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Abu Dhabi Global Market Proposes Regulations for Establishment and Operation of Foundations

ADGM Foundation Vehicle Would Complement the DIFC Common Law Trust and the Sharjah Islamic Waqf; A Positive Development for Family Businesses, Philanthropy, and Wealth Management

Abu Dhabi Global Market (ADGM), the international financial center and free zone located on Al Maryah Island in the UAE capital Abu Dhabi, yesterday opened a public consultation on the ADGM's proposed foundation regime ([Consultation Paper No. 3 of 2017](#) and proposed [Foundations Regulations 2017](#)).

Valuable for Family Firms, Philanthropy, and Wealth Management

The development is significant and positive, as the ADGM foundation, as proposed, would be the first-of-its kind in the UAE and particularly helpful for family businesses, philanthropy and wealth management in the UAE and the Middle East more broadly. The foundation model proposed is based on the civil law foundation, as it is an incorporated entity (with independent legal personality) with characteristics analogous to some features of the common law trust.

Foundation Would Complement UAE Offerings

An ADGM foundation vehicle, when it becomes a reality, will complement the UAE's existing offerings, particularly the DIFC common law trust and the Sharjah Islamic waqf (which also has independent legal personality as expressly provided for by Sharjah law, consistent with Shari'ah (Islamic Law) that accords independent legal personality to the waqf).

Proposed Foundation Framework Balances Privacy and Public Interest in Anti-Money Laundering and Tax Compliance

The ADGM's approach is praiseworthy for its balancing of the privacy interests of ADGM clients (*e.g.*, foundation founders) and the ADGM and public interest in gathering and retaining beneficial ownership and other information needed for anti-money laundering, tax compliance, and other purposes (including the protection of the ADGM's standing and reputation as a budding global financial center).

Accordingly, the ADGM has proposed a two-pronged formation approach, whereby basic foundation information would be publicly accessible and more sensitive information, such as foundation bylaws and Know-Your-Customer (KYC) details, would be held by the ADGM's Registrar and only disclosed where disclosure is in the public interest or legally required (such as where disclosure to another regulator is necessary).

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The two-pronged, public-private information disclosure model is particularly well-suited to the needs of foundations (particularly founders and beneficiaries) and to some cultural sensitivities surrounding private business and wealth in the Middle East.

Corporate Governance Issues

Among the issues that ADGM has flagged for public comment is whether the proposed ADGM foundation's governance structure should include a "guardian" to oversee the Foundation Council. This is a key question that should be considered from legal and practical vantage points.

In principle, a foundation guardian (which can be likened to a trustee of a common law trust) provides a top-level layer of oversight to ensure the integrity of foundation operations, protect foundation assets, and carry out the wishes of a foundation's founder(s).

As a practical matter— and particularly where a foundation serves family business succession and family wealth management objectives— a qualified and effective guardian can de-personalize the family dynamics that make family business succession and wealth management issues difficult in some cases. Family firms and offices with a potential interest in the ADGM foundation should consider foundation governance features in reviewing the proposed foundation model and formulating comments.

Not a U.S. Foundation

Readers in the United States should note that the proposed ADGM foundation is not the same as a U.S. foundation, which is distinguished by U.S. tax laws and regulations. Rather, the proposed ADGM foundation is a statutorily-created incorporated entity that, as suggested above, can be characterized as a hybrid of a company and a common law trust. The ADGM foundation is modeled on the civil law foundation as found in, for example, Germany and Switzerland, and more recently adopted in, *e.g.*, Jersey and Guernsey.

Public Consultation Time Period

The ADGM's public consultation on the proposed foundation regime is open until July 5, 2017.

For more information about MassPoint's relevant experience and services or the proposed ADGM Foundation and Public Consultation, or for assistance in developing and submitting public comments, please contact [Hdeel Abdelhady](mailto:Hdeel.Abdelhady) at habeldhady@masspointpllc.com.