

FOUNDATIONS AND FAMILIES: STRUCTURING FOR STABILITY ACROSS JURISDICTIONS

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Across the major financial centers of the world, foundation structures have become an increasingly sophisticated means of preserving wealth, maintaining family harmony, and ensuring continuity across generations. Yet despite the growing convergence of legal frameworks, the practical success of any foundation depends less on statute than on sensitivity - to culture, to family dynamics, and to the realities of cross-border life.

In practice, a foundation sits at the intersection of law, culture, and personality. Too often, advisers focus on technical perfection at the expense of human context. Increasingly, the most successful families treat the foundation not as a stand-alone structure but as part of a broader governance framework - complemented by family charters, advisory councils, and communication protocols that give legal form to shared purpose. The result is a structure that satisfies the legal formalities but unsettles the family it was meant to protect. Those who approach the task with an appreciation for both the legal and cultural dimensions tend to produce outcomes that endure; those who neglect that balance often sow the seeds of future dispute.

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Understanding the Cultural Lens

The starting point in any foundation planning exercise is an honest assessment of what the family believes wealth to represent. In Western common-law systems, wealth is generally treated as personal property - an individual asset, freely controlled and disposed of according to personal discretion. In contrast, within much of the Middle East, wealth is often regarded as a collective patrimony, belonging to the wider family rather than the individual. The patriarch or matriarch is viewed less as an owner and more as a custodian, bearing both moral and financial responsibilities to preserve and deploy the family's assets for the benefit of future generations. A foundation that fails to reflect the family's cultural realities rarely secures its lasting acceptance.

Regional, Civil Law and Perceptions of Fairness

Inheritance remains one of the most sensitive and frequently contested aspects of family wealth planning. Under Sharia law, estates are distributed according to fixed proportions among prescribed heirs - typically including the spouse, children and parents - with male heirs often receiving double the share of female heirs. Although modern foundation laws in the DIFC, ADGM and RAK permit founders to depart from these proportions, doing so without careful consultation can be perceived as infringing religious principle and may provoke resistance within the family.

Civil-law jurisdictions such as France, Italy and Switzerland adopt a different but equally prescriptive model through their forced heirship regimes, under which children, and in some cases other heirs, are entitled to reserved portions of the estate. To protect these statutory rights, such systems commonly include broad clawback provisions allowing heirs to challenge lifetime gifts or dispositions made by the deceased if they have the effect of eroding their reserved entitlements. In practice, this means that transfers completed during life can be retrospectively brought back into the estate to restore those shares.

By contrast, Sharia recognizes the doctrine of *hiba* - the lifetime gift - which, once validly executed, lies outside the inheritance estate and is generally insulated from redistribution after death, save in limited cases such as duress, incapacity or lack of delivery. The *hiba* mechanism thus provides a culturally legitimate and flexible means of inter vivos wealth transfer, aligning religious observance with modern estate planning objectives.

Advisers who engage families openly, document consensus, and clearly explain the rationale behind a chosen structure are far less likely to see that structure challenged later in court.

Choosing the Jurisdiction

Jurisdictional competition in this field is intense. The established Western centers - Jersey, Guernsey, the Cayman Islands, and Switzerland - offer depth of case law, judicial predictability, and reputational solidity. The newer Eastern centers - notably the DIFC, ADGM and RAK ICC - bring proximity, cultural familiarity, and a pragmatic regulatory tone.

The choice between them turns not on prestige but on purpose. For families with domestic assets in the UAE, a regional foundation may be the most practical and culturally resonant option. For those requiring global

recognition, established offshore regimes remain persuasive. Increasingly, sophisticated families employ both - combining a regional foundation for local holdings with a Channel Islands or Cayman structure for international assets.

The detail matters. Registration and disclosure regimes vary: some require public filing of charters; others retain confidentiality of by-laws and council membership. Beneficiary information rights also vary considerably between jurisdictions - ranging from regimes such as the Cayman Islands, Jersey and DIFC, where disclosure rests largely on the council's discretion or the terms of the charter, to those like Guernsey, which confer statutory entitlements to documentation and oversight on enfranchised beneficiaries. Enforcement cultures also diverge: Jersey and Guernsey remain judicially active, whereas DIFC and RAK have embraced arbitration as a primary method of private dispute resolution. The prudent approach is not to search for the "best" jurisdiction but for the most compatible environment in which the family's affairs can be governed with confidence.

Governance and Control

A foundation's stability is determined as much by its internal mechanics as by the jurisdiction of registration. The founder's intentions must be expressed with clarity, but without creating paralysis. Council composition, voting thresholds, and guardian powers should be delineated with care, allowing the structure to evolve without departing from its purpose.

Alongside the formal constitutional documents, many families now adopt a family charter - a non-binding but highly influential instrument that articulates shared values, governance principles, and protocols for decision-making. Properly aligned with the foundation's charter and by-laws, a family charter can clarify the roles of family members, trustees, and advisers, and can help prevent the informal misunderstandings that often escalate into formal disputes.

