مركز دبي المالي العالمي
Dubai International Financial Centre

التميمي و مشاركوه
AL TAMIMI & CO.

Setting up in the
Dubai International Financial Centre

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Dubai International Financial Centre

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Setting up in the
Dubai International Financial Centre

Forewords

It is our pleasure to present to you the latest edition of our publication 'Setting up in the DIFC'.

The Dubai International Financial Centre (DIFC) has become the premier financial hub in the Middle East with the rapidly developing skyline of the DIFC district being a clear signal of the success that has been achieved and the success that is yet to come.

Home to more than 1,750 companies employing almost 22,000 people, the DIFC has rapidly become the leading financial hub of the Middle East, South Asia and Africa. As the DIFC continues to expand, we are seeing an ever increasing number of companies from all over the world move to establish operations here. This shift is exciting not only for DIFC, but for the United Arab Emirates as a whole.

As the leading local firm in the region, Al Tamimi & Company is proud to have been a key partner in this growth. Since its beginnings in 2004, we have established over 120 regulated entities in the DIFC and assisted many other organisations to do business here.

This guide has been developed to assist not only new investors in the DIFC but also for existing DIFC occupants, as it provides a detailed description of the very latest financial regulations, banking, licensing and employment laws, as well as explaining the most recent changes to the DIFC court system and arbitration procedures. The information is presented in a clear and concise manner, divided into topical chapters to offer a greater level of understanding of the commercial and legal aspects of operating in the DIFC

We are proud to have been a legal partner to many organisations in the DIFC from their inception right through to offering support for their on-going legal requirements. If you need our support, we are ready to help you.

We do hope you find this information of great benefit and we look forward to working with you.

Essam Al Tamimi
Senior Partner
Al Tamimi & Company

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Al Tamimi & Company

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AL TAMIMI & CO.

When the Dubai International Financial Centre (DIFC) launched in 2004, Dubai – supported by its thriving trade, aviation and tourism sectors – had begun to establish its place on the world map. Today, with over a decade of experience behind us, the DIFC is well-positioned as the leading international financial hub for the Middle East, Africa and South Asia (MEASA). This is driven, in part, by the robust and transparent legal and regulatory framework that has laid the foundation for our success, the connectivity we have leveraged through Dubai's strategic geographical location, and of course, the zero tax benefit and 100 per cent ownership that has contributed to creating a world-class ecosystem for businesses and investors.

Equally important are the partnerships we have formed with highly reputable institutions and firms, which have played a significant role in building a community that now includes more than 1,750 companies with a combined workforce of almost 22,000 individuals. Our ongoing collaboration with Al Tamimi & Company is no exception. The DIFC is proud to be associated with Al Tamimi & Company, which has proven itself as a source of expert advice on local and regional jurisdictions and a provider of specialised services to businesses operating throughout the UAE and the wider Middle East.

Looking forward, our 2024 Growth Strategy sets out to strengthen the Centre's offering by deepening core synergies, building relevance in global sectors and facilitating trade and investment across the South-South corridor. As DIFC moves towards expanding its client base, it is essential that we enhance our infrastructure to support this growth and provide clear and comprehensive guidelines to facilitate ease of business. I trust this 4th edition of the Al Tamimi & Company 'Setting up in the DIFC' guide will prove to be a highly informative tool in the launch or expansion of your company's operations within DIFC.

Arif Amiri
Chief Executive Officer
DIFC Authority

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Dubai International
Financial Centre

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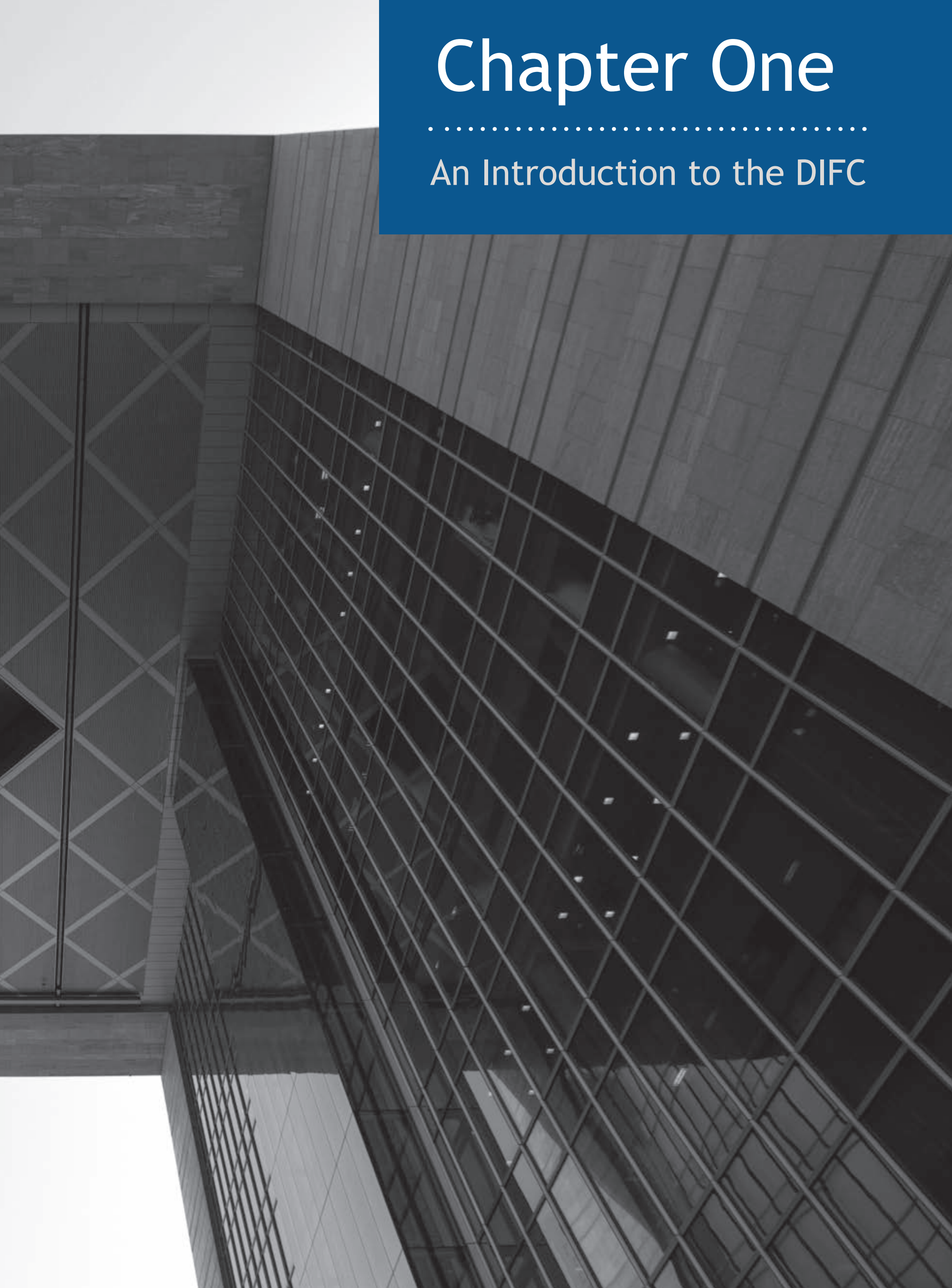


