UAE LOCAL COMPANY & CORPORATE STRUCTURING OF OWNERSHIP

UAE STRUCTURING FACTSHEET

TABLE OF CONTENTS

"UAE offers a large range of structures and solutions to optimise wealth planning, risk mitigation, inheritance planning, tax planning and organise businesses in a protective, straightforward & cost-effective way.

UAE LOCAL COMPANY & CORPORATE STRUCTURING OF OWNERSHIP

By Mohammed Rahali–Partner Wincore Advisory Group

IN BRIEF

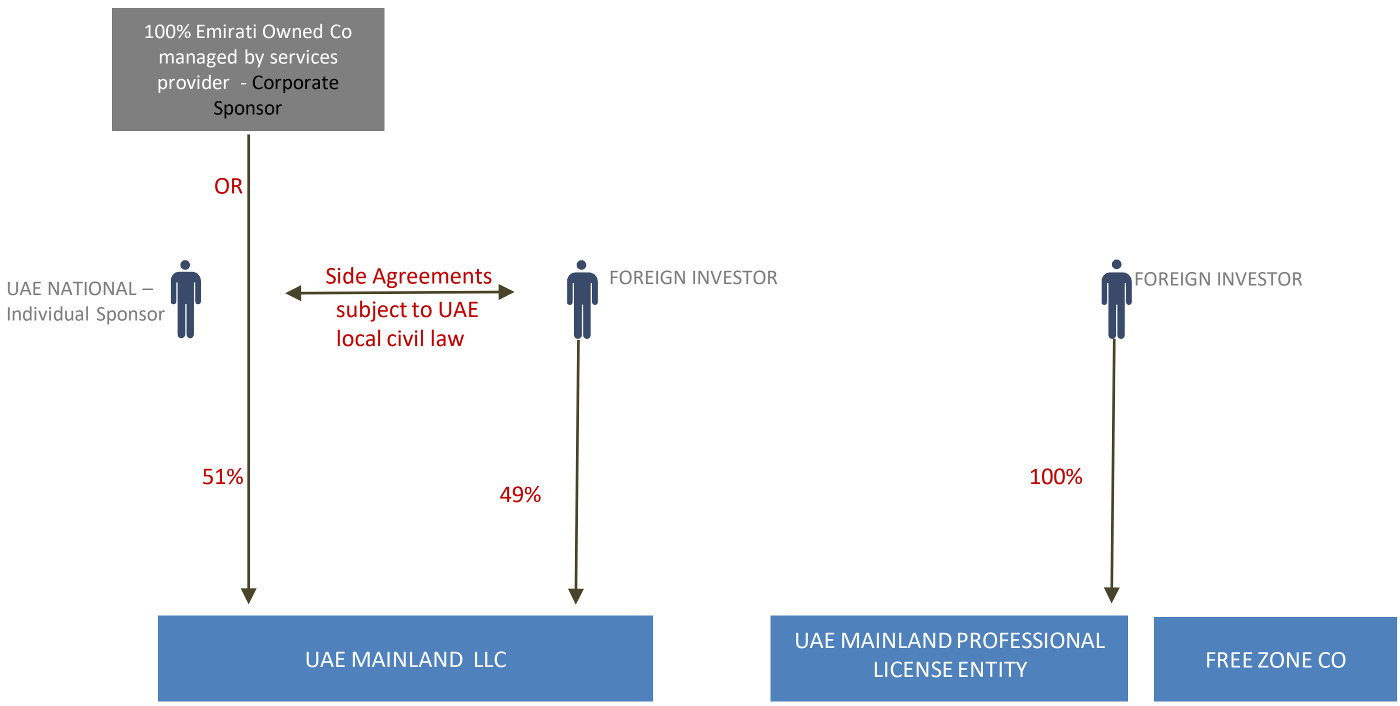
Business owners are in need of ownership & interests protection, full management control, personal assets protection from creditors 'reach, risk management mitigation, assets & liabilities segregation, efficient governance vehicle, robust corporate governance & succession planning at attractive costs, within controlled set up frame & process and in compliance with Economic Substance Regulations to benefit of the following advantages:

