BRACEWELL

INSIGHTS

Changes to the Dubai International Financial Centre's ("DIFC") Legal and Regulatory Framework relating to DIFC registered Companies

December 9, 2018

*By: **Christopher R. Williams***

His Highness Sheikh Mohammed bin Rashid Al Maktoum, in his capacity as president of the DIFC, vice president and prime minister of the United Arab Emirates ("**UAE**") and Ruler of Dubai, has recently enacted a new set of laws and regulations which are applicable to companies incorporated in the DIFC (the "**New DIFC Companies Laws**").

Some of the key changes introduced by the New DIFC Companies Laws include: (i) the introduction of two new forms of companies which can be established in the DIFC; (ii) the expansion and enhancement of directors' duties; and (iii) the requirement on all DIFC entities to produce and register information relating to the ultimate beneficial owners of such DIFC companies.

We set out below a brief summary of the key changes introduced by the New DIFC Companies Laws.

The DIFC an Overview

The DIFC is an economic free zone located in Dubai, UAE, established in accordance with UAE Federal Law and Dubai Law. The DIFC is generally exempt from the UAE and Dubai law and regulation, and can create its own legal and regulatory framework covering civil and commercial matters. The DIFC is a common law and English language jurisdiction with laws and regulations largely modeled on the English legal system. Arguably, the DIFC is the most established financial centre in the Middle East and it offers a number of benefits, including:

1. 100 percent foreign ownership;
2. a 0 percent tax rate on income or profits (guaranteed for a period of 50 years);
3. no exchange controls; and
4. world class financial regulation in the form of the Dubai Financial Services Authority for regulated entities.

New Laws

The following new laws have been enacted and collectively form the New DIFC Companies Laws:

1. Companies Law DIFC Law No. 5 of 2018;
2. Companies Regulations;
3. Operating Law DIFC Law No. 7 of 2018;
4. Operating Regulations;
5. Ultimate Beneficial Ownership Regulations (“**UBOR**”); and
6. DIFC Laws Amendment Law, DIFC Law No. 8 of 2018.

New Forms of DIFC Companies

Prior to the enactment of the New DIFC Companies Laws, two types of limited companies could be established in the DIFC: (a) companies limited by shares; and (b) limited liability companies (“**LLCs**”). However, under the New DIFC Companies Laws, LLCs and companies limited by shares are no longer recognised. Instead, the following types of companies can be registered and are recognised in the DIFC: (a) public companies (“**PLCs**”); (b) private companies (“**LTDs**”); and (c) recognised companies (i.e., a branch of a foreign company).

For the purpose of this note, we will focus on LTDs and PLCs only.

The distinction between LTDs and PLCs largely mirror the distinction found under the UK Companies Act 2006. The main difference between the two being that LTDs cannot offer their shares to the public and are subject to lower reporting and regulatory obligations. Rather, subscriptions of shares in LTDs can only be completed through a private placement of shares, whilst PLCs can offer their shares to the public. Other distinctions between LTDs and PLCs include the following:

1. LTDs can have a maximum of 50 shareholders, whereas PLCs have no restriction on the maximum number of shareholders; and
2. LTDs have no minimum share capital, whereas PLCs have a minimum share capital of US$ 100,000, of which at least 25 percent must be fully paid up.

Companies, currently registered under the old framework will be automatically re-classified in accordance with the parameters established under the New Companies Law and have 30 days from the date of re-classification to contest the outcome of such automatic re-classification.

The introduction of PLCs and LTDs and the associated changes by the New DIFC Companies Laws aim to allow maximum flexibility, especially for small private companies which will no longer be burdened by the regulatory requirements that was previously required for all LLCs. As well as encouraging flexibility, the changes aim to provide a framework for the appropriate levels of oversight for complex corporate arrangements, such as those associated with listed entities, mergers, schemes of arrangement and debt restructurings.

The New DIFC Companies Laws also introduce formal pre-emptive rights for existing shareholders of DIFC companies, such that PLCs and LTDs cannot allot new shares to new shareholders unless an offer has been made to each person currently holding shares in that company to allot shares to them on the same or more favorable terms in proportion to the shares held by each existing shareholder.

Enhancement of Director Duties

The New DIFC Companies Laws also include the expansion of DIFC directors' duties. Prior to the enactment of the New DIFC Companies Laws, DIFC directors were required to act honestly, in good faith and lawfully, with a view to further the best interests of the company to which they served as a director, and to exercise reasonable care, diligence and skill.

The New DIFC Companies Laws have expanded the scope of directors' duties by providing more prescriptive duties, as such there is now a requirement to: (a) act within powers conferred by the company's constitutional documents; (b) promote the success of the company; (c) exercise independent judgment, reasonable care, skill and diligence; (d) avoid conflicts of interest; (e) decline to accept gifts from third parties capable of creating a conflict of interest; and (f) declare any personal interest in a proposed or existing transaction or arrangement. Again, these prescriptive duties broadly match the duties found in Chapter 2 of the UK Companies Act 2006. The New DIFC Companies Laws also requires that a register of nominee directors should be maintained and filed with the DIFC Registrar within 90 days of the date of enactment of the New DIFC Companies Laws (if applicable).

Ultimate Beneficial Ownership

The UBOR now requires the production of ultimate beneficial ownership information for all DIFC entities. The UBOR is applicable to any natural person who in relation to any DIFC entity:

1. owns or controls (directly or indirectly) shares or other ownership interest of at least 25 percent;
2. owns or controls voting rights of at least 25 percent; or
3. possesses the right to appoint or remove the majority of directors, (a "**UBO**").

A UBO must be registered with the DIFC Authority. Such registration must occur within 90 days of the enactment of the New DIFC Companies Laws for DIFC entities already in existence and within 30 days of registration of new entities.

Impact

The changes introduced by the New DIFC Companies Laws are welcome additions which actively promote shareholder and creditor protection, whilst attempting to appropriately differentiate between larger corporations and SMEs. Consequently, this should create greater certainty and flexibility for companies by reducing barriers of entry to formal incorporation and increasing the cost-efficiency and flexibility of businesses operating in the DIFC.

Furthermore, the changes are a step towards ensuring that the DIFC remains one of the most sophisticated and business-friendly common law-based jurisdictions in the Middle East region.

Should you have any questions on the New DIFC Companies Laws or issues surrounding them, please do not hesitate to contact either ***Chris Williams*** (managing partner, Dubai), ***David Pang*** (senior counsel, Dubai) or ***Ade Mosuro*** (associate, Dubai).