

UAE at the Forefront of Legislative Development

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Family-owned businesses contribute significantly to the economy in the United Arab Emirates and wider Arab Gulf. A large part of the UAE business community is based on Family-owned businesses. Succession planning and governance is the key to keep successful families together and to ensure the continuity and prosperity of their business.

The UAE is taking the lead in building a legal framework and infrastructure for succession planning and asset protection.

This initiative is not recent as it started some years ago with the establishment of the UAE financial free zones which are common law jurisdictions. The financial free zones allow trust structures and foundations to be the basis for company and asset holding arrangements. Trusts are well suited as an enduring and cohesive legal structures to run and be administered in accordance with the wishes of the founders. Foundations are typically used to assist the multi-generational family allowing arrangements to continue through time.

The UAE legislator has become conscious of the importance of providing a similar legal framework for families within the onshore jurisdiction in the UAE. As part of the UAE Government's continuous efforts to create an innovative and forward thinking legislative framework designed to accommodate the growing needs of family business owners, the UAE issued new legislation to provide families with solutions that can be customized and tailor-made as per the requirements of each family in the onshore legal environment of Dubai and the UAE.

In particular, two laws have been issued by the UAE government designed to assist families in the preservation and protection of businesses from the challenges and risks arising from succession of ownership. The first is the Federal Law No 19 of 2020 Concerning Trusts ("**New Trust Law**") that allows trust structures to be established in mainland UAE i.e. outside the financial free zones. Accordingly, it grants recognition to similar trust arrangements but within the onshore UAE legal system. The second law is a Dubai law Law No (9) of 2020 Regulating Family Ownership in the Emirate of Dubai.

Federal Law No 19 of 2020 Concerning Trusts

Federal Law No 19 of 2020 Concerning Trusts ("**Onshore Trust Law**") will provide an additional option for wealth management for families with assets in the UAE and wider GCC region. Once fully adopted, with the necessary regulatory infrastructure in place it is expected to offer a stable and sustainable means of asset protection and succession planning.

The Onshore Trust Law represents an enhancement of the framework for the organization of family affairs in the UAE and abroad, for the purpose of achieving family business continuity and avoiding family disputes associated with succession and demonstrates a proactive approach of the UAE legislator who is always keen to create a competitive investment climate.

The Onshore Trust Law provides the same general principles provided by the trust laws currently available in the financial free zones derived from the common law, and thus provides an effective option for families

and companies in structuring their businesses, companies and assets within a flexible legal framework.

The Onshore Trust Law imposes certain conditions for the establishing of a Trust, most important of which is that a Trust Instrument is entered in a special register. Currently the implementing resolutions to establish the register and licensing regime set up to regulate professional trustees have not been passed yet to establish a valid trust under the Onshore Trust Law.

Trusts are considered superior structures in the context of family succession planning and hence this law is expected to put the UAE at the forefront in the region in terms of the solutions provided to family owned businesses.

Law No (9) of 2020 Regulating Family Ownership in the Emirate of Dubai

This Law has been recently introduced by the Government of Dubai in its proactive approach in building a legal framework for succession planning in the Emirate of Dubai.

The Family Ownership Law aims to establish a legal framework for the regulation of ownership and management of family property in Dubai and will facilitate the transition of property to future generations.

The provisions of the Law only apply at the request of family members that jointly own property, whether such property exists prior to the enactment of the Law or is acquired after the Law.

The Law in principle allows for all types of assets within its parameters except shares in a public joint stock companies.

Under the Law, the regulation and administration of the family property shall be as per the provisions of a contract entered into by the joint owners of such property known as the "Family Property Contract". The Law will only apply to Family Property to the extent that its owners have entered into a Family Property Contract. Accordingly, the principal effect of the Law is to provide for a contractual basis upon which family members can organise their affairs.

The Law does not create a separate legal personality (be that in the form of a company, foundation or trustee) to hold the legal title to assets, thus having the effect of separating the legal ownership from the interests of family members. The Family Property Contract itself is not a legal entity and hence cannot hold title to the assets, so it would be necessary to establish a legal holding structure to hold the assets to avoid risks associated with multiple individual owners.

The Family Property Contract may be tailor-made to each family, allowing them to specify a variety of matters relating to the management and governance of the Family Property. So long as a valid Family Property Contract is in place, a party may not request the division of the relevant property or assets and such assets shall remain subject to the arrangements stipulated under the Family Property Contract.

In order to be valid, the Family Property Contract must meet certain conditions such as all parties to the Contract must be members of the family and must share a common business or common interest.

The Law further provides that, in order to be valid, a Family Property Contract must be duly notarized and must not violate public order.

The Law allows the Family Property Contract to be valid with effect from the date specified by its parties, which may be at a later date than when it is signed (for instance, on the death of one of the parties). Once signed, any amendments to the Family Property Contract requires the consent of the owners of at least

75% of the relevant assets or property, unless the Family Property Contract requires a higher percentage.

The Family Property Contract does not apply by default to an heir or a party as adherence to the contract by an heir is optional. There is no obligation upon an inheritor of a deceased party's estate to participate or remain in the contract. Accordingly, the succession arrangements under this Law depend on the family members' willingness to remain within the said contract. This means that there remains a risk that the arrangements devised by the first generation will not bind the second and successive generations.

The Law restricts jurisdiction to settle any disputes arising from a Family Property Contract to a special judicial committee to be formed by the Ruler of Dubai.

Notwithstanding the proactive approach and initiatives of the UAE in introducing a legal framework for family businesses which are considered the pillar of the economy in the UAE, the key issue will be the nexus between the new legislations and various regulators and the practical aspects of implementing such legislations by such regulators and authorities.

The new legislation is an addition to the toolbox available to families in the UAE to offer them custom-made solutions tailored to their needs and objectives.

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