

The UAE is already home to a large number of ultra wealthy families and family-owned businesses. It is estimated that the top 10 UAE families employ over 600,000 people within the country and have a net worth of more than US\$31 billion<sup>1</sup>.

Increasingly, and particularly post-COVID-19, the UAE is an attractive destination for the privately wealthy – total private wealth held in Dubai, for instance, is estimated at US\$517 billion as 35,000 high net worth individuals (**HNWIs**) are thought to have migrated to the UAE in the past 20 years<sup>2</sup>. In no small part due to its two financial free zones, the Dubai International Financial Centre (**DIFC**) and the Abu Dhabi Global Market (**ADGM**), the UAE has built a regulatory framework and infrastructure to help support the growth and needs of HNWIs and family offices, and should be viewed worldwide as a stable option for family office planning.

This article provides an overview of the UAE legal landscape for family offices and highlights recent market changes that will, in our view, continue to enhance the attractiveness of the UAE as a destination for family offices when compared to some of the more traditional offshore centres.

## Part 1: Regulatory Framework

The DIFC and the ADGM are financial free trade zones and have been in existence since 2004 and 2015, respectively. Both are tax-free jurisdictions in which full foreign (non-UAE) ownership of businesses is allowed. Both have a legal system based on common law principles and their own court systems.

### a. DIFC

#### Existing Legislation

The DIFC was the first in the region to put in place a legal framework with a bespoke regime for family offices, the Single Family Office (**SFO**) Regulations (the **SFO Regulations**). The SFO Regulations specifically address the needs of family-run institutions, and have strengthened the DIFC's position as a regional platform for wealthy families to manage their private wealth, succession and tax planning.

The principal requirements that have to be met under the SFO Regulations are as follows:

- i. The SFO must be owned at 100% by members of a "Single Family"<sup>3</sup> looking back three preceding generations
- ii. The beneficiaries must be individual members of the Single Family, charities, family entities or other family fiduciary structures
- iii. The SFO can only manage the assets of the Single Family and may not provide services to third parties
- iv. The liquid assets must exceed US\$10 million (realisable in a 180-day period)
- v. The SFO must have an office in the DIFC

Family offices that qualify as SFOs under the SFO Regulations are not subject to the oversight of the Dubai Financial Services Authority (**DFSA**), the regulator of financial services in the DIFC, and are, therefore, exempt from a number of regulatory obligations, such as the requirements to prepare and maintain compliance monitoring and risk-management policies and manuals (but not the DFSA's anti-money laundering (**AML**) rules), to audit or file their accounts with the DIFC, or to appoint certain senior officers (such as a specific compliance officer).

To benefit from the current regime, SFOs must register as Designated Non-Financial Businesses and Professions (**DNFBP**). DNFBPs will continue to be subject to the AML rules that impose the following obligations:

- i. Management and mandatory appointments:
  - Senior management is responsible for compliance with the AML rules and must exercise due skill, care and diligence in doing so.
  - The appointment of a money laundering reporting officer is mandatory (this person must be UAE resident and have access to senior management and information).
- ii. Processes and manuals:
  - DNFBPs must put in place AML policies, procedures, systems and controls.
  - DNFBPs must conduct due diligence on their customers.
  - AML training must be provided on a regular basis.
- iii. Reporting:
  - DNFBPs must prepare and file AML reports with the DFSA on a yearly basis.

1 <https://www.khaleejtimes.com/business/local/revealed-the-uaes-most-powerful-business-families>

2 <https://www.arabianbusiness.com/banking-finance/458876-dubai-private-wealth-tops-517bn-as-uae-attracts-rich-with-safe-haven-status>

3 Defined as follows: "A family constitutes a Single Family either where it comprises one individual or a group of individuals all of whom are the bloodline descendants of a common ancestor or their spouses (including widows and widowers, whether or not remarried); or subject to such other limitations or conditions otherwise agreed with the Registrar." Regulation 2.3.4 provides that "individuals adopted as minors, step children, children of adopted children and illegitimate children of a qualifying family member shall also be regarded as members of the Single Family."

