

DIFC Foundations and their Role in Robust Succession Planning for the UAE's Next Generations

Dave Lange, General Manager & Senior Executive Officer of Trident Trust's DIFC office, gave delegates at the Hubbis Wealth Solutions Forum in Dubai an excellent presentation on the value of foundations as wealth planning solutions for private clients. Armed with an interesting slide show, he explained the key features of a DIFC Foundation, told guests how this compares with a Trust or Will and looked more broadly at global wealth and succession planning and structuring trends.



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Dave Lange
Trident Trust

Lange explained that Trident Trust is a global and independent fiduciary and fund services firm that began its life in 1978 and provides services to financial institutions, professional advisors, asset managers, family offices and international businesses.

The 3 Pillars

He explained Trident has three pillars in its service offering - their trustee services, which involve solutions and services for wealthy families looking for the benefits a trust can deliver, typically asset protection, estate planning, and inheritance tax deferral for their children, including the protection and preservation of family assets.

The second pillar is Trident's fund administration business, which provides the infrastructure, administration and accounting for third-party asset managers, whether hedge funds, private equity, debt or real estate funds.

And the third pillar is corporate services, which Trident provide from a very wide range of jurisdictions, covering both offshore and onshore. Those include incorporation and registered office

services, secretarial services and management representation.

Trident's independence

He explained that he wanted to highlight the independence of the firm as a core feature of its long-term success, noting that Trident's DNA is to achieve long-term sustainable growth and balance. And he noted that growth in the past decade had been driven mostly by the fiduciary and fund admin side of the business. "Today, we service over 20 jurisdictions globally, including Dubai, and we really pride ourselves on being able to assist clients across all of those jurisdictions on a global basis," Lange reported.

"According to the Gulf Family Business Council, within the next 10 years USD1 trillion of assets (not counting offshore assets) will pass from second generation business families to their millennial descendants. And surprisingly, only 15% to 20% of families actually have a solution in place. And even for those that do have succession plans in place, those plans are often not comprehensive enough."

He explained that the Private Wealth Market in the UAE was forging ahead robustly. He said private wealth represents an estimated USD3 trillion in the GCC and that the UAE is a top market for UHNWI and HNWI clients. He quoted a fairly recent Henley & Partners report that stated: "The UAE has become the focus of intense interest among affluent investors and is expected to see the highest net influx of HNWIs globally in 2022, with 4,000 forecast - a dramatic increase of 208% versus 2019's net inflow of 1,300 and one of its largest on record."

Transitioning wealth in the UAE

"With all that wealth in the region and jurisdiction, it's important for clients to consider how their wealth will pass from one generation to the next," he commented. "According to the Gulf Family Business Council, within the next 10 years USD1 trillion of assets (not counting offshore assets) will pass from second generation business families to their millennial descendants. And surprisingly, only 15% to 20% of families actually have a solution in place. And even for those that do have succession plans in place, those plans are often not comprehensive enough."

With that, he turned to some of the tools available to families in the UAE, with a particular focus on some of the tools available within the DIFC, supported robustly by the DIFC courts, which he noted apply international standards of justice and English common law principles, and are distinctly separate from the UAE legal system.

Foundations and their appeals

He then pointed to the most popular succession planning vehicle currently, namely the DIFC Foundation. A foundation,

he explained, is essentially a separate legal entity that has its own operating license, and is most commonly used for succession planning and asset protection. It can either be set up specifically for a charitable purpose, or for the benefit of certain classes of persons or specifically named individuals.

It cannot perform a commercial activity and must have a registered office in the DIFC. It is also what is called an 'orphan' structure, as it doesn't have any shareholders and is simply established once registered with the DIFC registrar. He said it is often referred to as a hybrid between a trust and a company in terms of key elements of control, decision making, and roles and responsibilities.

Key attributes

Lange reported that the DIFC Foundation is governed by council members similar to trustees of a trust and directors of a company and may or may not have a guardian depending on the specific purpose for which the foundation was established. It has two levels of beneficiaries, those being qualified recipients and default recipients. It is required to keep accounts but those accounts are not required to be submitted to the registrar if it has a registered office in the DIFC.

He then delved into some detail on the differences between a

foundation, a trust or a will, and then moved on to the rising popularity of foundations. He told delegates that since the concept of the foundation was established in the UAE in 2017, there have been roughly 550 foundations established across the DIFC, ADGM, and the RAK. Recently, he said the DIFC overtook the ADGM for being the most popular jurisdiction for establishing foundations.

Ideal for planning ahead

"When looking at the key reasons for establishing foundations, some of the most popular reasons are intergenerational wealth and legacy planning, followed by consolidation, wealth preservation and business continuity," he reported. "And when we are looking at some of the sort of the assets that are held in a foundation, there are few surprises but note also that it does have the flexibility to own a wide variety of assets. And interestingly, in our statistics, we see that comfortably more than 50% of our clients are Muslims, who have become ever more comfortable with the foundation concept, as it gives them the ability to have some say in their succession planning."

He then surveyed some of the benefits of the foundation. The foundation is a separate legal entity and allows for legal title of assets to be transferred. whilst allowing the

Founder to maintain control during their lifetime. Muslim clients can have a say in the allocation of more than one third of their assets, while for non-Muslims, the Foundation avoids the complex and lengthy process of probate. It is relatively quick and easy to establish, and has a lower maintenance cost than a trust structure, with no requirement for independent trustees. The Founding Documents (Charter & By-Laws) can be amended at any time by the Founder. And there is no need for multiple layers, such as special purpose vehicles in other jurisdictions such as the BVI.

Ready and able

Lange then offered delegates three examples of typical Foundation structures, tailored in each case to the needs and expectations of the clients. And he concluded that Trident Trust is a keen advocate of the Foundation as part of robust wealth and succession planning by forward-thinking clients. "The DIFC Foundation," he stated, "is an ideal succession planning and asset protection tool for founders and their next generations. Trident Trust is ready and available to help wealth managers and their clients understand how it can help them meet their goals and assist them with implementing a Foundation structure if it meets their requirements." ■

