

Investing Across Borders: Legal Considerations for Middle East Family Offices Entering the U.S. Market

As family offices across the Middle East continue to grow in both sophistication and ambition, many are increasingly looking to the United States as a destination for capital deployment. However, navigating the U.S. legal system as a foreign investor—particularly as a non-resident family office—requires more than financial acumen. It demands careful structuring, regulatory foresight, and tax-aware planning.

This advisory outlines key legal and regulatory issues family offices should consider when investing in the U.S., with a focus on how risks and obligations vary depending on the type of investment.

The Tax Landscape: Complexity and Exposure

The first—and often most overlooked—challenge is the U.S. tax regime for foreign investors. Unlike many jurisdictions, the United States taxes non-resident individuals and entities on both income and capital gains tied to U.S. assets. For example, under the Foreign Investment in Real Property Tax Act (FIRPTA), gains from the sale of U.S. real estate are taxable for foreign owners. Passive income such as interest and dividends is typically subject to a flat 30% withholding tax, unless a treaty provides relief—though notably, the U.S. does not have tax treaties with many Middle Eastern countries, including the UAE and Saudi Arabia.

In addition, U.S. estate tax presents a significant planning challenge. Non-residents are subject to estate tax on U.S.-situs assets (such as real estate or shares in U.S. companies) with only a minimal exemption of \$60,000. Unwary families can find themselves facing estate tax exposure of up to 40% on U.S. holdings, often unexpectedly.

Cross-border tax reporting is another area of complexity. U.S. tax authorities require extensive disclosures via forms such as Internal Revenue Service (IRS) Forms 1120-F, 5472, and 8938, depending on the structure used. Global transparency regimes like Foreign Account Tax Compliance Act (FATCA) and the Organization for Economic Co-operation and Development's Common Reporting Standard (CRS) have further tightened the net, requiring family offices to provide detailed information on beneficial ownership and financial activity.

Structuring by Investment Type

The appropriate legal and tax structure for a U.S. investment often depends on the nature of the asset class. Below is an overview of the distinct legal issues that arise in different sectors.

Real Estate

Real estate remains a favorite among Middle Eastern family offices for its tangible value and income-generating potential. However, U.S. real estate investments are particularly exposed to FIRPTA and estate tax. Structuring real estate investments through U.S. “blocker” corporations—often layered through offshore jurisdictions like the BVI or Cayman Islands—can mitigate these risks. These structures provide liability protection, limit estate tax exposure, and help navigate local real estate laws. Debt financing, particularly non-recourse loans, is also used strategically to reduce the taxable estate value of the asset.

Private Equity and Venture Capital

Direct investments into U.S. private companies can provide access to innovation and rapid growth, but they also raise issues of tax exposure and regulatory compliance. Income from these investments may be treated as “effectively connected income” (ECI), subject to U.S. tax rates. Structuring through offshore feeders or preferred equity instruments can reduce exposure to operational risk and taxation.

Family offices with U.S. beneficiaries must also navigate the Controlled Foreign Corporation (CFC) and Subpart F regimes—complex tax rules that may attribute income from foreign entities to U.S. shareholders even if no distributions are made.

Public Markets and Hedge Funds

Investing in U.S. equities, bonds, or hedge funds is often more straightforward, but still requires careful planning. Dividend and interest income from U.S. issuers is generally subject to withholding tax, and U.S. estate tax may apply to shares held directly. To address these concerns, family offices often invest through offshore funds or feeder structures designed to insulate the family from direct U.S. exposure.

Publicly traded investment vehicles may also qualify as Passive Foreign Investment Companies (PFICs), which have adverse tax consequences for U.S. persons involved in the structure, including heirs or U.S.-based employees.

Operating Companies and Business Acquisitions

When a family office acquires an operating business in the United States, a host of additional legal considerations come into play. These include employment law compliance, local tax registration, corporate governance, and risk management. The investment will almost certainly generate ECI, requiring U.S. tax filings and potentially leading to broader exposure.

Technology and IP Investments

Technology investments come with unique regulatory overlays. Data privacy laws, such as the California Consumer Privacy Act (CCPA), and federal cybersecurity requirements must be carefully assessed. Additionally, U.S. export control rules and sanctions compliance can affect cross-border collaboration in tech ventures. Family offices investing in these areas must ensure their structures do not inadvertently trigger regulatory review or enforcement.

Private Credit and Lending

Lending to U.S. entities can be attractive, particularly when structured to qualify for the “portfolio interest exemption,” which avoids U.S. withholding tax on interest. However, family offices must ensure they do not cross the line into commercial lending activity, which can require licensing under state law and trigger ECI. Proper documentation and passive lending structures are essential to avoid unexpected tax or regulatory obligations.

Regulatory Oversight and Disclosure

Beyond tax and structuring, U.S. regulatory expectations continue to evolve. Securities laws impose restrictions on marketing and capital raising; exemptions such as Regulation D or Regulation S must be carefully followed to avoid enforcement risk. Meanwhile, banks and fund managers are under increasing pressure to perform rigorous Know-Your-Customer (KYC) and anti-money laundering (AML) checks, including full transparency on ultimate beneficial owners.

Estate and Succession Planning

For many families, succession and intergenerational transfer of wealth are key drivers in cross-border investment strategy. The U.S. estate tax regime presents significant risk, particularly given its global application to U.S.-situs assets owned by non-residents. Structures such as foreign grantor trusts or insurance-wrapped investments may be deployed to preserve confidentiality and reduce exposure.

Moreover, for families adhering to Shariah principles, planning must account for Islamic inheritance laws. This adds another dimension of complexity to the estate and trust structures that govern U.S. holdings.

Immigration Considerations

Some family offices pursue U.S. investment in tandem with immigration goals, such as securing an EB-5 or E-2 visa. These routes offer lawful U.S. residency tied to business activity or capital investment but require tight alignment between the investment structure and the immigration application. Even absent formal immigration planning, families must monitor time spent in the U.S. to avoid inadvertently triggering tax residency under the substantial presence test.

Final Thoughts: Investing with Intent and Protection

The United States remains one of the most attractive jurisdictions globally for long-term capital deployment. However, its legal and tax systems are among the most complex, particularly for foreign investors. For Middle East family offices, success in the U.S. depends not just on investment judgment, but on robust legal structuring, tax efficiency, regulatory compliance, and cultural alignment.

At Carter Ledyard, we have the experience, technical knowledge, and cultural fluency to guide Middle East families through this complexity. We routinely advise family offices across several jurisdictions on structuring U.S. investments, mitigating tax exposure and designing compliant estate plans. Whether you are entering the U.S. market for the first time or restructuring an existing portfolio, we can deliver solutions that protect your assets, enhance your returns, and ensure full legal compliance.