- **100% Foreign Ownership** of mainland Companies for a list of 122 type of activities defining eligible companies as per Cabinet Resolution No. 16 of 2020.
- **Sponsorship Structuring:** Transfer of management & ownership structuring of the UAE local company from UAE mainland to UAE Common law free zone jurisdictions (Common law-based regulations and courts through direct incorporation of English law) with Best-in-class independent regulatory and Courts frameworks.
- **Asset Protection**: Sharia law mitigation risk in case of death of local citizen or foreign partner.
- **Variety of legal European type of entities and features** with more flexible, robust and sophisticated structuring (raising capital flexibility, segregation of assets, preferential shares, off balance sheet structure…).
- **Benefit of Double Tax Treaties** (over 80 in force), Tax Residency and Tax domicile Certificates granted.
- **0% Direct Taxation** (No Corporate & Personal Income Tax, No Withholding Tax, No Capital Gain Tax) & No restrictions on repatriation of profits or capital out of UAE.

1. STANDARD INCORPORATION STRUCTURING

Historically, a foreign investor could either establish a UAE company (with a commercial or industrial license) in the UAE mainland / onshore (UAE territory excluding free zones areas) - which will require by law ,except for professional license entities (issued to professionals with certain skills, qualifications or service providers) which could be 100% foreign owned, to have at least 51% of its shares (Article 10 of UAE Commercial Companies Law (CCL)) to be held by a UAE national (**individual sponsor**) or by a 100% Emirati owned company (**corporate sponsor,** usually managed by a foreign nominee service provider) to facilitate a corporate nominee type of arrangement with the foreign investor, - or a company in any of the Free Zones located within the UAE 7 Emirates, allowing him to directly hold 100% of the shares without the need for a UAE national sponsor.

Standard Mainland Company ownership Structuring | **Free zone Structuring**



In practice, the sponsor of the UAE mainland company – being the 51% majority shareholder of the LLC- would **provide sponsorship by entering into contractual agreements (side "security" agreements) 'to represent'' the foreign investor in UAE and granting a revocable Power of Attorney** to the foreign investor to manage solely the affairs of the company in exchange for a fixed annual fee. Despite these arrangements whether through individual or standard corporate nominee sponsorship, the level of risks attached to the ownership of the 51% shares of the company remains uncontrolled in respect of sponsor's interferences in the course of the business, trust risk exposure, percentage of the business dividends & capital gains, involvement in business management, control of voting rights, sharia law succession in case of the sponsor's demise / retirement/ sickness.

The **need for a more robust ownership structuring to safeguards your interests and full control** while ensuring you are fully compliant with the applicable laws & regulations is paramount.

2. Risks attached to standard structuring:

Risks attached to not using a robust and flexible, over the time to fulfil variable objectives, corporate structuring:

- **in Dubai, the legal practice allocates at least 20% of the dividends (and 10% in Abu Dhabi) under the memorandum & articles of association (MOA) to a UAE sponsor**;
- **any transfer of shares**, decision requiring shareholder approval (as per UAE Companies Law) or restructuring **requires the consent of the UAE sponsor**;
- **51% of the share capital of the mainland company is barely protected by using private side agreements** (not attested by relevant UAE governmental departments), which could be deemed unenforceable by UAE local courts;
- **Risk attached to the revocable nature of the power of attorney** granted in favour of the foreign investor by the sponsor to act in his place and on his behalf in respect of the 51% shares of the sponsor (concept of an irrevocable power of attorney is not valid in the UAE) to have full control the operations of the company.
- **Risk attached to inheritance Sharia Law rules**, to have the legal heirs of the dismissed UAE sponsor becoming registered as shareholders and possibly disrupt the operations and previous arrangements.

