



## DIFC's NEW COMPANIES LAW

### Client Alert

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### New Companies Law enhances ease of doing business in DIFC

The Dubai International Financial Centre (DIFC) has reinforced its position as one of the world's top financial and business centres, introducing changes to its companies regime and enhancing the ease of doing business in the centre. On 12 November 2018, the DIFC has issued amongst other laws and regulations, the DIFC Companies Law No. 5 of 2018 (**Companies Law 2018**), repealing the previous Companies Law No. 2 of 2009 (**Previous Law**). The changes are anticipated to provide greater flexibility for small and medium-sized private companies and reinforce corporate governance requirements for all DIFC companies.

#### What has changed?

##### 1. Companies recognized in the DIFC

The Companies Law 2018 no longer recognizes companies limited by shares (LTDs) and limited liability companies (LLCs). It instead introduces public company and private company as the types of companies recognized under the new law. In addition, the "recognized company", which refers to a branch of a foreign company, remains as a legal form under the new law.

The DIFC Registrar of Companies (ROC) will automatically convert LLCs to private companies, and LTDs to either private or public companies, depending on their share capital, public listing status and number of shareholders.

##### 2. Flexibility for private companies

Similar to LLCs under the Previous Law, private companies under the Companies Law 2018 are not subject to a minimum capital requirement and are not allowed to offer securities to the public. Apart from a new requirement



of having a maximum of 50 shareholders, the Companies Law 2018 provides additional flexibility for private companies whereby they:

- Can be managed by only one director (as opposed to two directors required under the Previous Law);
- Are not required to appoint a secretary;
- Do not need to have fully paid-up shares;
- Can reduce their share capital by an ordinary resolution of the shareholders and subject to a publication in the newspaper and solvency certification process;
- Are not required to have their financial reports filed with the ROC or examined by an auditor or sent to the shareholders (provided that their consolidated annual turnover in the preceding financial year is not more than USD 5 million and that they did not have more than 20 shareholders for the entire financial year); and
- Do not need to hold annual general meetings unless required to do so under their Articles of Association.

### **3. Corporate governance requirements**

#### *Director's Duties*

The Companies Law 2018 further strengthens the corporate governance requirements of all DIFC companies and expands on the provisions regulating conflict of interest, the director's duties and responsibilities and their role in promoting the success of the company.

#### *Director's Certificate*

The Companies Law 2018 introduces a new requirement for all DIFC companies who wish to amend their Articles of Association, to submit to the ROC a certificate by at least one director, stating that the proposed amendments comply with the requirement of all applicable DIFC laws.

### **4. Standard Articles of Association**

The Companies Law 2018 introduces new standard Articles of Association. In the event that DIFC companies do not adopt the standard Articles of Association in its entirety, they are no longer required to submit a legal opinion by an external legal advisor stating that the proposed articles comply with the applicable DIFC laws. Instead, the Companies Law 2018 requires the shareholder(s) to submit a statement which certifies that the Articles of Association adopted by the company is compliant with the new law and all applicable DIFC laws.

### **5. Confirmation Statement**



DIFC companies are also required to file a confirmation statement with the ROC upon the renewal of their license, instead of filing an annual return. The confirmation statement confirms that all required information has been notified to the ROC.

## **6. Ultimate Beneficial Ownership (UBO)**

Under the Companies Law 2018, UBO refers to ownership or control (directly or indirectly) of at least 25 percent of a company, as opposed to at least 10 percent ownership or control which was stipulated in the Previous Law.

DIFC companies must maintain a register of their UBO information within 90 days from the enactment date of the UBO regulations. They should provide the register information to the ROC and notify them of any amendments.

## **7. Resolutions in writing**

Special resolutions in writing may be adopted by shareholders holding at least 75 percent of the voting rights of shareholders. Ordinary resolutions in writing can be passed by a simple majority of the shareholders entitled to vote.

## **8. Pre-emptive rights**

The Companies Law 2018 introduces a new provision for pre-emptive rights in relation to any allotment of shares in the company. This may, however, be excluded or varied by the company's Articles of Association or by virtue of a special resolution.

## **9. Notice of general meetings**

The notice period for general meetings under the Companies Law 2018 has been reduced to:

- 14 calendar days for general meetings, other than annual general meetings of public companies, or an adjourned general meeting; and
- 21 calendar days for annual general meetings of public companies.

These notice periods can be reduced further in some specific circumstances after obtaining the majority vote of the shareholders, although this varies between a private company and a public company and ranges from a 90 percent vote in respect of a private company, a 95 percent vote for general meetings of public companies, and the approval of all the shareholders for annual general meetings of public companies.



## What should companies do?

All new and existing DIFC companies must now comply with the Companies Law 2018, and in particular:

- Amend their Articles of Association to the extent that such are not consistent with the Companies Law 2018, within a period of 12 months from the date in which the new law came into force. In case they conflict with the new regime, then the standard articles will apply. They can also continue to have the same "suffix" used in their trade names until the end of such grace period.
- File a confirmation statement with the ROC upon the renewal of their license, confirming that all required information has been notified to the ROC.
- Maintain a register of their UBO information within 90 days from the enactment date of the UBO regulations, and provide the register information to the ROC and notify them of any amendments.
- Observe the updated compliance calendars received from the ROC.

## How can we help?

We will be happy to assist with any enquiries that you may have with regard to compliance with the new requirements of the Companies Law 2018, including reviewing your company's Articles of Association and internal policies, and undertaking any required procedures with and notifications to the ROC.

***To speak to us about any matters relating to the DIFC, please feel free to contact one of the lawyers below, or your usual Baker McKenzie contact.***



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