

## Foundations: A Channel Islands and Middle East comparison

Foundations have become increasingly popular as vehicles for holding private wealth. For families who are less familiar with trusts, which require a separation of legal and beneficial interests in assets, establishing a foundation may be a good solution for succession planning and asset protection. A foundation is an incorporated entity, so it is akin to a company in that respect. However it does not have beneficial owners therefore, from a succession perspective, assets can be held in a foundation perpetually, thereby avoiding probate issues.

The Dubai International Financial Centre (“**DIFC**”) and Abu Dhabi Global Market (“**ADGM**”) have both introduced new foundations legislation recently while Guernsey and Jersey in the Channel Islands have had their foundations legislation for a number of years. This table compares the foundations legislation of these four jurisdictions.

When choosing where to establish a foundation, founders should consider the following key factors:

- reputation of the jurisdiction;
- regulatory framework;
- strength of the legislation;
- purpose of the foundation and proposed governance structure;
- type and location of assets to be held by the foundation;
- confidentiality;
- quality of service providers;
- quality of the judiciary; and
- body of case law.

In some cases it may be appropriate for a founder to establish foundations in several jurisdictions, as it might not be possible for one jurisdiction to satisfy all of the founder’s objectives.

NO.	TITLE	ADGM	DIFC	GUERNSEY	JERSEY
(1)	<b>Constitution and court system</b>	International financial centre and free zone located in Abu Dhabi and established in 2013.	International financial centre and free zone located in Dubai and established in 2004.  Governed by the DIFC Authority (“ <b>DIFCA</b> ”).	UK Crown Dependency. Self-governing. Part of the Commonwealth.  HM the Queen of England head of state.	UK Crown Dependency. Self-governing. Part of the Commonwealth.  HM the Queen of England head of state.

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		Lead by a board of directors, chaired by Minister of State (UAE).  Own independent court system.  Court of Appeal is the final court of appeal.  ADGM's legal system and courts are based on Common Law principles.	Own independent court system.  Court of Appeal is the final court of appeal.  DIFC's legal system and courts follow a Common Law framework.	Crown is responsible for the appointment of Lieutenant Governor and the senior members of the judiciary such as the Bailiff and Deputy Bailiff.  Own independent court system.  Judicial Committee of the UK Privy Council is the final court of appeal.	Crown is responsible for the appointment of Lieutenant Governor and the senior members of the judiciary such as the Bailiff and Deputy Bailiff.  Own independent court system.  Judicial Committee of the UK Privy Council is the final court of appeal.
(2)	<b>Primary foundation legislation</b>	The Foundations Regulations 2017 (" <b>ADGM Regulations</b> ").	Foundations Law DIFC Law No.3 of 2018 (" <b>DIFC Law</b> ").	The Foundations (Guernsey) Law 2012.	The Foundations (Jersey) Law 2009.
(3)	<b>Governing documents</b>	The Constitution comprising the Charter and By-laws.	The Constitution comprising the Charter and By-laws.	The Constitution comprising the Charter and Rules.	Charter and Regulations.
(4)	<b>Parties</b>	<b>Founder(s)</b> – individuals or legal entities.  <b>Council</b> – minimum of 2 members (individuals or legal entities). The founder may be a council member.  <b>Guardian</b> – required when no surviving founder. Optional whilst there is a surviving founder. May be a beneficiary, but may not be a founder, councillor or sole beneficiary.	<b>Founder(s)</b> – individuals or legal entities.  <b>Council</b> – minimum of 2 members (individuals or legal entities). The founder may be a council member.  <b>Guardian</b> – required when established for a charitable beneficiary or non-charitable purpose. Optional in all other instances.	<b>Founder(s)</b> – individuals or legal entities.  <b>Council</b> – minimum of 2 councillors (individuals or legal entities), subject to the terms of the Constitution. The founder may be a councillor.  <b>Guardian</b> – required when established for a purpose with no beneficiaries, or with disenfranchised beneficiaries. Optional in all other instances.	<b>Founder(s)</b> – individuals or legal entities.  <b>Council</b> – one or more members (individuals or legal entities). Must include a qualified member (a person registered under the Financial Services (Jersey) Law 1998). The founder may be a council member.  <b>Guardian</b> – mandatory.

