



ABU DHABI
GLOBAL MARKET

Charitable Endowments in ADGM Guidance

Registration Authority

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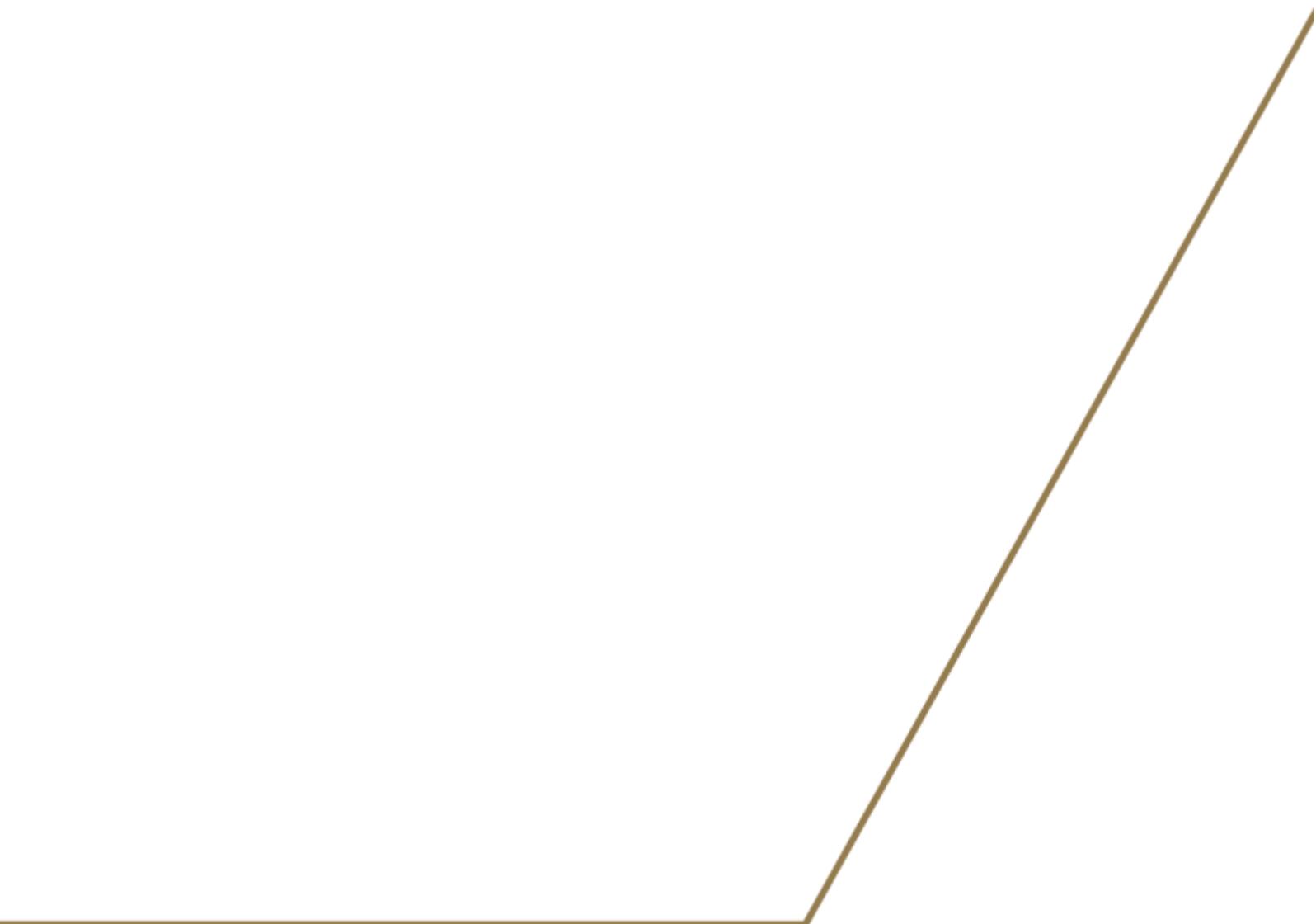