Key Considerations		DIFC	ADGM
Jurisdiction	Rule of law	✓	✓
	Adequate level of regulation	✓	✓
	Business friendly legal environment	✓	✓
	Political stability	✓	✓
	Global connectivity	✓	✓
	Common law court system and alternative dispute resolution system	✓	✓
	Access to know-how and skilled employees	✓	✓
Governance	Flexibility in agreeing on the corporate governance regime	✓	✓
	Robust system	✓	✓
	Set of statutory rules		
Capital	No restrictions on repatriation of profits	✓	✓
	No restrictions on dividends distribution	✓	✓
Operating costs	Low operating costs	✗	✗
Freedom of contract	Freedom to opt for a governing law outside of the selected jurisdiction	✓	✓
	Freedom to agree on contractual terms	✓	✓
Reporting	Timeline and effective registration process	✓	✓
	Information publicly available	✓	✗
	No annual filings	✗	✗
	No annual reporting requirements	✗	✗
	Audit required	✗	✗

## Proposed Changes

Over the last two years, the DIFC has been in discussions to replace the SFO Regulations with new regulations (the **Proposed Regulations**). The updates introduced in the Proposed Regulations take into account the recommendations of the DIFC Wealth Management Review, and seek to address a number of concerns raised by family offices and their advisors and introduce a number of important changes to the SFO regime.

The key changes in the Proposed Regulations include:

- i. A clear definition of family offices – “Family Office” is now defined as a company, foundation or partnership registered in the DIFC that is recognised by the DIFC Registrar as providing family office services, whether in its own right or as a trustee of a DIFC trust
- ii. The possibility for family offices to serve multiple families
- iii. A change in the minimum asset requirements
- iv. An exemption to operate from the DIFC for families with a substantial presence in the UAE
- v. Protection of the confidentiality of the ownership and management information, which will be kept on a private register not accessible to the public

Recommendations have been made to replace the automatic registration of SFOs as DNFbps with a non-automatic one at the discretion of the DFSA. However, it remains to be seen whether these will be accepted. As at the date of this article, the Proposed Regulations have not yet been enacted.

## Prescribed Companies

To further enhance its attractiveness as a hub for the structuring of establishments and transactions carried by businesses, the DIFC introduced the Prescribed Companies (**PC**) Regulations pursuant to which it provides cost effective options for companies seeking to use DIFC structures supported by the internationally recognised regime within the DIFC. SFOs qualify as “Qualified Applicants” pursuant to the PC Regulations meaning that they can incorporate wholly owned subsidiaries as PCs and manage their group structures while benefitting from lower incorporation and licensing costs and minimum compliance obligations (i.e. PCs are not required to prepare audited accounts or file them with the DIFC Registrar of Companies).

## Foundations

The foundations regime was introduced in the DIFC in 2018 offering private clients flexible vehicles for asset structuring and succession planning. A foundation is an independent legal entity that is established by one or more founders but does not have any shareholders, members or partners. This effectively means that a foundation owns itself and, therefore, owns its assets, which include charitable and non-charitable assets.

Foundations are effective vehicles used by family businesses to hold various assets into a single entity that is operated by a qualified foundation council in accordance with the charter and by-laws of the foundation. A guardian appointed by the founder oversees the function of the foundation council. Family members are named as beneficiaries of the foundation. DIFC Foundations are also permitted to own property in certain areas of mainland Dubai.

## b. ADGM

Unlike the DIFC, the ADGM does not have a separate set of regulations for family offices. The ADGM has opted for a system that is similar to the one applied in the UK through the introduction of a wide range of vehicles and structures that can be used to structure family offices based on each family’s specific needs (e.g. foundations, special purpose vehicles, holding companies, etc.).

## Restricted Scope Companies

A useful vehicle used for structuring family offices in the ADGM is the “Restricted Scope Company” (**RSC**). The ADGM Companies Regulations 2015 set out the criteria for private companies to be eligible for registration as RSCs and companies directly or indirectly owned by a group of persons who are members of the same family are eligible for registration as RSCs.

The main advantage of RSCs is that they offer a greater degree of confidentiality since the only details available on the public register are the RSC’s constitution date and its registered office.

