

A Guide to Distribution of DIFC Foundation Wealth

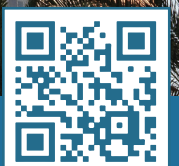


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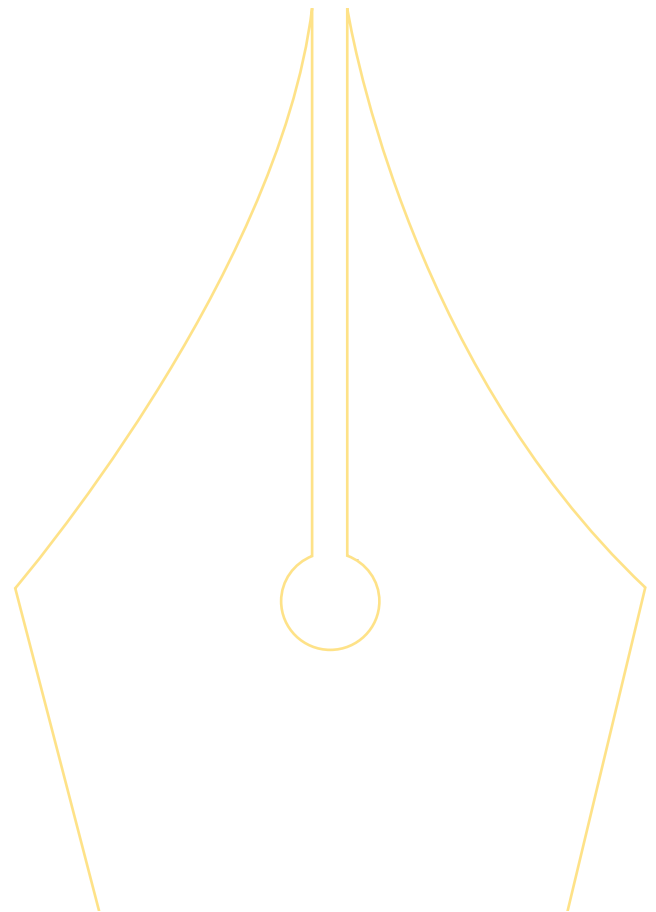
Navigating the Legal Landscape of DIFC Foundation Wealth Distribution

The concept of a Foundation finds its roots within civil law jurisdictions, offering a familiar legal framework for countries within the GCC region that share a similar heritage.



Unlike a trust, a Foundation operates as an independent legal entity, distinct from its Founder. This distinction safeguards the Founder's personal assets, ensuring the Foundation's holdings remain separate. We offer services for forming a Foundation in Dubai International Financial Centre (DIFC).

This article will delve into the nuances of wealth distribution from the perspective of Foundations.



What is a DIFC Foundation?



Similar to a company, a Foundation possesses its own legal personality, allowing it to enter into contracts and hold property.

However, a key distinction lies in its purpose. A Foundation is not driven by shareholder interests or profit generation. It lacks the ability to issue shares or engage in commercial activities beyond those directly supporting its stated objectives.

The core of a Foundation revolves around its objects, which define its purpose(s) and may identify specific Beneficiaries.

These objects, along with the Founder's wishes, are enshrined in the Foundation's Charter and By-laws, serving as the Foundation's guiding constitution.

Management is entrusted to a Council, mirroring the structure of a company board with its Council Members.

Such foundations governed by the DIFC Foundations Law of 2018 are referred as DIFC foundations.

Foundations offer a versatile tool for a variety of applications:

Family Wealth/Succession Planning:

Foundations provide a structured framework for wealth transfer across generations, ensuring the continued fulfilment of the Founder's wishes.

Asset Protection:

By separating assets from the Founder's personal wealth, Foundations offer a layer of protection in case of unforeseen circumstances.

Commercial Transactions:

Foundations can act as vehicles for securitization, a financial structuring technique.

Long-Term Business Holding:

Foundations possess the ability to hold assets and businesses for extended periods.

Anti-Hostile Takeover Instruments:

Foundations can be strategically utilized to deter unwanted corporate acquisitions.

Charitable Purposes:

A cornerstone application, Foundations serve as a conduit for philanthropic endeavours.



Letter of Wishes: Non-Binding Expressions of Intent



While Wills hold legal weight, Letters of Wishes serve a distinct purpose.

These documents express the testator's wishes and preferences regarding estate distribution beyond the legally binding directives outlined in the Will.

Letters of Wishes provide valuable guidance to executors and/or trustees in managing the estate, potentially including suggestions for charitable donations or preferred asset allocation among beneficiaries.

Unlike Wills, Letters of Wishes are not legally enforceable. However, their flexibility is a key advantage, allowing for modification or revocation at any time without the formalities and costs associated with amending a Will.

In conclusion, navigating estate planning within the DIFC requires an understanding of the distinct legal frameworks governing Foundations.

This knowledge empowers individuals to make informed decisions regarding the distribution of their assets and the expression of their wishes for the future management of their estate.

Legal Directives for DIFC Foundation Wealth Distribution



Legal Directives for Distribution of Foundation Wealth



Charter and By-laws: Defining Default and Qualified Recipients

- Primary tool for designating beneficiaries of the Foundation.
- There is sufficient room for flexibility in the manner of distribution



Tailored Distribution Provisions

- Charters and By-laws have scope for nuanced distribution of Foundation Assets beyond the distribution among Default and Qualified Recipients.



