

KEY FACTS

CORPORATE GUARDIAN SERVICES

THE GUARDIAN IS A UNIQUE ROLE ESTABLISHED UNDER ARTICLE 23 OF THE FOUNDATION LAW (DIFC LAW NO. 3 OF 2018). WHILE APPOINTING A GUARDIAN IS NOT MANDATORY FOR A DIFC FOUNDATION (THE “FOUNDATION”), EXCEPT FOR A “PURPOSE FOUNDATION”, HAVING ONE PROVIDES THE FOUNDER WITH GREATER FLEXIBILITY AND ADDITIONAL SECURITY IN SUCCESSION PLANNING.

The Guardian, which is akin to the Protector of a Trust, plays a key oversight role, ensuring that the Foundation’s Council Members act in accordance with the Charter and By-Laws. Guardians also have the duty to protect the interests of the Qualified Recipients (i.e., beneficiaries) and are responsible for ensuring the Founder’s wishes and objectives are upheld over time, particularly after the Founder has passed.

POWERS AND RESPONSIBILITIES OF A GUARDIAN

The Guardian has, amongst others, the following powers and responsibilities:

- > Appoint a Council Member if no member remains or where the members are less than two
- > Require the Council to account for the administration of the Foundation
- > Authorize Council action that is otherwise not permitted by the Charter or the By-laws, provided that such action is in the best interest of the Foundation, the Council acted in good faith, and the action is lawful
- > Provide prior or simultaneous approval when a Council member appoints an alternate
- > Provide prior or simultaneous approval to the Council for the continuation of the Foundation (i.e. moving the Foundation to another jurisdiction)
- > Provide prior or simultaneous approval to the Council for merging the Foundation
- > Provide prior or simultaneous approval to the Council for distributing all remaining Foundation properties to the Default Recipient at the end of the Foundation period
- > Apply to a court on behalf of the Founder to amend the Foundation’s object

In addition to the above, the Guardian has the following powers and responsibilities after the death (or incapacitation) of the Founder:

- > Provide prior or simultaneous approval to the Council for applying Foundation capital to a Qualified Recipient
- > Provide prior or simultaneous approval to the Council for resettling Foundation assets into another holding structure

TAXATION CONSIDERATIONS

Appointing a family member as Guardian could potentially create tax reporting obligations for that individual, depending on their tax residency, level of involvement and decision-making authority. Appointing an independent professional services firm as the Guardian can assist in addressing these potential individual tax implications.

BENEFITS OF APPOINTING A CORPORATE GUARDIAN

Expertise and Experience

A corporate Guardian, such as an independent service provider, brings specialized knowledge and experience in fields relevant to the Foundation's objectives, such as finance, law, family governance, or philanthropy. Their expertise enhances the Foundation's operations and strategic direction. In addition, a corporate Guardian may handle similar cases on a day-to-day basis, allowing them to apply best practices and provide informed guidance based on industry experience.

Continuity

Appointing a corporate Guardian ensures stability and eliminates the need to appoint a new Guardian if a natural person or family member acting as Guardian passes away or resigns. It is important to note that corporate Guardians are far less likely to accept an appointment as Guardian if they have not been involved from the beginning or if the Foundation's affairs are not well-structured.

Regulatory and Statutory Compliance

Foundations must adhere to specific legal and regulatory requirements both locally and globally (FATCA & CRS). An independent service provider acting as corporate Guardian and with compliance expertise can help ensure that the Foundation meets all its legal obligations and operates within the framework of both local and global laws. Corporate Guardians can assist with statutory record-keeping, documentation, and transaction oversight.

Objectivity and Independence

Appointing an independent corporate Guardian provides the Foundation with an unbiased perspective, supporting objective decision-making that prioritises the interests of the Foundation and its Qualified Recipients, free from internal conflicts of interest.

Enhanced Asset Protection

Appointing a corporate Guardian strengthens the Foundation's independence by providing demonstrable evidence that an independent oversight framework is in place.

HOW TRIDENT CAN ASSIST

Trident is one of the largest global providers of corporate and fiduciary services and can provide assistance with the establishment of DIFC Foundations, as well as provide corporate Guardian and Council Member services from our local office in DIFC. We provide corporate formation and administration services in more than 20 internationally recognised corporate domiciles and trust establishment and professional trustee services in over 15 jurisdictions worldwide. For more information, please contact your usual Trident Trust representative or our office at dubai@tridenttrust.com.

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