

Regulatory Update

Middle East Edition

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1.0 DIFC AND DFSA LATEST DEVELOPMENTS

1.1 Key Changes Introduced by the New DIFC Companies Law Regime

On 12th November 2018, the Dubai International Financial Centre (DIFC) introduced a new Companies Law affecting all entities registered in the financial free zone. The new Companies Law supersedes the previous Companies Law and all firms should ensure they are compliant with the new regime and should note that regulated entities, listed companies, firms owned by the government and non-profit corporate organisations are exempt from the new UBO regulations.

The changes include:

- New classification of companies
 - The new Companies Law abolishes LLCs and distinguishes between Private, Public and Recognised Companies.
 - Private companies (name must now be followed by "Limited" or "Ltd") are firms with 1 – 50 shareholders, no minimum share capital requirement and an optional Company Secretary.
 - Public companies (name to be followed by "Public Limited Company" or "PLC") are firms with 1 to any number of shareholders (no maximum), US\$ 100,000 minimum share capital requirement and a Company Secretary where required.
 - Additionally, companies should consider updating their VAT registration with the Federal Tax Authority (FTA) through the FTA's online portal regarding the change of name.
 - The New Companies Law has created a carve-out for small private companies from having to audit their accounts, said companies being with annual turnovers of not more than US\$5,000,000 and with not more than 20 shareholders. Directors of every company are still required to arrange for financial accounts to be prepared in relation to each financial year regardless of audit requirements.
- Enhanced director's duties
 - As a matter of effective corporate governance, Private and Public companies should consider providing training on directors' duties to directors and management teams.
 - Directors are now obliged to exercise independent judgement and are required by law to promote the success of the company.
- Enhancements to company accounting and audit requirements
 - Companies should consider whether buying back issued shares or issuing treasury shares could be beneficial for the financials, valuation of the company or for a practical use, such as an employee share scheme.
- Changes to Articles of Association, General Meetings and Fines
 - The New Companies Law has introduced a new standard form of Articles of Association (the Standard Articles). Companies' existing articles of association will stay in effect to the extent they do not conflict with the New Companies Law. Where conflicts exist, the standard articles will apply. Companies have twelve months to update their articles of association as appropriate and can do this voluntarily upon licence renewal.
 - It remains possible for companies to adopt either an amended form of the Standard articles or bespoke articles of association. In this instance, one of the company's directors will be required to certify compliance with all applicable DIFC laws. A legal opinion from the company's legal advisers is no longer required.
 - Private companies should consider whether statutory pre-emption rights should be disapplied in their articles of association.
 - Public companies should consider the implication of pre-emption rights on future fund raisings.
 - Companies should note that shareholders no longer need to provide agreed consent for written resolutions to pass.
 - General meetings can now be called on 14 calendar days' written notice. Annual general meetings can now be called on 21 calendar days' written notice. Both notice periods can be reduced in urgent cases with the requisite consent of shareholders.
 - Companies which have issued debentures should ensure that a register of debentures is created and maintained.

The changes to the Operating Law and Regulations include:

- Consolidation of conduct of business requirements for all entities

- Broad and more flexible licence categories and permissions to facilitate business
- Annual Confirmation statement to be filed by all DIFC entities to update registered details
 - All DIFC companies are now required to file a confirmation statement with the DIFC Registrar of Companies at the time of licence renewal instead of filing an annual return. In addition, public companies must provide a written copy of the confirmation statement to any person who may request it (subject to payment of a reasonable fee).
- Registrar of Companies (ROC) powers and functions have been consolidated
- ROC inspection and enforcement powers enhanced
 - Updated fines have been issued in Schedule 2 of the Law

The changes to Ultimate Beneficial Owner (UBO) Regulations:

- Disclosure of UBO information for DIFC entities not subject to exemption
 - Companies should put in place procedures to ensure registers of ultimate beneficial owners are prepared in accordance with the applicable time frame and any changes should be notified to the DIFC Registrar of Companies. Public companies should put in place a system for identifying when the 25% start is met
- All entities not subject to exemption are to maintain UBO information on private register
- All firms must notify the Registrar of UBO's within 90 days of enactment and 30 days of any change
- Fines and possible strike off for non-compliance have been introduced

DIFC entities exempt from the UBO regulations include:

- Listed companies
- Firms regulated by a recognised Financial Services Regulator
- Firms wholly owned by the Government
- Governmental bodies established under UAE Law
- Nonprofit corporate organisations.

1.2 SCA, the DFSA and FSRA Sign Agreement and Release Consultation Paper

The Emirates Securities and Commodities Authority, the Financial Services Regulatory Authority (FSRA) of the Abu Dhabi Global Market (ADGM) and the DFSA have signed an agreement to facilitate and promote the licensing of domestic funds across the UAE. The agreement dictates the plan to introduce a new facility and rulebook to the DFSA regulatory regime and the Fund Protocol Rules (FPR), which will assist firms who promote and market domestic funds across the UAE.

The DFSA also released [Consultation Paper No.123 – Fund Protocol Rules](#) in conjunction with this agreement.

The proposed rules include:

- Registration changes to the how domestic funds are registered
- Amendments to types of custodians which can be chosen for funds opted into the regime
- Standardised text for prospectus of funds.
- Changes to how firms must notify the DFSA of its domestic fund.

Other changes are outlined in the Consultation Paper and the DFSA is accepting comments on the proposed changes by the 3rd January 2019.

1.3 DFSA Signs MoU with Bank Negara Malaysia

The DFSA has signed a Memorandum of Understanding with Malaysia's Central Bank, Bank Negara Malaysia (BNM).

The agreement signifies a commitment between the two regulators who already have a close relationship due to their use and regulation of Islamic Finance. The two entities previously signed an MoU in 2007.