In addition, RSCs are exempt from a number of obligations otherwise applicable to private companies such as:

- i. Right of inspection – Register of directors and register of members of RSCs are not open for inspection and members do not have a right to inspect records of resolutions and meetings by members
- ii. Members’ approval – Members’ approval is not required for all related transactions with directors (e.g. loans to directors, the entering into long-term services contracts, etc.)
- iii. Reporting – RSCs are not required to file their accounts with the Registrar
- iv. Auditing – The obligation to audit accounts does not apply to RSCs
- v. Annual filings – RSCs are only required to file an annual return yearly

## Foundations

Similar to the DIFC, the ADGM foundations regime provides family businesses an alternative structure for wealth management and preservation and succession planning. An ADGM foundation is restricted from engaging in any commercial activities unless the activities are ancillary to meet its objectives.

As a foundation has an independent legal personality and is self-owned, it will continue to exist after the death of its founder and, therefore, is a useful tool for avoiding family conflicts in relation to succession and inheritance. It is not mandatory to appoint a guardian for an ADGM foundation during the founder’s time although such appointment becomes mandatory upon the founder’s death.

The foundations legislative regime in ADGM aims to achieve a robust, yet flexible, governance structure for family businesses while maintaining transparency and confidentiality, making the ADGM an attractive option for private clients and HNWI’s looking to create tax and cost efficient structures to protect their assets, manage their wealth and preserve the family legacy through succession planning.

## c. Comparative Analysis Between the Two Jurisdictions

The main difference between the two regimes is that in the ADGM, there is no asset-based entry level criteria, while in the DIFC, to qualify as an SFO, family businesses must hold liquid assets of a minimum of US\$10 million. In addition, SFOs in the DIFC are required to register as DNFBPs, which has, to our understanding, been perceived as something of a deterrent.

A more detailed comparative analysis between the two jurisdictions is attached in Annex A.

## Part 2: Responses to Challenges

### Transparency/AML

While relatively recent events such as the collapse of Abraaj and NMC may have led to some questions asked in the region, the UAE has responded admirably. The UAE government has since introduced new policies aimed at enhancing corporate transparency and risk management.

At the Federal level, a new anti-money laundering law, Federal Law No. 20 of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organisations (“**Federal AML Law**”), was enacted in an aim to enhance the anti-money laundering procedures in line with the Financial Action Task Force recommendations and to ensure compliance with international standards on anti-money laundering and terrorism financing. The Federal AML Law focuses on prevention and grants law enforcement bodies with greater authority to take proactive action. It also introduced greater penalties for non-compliance with the AML rules.

Following the enactment of the Federal AML Law, the DIFC and the ADGM have revised their legislation to further enhance their AML framework. The most notable change was the introduction of ultimate beneficial ownership rules that impose an obligation on businesses to disclose to the competent authorities the identity of their ultimate/beneficial owners.

### Economic Substance

As part of the regulatory enhancements, the UAE Cabinet of Ministers enacted Resolution No. 57 of 2020 concerning economic substance requirements on 10 August 2020 (the **ESR**). The ESR apply to all jurisdictions within the UAE, including all free zones. The ESR were introduced in response to the decision of the European Union (**EU**) to include the UAE on a list of non-cooperative jurisdictions for tax purposes. The ESR are aimed at companies reporting income without any real economic activity and substance in the UAE, i.e. the activities in relation to that income actually take place outside of the UAE but the income is fully exempt from tax. The purpose of the ESR is to ensure that UAE entities that undertake certain activities are not used to artificially attract profits that are not commensurate with the economic activity actually undertaken in the UAE.

## Advantages for Estate and Succession Planning

Both jurisdictions have raised their profile and are consistently looking to improve their landscapes to be in line with best practice and international standards and are gaining in popularity. Both offer structures that are compatible with domestic law, for example Sharia Law, and as such can be used by Muslims and non-Muslims. Other advantages for local and regional families include the proximity factor and local culture and heritage. Families tend to want more and more to remain in control of their business and establish their SFO closer to home.

## Tax Holidays

Both the DIFC and ADGM provide a 40-year guarantee of zero taxes on corporate income and profits, further enhanced by the UAE's wide network of global double taxation treaties.

## Interaction With Onshore Changes

More recently, the UAE introduced a number of legislative amendments that indicates a desire to encourage and ease foreign investment in the country. One of the most significant changes of 2020 was Federal Decree No. 26 of 2020 on the amendment of certain provisions of Federal Law No. 2 of 2015 on commercial companies (**Decree No.26**). Decree No.26 allows a greater foreign participation in the share capital of local mainland companies that, prior to the decree, was limited to 49% and at the remaining 51% had to be owned by UAE nationals (or companies wholly owned by UAE nationals).