TABLE OF CONTENTS

1.	INTRODUCTION	3
	Introduction to Abu Dhabi Global Market.....	3
	Guidance overview and application	3
2.	CHARITABLE INITIATIVES IN THE UAE	3
3.	CHARITABLE ENDOWMENTS IN ADGM	3
	What is an Endowment?	3
	What is a Charitable Endowment?	4
	Key Features of a Charitable Endowment.....	4
4.	CHARITABLE ENDOWMENT STRUCTURES AND THEIR REGULATION IN ADGM	5
	Foundations	5
	Trusts.....	5
	Companies Limited by Guarantee	6
5.	ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING OBLIGATIONS	6
6.	WHAT TO CONSIDER BEFORE CREATING A CHARITABLE ENDOWMENT	6
	Disclaimer.....	8

1. INTRODUCTION

Introduction to Abu Dhabi Global Market

- 1.1. Abu Dhabi Global Market (**ADGM**) is an international financial centre established pursuant to Abu Dhabi Law No. 4 of 2013 in the Emirate of Abu Dhabi. With its own civil and commercial laws based on English common law, ADGM offers the local, regional and international business community a world-class legal system and regulatory regime.
- 1.2. The Registration Authority (**RA**) is one of ADGM's three independent authorities, together with the Financial Services Regulatory Authority (**FSRA**) and the ADGM Courts. The RA is the commercial regulator of the ADGM. It is responsible for the licensing, registration and incorporation of entities seeking to establish a presence in the ADGM as well as monitoring and enforcing the ADGM's commercial legislation and facilitating government services.

Guidance overview and application

- 1.3. This Guidance is issued under section 28 of the Commercial Licensing Regulations 2015 to assist clients who wish to establish a charitable endowment in ADGM.

2. CHARITABLE INITIATIVES IN THE UAE

- 2.1. The UAE has a long established culture of philanthropic initiatives aimed at promoting and supporting the welfare of communities worldwide. Whilst such initiatives play an important role in supporting a strong and progressive society, charitable organisations must nevertheless adhere to all relevant laws aimed at reducing the risk of charities and non-profit organisations being utilised by illegal organisations as a means for disguising their fundraising efforts.
- 2.2. In the UAE, charity work and charitable donations are regulated at both the Federal and Emirate level. The Ministry of Community Development regulates the establishment and registration of charities. There are a number of legislative instruments regarding charitable donations at the Federal level, including Federal Law No. 2 of 2008 concerning Public Welfare Associations and Organisations, which criminalises the collection of donations through associations that are not properly licensed by the Ministry. Further, Federal Law No. 5 of 2012 on Combating Cybercrimes makes it an offence to seek public donations through information technology devices without relevant permission from the competent authorities. In addition, Federal Law No. 5 of 2018 provides the legislative environment for the establishment of Waqfs or endowments in the UAE.
- 2.3. In Abu Dhabi, the Department of Community Development plays an important role in facilitating, organizing and coordinating the contributions of individuals, governmental entities and private corporations to contribute to the UAE's prosperity and build a cohesive society.
- 2.4. Once a charitable organisation has been established in broader UAE (outside the ADGM) and appropriately licensed by Federal authorities, it may then collect donations to pursue its aims and objectives. To this end, ADGM's legal framework may provide an appropriate structure or vehicle to facilitate building, investing and benefiting from donations to achieve the charity's objectives.

3. CHARITABLE ENDOWMENTS IN ADGM

What is an Endowment?

- 3.1. An endowment, in its common day-to-day usage and as used in this Guidance, is a gift or a donation made for a charitable purpose. This gift or donation can then earn investment returns that can in turn be used to finance projects or operations.

- 3.2 It is important to note that an endowment as referred to in this Guidance should be distinguished from an 'Endowment Policy', which is a life insurance contract, or a savings product, that pays a lump sum to a beneficiary after a specific term or upon the death of the policyholder.

What is a Charitable Endowment?

- 3.3 Over the years, a number of legal structures have been utilised for philanthropic activities and causes including endowments, trusts, foundations and charitable organisations.
- 3.4 For the purpose of this Guidance, a charitable endowment refers to the mechanism by which a charitable or not-for-profit organisation collects and invests donations, and subsequently distributes the proceeds or income earned from the investment of such donations to finance charitable projects over the long term. The key aspect is that the donor of the donation loses all legal and beneficial title to, and has no expectation of, any return or repayment of the funds donated. Thus, once donated, the funds are used for the sole benefit of, and form the charitable endowment for, the proposed recipient (namely, a charitable or not-for-profit organisation).