An Introduction to the DIFC

An Introduction to the DIFC

Dubai is one of the fastest growing cities in the Middle East region. Its broad-based and diverse economy, and its well-developed infrastructure, makes it an attractive destination for foreign direct investment. The emirate offers residents a stable political environment and a high quality of life. It is amongst one of the safest cities in the world and it is a regional hub for international business.

It is also ideally placed to help the Dubai International Financial Centre (DIFC) grow.

The has DIFC acted as a catalyst for the region's economic development. Initially established with the aim of bridging the gap between the world's major financial centres - London in Europe, Hong Kong in the Far East, and New York in the United States – DIFC is today known as the leading financial centre for the Middle East and Africa region.

DIFC is a well regulated hub for investment firms, and other financial institutions that wish to take advantage of the wealth of opportunities in the region by providing full banking services including deposit taking and provision of credit, as well as providing services in respect of underwriting, mergers and acquisitions, venture capital/private equity, brokerage, trade finance, asset management, capital market and Islamic finance operations.

The Centre provides depth to the regional financial markets by broadening the range of financing options available in the region and attracting liquidity into investment opportunities.

How was the DIFC created?

The DIFC is a Federal Financial Free Zone attached to the Government of Dubai. It was established in accordance with United Arab Emirates (UAE) Federal Law and Dubai Law. The President of the DIFC is His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai.

The DIFC was created by a synthesis of several UAE Federal and Dubai Laws, some of the key ones are as follows:

- An amendment of Article 121 was passed to the UAE Constitution in order to allow the Federation to enact a Financial Free Zone Law. Therefore, Article 121 of the UAE Constitution now reads that the Union shall have exclusive legislative jurisdiction in the following matters: "*The order and the manner of establishing Financial Free Zones and the boundaries within which they are exempted from having to apply the rules and regulations of the Union.*"
- Federal Law No. 8 of 2004 was enacted, providing the basis for Financial Free Zones throughout the UAE. This Law exempts Financial Free Zones from Federal, Civil and Commercial Laws. As a result, each Financial Free Zone can create its own legal and regulatory framework, covering civil and commercial matters.
- Federal Decree No 35 of 2004 was enacted, establishing the DIFC as a Financial Free Zone within Dubai.
- Dubai Law No 9 of 2004 recognised the financial and administrative independence of the DIFC and provided an exemption for the DIFC from certain rules and regulations otherwise applicable in Dubai. The DIFC accordingly established its own legal and regulatory framework for civil and commercial matters.
- Dubai Law No 12 of 2004 was enacted which established the DIFC Judicial Authority and the DIFC Court System.

"The DIFC has been accepting applications for operating licences in the Centre since 2004. The active participation and support of the world's leading financial institutions will help Dubai to become the regional gateway for the flow of capital and investment into and out of the region and will create growth for the benefit of the UAE and the wider region."

His Highness Sheikh Mohammed bin Rashid Al Maktoum Vice-President and Prime Minister of the UAE and Ruler of Dubai.

What does the DIFC offer?

The DIFC offers financial institutions and other companies operating within it a number of important benefits which include:

- Access to regional wealth and investment opportunities;
- 100 percent foreign ownership;
- A zero percent tax rate on income or profits (guaranteed for a period of 50 years);
- A wide network of double taxation treaties available to UAE
- incorporated entities;
- A dollar denominated environment;
- No exchange controls (free capital convertibility);
- A transparent operating environment with high standards of rules and regulations;
- Strict supervision and enforcement of money laundering laws;
- An international stock exchange with primary and secondary listings of both equity and debt instruments;

- Ultra modern office accommodation, business continuity facilities, state-of-the-art technical support and data protection facilities;
- A one-stop shop service for visas, work permits and other related requirements;
- An international legal system based on the Common Law of England & Wales and an independent common law judicial system;
- Capital structuring flexibility;
- The availability of a skilled labour force and highly trained professionals; and
- Exemption from the UAE Federal civil and commercial laws

How is the DIFC made up?

The DIFC has three independent bodies:

1. the DIFC Authority (DIFCA);
2. the Dubai Financial Services Authority (DFSA); and
3. the Dispute Resolution Authority (inclusive of DIFC Courts, DIFC Arbitration Centre, Academy of Law and Wills & Probate Registry).

What are the general areas of financial activity in the DIFC?

1. Banks
2. Insurance & Reinsurance
3. Wealth & Asset Management
4. Brokerage & Capital Markets
5. Professional Service Providers
6. Corporate Offices
7. Retailers

What are the types of entities in the DIFC?

