Opportunities for Private Wealth Structuring

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In recent years both the Dubai International Financial Centre (DIFC) and more recently Abu Dhabi Global Market (ADGM) have established themselves as regional hubs for the wealth and asset management industries. The combination of a legal ecosystem, the presence of internationally renowned firms of professional advisors and the pressing needs of a client base demanding the services that such firms offer, means that the DIFC and ADGM can point to the expansion of popularity of the free zones as a true regional success story.

The initial stage of the DIFC and ADGM's success story has been one in which local families, with significant business operations in the UAE and the wider region, quickly identified the benefit of the common law legal structures when contemplating aspects of business ownership and succession planning: the juxtaposition of the flexibility of the DIFC and ADGM common law system with the rigid regulation of onshore companies under the UAE Commercial Companies Law brought into stark focus the advantages of situating holding structures in the freezones.

But the immediate future of wealth planning and asset protection in the region could very well mirror the increasingly cosmopolitan nature of the demographics of the region, with its sizeable expat community benefitting from a track record of significant wealth generation, now more often than not considering Dubai as a long term location, and in doing so looking closer to home for their private wealth management requirements.

Additionally, the UAE has in recent years been a destination of choice for entrepreneurs and investors from the wider Arab world and even further afield, and for those people who have a nexus to the UAE, if not a home, the attraction of one of the world's pre-eminent financial centres will only increase as its track record lengthens.

For high-net worth individuals, the increasing sophistication of financial markets means that professional wealth management is a requirement and in the DIFC and ADGM, both similar in terms of sophistication and expertise, with legal regimes derived from English law, clients can draw upon a premier network of advisors to grow private wealth holdings. But the reverse of the coin of the stewardship of private wealth is the retention and maintenance of assets which, in line with good planning, can straddle a number of different asset classes. In this regard again the DIFC and ADGM can point to expert legal and accounting services who can be engaged to structure and operate family wealth structures from a local UAE platform.

Central to any asset protection strategy must be to ensure that the assets themselves are captured and held through a corporate or trust structure so as to capitalise on the advantages such structures can bring. The availability of modern, flexible corporate codes, trust and foundations laws means the full range of options available in the traditional offshore centres is available in a convenient location and time zone.

For an individual with significant assets the advantages in utilising such structures are significant:

- Companies have perpetual succession and so avoid problems arising from disability or death of the holder, as a consequence they bypass probate and inheritance procedures and their limited liability status can act as a shield for the stakeholders against unpredictable business risks.
- Changes to the ownership of the assets are much easier to implement through the transfer or issue of shares rather than changing ownership of the underlying businesses (particularly in Middle Eastern

countries);
- Companies permit separation of management and ownership through boards of directors. As a further enhancement the usages of trusts in wealth planning is common place and again, significant advantages follow from their implementation. Trust structures have evolved to capture all the benefits of corporate ownership. This is achieved through the use of corporate trustees and (in some cases) subsidiary companies. However, there is some additional complexity and expense in establishing and operating these corporate trust structures, but in turn added value can be extracted from trusts but which is not available from a purely corporate structure derived from these additional features:
  - The founder of the trust can lay down and embed enduring rules covering the family assets, including rules as to management, use of assets, governance of the family business, entitlements of particular beneficiaries and succession;
  - Trusts can enhance flexibility in dealings with assets and with entitlements to economic benefits, including changes in allocation of capital and income to stakeholders from time to time; in contrast, capital payments out of companies are often subject to significant regulatory requirements (e.g. share buy backs, capital reductions);
  - Trusts can give rise to "**floating**" ownership or entitlement to assets; for example, the controllers of the trust may retain year to year discretion as to how trust entitlements and economic benefits will be distributed amongst a potentially wide class of stakeholders; and
  - Such "**floating**" ownership can preserve family assets from attack by creditors of beneficiaries because the terms of the trust may confer no right of ownership, merely a right to be "considered" by the controllers of the trust at their discretion; until a discretion is exercised in the beneficiary's favour, the debtor beneficiary 'owns' no share of the trust assets.

These features, prevalent also in the recent development of Foundations in the DIFC and ADGM present individuals with a range of options to design their wealth holding structures in the manner that best suits their individual requirements. To complement a structure designed to preserve wealth for the long term, corporatized asset holding structures provide the opportunity to establish governance frameworks to ensure that for the future suitable decision making is in place to avoid what might otherwise be the unwanted predations of people unsuited to the control of significant assets (i.e. family members).

One often overlooked methodology for corporatised trust arrangements is the establishment of a private trust company ("**PTC**") as the older of the trust assets, which can be structured, managed and controlled in accordance with the settlor's wishes through a board of directors.

In establishing a dedicated PTC, the board of directors ("**Board**") and shareholders of that entity can be selected from amongst family, close friends and trusted colleagues and advisers.

Whilst as considered above it is desirable to obtain skilled professional advice in running the internal affairs and compliance requirements, which are distinct from the usual corporate compliance, this can readily be achieved by outsourcing to professionals eg lawyers, accountants or a professional service provider.

In some jurisdictions it is necessary to engage a company licensed as a professional trust business to administer the trust and act as the trustee, but this is not the case in either the DIFC or ADGM.

Ordinarily with actively managed holdings and businesses it would be desirable to obtain advice. Again, expert advice in this sphere can readily be outsourced so this would not be a reason to appoint outsiders to hold shares or board positions as generally, the appointment of outsiders should only be undertaken where they add value to the business or where their presence is required to comply with foreign investment restrictions.

The question of board and shareholder composition requires consideration of the present and likely future family circumstances, particularly succession plans. In some families, participation in the board can fuel disagreements. On the other hand, in other families, exclusion from the board and management can lead to the same outcome.

A particular attribute of trust structures is the potential for the founder to retain a level of control for life. Founders can even embed rules and policies which apply well beyond their life time. These rules can be applied regardless of the contrary views of shareholders / directors provided there is a beneficiary or trust protector (an office holder under the Trust) who seeks to enforce them.

Often the holders of significant wealth look to impose structures later in their working life after a lifetime in business focussed on wealth generation. The benefits of a structure such as those discussed in this article, established in jurisdictions such as the DIFC and ADGM, means that it is possible to design and build a permanent and efficient structure designed for the long term.

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