3. Objectives of proposed structuring or restructuring – Mitigation of risks

The proposed structuring aim to reach the following objectives:

- **allow the foreign investor to own, control & protect the entire legal and beneficial interests** in the entire issued share capital of the relevant company or group of companies:
    - Secure legal & economic interests.
    - Receive all dividends of company or Group.
    - Enjoy full control & management of the company (ies).
    - to guaranty the enforceability of the provisions of a shareholders' agreement, including, with compulsory share transfer procedures such **as tag or drag along rights , call or put options**.
- **Permit the exit by any of the shareholders** without affecting the profitability of the business.
- **Allow spin-offs or discontinuance of non-profitable entities of the Group**.
- **Mitigate the effect of inheritance laws** applicable upon the death or physical incapacity of the UAE sponsor which may affect the governance, control and management of the company (ies).
- Ensure restructuring / structuring to **avail best tax optimisation planning** in repatriation of foreign parent company 's dividends under applicable double tax conventions.

- **Allow smooth Family Group corporate restructuring** to achieve:
    - Robust & sustainable succession planning,
    - Transparent & robust structure to operate the businesses,
    - separation between ownership & management risks,
    - Limitation, control, resolution of risks attached to family disputes,
    - Enhancement of best corporate & family management.

4. 100% FOREIGN OWNERSHIP OF UAE LOCAL COMPANIES BY LAW:

The UAE Cabinet Resolution=No 16 of 2020 (Concerning the Determination of the Positive List of Economic Sectors and Activities Eligible for Foreign Direct Investment and Percentage of their Ownership) - *amending the Federal Law No. (2) of 2015 on Commercial Companies, its amendments and The Federal Decree Law No. (19) of 2018 on Foreign Direct Investment*- has defined **122 eligible business activities** which are allowed to be conducted by Onshore Limited Liability Company (LLC) & Private Joint Stock Companies **detained 100% by foreign business owners**, if they qualify, without the need of having a UAE national retaining a 51% shareholding in the LLC.

The qualifying activities – *amongst which some will have specific restrictions & conditions to fulfil such as minimum capital requirements, Emiratization thresholds (minimum percentage of employed nationals)* - are part of the following sectors: ***(Full details available on demand)***

- ❖ Agricultural
- ❖ Manufacturing and Construction
- ❖ Services Sector
- ❖ Education and Art entertainment
- ❖ Hospitality and food services
- ❖ Healthcare, Information and communications
- ❖ Science and technology
- ❖ Transport and storage

This is an alternative to the use of free zone companies to maintain a 100% foreign ownership of a company (without the need of a UAE national shareholding), especially for commercial or industrial activities engaging with the UAE local market (outside free zone areas) without restrictions which is not permissible for free zone companies. In this last instance, the maximum foreign investor shareholding of 49% combined with a minimum 51% UAE national shareholding was the only available option for them to detain a UAE local company.