The following activities are deemed to fall within the ambit of providing a “Financial Service” and hence are regulated by the DFSA:

- Accepting Deposits
- Providing Credit
- Providing Money Services
- Dealing in Investments as Principal
- Dealing in Investments as Agent
- Arranging Deals in Investments
- Managing Assets
- Advising on Financial Products
- Managing a Collective Investment Fund
- Providing Custody
- Arranging Custody
- Effecting Contracts of Insurance
- Carrying out Contracts of Insurance
- Operating an Exchange
- Operating a Clearing House
- Insurance Intermediation
- Insurance Management
- Managing a Profit Sharing Investment Account
- Operating an Alternative Trading System
- Providing Trust Services
- Providing Fund Administration
- Acting as the Trustee of a Fund
- Operating a Representative Office
- Operating a Credit Rating Agency
- Arranging Credit and Advising on Credit
- Operating a Crowdfunding Platform

Authorised Firms

Authorised Firms, once authorised are subject to the laws and regulations of the DIFC and the DFSA. The DFSA Rulebooks provide a framework for the regulation, supervision and conduct of business of these entities.

Authorised Market Institutions

Authorised Market Institutions are authorised to operate an exchange and/or clearing house in or from the DIFC. NASDAQ Dubai has a license from the DFSA to operate an exchange and a clearing house. All Applicants wishing to participate as an Authorised Market Institution must do so in accordance with the Authorised Market Institution Rules (AMI Rules).

Designated Non-Financial Business or Profession

The following activities are deemed to fall within the ambit of a Designated Non-Financial Business or Profession (DNFBP) in the DIFC:

- Real estate developers and agents who carry out transactions with customers involving the buying or selling of real property;
- Dealers in precious metals or precious stones;
- Dealers a dealer in any saleable item of a price equal to or greater than US$15,000;
- Law firm, notary firm, other independent legal business, accounting firm, audit firm and insolvency firms;
- Company service providers, (e.g. who set up companies or provide corporate services including acting as a director, secretary or providing a registered office); and
- a Single Family Office.

Each person or legal entity providing these services in or from the DIFC is required to be duly authorised as a DNFBP to provide these services.

Non-Regulated Entities

Non-Regulated Entities in the DIFC are those which have business activities that do not fall under one of the regulated financial services and do not carry out any DNFBP or Registered Auditor services. Such entities are primarily companies or partnerships that provide outsourcing, business processing and other ancillary activities for the DIFC entities. Examples of Non-Regulated Entities in the DIFC include restaurants, recruitment agencies, back office administration services and similar. Setting up a Non-Regulated Entity in the DIFC is a less complex process than setting up a regulated entity as it does not involve regulation by the DFSA.

Special Purpose Companies

Special Purpose Companies (SPC) are non-regulated companies performing a specific activity, that is, a company incorporated in the DIFC pursuant to the DIFC's SPC Regulations. SPCs can only undertake 'Exempt Activities' as defined in the DIFC's SPC Regulations.

What are the legal restrictions on DFSA regulated entities?

UAE and DIFC laws and regulations impose the following restrictions on DIFC Licensees:

1. they may offer products or services to Professional Clients (as defined in the DFSA Rulebook) only, unless they obtain a Retail Client endorsement on their license;
2. insurance activities are restricted to insurance contracts in relation to non-UAE risks (although DIFC risks may be insured) and to re-insurance;
3. UAE Federal laws (Criminal and Penal laws) will apply in the DIFC. UAE Federal Civil and Commercial Laws do not apply in the DIFC;
4. they may not take deposits from the State's markets or deal in UAE Dirhams;
5. they are obliged to ensure that certain mandatory positions are filled, namely; Senior Executive Officer (resident), Finance Officer and Compliance and Money Laundering Reporting Officer (resident); and
6. all DIFC licensed entities, whether regulated or not must have offices in the DIFC.

How is setting up in the DIFC different from setting up in Dubai?

One key difference between setting up in the DIFC as opposed to Dubai is that entities undertaking financial services in the DIFC will not be subject to regulation by the UAE's financial services regulators. Although please note they are subject to UAE Federal Laws on Anti Money Laundering and terrorist financing, as discussed further in Chapter 8.

The basic principle for setting up anywhere in the UAE (other than in free zone areas) is that entities setting up must have at least 51% of the company's shares owned by UAE national(s). Therefore, in principle, it is not possible for international companies to carry out their trading or service activities in the UAE without local participation.

The DIFC however allows for the establishment of 100% foreign owned companies, whether as a branch of an already existing licensed and regulated financial institution, or as a subsidiary of an already existing foreign company/partnership, or as a start-up company/partnership incorporated within the DIFC.

Can an Authorised Firm operate from within the DIFC but have customers outside the premises?

A firm's customers may be based locally, regionally and internationally. However, a firm may not engage in any DIFC prohibited financial activities irrespective of where its customers are based.