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		<p><b>Beneficiary(ies)</b> – individuals or legal entities. Founder may be a beneficiary. Not required if established for specified purposes.</p> <p><b>Registered agent</b> – optional.</p>	<p><b>Qualified recipient(s)</b> – individuals or legal entities. The constitution may also identify a qualified recipient who will receive foundation property on the termination of the foundation. If no qualified recipient is identified as a default recipient or if it no longer exists, the property will become the property of DIFCA on termination.</p> <p><b>Registered agent</b> – optional. A registered agent must be a qualified person. A qualified person is a person who is licensed by the DIFCA to act as a registered agent of the foundation and registered with the DIFCA as a Designated Non-Financial Business or Profession.</p>	<p><b>Beneficiary(ies)</b> – individuals or legal entities. Founder may be a beneficiary. Not required but if no default recipient is named in the Constitution (or if the default recipient no longer exists), the foundation’s property or assets will become bona vacantia belonging to the Crown on termination (unless HM Receiver-General directs otherwise).</p> <p><b>Resident agent</b> – required unless the foundation is a collective investment scheme. Must be either an individual, resident in Guernsey, who is a foundation official (i.e. a councillor or guardian), or a Guernsey licensed fiduciary.</p>	<p><b>Beneficiary(ies)</b> – individuals or legal entities. Founder may be a beneficiary. Not required if established for specified purposes.</p> <p><b>Registered agent</b> – not required.</p>
(5)	<b>Local representation</b>	<p>Requires local registered office, but administration can take place outside the jurisdiction.</p> <p>The foundation must have a registered office in ADGM to which all communications and notices may be addressed.</p>	<p>Requires local registered office, but administration can take place outside the jurisdiction.</p> <p>The activities of the foundation must be carried on in the DIFC.</p> <p>If no registered agent is appointed, a copy of the by-laws must be filed with the Registrar.</p>	<p>Requires local registered office and local resident agent, but administration can take place outside the jurisdiction.</p>	<p>Requirement for qualified member in the council ensures administration conducted in Jersey.</p>

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(6)	<b>Records</b>	Accounting records must be kept at, or sent to, a place in ADGM and be open to inspection by the councillors and guardian.	Councillors and guardians must be named in the register. The register is available for public inspection.  Accounting records must be filed with the Registrar.	Council must ensure that the foundation keeps the records of the foundation (including accounting records) at its registered office.  Guardian and resident agent are entitled to inspect the records.	Each council member must ensure that proper accounting records are kept at the business address of the foundation. The business address of the foundation will be that of its qualified member.
(7)	<b>Founder's powers</b>	The ADGM Regulations specifically permit the following powers to be reserved for the founder in the constitution: <ul style="list-style-type: none"> <li>– power to amend the constitution;</li> <li>– power to change the objects of the foundation and to dissolve the foundation;</li> <li>– power to direct investments;</li> <li>– power to appoint and remove councillors;</li> <li>– power to appoint and remove guardians;</li> <li>– power to add and exclude beneficiaries;</li> <li>– power to amend the rights, entitlements and restrictions of a beneficiary; and</li> <li>– power to effect the continuation of an overseas foundation.</li> </ul>	The DIFC Law allows the following powers to be reserved to the founder during his/her lifetime (if a natural person), or up to 50 years (if a legal person): <ul style="list-style-type: none"> <li>– power to amend the constitution;</li> <li>– power to amend the objects of the foundation; and</li> <li>– power to terminate the foundation.</li> </ul>	The founder may reserve to himself/herself the following powers, subject to the terms of the constitution: <ul style="list-style-type: none"> <li>– power to amend, revoke or vary the terms of the constitution;</li> <li>– power to amend, revoke or vary the purpose of the foundation; and</li> <li>– power to terminate the foundation.</li> </ul> <p>Reserved powers must be detailed in full in the charter and only reserved during the founder's lifetime (if a natural person) or for up to 50 years (if a legal person).</p>	The charter and regulations may reserve rights for the founder. Where a founder has rights under the foundation and he/she dies, those rights will vest in the guardian unless the charter or regulations provide otherwise.