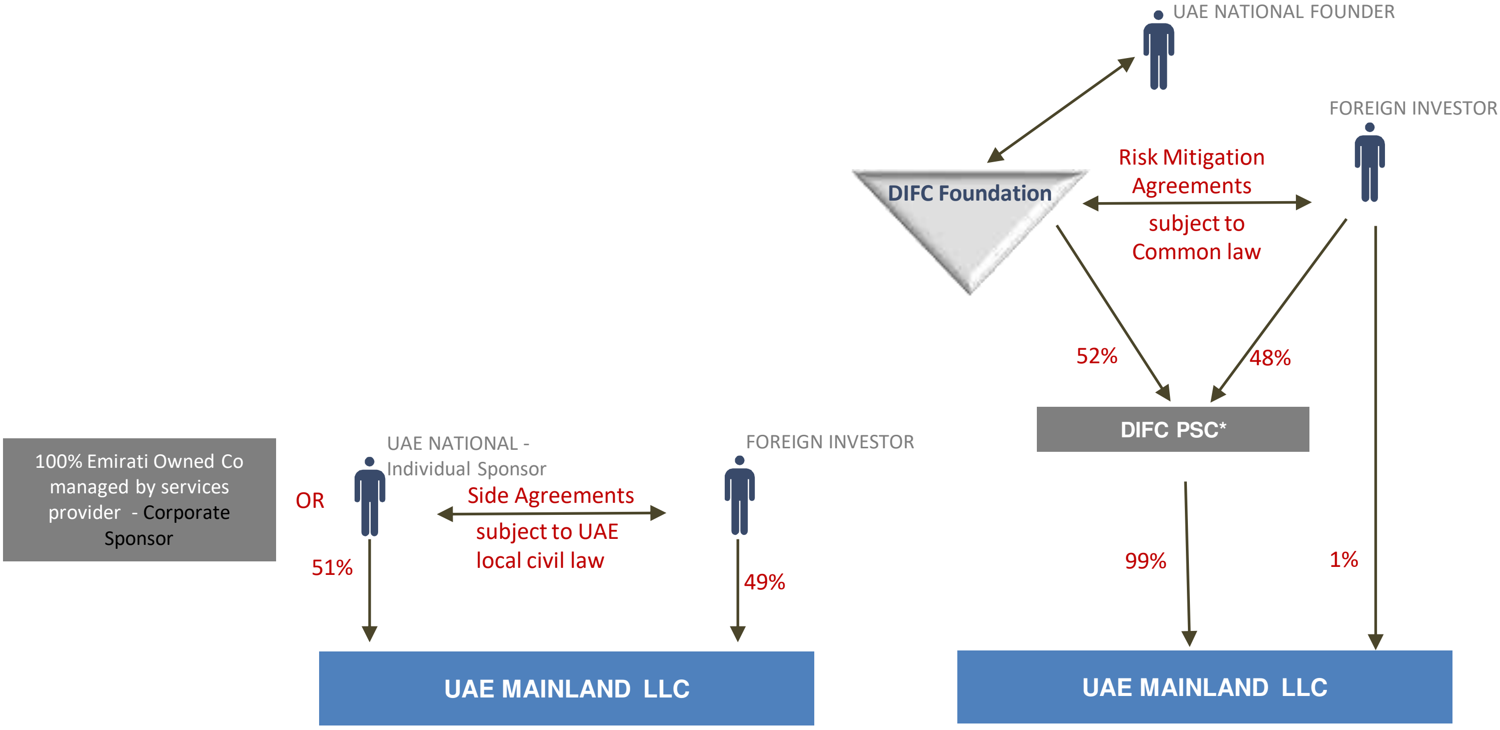
For the non eligible business activities, the following risk mitigation structuring could be considered to watertight the foreign investor control and protect his beneficial interests over his business.

5. DIFC RISKS MITIGATION PACKAGE FOR UAE MAINLAND COMPANY (PSC tool)

This structuring deploys its efficiency within a common law jurisdiction - under the supervision of its own Regulatory authorities and Courts- isolated from the UAE mainland laws and regulations while being in compliance with UAE Federal Law

Standard Mainland Company ownership Structuring

DIFC Risk Mitigation Structuring



UPLIFTING FROM CIVIL LAW JURISDICTION TO COMMON LAW JURISDICTION WITHIN UAE

The Foreign and UAE national shareholdings in the UAE mainland LLC being held through a DIFC entity will allow a higher level of flexibility and assurance by subjecting the risk mitigation agreements over the shares of the DIFC SPC to a UAE common law jurisdiction with its own courts which allows:

- Higher investor protection through enforceable risk mitigation agreements (pledge of shares deed, share option agreement and power of attorney).
- Isolation of the holding structure from the commercial one.
- Uplifting to a more sophisticated jurisdiction in terms of corporate tools and functioning.
- Smooth transfer of shares procedure (not to be before notary public).
- Sharia law and succession risks mitigation.
- **Additional high added value tools are to be implemented in this risk mitigation structuring (available on demand).**