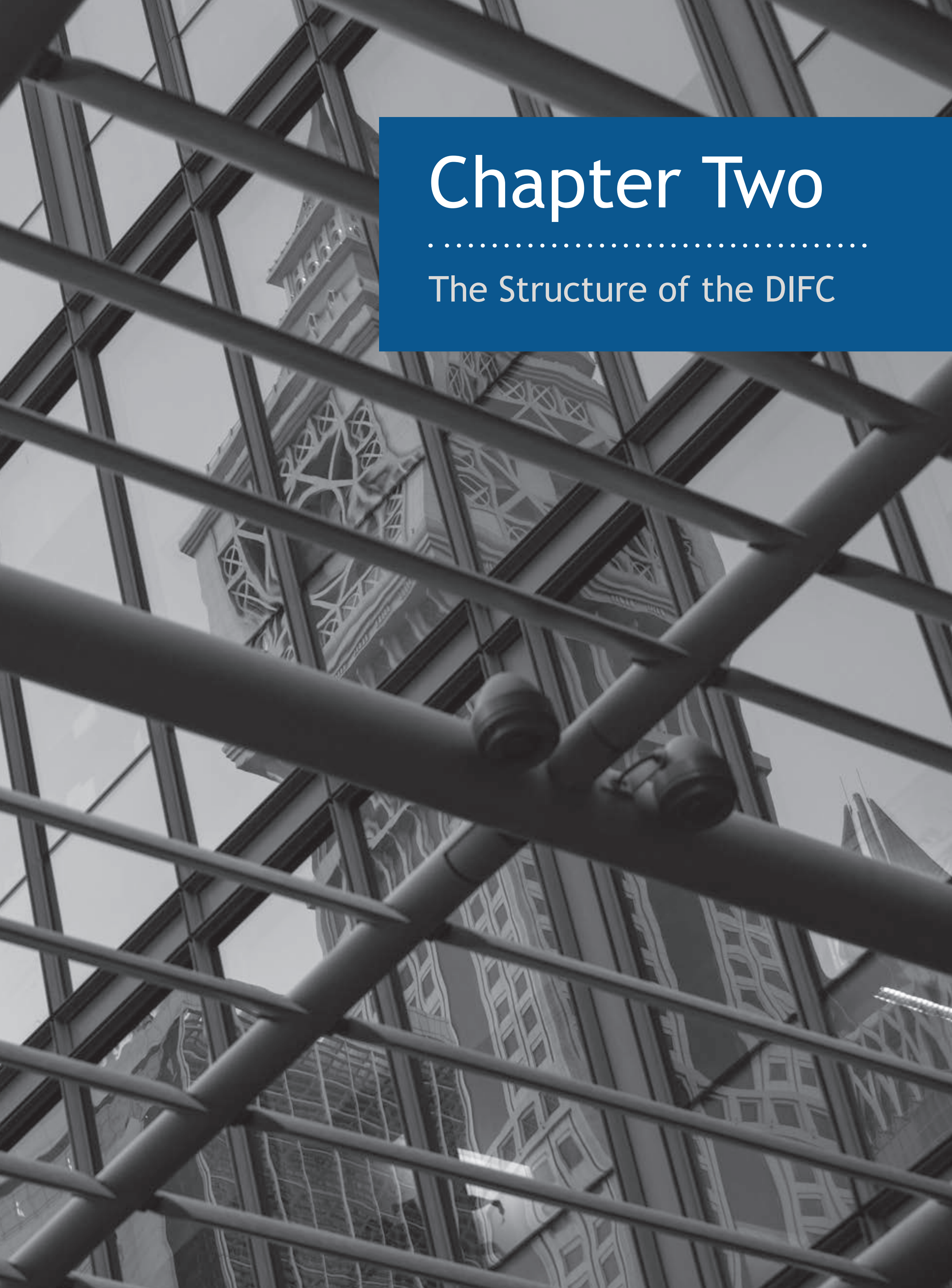
What is the Legal and Regulatory Framework?

DIFC Law is able to apply in the DIFC notwithstanding any UAE Federal Law on civil or commercial matters. DIFC Law No. 3 of 2004 (the Law on the Application of Civil and Commercial Laws in the DIFC) provides that the rights and liabilities between persons in any civil or commercial matter are to be determined according to the laws for the time being in force in the Jurisdiction chosen in accordance with the following hierarchy:

1. The DIFC Law or any other law in force in the DIFC so far as there is a regulatory content; failing which
2. The law of any jurisdiction other than that of the DIFC expressly chosen by any DIFC Law; failing which
3. The laws of a jurisdiction as agreed between all the relevant parties concerned in the particular matter; failing which
4. The laws of any jurisdiction which appears to the Court or Arbitrator to be the one most closely related to the facts of and the persons concerned in the matter; failing which
5. The laws of England and Wales.

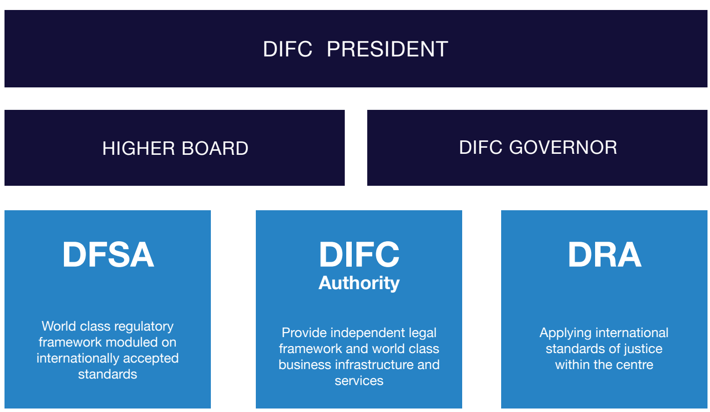
Chapter Two

The Structure of the DIFC



The Structure of the DIFC

There are several key organisations within the DIFC which enable it to function as a self-contained financial centre based on international standards:



THREE INDEPENDENT BODIES

The key organisations in the DIFC

DIFC Authority

The key role of the DIFC Authority is to develop an overall strategy and provide direction and supervision to the Centre. The DIFCA, created by Dubai Law No 9 of 2004, is also responsible for:

1. attracting licensees to operate in the DIFC;
2. incorporating and registering companies in the DIFC;
3. developing laws relating to non-financial services in the DIFC; and
4. business development and marketing/public relations.

Dispute Resolution Authority (DRA)

Established in 2014, the DRA administers justice and legal excellence within the DIFC. The DRA currently incorporates four divisions:

DIFC Courts

Dubai's established English-language, commercial common law judicial system.

DIFC Wills and Probate Registry

The first Common Law, English language wills and probate service for non-Muslims in the Middle East.

Academy of Law

An independent entity that provides quality legal education and support to the UAE legal community.

Dubai Arbitration Institute

Dubai Financial Services Authority (DFSA)

The DFSA is the independent regulator of financial and designated non-financial business or professions conducted in or from the DIFC. The DFSA has set uncompromisingly high standards in creating a regulatory and legal framework built on the best practices of leading jurisdictions worldwide. This robust and flexible regulatory framework is underpinned by the DFSA's guiding principles: integrity, transparency and efficiency.