Key Features of a Charitable Endowment

- 3.5 A charitable endowment has four key features:
- a. A founding instrument;
 - b. A mechanism for the collection or pooling of gifts or donations;
 - c. Effective governance and regulatory oversight to facilitate prudent investment; and
 - d. Governance structure to facilitate authorised distributions of proceeds/income.

A founding instrument

- 3.6 A charitable endowment is established by a legal instrument, which may choose to apply the English common law, as applied in the ADGM, and be enforced by the ADGM Courts, recording the terms of the gift or donation and facilitating the transfer of ownership of the gift or donation from the donor to the intended recipient, being a charitable or a not-for-profit organisation. The type of legal instrument utilized will depend, among other things, on the type of structure that the charitable endowment takes. For instance, a Foundation will require a Foundation Charter; a Trust a Trust Deed and a Company a Constitution, Articles of Association or a resolution of the board of directors.

A mechanism for the collection or pooling of gifts or donations

- 3.7 In the context of a charitable endowment, as the donor does not retain title to the donation or a gift, this mechanism can be a bank account into which donors can deposit their donations.

Effective governance and regulatory oversight to facilitate prudent investment

- 3.8 This element involves three separate considerations:
- a. The role of the charitable or not-for-profit organisation in establishing the investment strategy and practices. These may include investment and operating restrictions concerning the deployment of donated funds and are typically articulated in the founding instrument;
 - b. The role of any investment manager appointed by the charitable endowment in implementing the investment strategy and practices; and
 - c. The role of the Federal authorities in overseeing the conduct of a charitable organisation that is established and licensed in the broader UAE (outside ADGM) and, where relevant,

the possible role of the FSRA to supervise the conduct of any ADGM-based investment manager appointed by a charitable organisation, if one is appointed.¹

Governance structure to facilitate authorised distributions of proceeds/income

3.9 The founding instrument establishing a charitable endowment will also set out the guidelines for, and restrictions on, the use of the proceeds or income derived from the investment of endowed funds. This will include prescribing a specific purpose or nominating particular projects or causes to which the proceeds or income could be applied, and which persons (for instance, a board of directors or trustees or oversight committee) will be empowered to determine whether any proposed deployment of resources is in compliance with the operating restrictions contained in the founding instrument. This ensures that proceeds are only distributed to agreed or authorised projects or purposes as specified in the founding instrument of the vehicle established.

4. CHARITABLE ENDOWMENT STRUCTURES AND THEIR REGULATION IN ADGM

4.1 There are a number of legal vehicles in ADGM that may be utilised to facilitate a charitable endowment framework, including foundations, trusts and companies limited by guarantee.

Foundations

4.2 Foundations are a type of legal entity that operate like a common law trust yet have features more akin to a company, such as being incorporated and having separate legal personality. Foundations in ADGM can be used for a variety of purposes, including wealth management and preservation, family succession planning, tax planning, asset protection, corporate structuring and for public interest purposes. Once a founder establishes a foundation, assets are transferred and become the property of the foundation. Unlike a trust, a foundation safeguards the founder's ability to exercise control over a foundation. The foundation continues to exist perpetually after the death of the Founder. In the case of a charitable foundation, this can be established by a founder who is an individual (philanthropist) or an organisation.

4.3 In ADGM, foundations operate in accordance with the *ADGM Foundations Regulations 2017* and are regulated by the RA. The regulatory framework prescribes the mandatory requirements for ADGM foundations, such as the need for a valid charter, a requirement for a registered office address in ADGM, as well as governance controls or safeguards to protect the wishes of the founder, safeguard the assets of the foundation and oversee the foundation council (including the role of a guardian, statutory duties for the foundation council, including the requirement to maintain accounts). Further information on the ADGM foundations regime is available [here](#).

Trusts

4.4 A trust is, broadly, a legal relationship recognised and governed by established English common law, English statute, ADGM regulations and the principles of equity. A trust is created by a settlor when assets are placed under the control of a trustee for the benefit of a beneficiary, or for a specified purpose. A trust permits the separation of legal and beneficial

Investment Management is a financial services activity regulated by the FSRA. An investment manager will require a Financial Services Permission (FSP) to engage in the Regulated Activity of Managing Assets, and be subject to additional regulatory requirements imposed by the *Financial Services and Markets Regulations 2015* (FSMR) and the Rules made under FSMR, including the FSRA General Rulebook and the FSRA Conduct of Business Rules.

ownership: the trustees become the owners of the trust property whilst the beneficiaries are entitled to expect that the trustees will manage the trust property for their benefit.

