



The Dubai International Financial Center Foundations Regime

FOUNDATION FACTSHEET

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

The Dubai International Financial Center Foundations Regime

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IN BRIEF

DIFC Foundations Regime was introduced in 2018 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 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.

1. WHY CHOOSING DIFC?

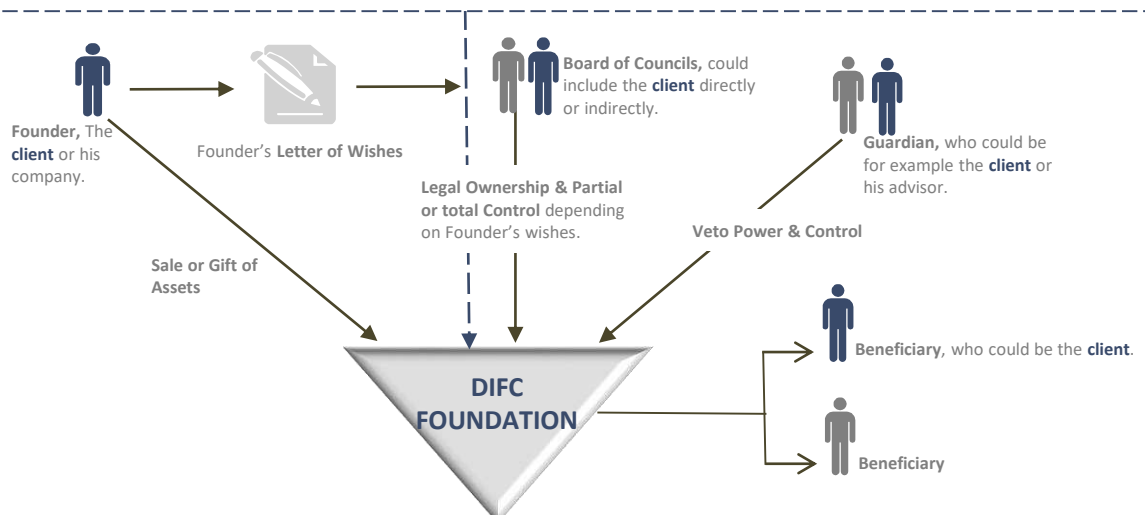
DUBAI INTERNATIONAL FINANCIAL CENTER (DIFC) is a broadly based recognized and renowned international financial center serving local, regional and international institutions. As a financial free zone with an independent jurisdiction, DIFC has three independent authorities, Financial Services Authority (FSA), Dubai International Financial center Authority (DIFCA) and DIFC Courts operating under common law. These three authorities ensure that DIFC offers a highly professional yet business-friendly environment operating with the best practices and recognized by all the major financial centers across the world.