The Dubai Financial Services Authority (DFSA), created under Dubai Law

No 9 of 2004, provides the regulatory framework for the Dubai International Financial Centre. It is responsible for:

1. authorising, licensing and registering financial services and related activities;
2. regulating these financial services and related activities; and
3. supervising market activities.

It has been granted investigative and enforcement powers in order to carry out its intended functions. The DFSA has set high standards of corporate governance and has a regulatory framework that is based on best practices in accordance with leading financial jurisdictions.

The main areas of financial activity in the DIFC

1. Banking & Capital Markets

Attracted to the region by its growing wealth, cross-border trade and investment activity, M&A activity and ongoing restructuring by state owned enterprises, corporations and private entities, a large number of banks and brokerage firms have established a presence in DIFC. From DIFC, investment banks are able to service the region's growing financing needs and support growing sophistication of businesses operating in and from around the region. Recent years have seen the expansion of the corporate sector with more sophisticated financing requirements.

Regional debt capital markets are also picking up as governments and corporates across the region diversify their funding bases.

The DIFC's legal and regulatory framework has created a highly conducive and secure environment for the growth of banks offering a wealth of services, including:

- Commercial banking
- Investment banking
- Trade and export finance
- Project and infrastructure funding
- Treasury services
- Correspondent banking

2. Wealth & Asset Management

The region benefits from a vast pool of wealth and a growing appetite for specialist investment products. There is also an increasing demand from high net worth individuals for tailor made solutions which meet their specific and individual wealth management requirements.

The Centre's legislative and regulatory regime has created a highly supportive and secure environment for the growth of the funds industry. In compliance with IOSCO Principles, the Funds Regime allows for the domiciliation, management and distribution of funds from DIFC. The vast scope for investing, managing and administering this enormous wealth has encouraged many of the world's biggest asset managers, hedge funds and private equity firms to set up within DIFC and take advantage of the ability to:

- Manufacture and distribute tailor-made mandates and specialist investment products
- Manage the world's largest concentration of Islamic wealth
- Offer advanced asset management products for institutional investors including the region's large sovereign wealth funds
- Access investment opportunities across the region and gaining exposure to rapidly growing emerging markets
- Tap into the regions vast pool of wealth for fund raising and seed capital

3. Corporate Offices

DIFC's attractive legal framework and tax offering has attracted a range of management offices, including:

- Holding Companies
- Proprietary Investments Offices
- Single Family Offices
- Marketing Operations

Operating a management office in DIFC provides access to a variety of professional services, wealth and asset managers, private bankers, legal firms, accounting firms, recruitment firms, consultants, corporate governance experts, international tax advisers, captive insurers and experts on Islamic finance, as well as access to capital markets and corporate financiers.

Single Family Offices (SFOs) benefit from a confidential yet transparent regulatory framework that excludes them from many of the regulatory constraints placed on conventional organisations in the Centre, and is the first in the world to define a family office in legal terms. These regulations, combined with estate and succession planning advisers, corporate governance experts and other available professional services, make DIFC an ideal jurisdiction for family offices.

4. Insurance & Reinsurance

DIFC promotes the development of a thriving regional insurance market. Global and regional insurers, reinsurers and brokers are attracted to set up in the Centre due to its world-class infrastructure, legislation and regulation.

In many cases, international players tie up with regional firms to establish a new entity to cater to the region's demand for insurance and reinsurance services.

With the growing presence of regional and international companies, the insurance penetration in the market has grown, outpacing that of industrialised countries.

In view of the notable rapid development of Takaful, Islamic insurance and reinsurance, over the recent years, firms are eager to establish in the Centre to meet the needs of the Islamic market.

An important facet of the Insurance sector is Captives, which is rapidly gaining appeal in the region. With the economic development, growing industrialisation, rapid growth of international trade, international mergers and acquisitions, improved regulation and increased focus on corporate governance, the region is witnessing a change of attitude towards corporate risk management, and a growing awareness of the need for innovative ways to finance the future cost of corporate risk.

For firms looking to finance and manage corporate risk, DIFC's regulatory framework, coupled with its favourable tax environment, offers a convenient platform for the establishment of captive insurance companies. Furthermore, the flexibility of the DFSA in providing the regulation of Protected Cell Companies positions the DIFC among the most forward-looking financial centres.

5. Professional Services

The region has witnessed a growing demand for professional service firms driven by greater sophistication in financial services requiring specialist advisory work, increased cross-jurisdictional trade and transactions, and the ongoing restructuring by state owned enterprises, corporations and private entities.

Through its offering of world-class technology and associated infrastructure, a pool of multilingual highly skilled professionals, DIFC has attracted a wide range of professional service providers including:

- Legal
- Accounting and audit
- Consulting
- Compliance
- Recruitment
- Risk management
- Data and research providers

By locating in DIFC, firms are able to centralise and consolidate their resources used to service the region, thereby gaining a competitive cost of operation. In addition to the growing regional opportunity, professional service firms may benefit from the large business and financial captive clientele already located within the Centre – making DIFC your logical home.

The expertise of the world's major international professional service firms has been an important pillar in establishing DIFC as a world-class international financial Centre.

The Entities within the DIFC

There are different types of entities found in the DIFC, these include:

1. Authorised (Regulated) Firms
2. Authorised Market Institutions
3. Designated Non-Financial Business or Profession
4. Registered Auditors
5. Non-Regulated Entities
6. Exempt Companies

1. Authorised Firms

Any person or institution intending to carry out any financial services in or from the DIFC must be licensed and authorised by the DFSA as an Authorised Firm. The primary areas of financial activities that an Authorised

Firm can carry out, in and from the DIFC, include banking services, asset management, fund registration, Islamic finance, reinsurance, captive reinsurance and capital markets.

All authorisation matters in respect of an Authorised Firm, which includes the application for initial license, extension or reduction to the scope of a license and an appointment of authorised individuals, are set out in the DFSA's General Module and the Conduct of Business Module.

