

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF APPEAL

AND

PURSUANT TO ARTICLE 5(B)(1)(b) OF THE JUDICIAL AUTHORITY LAW BEING DUBAI LAW NO.12 OF 2004 (AS AMENDED)

BY

THE DUBAI INTERNATIONAL FINANCIAL CENTRE AUTHORITY

Applicant

SUBMISSION IN SUPPORT OF REQUEST FOR INTERPRETATION

1. We refer to the instructions provided by the Deputy Registrar Nour Heidi (the **Deputy Registrar**) via email on 2 March 2020 and in accordance with paragraphs 7 and 8 of the Deputy Registrar's Order dated 12 February 2020, and hereby make submissions on behalf of Family Business Council- Gulf (**FBCG**), in support of the proposed interpretation of the DIFC Laws specified in the abovenamed Request for Interpretation (the **Request for Interpretation**) and respectfully request that FBCG be formally recognised and included as an Interested Third Party to the proceedings.

The Family Business Council – Gulf (FBCG)

2. FBCG is a non-profit member organization founded in 2013 by two UAE family members – H.E. Abdulaziz Al Ghurair who served as the founding Chairman from 2013 to 2018 and Mr. Omar Al Futtaim, who remains as the Vice-Chairman. Together with nine other GCC family businesses FBCG was established as the GCC chapter of the global organization, Family Business Network (FBN), covering all six countries.
3. FBN is a non-profit member organization established in 1990 “by families, for families” and headquartered in Lausanne, Switzerland. FBN’s purpose is to enable business families to thrive and transform across generations to build a sustainable future. Today FBN’s membership consists of over 4,000 family businesses and 16,000 individual members represented by over 50 countries worldwide and significant contributors of the private sector economy.

4. Today, FBCG's community consists of many of the leading established family business groups across the GCC countries operating in their second or third generation. Majority of FBCG members hold the top three positions in their respective markets and sectors in which they operate. Cumulatively our members create over 150,000 direct jobs and carry a significant economic impact. Therefore, ensuring their continuity and sustainability is imperative to the broader society and regional economy.
5. FBCG's purpose is to facilitate the continuity of GCC family business across generations through a peaceful transfer of wealth, ownership and management by focusing on promoting viable governance and legal structures, in addition to next generation preparation and development. We have led, coordinated and/or supported several initiatives such as the GCC Family Business Governance Code, Annual Legal Roundtables and the Legal White Paper on Succession Planning to raise awareness, provide practical tools and inform policymakers on opportunities for progress in governance and ownership related regulation. FBCG has also supported the publication of a book titled 'Family Business Continuity in the Middle East & Muslim World- Betting Against the Odds', a first of its kind in the region, to promote family business continuity.

The Succession Challenge

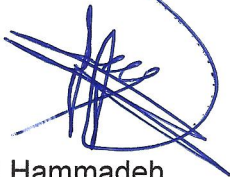
6. It is evident to us that the biggest challenge that many family businesses face in this part of the world is the lack of tested and viable legal platforms that may allow for smooth management and ownership continuity and protect family firms from the risk of economic fragmentation and family conflict. We estimate that a significant percentage of regional family businesses are currently undergoing a generational transition namely from founder(s) to sibling(s). Our observations are that an *ad hoc* transition process is fraught with challenges at best and doomed at worst. This is not just owing to the divergent interests of future heirs, but also to the absence of impenetrable and tested legal structures via which families may organize the sustainability of their wealth and ensure the harmonious management thereof across generations.
7. It is true that over the past few years a number of solutions have become available to families in the United Arab Emirates (UAE) and beyond, including through the Dubai Waqf Law No.14/2017 and the Federal Waqf Law No. 5/2018 as well as a plethora of other wealth preservation legislations which were enacted recently in other onshore and offshore jurisdictions, in and outside of the UAE.
8. Notwithstanding the differing nature and scope of these legislations, the one common thread is that all of them are recently promulgated. This newness has naturally resulted in lack of court precedents and the inherent inability to comfort early adopters regarding the ambiguous and sometimes contentious aspects of some of these laws. We believe that in this part of the world many family businesses, especially those with diverse regional assets, remain uncertain as to the (i) enforceability of many of these laws beyond the jurisdictions in which they were enacted; and (ii) the compatibility of these laws with forced heirship rules and personal status legislations in the context of inheritance. These

uncertainties become evident, for instance, when trying to reconcile some of these proposed solutions with Article 361 of the UAE Personal Status Law No. 28 for 2005.

FBCG interest in and support for the Request for Interpretation

9. FBCG and its members have a special interest in the subject matter of these proceedings as it will have clear and direct implications on the furtherance of its stated objectives. FBCG members, who play an important role in adopting and disseminating knowledge regarding succession planning options in the UAE and the larger GCC, welcomed the new DIFC Trust Law (DIFC Law No 4. of 2018) (the **Trust Law**) and DIFC Foundations Law (DIFC Law No.3 of 2018) (the **Foundations Law**). With the Trust Law being an improvement on the 2005 version of the DIFC Trust Law (DIFC Law No.11 of 2005) and the introduction and recognition of foundations, the DIFC statutes are now sufficiently flexible to be adapted to the needs of most of families wishing to create a sustainable wealth holding structure.
10. In our view, the Court of Appeal's responses to the questions posed in the Request for Interpretation will provide welcome court precedents certainty to the community which we believe will in turn lead to more advisors recommending DIFC structures to their clients and more families choosing to utilise the Trust Law and Foundations Law when considering viable solutions for their management and ownership continuity.
11. For the reasons stated above, FBCG supports the Request for Interpretation including the proposed answers in full.

Yours faithfully,



Fadi Hammadah

For and on behalf of
Family Business Council- Gulf (FBCG)

9 March 2020

CC: Sara Mohammadi- CEO FBCG