

Impact of the New DIFC Companies Law regime on DFSA regulated firms

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What we will cover today

Architecture and Administration of the new DIFC Companies Law (CL) regime

Why the CL regime is important to DFSA regulation

Some key changes brought in by the new CL Regime

General points to remember

DFSA regulated entities impacted by the new CL regime

Impact on Financial Services providers

Impact – the new classification

Impact – DIFC Funds

Impact – Directors' Duties

Impact on other DFSA regulated companies

Impact on other stakeholders of DIFC companies

Takeaways

Questions

Architecture & Administration of the new CL Regime

Architecture – The CL regime comprises of:

- The Companies Law No 5 of 2018.
- The Operating Law No 7 of 2018.
- The Companies Regulations.
- The Operating Regulations.
- Regulations covering specialist companies.

Administration of the CL regime:

- By the Registrar of Companies (RoC).
- With the DFSA having a limited interactive role with RoC, if a DFSA regulated entity.

Why the CL regime is important to DFSA regulation

The CL regime forms the foundation of the regulatory framework for DIFC Companies.

Most entities conducting financial services business in the DIFC are DIFC Companies.

Foreign Companies who wish to do business in the DIFC are also governed by the CL regime – as Recognised Companies.

The DFSA regime builds upon the governance provided by the CL regime for DIFC Companies/Recognised Companies carrying on regulated activities in or from the DIFC.

Some key changes brought in by the new CL Regime

A new
classification
of
companies

Removal of
Limited
Liability
Companies

Enhanced
directors'
duties

New
provisions
relating to
company
mergers

Enhancements
to company
accounts and
audit

General points to remember

Continuity

- *Anything done or omitted under the previous Companies Law remains in force – unless otherwise provided (see Art 1(3)).*
- *Transitional regulations allow existing companies to be deemed as Public or Private Companies, as appropriate.*

Interaction between the CL regime and the DFSA regime

- *If both the CL and DFSA regimes apply to a person, the CL regime provisions do not exempt the person from the requirements in the DFSA regime.*

DFSA & DIFCA Licences

- *Without a Licence (or Permission) from the RoC, no person can conduct activities in the DIFC.*
- *A DFSA Licence is also required to conduct Financial Services business in or from the DIFC.*

DFSA regulated entities impacted by the new CL regime

DIFC Companies Conducting Financial Services Business in or from the DIFC

- To conduct FS business in or from the DIFC, a Person must be a Body Corporate or Partnership.
- A Body Corporate can be either a DIFC Company, or a Foreign Company, registered under the CL (details later).

A DIFC Company making a Public Offer of its Securities in or from the DIFC

- Only a Public Company can offer its Securities to the public (subject to the DFSA Prospectus regime).
- A Foreign Company (Public) can also make a Public Offer – subject to certain bespoke DFSA requirements.

A Company seeking to list and trade its Securities on a DIFC Exchange

- Must be a Public Company.
- If a Foreign Company – must comply with the bespoke DFSA requirements (e.g. approved prospectus).

DIFC Companies which are DNFBPs

- Fully regulated under the CL regime – by the RoC.
- DFSA has limited role relating to AML.

Impact on Financial Services providers

A Body Corporate can obtain and maintain a DFSA Licence by registering under the CL as:

- a Public Company - if having more than 50 shareholders & issued share capital of at least USD100,000;
- a Private Company - no restrictions as above; or
- a Recognised Company - if a Foreign Company (e.g. a DIFC branch).

If above, the RoC will not, without the prior consent/request of, or notification to, the DFSA:

- register a company;
- remove a registration of a company; or
- initiate Court proceedings (e.g., to windup a DIFC company).

Once granted, a holder of a DFSA Licence must:

- comply with the CL regime;
- the DFSA regime; and
- other applicable DIFC legislation.

Some CL provisions do not apply to DFSA licensees

- e.g., the accounting and auditing provisions in the CL.

Impact – new classification

If a firm does not have more than 50 shareholders, or want to be listed and traded on an AMI – it does not need to register as a Public Company

Transitional provisions deem DIFC companies as Public or Private Companies, based on the new classification.

