

Entity Structuring in Dubai



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The foundation for much of the economic progress in Dubai is the Dubai International Financial Centre (DIFC),¹ which includes the rules, regulations and support for beginning and operating a business in the DIFC. But unlike many “offshore” tax havens or financial centres, the DIFC is a fully-fledged “onshore” capital market, comparable to London, Hong Kong and New York.

Anyone seeking to establish a business presence in Dubai selects from four DIFC entity laws: (1) the Dubai Companies Law 2006;² (2) the Dubai General Partnership Law 2004;³ (3) the Dubai Limited Partnership Law 2006;⁴ and (4) the Dubai Limited Liability Partnership Law 2004.⁵ Each of these laws include implementing regulations.

This is the first of a series of articles regarding the various entity laws in Dubai, beginning with the appointment and role of the Registrar, the powers and functions of the Board of Directors of the Dubai International Financial Centre Authority (DIFCA), general aspects of company formation and registration, and the various companies recognised under the Dubai Companies Law 2006 (Companies Law).

The Companies Law applies in the jurisdiction of the DIFC, and the legislative authority for the Companies Law is that it is made by the Ruler of Dubai. Paragraph (a) of Article 6(1) provides that Schedule 1 contains the interpretive provisions with respect to the Companies Law, and paragraph (b) of Article 6(1) contains a list of defined words and terms used in the Companies Law.

Types of Companies

Under Article 9, the Companies Law recognises the following types of companies: Companies Limited by Shares; Limited Liability Companies; and Recognised Companies.

The Companies Law defines “Company” as “a company limited by Shares or a Limited Liability Company, in each case, incorporated or continued under this Law.” “Law” is defined as “the DIFC Companies Law.” The Companies Law is written to include both Companies Limited by Shares and Limited Liability Companies in the provisions of the Law except as otherwise provided. For example, Part 7: Company Limited by Shares, includes Articles 30-81. Article 30 provides that wherever the word “Company” appears in Part 7 (Articles 30-81), it shall be construed as a Company Limited by Shares. Part 8: Limited Liability Company, includes Articles 82-98. Article 82 provides that wherever the word “Company” appears in Articles 82-98, it shall be construed as a Limited Liability Company.

In this article, the words “company” or “companies” include both Companies Limited by Shares and Limited Liability Companies, unless specifically stated otherwise.

Registrar of Companies

Any individual, firm or company desirous of establishing a presence in Dubai must consult with and receive advice and services from the DIFC. The staff at the DIFC Registrar of Companies⁶ advises, receives, reviews and processes all applications that are submitted for the purpose of establishing a presence in the DIFC in accordance with its various company laws. The office of the Registrar of Companies is created under Article 7(1) of the Companies Law, and the Board of Directors of the DIFCA appoints a person to serve as Registrar with authority to dismiss a Registrar without cause. The Registrar is required to act in an independent manner, notwithstanding that he is an agent of the government of the Emirate of Dubai. The DIFCA is the “DIFC Authority established under Dubai law.”

The Registrar carries out the functions and powers conferred upon him by or under the Dubai Companies Law or by or under any law made by the Ruler. Such powers and functions of the Registrar include, but are not limited to: drafting and submitting regulations, standards of codes of practice, and guidance, which are reasonably required to allow the Registrar to perform his statutory functions. The Registrar is given other powers and functions under Article 8(2), such as prescribing forms to be used for any purposes of the Companies Law or legislation administered by the Registrar, holding and disposing of property, making contracts and agreements and delegating functions to officers and employees where it is appropriate and more efficient and effective. The Registrar may also delegate functions in general or with respect to any particular matter, with the approval of the Board of Directors of the DIFCA, where appropriate and more effective and efficient. The Registrar may exercise and perform other powers and functions delegated by the Registrar or by the Board of Directors of the DIFCA, pursuant to the provisions of the Companies Law. The Registrar is also given the broad power of doing what he deems as necessary in performing his functions.

Company Formation and Registration

Under Article 11 of the Companies Law, one or more persons may apply to incorporate a company by signing and filing an application for incorporation with the Registrar. Specific information is required to be included in the foregoing application under Article 11(2), including: (a) the name of the company; (b) the address of the company’s registered office; (c) the nature of the business to be conducted by the company; (d) the amount of share capital authorised by the company and the amount

of share capital paid upon incorporation (not less than the minimum share capital required by regulations; for a Company Limited by Shares, the number of shares into which the share capital will be divided, and for a Limited Liability Company, the number of Membership Interests into which such share capital will be divided and the value of each such Membership Interest); (e) full name, nationality and address of each of the incorporators; (f) the full name, nationality and address of the persons who are to serve as Directors or Managers; (g) the articles; and (h) such other particulars as the Registrar may require.

Under Article 12(1), a company's articles are required to be written in the English language and divided into paragraphs numbered consecutively. A company's articles shall include the information set forth in paragraphs (a) through (f) of Article 11(2) of the Companies Law, together with such other information that is contemplated by the Companies Law. For a Company Limited by Shares and Limited Liability Companies, the Board of Directors and the DIFCA may prescribe, in the regulations, model articles to be known as Standard Articles; and a company may adopt, in whole or in any part, the Standard Articles as are applicable for that company. If Standard Articles are not adopted by a company in their entirety, the articles of association of the company may specify regulations incorporating sound corporate government standards that do not seek to modify the applicable provisions of the Companies Law, which shall be submitted to the Registrar for approval prior to adoption of such articles by the company.

