

The Ownership of Real Estate Assets in Dubai by a DIFC Foundation

Izabella Szadkowska - Partner - Corporate Structuring / Corporate Services / Corporate / Mergers and Acquisitions / Capital Markets / Family Business

i.szadkowska@tamimi.com - Dubai International Financial Centre

Malek Al Rifai - Partner - Real Estate / Sustainability focused Corporate Governance / Sustainable Finance / Sustainable Business / Sustainable Sourcing / Climate Change & Energy Transition

- Dubai International Financial Centre



Since March 2018, when the Dubai International Financial Centre ('DIFC') Foundations Law (DIFC Law No. 3 of 2018) ('Foundations Law') came into effect, Al Tamimi & Co. has assisted several clients in the registration of their foundations in the DIFC ('DIFC Foundation(s)').

Whilst a DIFC Foundation can be utilised as a vehicle for philanthropic and charitable purposes, it was ultimately designed to provide an alternative mechanism for wealth management as well as the safeguarding of assets for individuals, companies and families.

Foundation Features

A DIFC Foundation is normally established by a founder who dedicates certain assets towards a specified charitable or non-charitable purpose.

Although a DIFC Foundation has a separate legal personality, unlike a typical corporate vehicle, it does not have partners, shareholders or members, but rather is 'self-owned'. In the absence of an ownership structure as such, a DIFC Foundation, is generally administered by a council appointed by its founder.

The management, governance and control of the DIFC Foundation can be tailor-made, to the extent permitted by the Foundations Law, to reflect the arrangements that the founder desires, via a combination of provisions set out in the charter and by-laws.

DIFC Foundations are often used in commercial transactions (for example, for off-balance sheet holding of funds), or for the purposes of securitisation structures (normally public foundations) or as anti-hostile takeover instruments or to hold orphan entities in order to forbid the ultimate legal owners disturbing the DIFC Foundation's objective.

Moreover, in the UAE and the greater GCC, the DIFC Foundation is a vehicle predominantly recommended

in the context of succession planning and the family wealth management context, where it can be used by families to structure ownership of their assets and properties, as long as the local ownership restriction, as well as Sharia principles, are respected.

The DIFC Foundation concept proves to be suitable in the context of succession due to the fact the founder can remain in control of the assets of the DIFC Foundation during his/her lifetime and beyond, under the terms of the charter and the by-laws of the DIFC Foundation. Once the founder transfers the assets to the DIFC Foundation, those assets cease to form part of his/her private/individual estate. Those assets then form part of the estate of the DIFC Foundation itself.

DIFC Foundation's Assets

The DIFC Foundation shall have capital, which can be in the form of cash or in kind/other assets (including real estate assets as mentioned below), and further endowment towards the capital can be made by the founder.

The assets of the DIFC Foundation are commonly managed by the council, for the benefit of one or more beneficiaries identified by the founder in the charter/by-laws. The beneficiaries can include the founder as a natural person or a corporate vehicle, or possibly the natural person's family members.

Ownership of Real Estate Assets in Dubai

On 4 May 2018 the DIFC announced it entered into a Memorandum of Understanding ('MoU') with the Dubai Land Department ('DLD') which allowed entities based in the DIFC to purchase and register real property and property rights ('Real Estate Assets') with the DLD. While the terms of the MoU have not been made public at the time of writing, it is our understanding, from our discussions with officials in DIFC and the DLD, the MoU is intended to apply in respect of DIFC Foundations. Under the current DLD approach, DIFC Foundations are allowed to own Real Estate Assets located in the areas of Dubai that are designated for foreign ownership by the Ruler of Dubai.

In order to register a Real Estate Asset in the name of a DIFC Foundation with the DLD, in addition to the documents typically required by the DLD for this purpose, the DIFC Foundation is required to apply to the DIFC Registrar of Companies ('ROC') for a no objection certificate addressed to the DLD. This no objection certificate should include the following:

1. the full name and registration number of the DIFC Foundation;
2. the names, nationality and passport details of each interest holder in the DIFC Foundation who is a natural person;
3. the name of each legal person that is an interest holder in the DIFC Foundation and, where it is not a publicly listed entity, the details of the shareholders, partners or interest holders of that legal person up to the level of the full names and passport details of individual beneficial owners;
4. that the DIFC Foundation is in good standing and that all licences are up to date and fully paid up; and
5. that the DIFC Foundation is permitted to own Real Estate Assets in accordance with its constitutional documents, resolutions or authority documents.

The DLD will approve the registration of the Real Estate Assets and issuance of the title deed in the name of a DIFC Foundation in accordance with the rules, regulations and policies adopted by the DLD as agreed with the ROC.

With regard to the fees levied by the DLD in connection with the transfer of Real Estate Assets, the typical rates set out in the Executive Resolution no. 30 of 2013 apply depending on the type of requested transfer

(sale, usufruct, long-term lease, etc.). However, if a natural person is the ultimate beneficial owner of a Real Estate Asset and intends to transfer such Real Estate Asset to a DIFC Foundation in which that person holds the position of founder, it is likely that the transaction can be regarded by the DLD as a gifting transaction and therefore could be subject to a reduced fee of 0.125 percent calculated with respect to the value of the Real Estate Asset. The application of the gifting fee requires a no objection certificate from the DLD which has a high degree of discretion in determining whether the gifting fee would apply.

The introduction of the DIFC Foundations' regime was a positive development that made the offering of the DIFC even more attractive to family businesses and other commercial entrepreneurs.

What is more, the willingness of the DIFC and the DLD to recognise the ability of a Foundation to own Real Estate Assets in the Emirate of Dubai, albeit with certain restrictions, has strengthened the DIFC Foundation model even further, making it a viable option worth considering in the context of wealth management and corporate restructuring. However, as experience often shows, there is no-one-size-fits-all solution and careful attention therefore needs to be given to the specific requirements of each case to ensure that a DIFC Foundation can potentially achieve the intended objective.

Al Tamimi & Company's [Real Estate](#) and [Corporate Structuring](#) teams regularly advise on how best to benefit from significant developments in the UAE. For further information please contact Izabella Szadkowska (i.szadkowska@tamimi.com) or Malek Al Rifai (m.alrifai@tamimi.com).