- 4.5 A charitable trust is a trust for purposes rather than identified beneficiaries, and may be an appropriate vehicle through which a charitable organisation's donations may be invested and managed for charitable purposes. A charitable trust typically falls within any of the following four classes: the advancement of education, the relief of poverty, the advancement of religion, or for other purposes beneficial to the community. For example, trust structures have been utilised in the USA by universities to collect and administer donations to those institutions including by philanthropists, former students and the industry, in order for those institutions to utilise those funds for the future advancement of the institution including research and infrastructure.
- 4.6 The ADGM Trusts framework is derived from both established English common law and the *ADGM Trusts (Special Provisions) Regulations 2016*. This enables ADGM trusts to be flexible, enabling changes in trust assets, trustees or beneficiaries, trust objectives and limits on trusts' duration. Being a trustee of an express trust, as well as other associated activities of 'Providing Trust Services', is a type of a financial services activity regulated by the FSRA. Accordingly, a Financial Services Permission under the *Financial Services and Markets Regulations 2015* is required in order to provide trust services by way of business, including acting as a trustee of a charitable trust, in or from ADGM.

Companies Limited by Guarantee

- 4.7 A company limited by guarantee is designed to protect members from liability, but which typically does not distribute profits to its members and does not hold share capital. These companies do not have share capital and their members are 'guarantors' rather than 'shareholders', as they agree to guarantee a stated sum to contribute in the event of the winding up of the company. Such companies are primarily used for industry and professional associations or organizations that require legal personality. In ADGM, these entities are governed by the *ADGM Companies Regulations 2020* and regulated by the RA. A company limited by guarantee can be incorporated by a minimum of one person, an individual or a body corporate, and require a minimum of one director. More information on the incorporation of a company limited by guarantee is available [here](#).

5. ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING OBLIGATIONS

- 5.1 In addition to all requirements imposed under Federal laws applying to organisations with charitable purposes, ADGM's *Anti-Money Laundering and Sanctions Rules and Guidance (AML)* apply to any legal purpose or arrangement operating for charitable purposes in or from ADGM, defined as a 'Non-Profit Organisation' (NPO). The governing body of an NPO is obligated to maintain records of its membership, objectives and charitable activities, including the details of any charitable beneficiaries, and all measures undertaken to ensure that charitable funds have not been used to finance terrorism. The NPO is required to provide all requested assistance to the FSRA to ascertain whether AML has been complied with, including access to records and employees.

6. WHAT TO CONSIDER BEFORE CREATING A CHARITABLE ENDOWMENT

- 6.1 Charitable endowments are predominantly focused on planning and investing funds for the benefit of a charitable cause. This has a number of advantages, as well as some potential drawbacks, that must be taken into consideration.
- 6.2 Most charitable endowments are typically designed to keep the principal investment intact so it can grow and increase in value over time, allowing the returns earned to be applied to the nominated purposes or projects of the endowment. Accordingly, a well-managed charitable

endowment can help create an ongoing source of income to fund the charity's current and future projects.

- 6.3 Nevertheless, the cost and complexity of establishing and operating a charitable endowment may not be appropriate where only a single, immediate charitable objective is envisioned. In addition, as with any investment plan, the long term growth of the charitable endowment and the amount of income available for charitable purposes will be subject to the risks associated with the investment strategy devised by the framework agreement and its execution. The expertise of any appointed investment manager, as well as the costs of administration of the charitable endowment, will have a significant impact on the income and proceeds that will be available to finance charitable projects.

For more information, you may contact the Registrar:

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Opening Hours

The Registrar's office is open to public from Sunday to Thursday, 9:00am to 3:00pm.

Disclaimer

This Guidance includes non-binding and interpretive guidance with regard to charitable endowments in ADGM. Further advice from a specialist professional in relation to the implementation of this Guidance may be required. ADGM makes no representations as to accuracy, completeness, correctness or suitability of any information and will not be liable for any error or omission. Information in this Guidance is not to be deemed, considered or relied upon as legal advice and should not be treated as a substitute for a specific advice concerning any individual situation. Any action taken upon the information provided in this Guidance is strictly at your own risk and ADGM will not be liable for any losses and damages in connection with the use of or reliance on information provided in this Guidance.