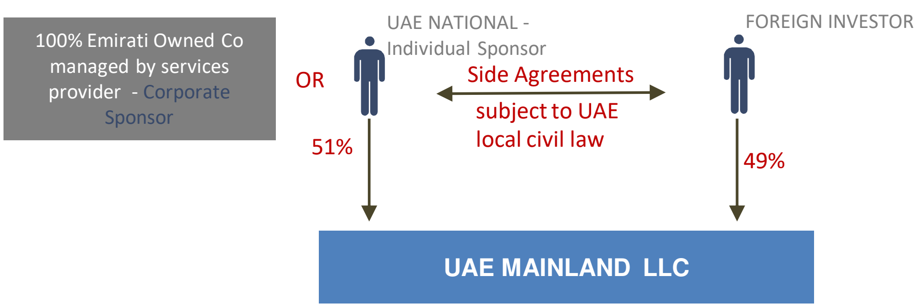
DOWNLOAD DIFC FOUNDATION FACT SHEET

* ***The DIFC Prescribed Company (PSC)*** *(established by the DIFC Law No. 5 of 2019 in October 2019 to replace Intermediate Special Purpose Vehicles (ISPVs) and Special Purpose Companies (SPCs)) , identically to the ADGM Special Purpose Vehicle, is to be established for holding purposes (non-operating purposes) under prescribed conditions. It could use the registered address of a DIFC registered agent. Qualifying applicant who will be allowed to incorporate could be the founder of a DIFC Foundation. The Economic Substance regulation must be complied with : substance could be demonstrated through having a resident director, registered office , accounting and secretarial services being outsourced to a local services provider.*

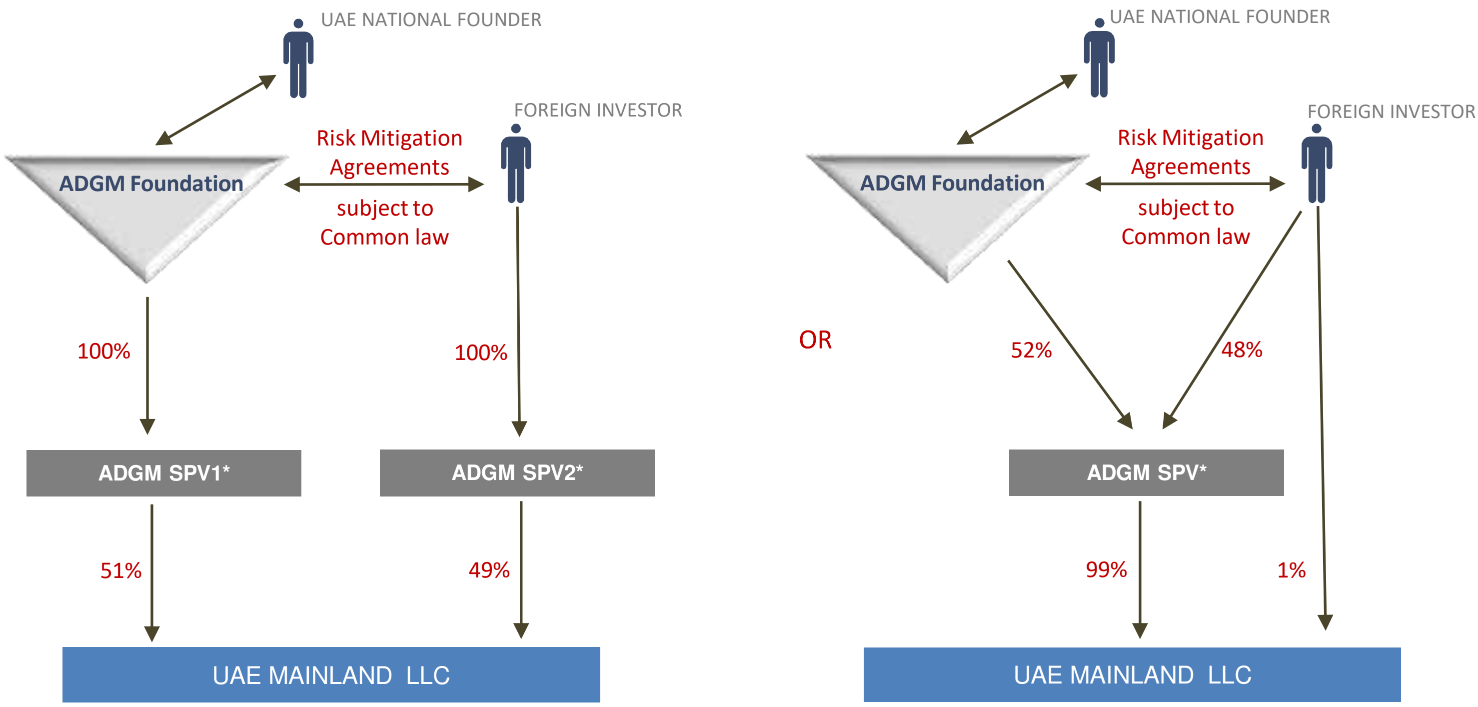
6. ADGM RISKS MITIGATION PACKAGE FOR UAE MAINLAND COMPANY (SPV tool)