The core principles which are detailed in the General Module must be adhered to by all Authorised Firms and Authorised Individuals. The General Module also outlines in detail the types and definition of the financial services that can be carried out, in or from the DIFC, by an Authorised Firm. Authorised Firms in the DIFC are categorised into 7 distinct prudential categories dependant on the types of activities that the Authorised Firm will be undertaking. The 7 prudential categories of Authorised Firms in the DIFC are detailed below:

The 7 Categories of Authorised Firms in the DIFC

Category 1	Category 2	Category 3A	Category 3B	Category 3C	Category 4	Category 5
Accepting Deposits	Dealing in Investments as Principal (not as Matched Principal)	Dealing in Investments as Principal (as Matched Principal)	Providing Custody (only for a Fund)	Managing a Collective Investment Fund	Arranging Deals in Investments	An Islamic Financial Institution which Manages a PSIAu
Managing a PSIAu				Managing Assets	Advising on Financial Products	
	Providing Credit	Dealing as Agent	Acting as the Trustee of A Fund	Providing Trust Services as a trustee of an express trust	Arranging Custody	
				Managing a PSIAr	Insurance Intermediation	
				Providing Custody (other than for a Fund)	Insurance Management	
					Operating an Alternative Trading System	
					Providing Fund Administration	
					Providing Trust Services other than as a trustee of an express trust	
					Arranging Credit and Advising on Credit	
					Operating a Crowdfunding Platform	

Note:

1. *The Financial Services described in the boxes are the determinants for the prudential category. The activities set out in the boxes in the table are Financial Services. The Financial Services that an Authorised Firm is authorised to carry on, are specified on its Licence.*
2. *If a Person carries on any one or more of the Financial Services specified in a box under a particular category, then the highest such category is that Person's category for the purposes of the DFSA PIB Module.*
3. *An exception to the above is an Islamic Financial Institution which manages a Profit Sharing Investment Account (PSIA) which is a PSIAu. Such an institution falls in category 5.*

The table is for guidance purposes only, in order to determine the category of license for which to apply, it is important to have a clear understanding of the meaning of the financial activities, detailed in each category:

a. Accepting Deposits, means where money received by way of deposit is lent to others, or where any other activity of the entity accepting the deposit is financed, wholly or to a material extent, out of the capital of or returns on any money received by way of deposit.

b. Providing Credit, means the provision of a credit facility (which includes any arrangement or agreement which extends monetary credit whether funded or unfunded to an entity, which includes but is not limited to any loan or syndicated loan, mortgage, overdraft, financial lease, letter of credit, financial guarantee, trade finance, transaction finance, project finance or asset finance).

c. Dealing in Investments as Principal, means the buying, selling, subscribing for or underwriting of any investment (as broadly defined under the General Rules) as principal.

d. Dealing in Investments as Matched Principal, means entering into transactions as a Principal only for the purpose of fulfilling its Clients' orders; holding positions for its own accounts only as a result of a failure to match Clients' orders; the total market value of the positions it holds is no more than 15% of the Firm's Tier One Capital resources; and the positions are incidental and provisional in nature and are strictly limited to the time reasonably required to carry out a transaction of that nature.

e. Dealing in Investments as Agent, which means the buying, selling, subscribing for or underwriting of any investment (as broadly defined under the General Rules) as Agent.

f. Arranging Deals in Investments, which means making arrangements with a view to another entity whether as principal or agent buying, selling subscribing for or underwriting an investment.

g. Managing Assets, means managing on a discretionary basis assets belonging to another entity if the assets include any investment or rights under a contract of Long-Term Insurance (as broadly defined under the General Rules), not being a contract of reinsurance.

h. Advising on Financial Products means giving advice to a person in his capacity as an investor or potential investor, or in his capacity as agent for a potential investor on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product.

i. Managing a Collective Investment Fund, means being legally accountable to Unitholders in the Fund for the management of the property held for or within a Fund under the Fund's Constitution and establishing, managing of otherwise operating or winding up a Collective Investment Fund.

j. Providing Custody, means both the activity of safeguarding investments belonging to another entity and the administration of those investments.

k. Arranging Custody, means the arranging for one or more entities to carry on the activity of Providing Custody.

l. Effecting Contracts of Insurance, means effecting such contracts (as broadly defined under the General Module) as principal.

m. Carrying out Contracts of Insurance, means carrying out such contracts (as broadly defined under the General Module) as principal.

n. Insurance Intermediation, means advising on insurance; acting as agent for another Person in relation to the buying or selling of insurance for that other Person or making arrangements with a view to another Person, whether as principal or agent, buying insurance.

o. Insurance Management, means providing management services or exercising managerial functions, which include administration and underwriting, for an insurer (an entity effecting or carrying out Contracts of Insurance).

p. Managing a Profit Sharing Investment Account, means the management of an account, portfolio or fund (a) in relation to property of any kind, including the currency of any country or territory, held for or within the account, portfolio or fund; (b) in accordance with the principles of Islamic Sharia and held out as such; and (c) under the terms of an agreement whereby: (i) the investor agrees to share any profit with the manager of the account, portfolio or fund in accordance with a predetermined specified percentage or ratio; and (ii) the investor agrees that he alone will bear any losses in the absence of negligence or breach of contract on the part of the manager.

q. Operating an Alternative Trading System, means making arrangements with a view to another entity whether as principal or agent buying or selling an Investment by way of operating a facility which is organized on a temporary or permanent basis; which provides a means by which over the counter (OTC) trading of Investments can take place; and which provides a system or mechanism which enables electronic trading or trading by other means.

r. Providing Trust Services, means: (a) the provision of services with respect to the creation of an express trust; (b) arranging for any Person to act as a trustee in respect of any express trust; (c) acting as trustee in respect of an express trust; (d) the provision of Trust Administration Services in respect of an express trust; or (e) acting as protector or enforcer in respect of an express trust.

s. Providing Fund Administration, means providing one or more of the following services in relation to a Fund (a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements; (b) valuing of assets and performing net asset value calculations; (c) maintaining the share register and unit holder registration details; (d) performing anti-money laundering requirements; (e) undertaking transaction monitoring and reconciliation functions; (f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange; (g) producing financial statements, other than as the Fund's registered auditor; or (h) communicating with participants, the Fund, the fund managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund.

t. Acting as the Trustee of a Fund, means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of an Investment Trust.

u. Arranging Credit and Advising on Credit, means making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility; or giving advice to a Person in his capacity as borrower or potential borrower, as principal or agent, on the merits of his entering into a particular Credit Facility.

v. Operating a Crowdfunding Platform, means either Operating a Loan Crowdfunding Platform; or Operating an Investment Crowdfunding Platform (as futher defined in the DFSA Rules).

