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ADGM'S NEW FOUNDATION LEGISLATION IS A SIGN OF CHANGING TIMES IN THE MIDDLE EAST'S FAMILY WEALTH MANAGEMENT INDUSTRY, WRITES **JAMES BARBER-LOMAX**

IN THE UNITED Arab Emirates' (UAE's) recent history, the majority of structures underpinning the management of family wealth have been set up through advisors who reached out for specific expertise situated elsewhere in the world. There were good reasons for this. One was that the requisite legal framework was unavailable locally, but another related to the historic culture of the region's wealthy families.

To say that Middle Eastern families are extremely discreet is an understatement, though this is not unusual in the world of ultra-high-net-worth individuals. For this reason, many of the older generation of wealthy families were – and still are – very happy to travel overseas to manage their financial affairs and requirements.

That said, the new generation moving into positions of authority and leadership in local families and businesses are introducing change across a wide spectrum. Middle Eastern family heads and business leaders rightly expect to be able to have their financial needs, however legally or geographically complex, delivered locally – preferably by locally based providers.

THE UAE AND ADGM

The UAE comprises seven individual emirates, the most famous being Dubai and Abu Dhabi – the latter being geographically the largest, and home of the capital of the UAE. As a country, the UAE now boasts two highly reputable, diverse and internationally

respected financial centres – the Dubai International Finance Centre and the Abu Dhabi Global Market (ADGM), which were established, and are run, independently of each other.

ADGM was established by federal decree in 2013 to support the economic and financial development specifically of Abu Dhabi. It now has over 700 licensed companies and legal entities. Located on Al Maryah Island at the heart of Abu Dhabi, ADGM is one of the world's newest international financial centres. It comprises three independent authorities – the Financial Services Regulatory Authority, the Registration Authority and ADGM Courts. The latter oversees all civil and commercial disputes within its jurisdiction under the common law of England and Wales, rather than the onshore Shari'a legal system.

With common law at ADGM's core, it was a natural progression for it to adopt the *Trustee Act 1925*, setting the base for a trust framework, and with it the ability to offer traditional 'offshore' structures from a highly accessible location within the UAE. The *Trusts (Special Provisions) Regulations 2016* provided important modern-day updates, resulting in a highly robust and legally sound local trust architecture. This is supplemented by a special-purpose vehicle regime and a well-developed single- or multi-family office solution.

However, as the concept of a trust remains foreign to many Middle Eastern nationals, ADGM sought to introduce

KEY POINTS

WHAT IS THE ISSUE?

The Abu Dhabi Global Market (the newer of the United Arab Emirates' financial centres) has recently adopted foundation legislation, making it the first Middle East jurisdiction to do so.

WHAT DOES IT MEAN FOR ME?

Although trust frameworks exist in the region, they often remain a foreign concept.

WHAT CAN I TAKE AWAY?

The new locally administered and managed foundation regime is increasingly being seen as a more acceptable solution to the increasingly complex needs of local families and businesses.

alternative but supportive regimes to assist effective and efficient wealth management for local and international individuals and families. Therefore, the registration unit of ADGM turned its focus towards drafting a foundation regime – the first such domestic regime in the region.

FOUNDATIONS REGULATIONS 2017

Foundations have long been a key alternative planning option for clients who may not be comfortable with the concept of a trust or trustee relationship – and for those living in jurisdictions that do not respect, or actively discriminate against, trusts. Although a foundation is similar in nature to a trust, it is more like a company structure.

A foundation has its own legal personality, thus enabling assets to be transferred directly to it (rather than to a trustee on behalf of the trust); also, a foundation can enter into contracts in its own name – in much the same way as a company. The full attributes of the ‘corporate veil’ given to subscribers of a company are aligned with those given to the founder(s) of a foundation, culminating in protection, segregation and a degree of privacy where required.

Settled in August 2017, ADGM’s *Foundations Regulations 2017* are modelled on internationally respected features, but with some innovative updates, resulting in an extremely stable but versatile system suitable for a range of client needs. Among the key features of the legislation are the following:

- The founder can be an individual, nominee or corporate nominee.
 - A wide range of founder reserved powers are available if required.
 - The foundation must have a registered address in ADGM.
 - The foundation council, which oversees the foundation, needs a minimum of two councillors, who can be individuals or corporates – one of whom can be the founder, if desired.
 - A guardian, much like a protector of a trust, can be appointed to oversee the foundation council, but this is not mandatory during the lifetime of the founder.
- There is no requirement to have an appointed registered agent.
 - The foundation must keep accurate financial accounts, but is not required to submit these to the registrar.
 - The charter of a foundation is submitted to the registrar and holds similar information to a company’s memorandum. It must include: the name of the foundation; its registered address in ADGM; details of the founder(s) or nominee(s); a description of the initial assets; provisions for the appointment of the council; the objects of the foundation; and details of the registered agent or any specific purpose or term (if any).
 - The foundation’s by-laws are not submitted to the registrar and remain confidential. Similar to a company’s articles, they set out the operational conditions and rules of the foundation, including the ability to make investments or distributions, powers of the council and/or guardian, and any reserved powers held by the founder.
 - Foundations established in another jurisdiction can be re-domiciled to ADGM. The foundation’s activity, by-laws and records must be in keeping with ADGM legislation, but this enables local families who have already established a foundation to move the operational activity much closer to home.
 - Importantly, the regulations also note that any transfer of property to a foundation in ADGM cannot be set aside by reference to any law of a foreign jurisdiction, including forced heirship, which is prevalent in Shari’a law.

The interaction between ADGM and UAE onshore authorities is also increasing, with various memoranda of understanding being signed. This indicates that, in the near future, an ADGM foundation may be able to own real estate in the UAE, which is currently only possible in very limited circumstances.

The UAE holds a significant tax-treaty network with 94 countries, including most of the EU and the wider Middle East and North Africa region – and there are 15 pending. Foundations, along with other ADGM structures, can benefit

from this expansive treaty network where local substance is provided.

Like the rest of the UAE, ADGM offers zero per cent tax for individuals and corporates, other than the newly introduced value-added tax, which came into effect on 1 January 2018, set at 5 per cent. From a practical standpoint, English is the working language for legislation and the courts, meaning there is little room for translation confusion.

BRINGING WEALTH ADMINISTRATION HOME

The move to create a foundation regime directly supports the work that ADGM has already done to allow wealthy local families to look closer to home for the financial services they need. Overseas firms already providing services to Middle Eastern clients are well aware of the potential for frustration created by having to wait for remote action or a response to specific needs caused by time-zone differences. The Middle East operates a Sunday to Thursday working week, and it is therefore not uncommon for a client to request operational activity on a Sunday morning, which the offshore provider may not pick up until Monday afternoon. In the days when communications were not as immediate, a delay of a few days might have been acceptable, but today it is not.

Though the use of foundations is not new to the Middle East, hitherto, they have not been run or administered locally. Ownership and control of wealth (and how it is shared and passed on) are held dear in the Middle East. Although trusts have played a significant part in bringing the region in line with common international practice, the arrival of local foundation legislation provides more comfort for the family patriarch, or other senior members, by allowing them to sit on the foundation council alongside their trusted fiduciary and advisors to manage the increasingly complex needs of the family in an efficient and secure manner.



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