The DIFC and the ADGM are both free zone jurisdictions. Free zones are geographical areas within the UAE governed by their own rules and regulations and where 100% foreign ownership is allowed. This obviously makes free zones attractive to foreign investors. However, entities established in free zones are limited to operating within the free zone and abroad, i.e. outside the UAE, which deemed to be a great disadvantage for foreign investors seeking to do business in the UAE. With Decree No.26, the restrictions applicable in mainland UAE have been lifted for certain activities and, therefore, offering foreign investors with wider options for the operations of their businesses in the UAE.

## Part 3: DIFC and ADGM Well Positioned Versus Other Global Offshore Centres

The DIFC and ADGM are well positioned to become a central platform for family offices around the world in comparison to the more traditional offshore centres such as the Cayman Islands, BVI or the Channel Islands. While many of those traditional offshore jurisdictions have historically been used in family office structures, with increased global scrutiny on tax havens and transparency of ownership, the traditional jurisdictions are under threat.

The Cayman Islands were blacklisted by the EU as a non-cooperative jurisdiction for tax purposes in February 2020<sup>4</sup>, and although they were subsequently removed from the list, the increased attention on British Overseas Territories means that HNWI's are inclined to turn to alternate jurisdictions. The UAE Free Zones have struck a balance between disclosure and privacy, while remaining user friendly and ideally positioned at the crossroads for local business.

Despite COVID-19, in 2020, the DIFC reported its best performance since its creation, with a growth of 20% in the number of firms operating in the free zone<sup>5</sup>. In addition, recent initiatives such as the Innovation Hub and the Fintech Hive have placed the DIFC at the centre of tech innovation, which is an attractive area for HNWO and venture capital.

The ADGM, also reported a record year of growth in 2020, with significant achievements across core areas of fintech, regulation, sustainable finance and arbitration. ADGM increased the number of registered licences by 43%, totalling 3,211 by year-end 2020. Assets under management increased by 193% throughout the year, to end the year with over US\$85 billion.<sup>6</sup> Recent initiatives include the ADGM Digital Lab and the expansion of the ADGM Academy through a cooperation agreement with the Human Resources Authority, First Abu Dhabi Bank and the Abu Dhabi Commercial Bank to create an education platform aimed at young Emiratis.

The COVID-19 situation has shown that businesses can operate flexibly from around the world, and therefore business owners and HNWI's have much greater choice as to where to locate their business. For global HNWI's and family offices, the benefits of relocating their operations to the UAE can be significant, and there has never been a better time to take that step.

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4 Source: <https://home.kpmg/us/en/home/insights/2020/02/tnf-cayman-islands-eu-blacklist-of-non-cooperative-jurisdictions.html>

5 Source: <https://www.difc.ae/newsroom/news/difc-records-highest-number-annual-registrations-inception-2020/>

6 Source: <https://www.adgm.com/media/announcements/adgm-completes-2020-with-notable-achievements-growth-and-new-partnerships>