2. WHO ARE THE STAKEHOLDERS OF A FOUNDATION?

DIFC Foundation Key Elements

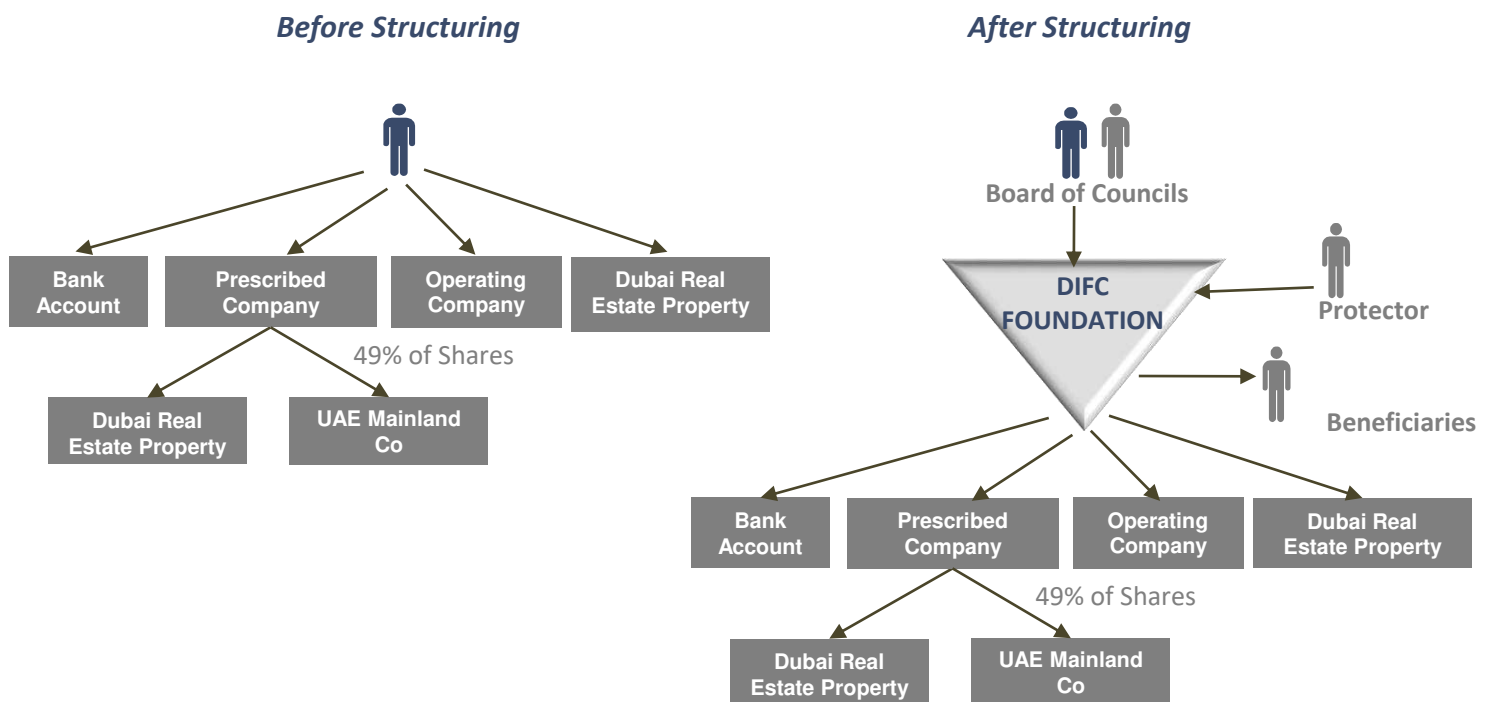
Unlike a Company, It does not have shares or shareholders: **It is not own by anyone but instead created by law to fulfil a mission and own assets.** The Foundation is an **Orphean Sheltering entity.** The entity is incorporated and exists for a purpose: **to have its assets managed by its Board for 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.



3. HOW TO USE A DIFC FOUNDATION?

The **DIFC FOUNDATION REGIME** was introduced in 2018 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.



4. WHAT ARE THE KEY BENEFITS OF A DIFC FOUNDATION?

DIFC Foundation could have a charitable purpose, benefit persons by name /class or category, be granted a Tax residency certificate to avail the benefits of UAE’s DTA network and may issue securities, including transferable depository receipts (STAK certificates as per the Dutch regime), representing specific rights to payment quantified by reference to specific parts of the property owned by the Foundation or relating to other rights or interests, whether present or future, to which the Foundation is or might be entitled.

The Foundation is an **efficient succession planning instrument and asset protection vehicle** in respect of claims from persons being Founder’s creditors, having a personal relationship or heirship rights with / against the Founder:

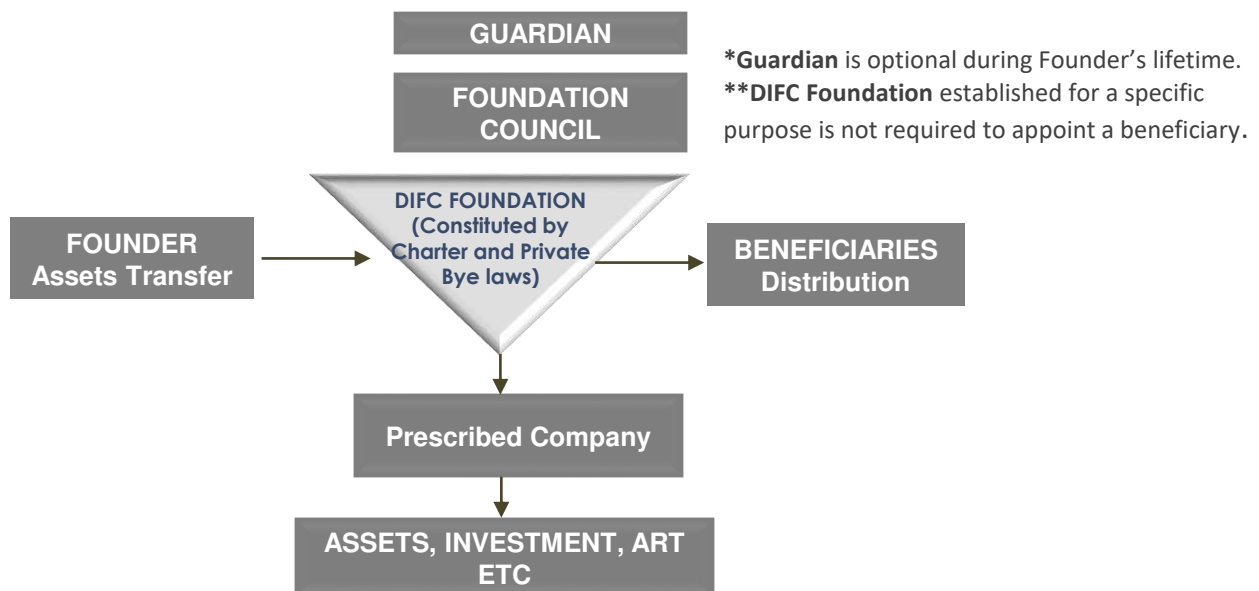
“Without limiting the generality of Article 13(1), no disposition of property to a Foundation that is valid under the laws of the DIFC is void, voidable, liable to be set aside or defective in any manner by reference to a Foreign Law; nor is the capacity of any Founder in relation to the Foundation or disposition to be questioned nor is the Foundation or any other person to be subjected to any liability or deprived of any power or right, by reason that:

- the laws of any foreign jurisdiction prohibit or do not recognize the concept of a foundation;
- the disposition voids or defeats any rights, claims or interests conferred by Foreign Law upon any person by reason of a Personal Relationship to a founder or any other person related to the foundation or by way of Heirship Rights or contravenes any rule of Foreign Law or any foreign, judicial or administrative order, arbitration award or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests; or
- the Foreign Law or foreign judicial or administrative order or arbitration award or imposes any obligation or liability on a founder, foundation or any other party in relation to the foundation or the property of the foundation.

Subject to Article 14(3), a transfer of property to a Foundation shall not be void, voidable or liable to be set aside by reason of a Founder or a Contributor’s bankruptcy, the liquidation of a Founder or Contributor, or any action or claims made against a Founder or Contributor by any creditor, notwithstanding any foreign statute providing otherwise.

Notwithstanding Article 14(2), where the Court determines that, at the time when the property was transferred to a Foundation, a Founder or Contributor, as applicable, was insolvent or intended to defraud any creditor of a Founder or Contributor, as applicable, it may declare that the transfer of property was void to the extent of the creditor’s claim.

In making claims to set aside transfers of property to a Foundation under Article 14(3), the burden of proof shall rest with the creditor.”



- **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:** Natural or 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 (Compulsory for Charitable Foundation).
- **Default Recipient:** Appointment 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 (Qualified recipient), 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.

5. 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 DIFC Foundations Law No 3 of 2018. **We recommend a bespoke Charter and By-Laws be prepared through lawyers.**

LET'S GET IN TOUCH

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

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ABOUT WINCOREADVISORY GROUP

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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.