This structuring deploys its efficiency within a common law jurisdiction - under the supervision of its own Regulatory authorities and Courts- isolated from the UAE mainland laws and regulations while being in compliance with UAE Federal Law:

Standard Mainland Company ownership Structuring



ADGM Risk Mitigation Structuring



** **ADGM Special Purpose Vehicle** (ADGM SPV) is a passive holding non operating company established to segregate and mitigate legal and financial risks. Its appointed manager and authorised signatory must be resident in the UAE. It could use the registered address of a DIFC registered agent but cannot grant UAE residency visas for its employees.*

DOWNLOAD SPV FACT SHEET

DOWNLOAD ADGM FOUNDATION FACT SHEET

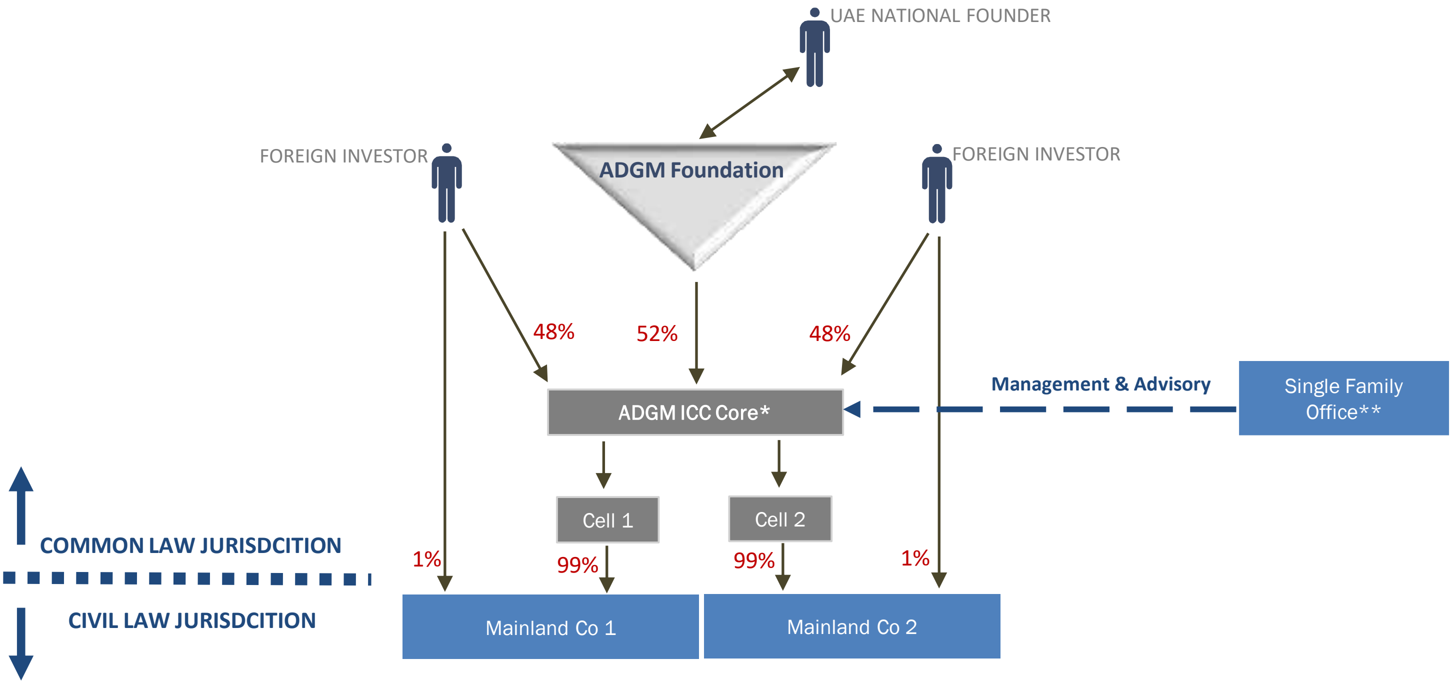
UPLIFTING FROM CIVIL LAW JURISDICTION TO COMMON LAW JURISDICTION WITHIN UAE

The Foreign and UAE national shareholdings in the UAE mainland LLC being held through ADGM entities will allow a higher level of flexibility and assurance by subjecting the risk mitigation agreements over the shares of the DIFC SPC to a UAE common law jurisdiction with its own courts which allows:

- Higher investor protection through enforceable risk mitigation agreements (pledge of shares deed, share option agreement and power of attorney).
- Isolation of the holding structure from the commercial one.
- Uplifting to a more sophisticated jurisdiction in terms of corporate tools and functioning.
- Smooth transfer of shares procedure (not to be before notary public).
- Sharia law and succession risks mitigation.
- **Additional high added value tools are to be implemented in this risk mitigation structuring (available on demand).**

7. ADGM RISKS MITIGATION PACKAGE FOR UAE MAINLAND COMPANY (IES) (ICC tool)