The Fund Manager of a Public Fund (as a licensee) does not have to be a Public Company, unless it has 50 or more shareholders, or want to list and trade its shares.

For Funds established as a DIFC Company – different rules apply (details in a moment).

Impact – DIFC Funds

Funds have a choice of being established as an Investment Company

If an Investment Company – the CI, as amended by the IC Regulations, apply

An Investment Company must register under the CL:

- as a Public Company – if it is, or is to be, a Public Fund; and
- as a Private Company – if it is, or is to be, an Exempt Fund or Qualified Investor Fund (QIF)

The shareholder number limits under the CL does not apply to Investment Companies – as the IC Regulations override any conflicting provisions in the CL

Impact – Directors’ Duties

Two sets of Directors’ Duties

- Directors Duties’ under the CL – apply to individual directors of the firm.
- The DFSA requirements relating to:
 - the Governing Body – apply on an individual and collective basis to the members of the Board; and
 - Licensed Directors apply to the individual AI.
- Different approaches are reflected in the two sets of obligations above.

The CL Directors’ Duties require a Director to:

- act within his powers;
- promote the success of the Company;
- exercise independent judgement;
- exercise reasonable care, skill and diligence;
- avoid conflicts of interest;
- not accept third party gifts that give rise to conflict of interests;
- declare an ‘interest’ in a proposed transaction; and
- comply with other duties and procedures (e.g., declaring an existing interest in a transaction).

Key DFSA requirements include:

- the Six Principles for Authorised Individuals applicable to Licensed Directors (e.g., observing high standards of integrity & fair dealing; acting with due skill, care & diligence); and
- the Corporate governance obligations of the Board (e.g., the responsibility to set & approve business objectives and strategies of the firm; and have and maintain relevant knowledge, skills, expertise and time commitment).

Impact on users of specialist Companies (PCCs, ICs)

- Two types of current specialist companies under the CL for bespoke DFSA regulated business.
- An Investment Company (IC) – for Funds business.
- A Protected Cell Company (PCC) – for Funds or Insurance Business (e.g. captives).
- A new specialist company, called ‘Incorporated Cell Company’ (ICC) – for Funds (Fund Platforms) or Insurance Business. We expect to have ICCs available in the Centre later this year.
- We are happy to consider whether PCCs and ICCs should be open to other DFSA regulated financial services.

Impact on other DFSA regulated companies

General enhancements across the board

- A Co. must maintain a Register of Debentures.
- The company name must have:
 - PLC, if a Public Company; and
 - Ltd., if a Private Company.
- A Public Company must have and maintain a minimum share capital of USD 100,000.

- Now a Co. can issue partly paid shares – provided paid up to 25% of nominal value.
- Stringent controls on the issue of Shares in a Public Company for consideration other than cash.
- New – Mandatory shareholder pre-emption rights for Public Companies, Private Companies can alter or vary by Articles.

- More detailed procedures for share buy-backs.
- A company can hold Treasury Shares, subject to controls.
- New Merger provisions – though the DFSA regime for transfer schemes apply to DFSA licensees.

Impact on other stakeholders of DIFC companies

- **Investors** (shareholders) benefit, for example, from the enhanced directors duties, controls on company mergers, pre-emption rights procedures, and share buy-back provisions.
- **Creditors** benefit from enhancements, e.g., relating to a Debenture Register, protections provided to safeguard company assets (such as in buy-backs and mergers).
- **Employees** have the protection of the Whistleblower provisions in the Operating Law 2018 – if made in good faith and made on a reasonable suspicion of a breach.

Takeaways

1

For an Authorised Firm – the CL regime applies side-by-side with the DFSA regime, but be fully aware of the changes introduced by the CL.

2

For a company wishing to list and trade on a DIFC Exchange – the CL requirements apply in addition to the DFSA's Markets regime.

3

For a Fund – the CL requirements and the DFSA regime apply to the Fund. If the CL provisions and the DFSA regime conflict, the latter prevails.

4

For a DNFBP – the DFSA's AML regime applies, but the UBO requirements are in the Operating Law 2018.



Thank You