## Annex A: DIFC and ADGM – Main Features

	DIFC		ADGM
	Existing Regulations	Proposed Regulations	
<b>Applicable Law</b>	<ul style="list-style-type: none"> <li>• 2008 Single Family Office Regulations (as amended in 2011)</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed Single Family Office Regulations</li> </ul>	<ul style="list-style-type: none"> <li>• 2015 ADGM Companies Regulations</li> <li>• 2015 ADGM Controlled Activities Rules and Conditions of License</li> </ul>
<b>Investment Size</b>	<ul style="list-style-type: none"> <li>• Liquid assets of US\$10 million</li> </ul>	<ul style="list-style-type: none"> <li>• Liquid assets of US\$10 million</li> <li>• Net assets of US\$50 million</li> </ul>	<ul style="list-style-type: none"> <li>• No minimum share capital</li> <li>• No minimum liquid or net assets required</li> </ul>
<b>Legal Structure</b>	<ul style="list-style-type: none"> <li>• SFO, i.e. Body Corporate or Partnership established within the DIFC providing services only to a Single Family</li> </ul>	<ul style="list-style-type: none"> <li>• Registered Person (i.e. company, foundation or partnership) that has been recognised by the Registrar as providing a Family Office Services</li> </ul>	<ul style="list-style-type: none"> <li>• Varies depending on the needs of the family office</li> <li>• Restricted Scope Companies (RSC) and Foundations are the most common structures</li> </ul>
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>• Bloodline descendants of a common ancestor of three generations or their spouses</li> </ul>	<ul style="list-style-type: none"> <li>• No proposed changes</li> </ul>	<ul style="list-style-type: none"> <li>• Family members</li> </ul>
<b>Premises</b>	<ul style="list-style-type: none"> <li>• Physical presence within the DIFC required</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement to maintain premises within the DIFC not applicable if substantial presence in the UAE and corporate services firm appointed in the DIFC as registered agent</li> </ul>	<ul style="list-style-type: none"> <li>• Office or registered agent in the ADGM</li> </ul>
<b>Management</b>	<ul style="list-style-type: none"> <li>• Authorised Representative who must be a UAE Resident</li> <li>• Minimum one director</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum one director</li> </ul>	<ul style="list-style-type: none"> <li>• Depends upon the legal structure</li> <li>• For private companies: minimum one director</li> </ul>
<b>Reporting</b>	<ul style="list-style-type: none"> <li>• Annual return</li> <li>• Maintain accounting records</li> <li>• Filing of audited accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain accounting records</li> <li>• Exempt from filing accounting records with registrar or to have them audited</li> </ul>	<ul style="list-style-type: none"> <li>• Depends upon the legal structure</li> <li>• RSCs: annual return to be filed on a yearly basis but no requirement to file accounts or audit accounts</li> </ul>
<b>Public Register</b>	<ul style="list-style-type: none"> <li>• Name of SFO, current and former shareholders, directors and company secretary</li> </ul>	<ul style="list-style-type: none"> <li>• Details of shareholders, interest holders, directors and officers are kept on a private register (i.e. not made public)</li> </ul>	<ul style="list-style-type: none"> <li>• Depends on the legal structure</li> <li>• RSCs: record of directors and shareholders not publicly accessible</li> </ul>
<b>Taxation</b>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>

	DIFC		ADGM
	Existing Regulations	Proposed Regulations	
<b>Cost</b>	<ul style="list-style-type: none"> <li>• Registration and licensing of a Private Company: US\$20,000</li> <li>• Data protection registration: US\$750</li> </ul>	<ul style="list-style-type: none"> <li>• No proposed changes</li> </ul>	<ul style="list-style-type: none"> <li>• Operational single family office registration fees: US\$10,000</li> <li>• Data protection registration: US\$300</li> </ul>
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Bespoke law</li> <li>• Dedicated management team in the DIFC</li> <li>• Home to world's leading asset management and advisory firms</li> <li>• Access to a wide range of professional service providers</li> <li>• Financial hub</li> <li>• Legal and regulatory environment</li> <li>• SFO Regulations in place since 2008</li> <li>• Sophisticated alternative dispute resolution system (DIFC-LCIA)</li> </ul>	<ul style="list-style-type: none"> <li>• Bespoke law</li> <li>• Dedicated management team in the DIFC</li> <li>• Home to world's leading asset management and advisory firms</li> <li>• Access to a wide range of professional service providers</li> <li>• Financial hub</li> <li>• Legal and regulatory environment</li> <li>• Sophisticated alternative dispute resolution system (DIFC-LCIA)</li> <li>• No requirement for office for large UAE-based businesses</li> <li>• May manage assets of several families</li> <li>• Information on SFO not available to the public</li> </ul>	<ul style="list-style-type: none"> <li>• Sophisticated alternative dispute resolution system (ADGM Arbitration Centre) (since October 2018)</li> <li>• No minimum asset level criteria</li> <li>• No minimum share capital</li> <li>• Flexibility in terms of structure to be adopted</li> <li>• Financial hub</li> <li>• Home to world's leading asset management and advisory firms</li> <li>• Access to a wide range of professional service providers</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• May only manage assets of a single family</li> <li>• Information on SFO publicly available on DIFC Public Register</li> <li>• Minimum threshold for assets under management</li> <li>• Cost of registration and licensing</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum threshold for assets under management</li> <li>• Cost of registration and licensing</li> </ul>	<ul style="list-style-type: none"> <li>• Recent jurisdiction (has been in existence since 2015)</li> <li>• No bespoke law</li> </ul>