This structuring deploys its efficiency **FOR MULTIPLE MAINLAND COMPANIES TO BE HELD BY SAME HOLDING LEGAL ENTITY WHILE SEGREGATING ASSETS AND LIABILITIES FOR EACH OF THEM** to consolidate financial statements for the purpose of creating leverage to obtain further financing from banks or financial institutions, to optimise VAT computation, to minimise the imposition of applicable customs duties, to prepare for an IPO or to ensure a group structured family succession between generations.



** **ADGM Incorporated Cell Company (ICC)** is similar to Protected Cell Company but adopts a fundamentally different approach to cells. The ICC incorporates each cell as a separate legal personality without the cell company needing to have any shareholder relationship with the relevant cell. Such cell is called Incorporated Cell (IC). Each IC is a separate company as a matter of law. ICC may create one or more cells (ICs) and the assets and liabilities of which are segregated from the assets of the ICC itself and from the other cells. Creation of cell requires regulatory approval. A cell can transact and incur liabilities of its own rights. ICC can take a form of Public Company Limited by Shares , Private Company Limited by Shares or Private Company Unlimited with Shares .*

** ***Single Family Office:*** *For families to centralise functions to manage their family wealth and business interests, family office is the most flexible and efficient investment vehicle. There is not a single structure for a single-family office. It is more a concept encompassing a variety of entities combined in a bespoke way to manage family assets in a centralised manner with a common target. The distinction resides in the governance mechanism, its decision-making hierarchy & management responsibilities to distribute and maintain the influence throughout the family structure and its ownership entitlements spread across family members.*