Further information

If you have any questions or concerns regarding these DFSA and DIFC developments and requirements, please contact Clare Curtis (CCurtis@cclcompliance.com)

2.0 ADGM AND FSRA LATEST DEVELOPMENTS

2.1 ADGM Sign Memorandums of Understanding

The ADGM signed two Memorandum's of Understanding (MoU) in November 2018.

The first was with the Dubai Land Department (DLD), which establishes a working relationship between the two entities. The agreement established that international companies registered in the ADGM could own properties in areas of Dubai and the DLD can now seek further partnerships in the ADGM.

The second MoU was signed between the Central Bank of Bahrain and the ADGM. As in other MoUs, the agreement allows for the sharing of regulatory information and innovation between regulatory entities.

2.2 ADGM FinTech

The ADGM announced two FinTech initiatives in November.

The ADGM, a front runner in FinTech innovation has announced a collaboration with Al Hilal Bank and Jibrel Network to use the ADGM Regulatory Laboratory (RegLab) to develop FinTech solutions for Shariah-compliance sukuk transactions using blockchain technology.

FinTech progress has also been achieved through the development of a cross-border FinTech digital sandbox test between Abu Dhabi and Singapore. The idea is to be able to test innovative solutions and FinTech collaborations between the two jurisdictions. The first testing phase of the cross-border regulatory sandbox was successful between the ADGM and Singapore AFIN (ASEAN Financial Innovation Network).

2.3 FSRA Release Consultation Paper on Domestic Fund Passporting Rules

Following the agreement between the Emirates Securities and Commodities Authority, the Financial Services Regulatory Authority (FSRA) and the DFSA regarding the facilitation and promotion of the licensing of domestic funds across the UAE, the ADGM has subsequently also released a Consultation Paper No. 7 of 2018 – Proposed Fund Passporting Rules for public review and are also accepting comments by the 3rd January 2019.

Further information

If you have any questions or concerns regarding ADGM and FSRA developments and requirements, please contact Clare Curtis (CCurtis@cclcompliance.com)

3.0 MIDDLE EAST REGULATORY UPDATE

3.1 MENAFATF Hold Plenary Meeting

The Middle East and North Africa Financial Action Task Force (MENAFATF) held their 28th Plenary Meeting in Lebanon on the 27th November 2018.

The MENAFATF is made up of 19 members and 15 observers, members include the UAE, Oman and Kuwait and observers include the United Kingdom, United States and Australia.

The plenary meeting addressed topics such as the Assessment Report of the Kingdom of Morocco and the relationship between the MENAFATF and international bodies and organisations.

4.0 INTERNATIONAL DEVELOPMENT

4.1 Transparency International Raise Concerns on German Real Estate Money Laundering

Transparency International has raised concerns amid a report that billions of illicit euros are being invested into real estate in Germany.

Their report claimed that:

- about \$34 billion of international money with unclear background was funnelled into German real estate.
- 15-30 percent of criminal proceeds are invested in real estate.
- Only 20 of the 60,000 suspicious transactions were alerted to authorities solely in 2017 were through real estate.

Further information

If you have any questions or concerns regarding any International developments, please contact Clare Curtis (CCurtis@cclcompliance.com)

5.0 ENFORCEMENT ACTION

5.1 FCA Publishes Decision Notice Against SEO of Sonali Bank (UK) Ltd

The FCA has fined Mohammad Ataur Rahman Prodhan, the former SEO of Sonali Bank (UK) Ltd £76,400 and published a Decision Notice following concerns that Mr Prodhan was not acting with due skill, care and diligence and failed to provide adequate focus on the AML systems of the firm. Mr Prodhan also failed to oversee, manage and resource the MLRO role of the firm leading to failures in AML systems in the firm.

5.2 Director of Company Pleads Guilty to Illegally Operating Investment Scheme

The sole director of British company, Dynamic UK Trades Ltd, Manraj Virdee has pleaded guilty following an investigation by the FCA into his illegal operation of an unauthorised investment scheme, misleading consumers and two counts of fraud.

Mr Virdee received approximately £600,000 in investment funds and promoted a deposit taking scheme without authorisation from the FCA. The hearing was adjourned until January 2019.

Further information

If you have any questions or concerns regarding enforcement action, please contact Clare Curtis (CCurtis@cclcompliance.com)

6.0 FINANCIAL CRIME

6.1 UK Court Sentences Man for Defrauding Investors of £3 Million

A UK Court has sentenced Mark Barry Starling, for defrauding investors made up of friends and acquaintances, of just under £3 million. He carried this out over a period of 9 years, forging documents and correspondence to prolong the fraud and consistently lying to victims.

Mr Starling was never authorised by the FCA to carry out any regulated activity and victims are expected to receive limited compensation.

Further information

If you have any questions or concerns regarding financial crime, please contact Clare Curtis (CCurtis@cclcompliance.com)

ABOUT CCL

CCL has been providing a comprehensive range of regulatory compliance service to firms in the financial services industry since 1988, with offices in London, Dubai, Abu Dhabi and Mumbai. We combine a long history and extensive experience in financial services compliance with the expertise of a team of practitioners that includes former regulators, senior compliance professionals, lawyers and accountants.

Consultancy Services & Support

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- Regulatory Technology
- Prudential Rules & Regulatory Reporting

Training

- Governance, Risk & Compliance
- AML & Financial Crime Prevention
- Finance Induction
- CISI Qualifications

If you wish to discuss how CCL can assist you with any of the issues raised in this Regulatory Update, please contact us the details below:

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This Regulatory Update provides information about the consultative documents and publications issued by various regulators which are still current, proposed changes to the Rules and Guidance set out in Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the regulators' document referred to.