

Key Changes Introduced by the New DIFC Companies Law Regime

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On 12 November 2018, the Dubai International Financial Centre (“**DIFC**”) enacted the Companies Law, DIFC Law No. 5 of 2018 (the “**New Companies Law**”), the Operating Law, DIFC Law No. 7 of 2018 (the “**Operating Law**”), the Companies Regulations, the Operating Regulations and the Ultimate Beneficial Ownership Regulations (the “**UBO Regulations**”). The Companies Law and the Operating Law have repealed and replaced the Companies Law, DIFC Law No. 2 of 2009 (the “**Previous Companies Law**”). This note summarises the key changes that have been introduced by such new laws and regulations.

Type of Companies

The Previous Companies Law recognised three main types of companies: (i) companies limited by shares, (ii) limited liability companies (“**LLCs**”) and (iii) ‘recognised companies’ (i.e., branches of foreign companies). The New Companies Law has abolished the form of LLCs and now categorises companies limited by shares as “Private Companies” and “Public Companies”. Recognised companies continue to exist under the New Companies Law.

Private Companies:

- may not make an offer of their securities to the public;
- have between one and 50 shareholders;
- contain the word “Limited” or the abbreviation “Ltd.” after their names;
- have no minimum share capital requirements;
- do not need to have fully paid-up shares;
- must have at least one director with an optional company secretary; and
- are not required to hold an annual general meeting (unless expressly required in their articles of association).

Public Companies:

- may make an offer of their securities to the public;
- may have any number of shareholders;
- contain the words “Public Limited Company” or the abbreviation “PLC” after their names;
- must have an issued and allotted share capital (excluding treasury shares) of at least US\$100,000 at all times;
- issued shares must be paid-up as to at least 25 per cent of their value;
- must have at least two directors and a company secretary; and
- are required to hold an annual general meeting.

On the date of enactment of the New Companies Law (i) all LLCs in the DIFC were automatically converted into Private Companies, (ii) companies limited by shares that are publicly listed and/or have more than 50 shareholders were automatically converted into Public Companies, and (iii) all other companies limited by shares were converted into Private Companies. Pursuant to the Companies Regulations, companies have a grace period of 12 months to transition from the Previous Companies Law for most matters. During this time, companies must amend their articles of association so that they are consistent with the New Companies Law; however, they may continue to use their former names in communications until the end of such grace period.

Pre-emption Rights

The New Companies Law has introduced statutory pre-emption rights for existing shareholders in order to provide protection against undue dilution of their shareholding. The New Companies Law does, however, contain a number of customary carve-outs to such rights including in respect of issues of bonus shares and shares issued in accordance with employee share schemes. Private Companies have also been given the ability to alter or exclude such pre-emption rights in their articles of association.

Written Resolutions

Under the Previous Companies Law, both ordinary resolutions and special resolutions in writing required the signature of each shareholder that would have been entitled to vote on the matter at a meeting. Effectively this meant that written resolutions needed the unanimous consent of shareholders. Under the New Companies Law, ordinary resolutions in writing can be passed by a simple majority of shareholders entitled to vote and special resolutions in writing can be passed by shareholders holding at least 75 per cent of the total voting rights of shareholders.

Directors Duties

In an effort to increase the corporate governance standards, the New Companies Law has enhanced the duties of directors by introducing the following suite of directors' duties based on the provisions of the UK Companies Act 2006:

- duty to act within powers;
- duty to promote the success of the company;
- duty to exercise independent judgment;
- duty to exercise reasonable care, skill and diligence;
- duty to avoid conflicts of interests;
- duty not to accept gifts from third parties; and
- duty to declare interest in proposed transaction or arrangement.

Notice of General Meetings

The New Companies Law has reduced the notice requirements for calling general meetings. Any general meeting can be called on at least 14 calendar days' written notice and annual general meetings can be called on at least 21 calendar days' written notice (these notice periods can be reduced in urgent cases with the requisite consent of shareholders). Under the Previous Companies Law, all general meetings had to be called on 21 business days' written notice, which created a number of practical challenges for companies in the past.

Audit Requirements

All companies must prepare annual accounts. Further, all companies must lay out audited accounts, auditor's reports and, in the case of Public Companies only, directors' reports, at general meetings for approval. The New Companies Law has introduced a carve-out for small Private Companies with annual turnovers of not more than US\$5,000,000 and with not more than 20 shareholders from having to audit their accounts.

Other Key Changes

- Pursuant to the Operating Law and Operating Regulations, the requirement to file an annual return has been replaced with the requirement to file a 'Confirmation Statement', which must be submitted at the time of renewing a company's licence.
- Under the New Companies Law, Public Companies and Private Companies may merge with other companies (including companies outside of the DIFC).
- Pursuant to the UBO Regulations, ultimate beneficial owners (UBOs) are now defined as individuals owning or controlling (directly or indirectly) at least 25 per cent of a company (previously this was ten per cent). Each company must establish a register of UBOs within 90 days of the commencement of the regulations.
- Pursuant to the Operating Law, a company may decide to maintain its registers and records at a location other than its registered address. This allows for registers of shareholders, directors and ultimate beneficial owners to be held with a company's corporate service provider.

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