8. HOLDING COMPANIES COMPARISON TABLE

	DIFC PC	DIFC PSC	ADGM SPV
Legal form	- Company limited by shares - Common law regulatory - Access to Common Law Courts.	- Company limited by shares - Common law regulatory - Access to Common Law Courts.	- Company limited by shares - Common law regulatory - Access to Common Law Courts.
Requirements	**- DIFC physical office required** for incorporation purpose; - Must maintain register of Directors and shareholders; - Annul return to be submitted.	**- No DIFC physical office required** if an agent is appointed; - Must be controlled by qualifying applicant for qualifying purpose only; -No requirement to deposit share-capital; - Must maintain register of Directors and shareholders; - Annul Financial reports to be submitted.	- No ADGM physical office required if registered agent is appointed, like ADGM Foundation; - No requirement to have employees; -Authorized signatory must hold a UAE residency visa; - Must maintain register of Directors and shareholders; -Annual return and Financial statements (made **publicly available**) to be submitted but no audit requirements; - No corporate documents attestation required. - No Shareholders Annual General Meeting require; - No presence of shareholder / director / signatory required for incorporation.

	DIFC PC	DIFC PSC	ADGM SPV
Key Characteristics	- To hold all type of assets in the UAE or abroad; - To hold movable or immovable properties (including **Dubai freehold real estate**) **like a DIFC / ADGM Foundation**.	- To structure **finance transactions;** - To be a Family Holding Structure; - To hold Aviation investments; - To cater crowdfunding - To hold **DIFC company shares;** *- Allowed to conduct only investment or holding activities.*	- To segregate assets and liabilities from a financial and accounting risk perspective; - To be used for investment financing, raising capital, IP holding, asset transfer, securitization, risk sharing - To hold **Dubai freehold real estate, like an ADGM / DIFC Foundation;** *- Restricted from conducting trading activities.*
Objects of Company	- To hold all type of assets in the UAE or abroad; - To hold movable or immovable properties (including **Dubai freehold real estate**) **like a DIFC / ADGM Foundation**.	- To structure **finance transactions;** - To be a Family Holding Structure; - To hold Aviation investments; - To cater crowdfunding - To hold **DIFC company shares;** To hold **DIFC company shares;** *- Allowed to conduct only investment or holding activities.*	- To segregate assets and liabilities from a financial and accounting risk perspective; - To be used for investment financing, raising capital, IP holding, asset transfer, securitization, risk sharing - To hold **Dubai freehold real estate, like an ADGM / DIFC Foundation;** *- Restricted from conducting trading activities.*
Time Frame	- 4 - 7 weeks.	- 2-5 weeks.	- 2-5 weeks.
Government Incorporation Fees	- USD 20,000.	- USD 1,100.	- USD 1,600.
Government Recurring fees (excluding any rental fee if office required)	- USD 12,000	- USD 1,000.	- USD 1,200.

Let's get in touch

If you wish to discuss UAE local company & corporate structuring of ownership, or any other legal entity, feel free to **contact us**.

Mohammed Rahali
Wincore Advisory Group
Tax Services Partner
T: +971 (0) 55 138 95 91
T: +971 (0) 42 212 6 02
m.rahali@wincoreadvisory.com

Chinwe Azikiwe
Wincore Advisory Group
Senior Business Advisor
T : +971 (0) 50 630 08 21
T: +971 (0) 42 212 6 02
c.azikiwe@wincoreadvisory.com

Maricar Caluracan
Wincore Advisory Group
Senior Business Advisor
T : +971 (0) 58 105 15 53
T: +971 (0) 42 212 6 02
m.caluracan@wincoreadvisory.com

ABOUT WINCORE ADVISORY GROUP

Wincore Advisory Group is a multi-disciplinary aggregate of tax planning, corporate services, corporate finance and wealth structuring advisory services provider. Our group was founded by prior executives and directors of major banks, trust, CSP and law firms to provide unmatched on-the-ground competences in the Middle East, Africa, US and Europe.

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.