Letters of Wishes: Providing Non-Binding Guidance

- This non-binding directive provides flexibility when attempting to address intricacies and details which otherwise cannot be added to the Foundation Charter and By-laws when seeking distribution of wealth.

The effective distribution of a Foundation's wealth upon its dissolution is a critical consideration for Founders.

1. Charter and By-laws: Defining Default and Qualified Recipients

The Foundation's Charter and By-laws serve as its primary governing documents. Within these documents, Founders can designate beneficiaries for the Foundation's assets. Two primary categories exist:

Default Recipient:

This recipient receives any unallocated assets upon the Foundation's termination.

Qualified Recipient:

This recipient holds a legal entitlement, as specified in the By-laws, to a predetermined share of the Foundation's wealth upon dissolution.

Beyond these default categories, Founders have the flexibility to establish more nuanced distribution models within the Charter and By-laws. Careful legal drafting is essential to ensure compliance with the relevant Foundation law.

2. Tailored Distribution Provisions

Our experience demonstrates a need for distribution models beyond the default and qualified recipient structures. Founders may wish to:

- Designate additional beneficiaries beyond the initial and qualified categories.
- Specify precise distribution ratios for various beneficiaries, ensuring a non-equal distribution.

Such specific distribution instructions can be incorporated into the Foundation's Charter and By-laws, fostering a more customized approach to wealth allocation.

3. Letters of Wishes: Providing Non-Binding Guidance

Letters of Wishes offer a complementary tool for Founders. Unlike Wills, they are non-binding documents. However, they serve a valuable purpose by expressing the Founder's wishes for the distribution and future management of the Foundation's wealth. Letters of Wishes can specify:

- The desired timing of asset distribution.
- The intended purpose for which the wealth should be used.
- Specific allocations of certain assets or investments to designated recipients.

This flexibility allows Founders to address intricacies and complexities beyond the scope of legally binding documents like the Charter and By-laws of the Foundation

Case Study



On many instances, clients have approached us with concerns relating to the distribution of their Foundation Wealth both during their subsistence and after their demise.

Both in tailor made ratios or in such a manner as to give certain types of wealth, i.e. investments to one heir and other fixed assets to the other heir at different circumstantial intervals.

We have trained professionals equipped to provide the best possible advice with regard to situation specific concerns.



Conclusion



The distribution of Foundation wealth requires a thoughtful approach.

By strategically utilizing Charters and Letters of Wishes within the legal framework of DIFC, Founders can ensure their philanthropic or wealth distribution goals are effectively realized upon the Foundation's dissolution.

This article summarizes all the practical aspects that we have dealt with so far, with regard to wealth management of Foundations. You can keep this as your guide to further wealth distribution plans you may have with regard to your respective Foundation(s).

FAME Advisory's provision for DIFC Foundation Wealth Distribution



We can provide you with a wide variety of services from the stage of drafting the particulars of the Foundation Charter and By-laws or Letter of Wishes to getting the same attested.

If you would like our assistance with wealth planning and Foundations, please do not hesitate to contact us.



FAQs



01 Are Letter of Wishes legally binding?

Ans Letter of Wishes are not legally binding. It is recommended to create a Letter of Wishes in order to provide guidance to the Executors when following the directions contained in the Foundation By-laws when distributing the wealth.



02 At what stage of the Foundation can I make changes in wealth distribution?

Ans Insertions to the Charter and By-laws and drafting of a Letter of Wishes can be made at any stage of the Foundation's subsistence.



About FAME Advisory DMCC



About FAME Advisory DMCC

With three decades of market presence, FAME Advisory has remained the UAE's most trusted and leading tax advisory and management firm.

Along with that, FAME excels in various domains, such as corporate services, succession planning, and corporate structuring. Our primary aim is to align our solutions with the client's problems, educate them, and empower them to take informed decisions.



Better future with FAME Advisory



Vision

To be the region's first choice for tax compliance and advisory in various aspects of the business.



Mission

We at FAME Advisory aim to solve businesses' tax compliance issues and provide advisory services that help them achieve the milestones they dreamt of.

Our Team



Mr. Nirav Shah

Director at FAME Advisory

With over two decades of experience in corporate advisory, consultancy, and compliance, CA Nirav Shah is a qualified Chartered Accountant and a stalwart in the industry, being recognized as amongst the top corporate structuring, international tax, and compliance experts in the UAE, India, and other countries.

For more than 15 years, Mr. Nirav has had a distinguished journey consulting global clients on Corporate Structures and Governance and family asset holding structures and has served as a specialist in providing strategic inputs to organizations.



Udit Chokshi

Manager- Corporate Tax and VAT Advisory

Udit Chokshi is a Taxpert, helping businesses all across the UAE in getting tax audit-ready, streamlining their VAT and accounting processes, and shield them against tax evasion. Being an active listener, Udit absorbs and understands the client's problem and situation and communicates the facts and solutions honestly.

As a customer service-oriented person, he believes in providing utmost dedication and availability to customers.



Hemang Agravat


Manager - Business Development

As a Business Development Manager at FAME, Hemang has had a long professional career with a focus on growing the company's client base.

He holds a successful track record of nurturing clients & has been instrumental in building high-performing teams. He specializes in building programs that add value to the client relationships. Hemang brings in a wealth of experience bridging the gap between Sales & Advisory teams.



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