

The DIFC's New Companies Law Regime

Corporate



Introduction

On 12 November 2018, the Dubai International Financial Centre ('DIFC') enacted the following new laws and regulations ('**New Companies Laws Regime**')

1. Companies Law, DIFC Law No. 5 of 2018 ('Companies Law');
2. Companies Regulations;
3. Operating Law, DIFC Law No. 7 of 2018 ('Operating Law');
4. Operating Regulations; and
5. Ultimate Beneficial Ownership Regulations ('UBO Regulations').

The New Companies Laws Regime aims to reduce compliance requirements in order to create commercial flexibility for businesses, and seeks to clarify previously uncertain matters to ensure closer alignment with international best practice.

Under the New Companies Laws Regime, the DIFC Registrar of Companies shall monitor compliance with DIFC laws by relying on companies to individually establish appropriate systems for internal checks and balances. The Registrar of Companies' supervisory role will be facilitated by the new comprehensive penalties regime and the certainty provided in respect of directors' duties.

Key Changes under the New Companies Laws Regime

The New Companies Laws Regime repeals and replaces the former Companies Law, DIFC Law No, 2 of 2009 and its Regulations. Some of the key changes introduced by the new legislation include:

1. The introduction of two types of companies that can be incorporated in the DIFC: a private limited company and a public limited company.
2. The maximum number of shareholders that a private limited company can have is limited to 50 shareholders.
3. In terms of the company officers of a private limited company, the new Companies Law stipulates that only one director is required and there is no longer a mandatory requirement to appoint a company secretary.
4. In addition, there is no minimum capital requirement for private limited companies.

5. The new Companies Law does not recognise a limited liability company; all private companies are companies limited by shares.
6. The duties of the directors of a company have been expanded. The duties now include the following:
 - a. Duty to act within powers;
 - b. Duty to promote the success of the company;
 - c. Duty to exercise independent judgment;
 - d. Duty to exercise reasonable care, skill and diligence;
 - e. Duty to avoid conflicts of interest;
 - f. Duty not to accept benefits from third parties;
 - g. Duty to declare interest in a proposed transaction or arrangement; and
 - h. Duty to declare interest in an existing transaction or arrangement.
7. New standard articles of association have been introduced.
8. The requirements in respect of amendment of the articles of association of a company have been modified.
9. The new Companies Law introduces pre-emption rights and sets out the exceptions to the same.
10. An annual general meeting is not mandatory for a private limited company unless it is required to do so under its articles of association.

The Operating Law and Regulations

The main aspects of the Operating Law and Regulations include:

1. The detailed provisions relating to conducting a business in the DIFC, specifically in relation to the license requirements;
2. The role and powers of the DIFC Registrar of Companies;
3. The list of possible contraventions by companies that are subject to fines; and
4. The requirement of filing an 'Annual Return' being replaced with the requirement to file a 'Confirmation Statement' at the time of license renewal.

The Ultimate Beneficial Ownership Regulations

The UBO Regulations introduce the entirely new requirement to maintain information about 'Ultimate Beneficial Owners' of DIFC companies.

Under the UBO Regulations, all entities operating in the DIFC must establish a register of 'Ultimate Beneficial Owners' within 90 days of the enactment date of the said Regulations. This information must also be filed with the DIFC Registrar of Companies.

In addition, all entities are required to create and maintain similar registers for 'Nominee Directors' within 90 days of the enactment date of the UBO Regulations. The details of the 'Nominee Directors' will also have to be files with the DIFC Registrar of Companies.

How we can help

We, at RIAA Barker Gillette (Middle East) LLP, can assist you with:

- Incorporation of any type of companies and other entities in the DIFC;
- Ensuring on-going compliance with the DIFC's laws and regulations;
- Advising on the recent changes enacted through the DIFC's New Companies Law Regime;
- Advising on the amendments of existing articles of association to ensure compliance with the DIFC's New Companies Law Regime;
- Advising on any other changes required in the management/structure/board of existing companies, etc.

For more information on how we can help, please contact Mr. Hasan Rizvi, Managing Partner.

The information mentioned in this article is current at the date of publication of this article and available from public sources. Nothing in this article constitutes legal advice and should not be construed as any form of advice.

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