visa or Passport with UAE stamp for authorized signatories

## 8. WHAT IS THE INCORPORATION PROCESS?

There are various procedures to be followed during incorporation and the whole process can take up to 2-3 weeks. This includes submitting the chosen name of the Foundation according to the prescribed regulations, submission of the Resolutions, Charter, By-Laws and compliance documents of Founder, Council Members, Guardian, Authorized Signatory and Registered Agent (if appointed) or Lease Agreement if leasing separate office. Please consult us for further details.

**LET'S GET IN TOUCH**

If you wish to discuss the many benefits of **ADGM Foundation**, or any other legal entity, feel free to contact us.

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Under a private and independent ownership, our goal and commitment is to provide high quality pragmatic, confidential, flexible and efficient solutions to address our clientele's specific needs in the fast-moving international business and tax law environment.

Our corporate, finance and tax structuring team comprises multidisciplinary experts who have gained significant experience in the GCC, Africa and Europe in large and reputable international firms and financial institutions.

To keep pace with the changing international marketplace, we also continuously work to strengthen our international networks to deliver seamless and first-class services.