It is also important to note that in order to obtain a full banking license (that is, a Category 1 license in the DIFC), the DIFC entity must be either a branch or a subsidiary of a bank regulated by a regulator of a jurisdiction acceptable to the DIFC; or alternatively must be a joint venture between two or more banks regulated in a jurisdiction acceptable to the DIFC.
Start-up operations in Categories 2 – 4 are entertained by the DFSA, however, a stricter examination of the proposed entity will be made at the outset to ensure that the key issues of Corporate Governance, Anti Money Laundering and Compliance and Risk systems will be in place at the commencement of operations; and to ensure that the proposed management have the necessary skills, qualifications and experience to run a financial institution.

The scope and category of the license of an Authorised Firm is determined by the types of financial activities that an Authorised Firm is authorised to offer. This categorisation is provided in the Prudential - Investment, Insurance Intermediation and Banking Business Modules (PIB Module) and may be summarised as follows:

Category 1 - Accepting Deposits/Managing an Unrestricted Profit Sharing Account

A Category 1 Authorised Firm is a firm which is licensed to carry out the Financial Service of Accepting Deposits or Managing a Profit Sharing Investment Account (received on an unrestricted basis). The Authorised Firm under this category may be authorised to conduct other Financial Services, but its authorisation for Accepting Deposits and/or Managing a Profit Sharing Investment Account is what determines it as a Category 1 Authorised Firm, rather than another.

Category 2 - Principal Investor (not matched)/Providing Credit

This is an Authorised Firm licensed to carry out the Financial Service of Dealing In investments as Principal, and Providing Credit. In addition to this activity, the Authorised Firm under this category may also be authorised to conduct other Financial Services found in Category 3A, 3B, 3C or 4, provided that it cannot be authorised to conduct the Financial Services set out in Category 1.

Category 3A -Dealing in Investments as Principal/Dealing in Investments as Agent

Under this category, an Authorised Firm is licensed to carry on one or more of the Financial Services of: Dealing in Investments as Principal where it does only so as a Matched Principle; Dealing in Investments as Agent. An Authorised Firm grouped under this category may be authorised to conduct other Financial Services found in Category 3B, 3C or 4, but it cannot be authorised to conduct any of the Financial Services in Categories 1 or 2.

Category 3B – Providing Custody (for a Fund)/Acting as Trustee of a Fund

An Authorised Firm in this category is licensed to Provide Custody (but only for a Fund) and act as trustee for a Fund. An Authorised Firm in this category can carry on financial services in Category 3C and 4 but cannot carry on financial services in Categories 1, 2 or 3A.

Category 3C – Managing a Collective Investment Fund/Managing Assets

An Authorised Firm in this category may be licensed to carry on one or more Financial Services of Managing a Collective Investment Fund, Managing Assets, Providing Trust Services as a trustee of an express trust, Providing Custody (other than for a fund) and Managing a Profit Sharing Investment Account (received on a restricted basis). An Authorised Firm which has a 3C licence can also provide Financial Services in Category 4 but cannot provide Financial Services in Categories 1, 2, 3A or 3B.

Category 4 – Arranging Credit or Deals in Investments / Advising on financial Products

Authorised Firms in this category can do one or more of Arranging Deals in Investments, Advising on Financial Products, Arranging Custody, Insurance Intermediation, Insurance Management, Operating an Alternative Trading System, Providing Fund Administration, Arranging Credit and Advising on Credit, Operating a Crowdfunding Platform and/or Providing Trust Services (other than as a trustee of an express trust).

In Categories 2-4, Authorised Firms may apply to conduct their business in a wholly Sharia Compliant manner or through an Islamic Window. A Category 1 firm may apply for an Islamic Window to conduct certain aspects of its business in a Sharia compliant manner.

Category 5 - Islamic Financial Institution

An Islamic Financial Institution carries out its entire business in accordance with the principles of Sharia, and manages a profit sharing investment account (received on an unrestricted basis).

In the each case, an Authorised Firm, may only conduct the activities for which it has been specifically authorised. For example, an Authorised Firm which is a Category 2 licensed entity can only conduct the activities for which it was authorised at the time of licensing – it is not automatically allowed to conduct Category 3A, 3B, 3C and 4 activities.

In carrying on the above mentioned financial activities, the Authorised Firm must observe the rules in the DFSA Rulebook, in particular the following restrictions in that an Authorised Firm:

i. may only offer products or services to clients in accordance with the DFSA's Conduct of Business client classification requirements; and

ii. may not take deposits or deal in UAE Dirhams; and

iii. may not accept deposits from the State's markets.

In addition, an Authorised Firm must also comply with the provisions in the PIB Moduls. The PIB Module apply to every Authorised Firm in accordance with its category, except those carrying on insurance business. It sets out the general requirements on financial resources and capital and specific requirements in respect of risks namely credit risk, market risk, liquidity risk, group risk, operational risk and risks associated with Islamic financial businesses.

An Authorised Firm must ensure that its business and financial activities are in all respects, conducted according to the rules and regulations enforced by the DFSA and the DIFC. Breaching the rules and regulations, amongst other things, may result in withdrawal of authorisation of the Authorised Firm by the DFSA. This can be in respect of one or more of its Financial Services. If the DFSA considers it necessary, such consequences may also extend to the Authorised Individuals or other persons performing any functions in the Authorised Firm. Any breach of obligations on the part of the aforesaid persons entitles the DFSA to restrict them from performing their functions or in the case of Authorised Individuals, suspend or withdraw their status.