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		A founder can amend the charter during his/her lifetime even if the charter does not include a power of amendment.			
(8)	<b>Guardian's powers and duties</b>	<p>A guardian is responsible for ensuring that the council complies with the constitution and it supervises the activities of the council.</p> <p>Its powers are set out in the constitution.</p>	A guardian may sanction or authorise any action taken by the council that would otherwise not be permitted by the by-laws (unless the by-laws provide otherwise).	<p>A guardian has a duty to the founder and the beneficiaries to act in good faith and <i>en bon père de famille</i> (as a good father) to enforce the constitution and the purpose and in the exercise of his functions.</p> <p>A guardian may bring an action against the council unless the constitution provides otherwise.</p>	A guardian may sanction or authorise any action taken by the council that would otherwise not be permitted by the regulations (unless the regulations provide otherwise).
(9)	<b>Foundation's activities</b>	<p>A foundation may manage its assets and income.</p> <p>A foundation may not carry out any activities which are unlawful, contrary to any public policy of ADGM.</p>	A foundation may not carry out any commercial activities unless those activities are necessary for, and ancillary or incidental to, its objects.	<p>A foundation must have a purpose and may be established for any purpose except it cannot carry out any commercial activities except those necessary for, and ancillary or incidental to, its purpose.</p> <p>Any property may be endowed upon the foundation.</p>	A foundation cannot directly acquire, hold or dispose of Jersey immovable property, nor engage in commercial trading activities unless those activities are incidental to the attainment of its objects.
(10)	<b>Disclosure of information</b>	The foundation must provide to the guardian all documentation and information as the guardian may require to exercise his functions.	Subject to the terms of the by-laws, a foundation must disclose certain information to a "Person with Sufficient Interest" if requested to do so.	The council must, at all reasonable times, provide full and accurate information as to the state and amount of the foundation property within 3 months of a written request	Unless required by law, the charter or regulations, a foundation is not required to disclose any information to any person (whether or not a beneficiary).

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		Subject to the terms of the by-laws, a foundation can disclose certain information to a beneficiary.	A Person with Sufficient Interest is widely defined and includes most people who have a connection with the foundation.	made by the guardian, any enfranchised beneficiary or, subject to the terms of the constitution, the founder.	
(11)	<b>Migration</b>	Allowed	Allowed	Allowed	Allowed
(12)	<b>Assets</b>	A foundation can hold shares in companies (some restrictions apply to direct holding), listed stocks and portfolios, as well as properties in Abu Dhabi.	A foundation can hold shares in companies (some restrictions apply to direct holding), listed stocks and portfolios, as well as properties in Dubai.	No restriction on type of assets held.	No restriction on type of assets held except for Jersey immoveable property.
(13)	<b>Public information</b>	<p>The following information is publicly available upon request to the Registrar:</p> <ul style="list-style-type: none"> <li>– name and address of foundation;</li> <li>– name and address of the founder;</li> <li>– foundation charter; and</li> <li>– registered agent.</li> </ul> <p>The following information is confidential:</p> <ul style="list-style-type: none"> <li>– name and address of each councillor;</li> <li>– names and addresses of any beneficiaries;</li> <li>– names and addresses of guardian (if any); and</li> <li>– name and address of each beneficial owner of each founder which is a legal person (if any).</li> </ul>	<p>The following information is publicly available upon request to the Registrar:</p> <ul style="list-style-type: none"> <li>– name and address of foundation;</li> <li>– name and address of the founder;</li> <li>– name and address of each councillor;</li> <li>– foundation charter; and</li> <li>– registered agent.</li> </ul> <p>The following information is confidential:</p> <ul style="list-style-type: none"> <li>– names and addresses of any beneficiaries;</li> <li>– names and addresses of guardian (if any); and</li> <li>– name and address of each beneficial owner of each founder which is a legal person (if any).</li> </ul>	<p>Only “Part A” of the register is publicly available:</p> <ul style="list-style-type: none"> <li>– name and registered number of foundation;</li> <li>– name and address of councillors and guardians; and</li> <li>– details of registered office.</li> </ul> <p>The following information is confidential:</p> <ul style="list-style-type: none"> <li>– names and addresses of any beneficiaries; and</li> <li>– name and address of the founder.</li> </ul>	<p>The foundation charter is publicly available upon request to the Registrar containing at least:</p> <ul style="list-style-type: none"> <li>– name, object, purposes of foundation; and</li> <li>– initial endowment.</li> </ul> <p>The following information can be confidential:</p> <ul style="list-style-type: none"> <li>– name and address of council members and guardians;</li> <li>– names and addresses of any beneficiaries; and</li> <li>– name and address of the founder.</li> </ul>

*This table has been prepared for information purposes only and does not constitute legal advice. Appropriate legal advice on specific matters should be sought by legal advisors qualified in the relevant jurisdictions. The IPC team at Bedell Cristin are qualified to advise on the laws of the British Virgin Islands, Cayman Islands, Guernsey and Jersey.*