Succession planning for office-holders is too often neglected. The passing of a patriarch or matriarch can leave a vacuum if no successor mechanism exists. Explicit appointment provisions, transitional arrangements, and powers of replacement reduce the risk of deadlock. Likewise, clarity on amendment rights - specifying when and how the charter or by-laws may be varied - prevents later disputes over legitimacy.

Transparency and Confidentiality

The modern regulatory climate leaves little room for absolute secrecy. Beneficial ownership registers, FATF and OECD standards, and information-exchange treaties have redrawn the landscape. Families should therefore pursue structured transparency rather than opacity - regular accounts, reasoned minutes, and proportionate information rights for beneficiaries. Experience shows that most disputes do not arise from malfeasance but from silence. When information is withheld, suspicion fills the void. A measured reporting framework, even where not legally required, is often the simplest form of risk management.

Duties, Liability and Protection

Council members sit at the frontier between fiduciary responsibility and practical administration. Their duties vary by jurisdiction: some statutes impose explicit obligations of honesty and good faith; others rely on the equitable principles of impartiality and diligence. Either way, the standard of care should be defined contractually, accompanied by appropriate indemnities and insurance. Clarity protects both the council and the beneficiaries and helps prevent the drift into litigation that often follows when roles are left ambiguous.

Firewall provisions have become an essential feature of modern foundation law. They are designed to shield the structure from the reach of foreign judgments or inheritance claims that would otherwise disturb its internal arrangements. Most leading foundation jurisdictions now provide robust statutory firewall protections of this kind. The DIFC and RAK ICC frameworks exemplify this modern approach, each containing explicit statutory provisions that limit recognition of foreign judgments inconsistent with their respective foundation's legislation. Both reinforce the principle that questions of validity, interpretation and administration are to be determined exclusively under local law and within the jurisdiction of their own courts.

That protection, however, is not absolute. Even the strongest firewall cannot completely defeat a claim arising from a transfer tainted by fraud or made in circumstances of insolvency - although, in many cases, such legislation confines any creditor's recovery to the value of the impugned transfer rather than exposing the foundation's wider assets. Moreover, the practical effectiveness of any firewall often depends on the location of the foundation's assets. If those assets are situated outside the foundation's home jurisdiction, a judgment creditor may still seek enforcement in the place where the assets are held, notwithstanding the statutory protection at home. It is therefore essential that foundations maintain a clear understanding of where their assets sit and assess whether any are exposed to potential claims. Ultimately, sound structuring, clear documentation, and prudent solvency analysis at the point of settlement remain the most reliable safeguards.

Managing Disputes

No structure is immune from conflict, but good drafting can determine how that conflict is managed. Tiered dispute-resolution clauses - providing for internal review, mediation, and arbitration before litigation - are now standard in well-advised foundations. They preserve confidentiality and provide space for pragmatic settlement.

In the Middle East, there is a growing institutional emphasis on family dispute prevention and mediation. The Saudi National Centre for Family Business has taken a notably proactive role, reporting that it has assisted more than ten prominent family groups resolve or avoid public disputes through structured dialogue and intervention. While Saudi Arabia has no foundation law of its own, the Centre's work demonstrates the region's recognition that early engagement and facilitated dialogue are often more effective than formal proceedings in preserving both wealth and relationships. The Dubai Centre for Family Businesses, established more recently under the umbrella of Dubai Chambers, pursues similar objectives and is steadily expanding its initiatives to promote governance, education and dispute-prevention frameworks for family enterprises within the UAE.

Together, these initiatives underscore the regional shift toward managed resolution rather than adversarial litigation. The UAE's financial free zones, with modern arbitration statutes and bilingual courts, complement this philosophy by providing efficient, discreet venues for resolving those disputes that cannot be settled internally.

The Human Element

Ultimately, foundations fail for human reasons: misunderstanding, mistrust, or unmet expectation. The most effective structures are those that institutionalize communication as much as control. Regular family meetings, statements of wishes, and a living family charter - reviewed and reaffirmed by successive generations - can convert what might become future litigation into sustained consensus.

Law can define rights, but only dialogue sustains relationships. The real craft in foundation work lies not merely in drafting but in listening - discerning what a family needs to preserve, what it wishes to change, and how those aims can be reconciled within a coherent legal framework.

Conclusion

The modern foundation is more than a vehicle for wealth preservation. Properly conceived, it is a constitutional instrument for the family itself - one that reconciles the universality of law with the individuality of heritage. Its strength lies not only in statutory sophistication but in empathy, foresight, and precision of expression.

For practitioners and families alike, the lesson is consistent: the foundation is not an end in itself but a means of perpetuating stability. Where culture, communication and legal structure are harmonized, disputes are rare and legacies secure. Where they are not, even the most elegant drafting will not save it.



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