Upon approval by the Registrar, he will register and file the company articles under Article 12. Upon registration of a company and its articles, the Registrar issues a certificate that the company is incorporated and assigns to the company a registered number in accordance with paragraphs (a) and (b) of Article 14(1) of the Companies Law. As of the date of incorporation stated on the certificate of incorporation, the incorporators or such other persons that are, from time to time, Shareholders or Members of the company shall constitute a body corporate having the name contained in the certificate of incorporation with the authority to exercise all the functions of an incorporated company. Subject to the provisions of the Companies Law to the contrary, registered articles are binding on the company and its Shareholders or Members as if signed by each Shareholder or Member; and each Shareholder or Member shall observe all covenants stated in the provisions of the articles of the company. A company shall provide each Shareholder or Member with a copy of the articles if requested.

A company must have a registered office in the DIFC at all times to which communications and notices may be addressed. A company must carry on its principal business activity in the DIFC, unless the Registrar otherwise permits. A document may be served on a company by leaving it at or by sending it by post to the registered office of the company. A company shall, on or before the end of March of each year in which it is incorporated, file an annual return with the Registrar stating each class of shares or Membership Interests in the company. The names and addresses of the specified Shareholders or Members to be included on the annual return are stated in paragraphs (a) and (b) of Article 22(1). The returns shall contain information, declarations and verification as prescribed, accompanied by the filing fee.

The records required by the Companies Law for a company to maintain may be kept in the form of a bound or loose-leaf book, photographic film, or entered or recorded by a system of mechanical or electronic data processing or other information storage device that is capable of reproducing required information in intelligible written form.

Companies registered under the Companies Law have a separate legal personality from their Shareholders or Members. Any liabilities, whether arising in contract, tort or other liability, of the company are the liabilities of the company, not the personal liabilities of any Shareholder, Member or officer of the company, except as may otherwise be provided by law. Officer, "in relation to a body corporate, means: (i) a Director or secretary of a Company Limited by Shares; (ii) a Manager of a Limited Liability Company; (iii) receiver or a receiver and Manager; (iv) an administrator of a deed of company arrangement executed by the body corporate; (v) an official manager; or (vi) a liquidator or a provisional liquidator." A "Director" is defined as "a person occupying the position of Director of a Company Limited by Shares, by whatever name called."

A Company Limited by Shares is defined as a company incorporated by one or more Shareholders whose obligation is limited to the payment of the subscription price of their shares. A "Share" is defined as "a Share in the share capital of a Company Limited by Shares." Shareholder is defined as "a person entered in the Shareholders' registry as the holder of a Share in a Company Limited by Shares." A Company Limited by Shares is required to include after its name the word "Limited" or "Ltd." A Company Limited by Shares may be incorporated to conduct any lawful business. Upon formation of the Company Limited by Shares, incorporators are deemed to agree to become Shareholders

of the company. It is unlawful for a Company Limited by Shares to issue bearer shares.

A Limited Liability Company is incorporated by one or more Members and is defined as a company incorporated by one or more Members whose obligation is limited to pay the amount of their subscribed Membership Interest, which may not be represented by securities, which are defined as "any negotiable instrument including but not limited to stocks, shares, debentures, warrants, certificates, units, options or any right to or interest in any such instrument." A Member is defined as "the person entered in the register of Members as the holder of a Membership Interest in a Limited Liability Company." A Membership Interest is defined as "the interest held by a Member in the share capital of a Limited Liability Company." A Limited Liability Company is required to include, after its name, the words "Limited Liability Company" or the abbreviation "LLC." A Limited Liability Company may be incorporated to conduct any lawful business that is not an activity regulated by the Dubai Financial Services Authority (DFSA) under the DIFC Regulatory Law 2004, as amended.

A "Foreign Company" is defined as "a company incorporated in any jurisdiction other than the DIFC." A foreign company is authorised to carry on business in the DIFC upon registering as a Recognised Company under Part 11 of the Companies Law, or it submits all necessary documents and information to be registered in accordance with the requirements of the Registrar and the application is not processed within a reasonable period of time. A foreign company not registered as a Recognised Company is prohibited from carrying on business in the DIFC. In the event a Recognised Company becomes "continued as a Company," the Registrar shall change the registration from Recognised Company to company.

The next issue will continue with further information regarding the Companies Law.

END NOTES:

1. *The DIFC was founded by Sheikh Mohammed Bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai, September 2004.*
2. *Companies Law, DIFC Law No. 3 of 2006, which repeals the DIFC Companies Law 2004.*
3. *General Partnership Law, DIFC Law No. 11 of 2004.*
4. *Limited Partnership Law, DIFC Law No. 4 of 2006.*
5. *Limited Liability Partnership Law, DIFC Law No. 5 of 2004.*
6. *Established under Article 7 of DIFC Law No. 3 of 2006 (Companies Law) as a statutorily created "Centre Body," defined under DIFC Law No. 9 of 2004.*