

Dubai International Financial Centre: new rules pertaining to companies

Recently, the Dubai International Financial Centre (DIFC) adopted several new laws and regulations, including: • the Companies Law DIFC Law No. 5 of 2018 (Companies Law); and • the Ultimate Beneficial Ownership Regulations (UBO Regulations). These new sets of rules bring about a number of noteworthy changes for companies incorporated or registered in the DIFC but also impact other entities (e.g. partnerships, non-profit organisations, foundations, trusts). It is each entity's obligation to ensure full compliance with the applicable laws and regulations. The DIFC Authority reserves the right to inspect the registered office any time and failure to comply with the new laws and regulations will result in a fine imposed on the company. The rules and regulations discussed in the present article went into force on 12 November 2018.

Companies Law

Originally, the DIFC laws and regulations originally drew, to a considerable extent, on the UK Companies Act 2006 and other common law jurisdictions. In several respects, the Companies Law deviates from those sources of inspiration, providing overall for lighter rules. At the same time, the new legislation is part of a broader initiative in line with international best practices that aim to establish a suitable regulatory framework by promoting shareholder and creditor protection while creating greater certainty and flexibility for companies. The key changes of the Company Laws comprise: • *Automatic company re-classification*. There are no more LLCs. Instead the law distinguishes between a private company (up to 50 shareholders, Ltd), a public company (one to any number of shareholders, Plc) and a recognised company (i.e., branch of foreign company, Rc). All companies have 30 days to contest automatic conversion. • *New standard Articles of Association (AoA)*. Existing AoA will continue to apply to the extent that they do not conflict with the provisions of the Companies Law. Model AoA apply to the extent there is such a conflict. Companies have 12 months to amend their articles to the extent necessary. • *Enhancement of Director Duties*. The duties include the exercise of independent judgement, consideration of the long-term implications of their decisions and corporate actions, the interests of the company's employees and its shareholders and its impact on the community and the environment. If applicable, a Register of Nominee Directors should be maintained and filed with the Registrar within 90 days of the date of enactment. • *Confirmation Statement at License Renewal*. All companies must now file such a statement (instead of an annual return), which includes a confirmation that all details required to be submitted with the Registrar have been so duly notified. • *Mandatory annual filing of Audited Accounts*. The filing must be made within 7 months of year's end. A Director's report is required for the Plc. The Board of Directors of the Ltd must prepare a financial report each year and preserve a record of it for 6 years. There is an exemption for Small Private Companies (i.e., up to 20 shareholders and a turnover of USD 5 million). • *Minimum share capital requirements*. There is no minimum for the Ltd. By contrast, the Plc must have a share capital of at least USD 100,000 (of which 25% must be fully paid up). In addition, the Company Law has introduced formal pre-emptive rights for existing shareholders of companies, a provision for the treatment of treasury shares, and the obligation, for a Plc having issued debentures, to establish a Register of Debenture Holders. • *Requirements for lease registration*. For a lease registration, a new form must be signed by both parties and uploaded on the client portal to register any lease. A lease of more than 6 months needs be registered within 20 days of entering into the lease agreement. • *Register of Ultimate Beneficial Owners*. The Register must be established within 90 days of the date of enactment for each Registered Person already in existence, or each Registered Person coming into existence after the date of enactment within 30 days. The UBO Regulations (discussed below) provide further details.

UBO Regulations

The UBO Regulations reflect an increased focus by national authorities and global regulatory groups, on the importance of combatting money laundering, terrorist financing, bribery and corruption. Their adoption aims to safeguard and promote the DIFC's reputation as a stable and responsible financial centre, while reinforcing its commitment to adhere to the highest global standards. Pursuant to the UBO Regulations, a "Registered Person" is defined as every Public Company and Private Company, various Partnerships, a Foundation, a Recognised Foundation, an Incorporated Organisation or any other legal body or structure created by legislation administered by the Registrar, which is active in the DIFC. However, there are a number of exemptions to which certain requirements of the UBO Regulations do not apply. The exemptions concern for instance Registered Persons that have their securities listed or traded on a Reorganised Exchange; are regulated by a Recognised Financial Services Regulator; are Non-profit Incorporated Organisations which do not engage in certain activities or are established under the law of the United Arab Emirates to perform governmental functions. In the case of a Company, a "Ultimate Beneficial Owner" (UBO) is a natural person who owns or controls (directly or indirectly):

- shares or other ownership interest of at least 25%;
- voting rights of at least 25%; or
- the right to appoint or remove a majority of directors.

For other entities (e.g. partnerships, Non-Profit Incorporated Organisation), different criteria apply to identify a UBO. The UBO Register should contain the following information pertaining to a UBO:

- full legal name;
- residential address;
- date and place of birth;
- nationality;
- information identifying the person from their passport or other governmental-issued national identification document;
- date on which the person became an UBO of the Registered Person;
- and • the date on which the person ceased to be an UBO of the Registered Person.

Finally, it is important to note that the UBO Register is not publicly available. Julien Dif, Dubai