Representative Office

A DIFC representative office is an Authorised Firm and is regulated by the DFSA. However it is not included in the above Authorised Firms categorisation table because it does not have any capital requirements as per the DFSA PIB Module. This is because a representative office can only be set up as a branch of an already established firm. Any firm in a financial services sector can apply to be a representative office but they must be regulated in an acceptable home jurisdiction (other than the DIFC). A representative office's activities are confined to the general marketing of financial services and financial products already being offered from a location outside the DIFC by its head office or a member of its group.

Categories of Clients in the DIFC
All clients of a DFSA regulated entity must meet specific Client Classification requirements of the Conduct of Business (COB) Module of the DFSA Rulebook.

An Authorised Firm must, before carrying on a Financial Service with or for a Person, classify that Person as a: (a) Retail Client; (b) Professional Client; or (c) Market Counterparty, in accordance with the requirements in COB. The definition of a Professional Client and a Market Counterparty are briefly summarised below.

i. A Professional Client is defined as a person who:
   - Either:
     a. If an individual has net assets of at least US$1 million or if a Undertaking have own funds or called up capital of at least US$1 million; or
     b. an individual who is, or has been, in the previous two years, an Employee in a relevant professional position of an Authorised Firm or a Regulated Financial Institution;
   - has sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks; and
   - has not elected to be treated as a Retail Client.

Market Counterparties: are a type of Client (i.e. Deemed Professional Clients), who do not have to be given all the protections that would otherwise be required for Professional Clients. Deemed Professional Clients have to be notified by the firm that they will be treated as a Market Counterparty, with a right to object if they wish.

A Deemed Professional Client is a client who is:

- a Collective Investment Fund or regulated pension fund;
- a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;
- a public authority or state investment body;
- a supranational organisation whose members are either countries, central banks or national monetary authorities;
- an Authorised Firm, Regulated Financial Institution or the management company of a regulated pension fund;
- an Authorised Market Institution, regulated exchange or regulated clearing house;

- any other institutional investor whose main activity is to invest in financial instruments, including an entity dedicated to the securitisation of assets or other financial transactions; or
- a body corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country.
- a Large Undertaking (as defined in the COB Rules).
- a trustee of a trust which has, or had during the previous 12 months, assets of at least $10 million.
- a holder of a licence under the Single Family Office Regulations.

ii. A Retail Client is any client that cannot be classified as a Professional Client or as a Market Counterparty. For a firm to deal with Retail Clients, it needs to obtain a Retail Endorsement on its DFSA Licence. When applying for an endorsement to its Licence, a firm needs to show that it can offer additional protections, especially in the area of internal complaints handling and dispute resolution systems. It is important to note the following restrictions in terms of Financial Services which can be offered by firms dealing with Retail Clients:

  - No Accepting Deposits
  - Providing Credit is confined to Undertakings (that is, not individuals) and for business purposes only.

A firm that deals with Retail Clients has the option to treat all its Clients as retail, without conducting any further classification. Client classification does not need to be undertaken where a firm does no more than carry on an activity that constitutes marketing (as defined in the GEN Module of the DFSA Rulebook) with that person and provides no other Financial Service to that person.

Authorised Individuals

Individuals do not hold licenses in their own right to provide financial services. However, persons in all mandatory positions of an Authorised Firm and its Directors must become Authorised Individuals for the purpose of DFSA regulation of the Authorised Firm. The mandatory positions for an Authorised firm are, among others: Senior Executive Officer, Finance Officer, Compliance Officer and Money Laundering Reporting Officer, all of whom need to be authorised in respect of their duties because of their management responsibility and significant influence on the firm.

Persons who are looking to being authorised by the DFSA must adhere to a ‘fit & proper’ test to assess their integrity, competence and financial soundness, ensuring that the person is fit and proper to hold the position. Therefore, bankrupt individuals and those who have been convicted of serious criminal violations are highly unlikely to be considered to be fit and proper to perform a Licensed Function.

Ongoing requirements for Authorised Individuals

DFSA approval must be obtained in order to carry out additional Licensed Functions before they are conducted, and Individuals are expected to remain fit and proper at all times. Individuals ceasing to perform a Licensed Function must officially withdraw from the role by completing and submitting the relevant form to the DFSA. The DFSA must be notified of any changes to the individual’s circumstances where required, or where it would be reasonably expected that the DFSA be informed.

2. Authorised Market Institutions

These are entities that are authorised to operate an exchange and/or clearing house in or from the DIFC. Authorised Firms cannot be licensed to operate such businesses, despite the fact that they are defined as Financial Services.

The Dubai International Financial Exchange (DIFX) opened on 26 September 2005. It has since changed its name to NASDAQ Dubai. It aims to become the leading stock exchange located between Western Europe and East Asia. NASDAQ Dubai is unique in the region because its standards are comparable to those of leading international exchanges in New York, London and Hong Kong. The exchange expects to welcome many regional and international issuers and members. For international investors, NASDAQ Dubai will be the main gateway to opportunities in the Gulf Cooperation Council states and the rest of the Middle East and North Africa, as well as South Africa, Turkey, Central Asia and the Indian sub-continent.

NASDAQ Dubai has a license from the DFSA to operate an Exchange and a license to operate a Clearing House. For issuers of shares and other securities in these areas, the exchange offers increased market visibility, unprecedented access to regional and global capital and the ability to sustain fair valuation. The trading hours of the NASDAQ Dubai are from 10.00 am to 2.00pm from Sunday to Thursday. NASDAQ Dubai intends to become the platform of choice in its region for a range of:

- Equities
- Bonds

- Funds
- Islamic Products
- Index Products
- Derivatives
- Alternative Risk Products

An applicant who intends to carry on either or both of the financial services of operating an exchange or operating a clearing house must seek authorisation from the DFSA in accordance with the Authorised Market Institution Rules (AMI Rules). In this respect, The DFSA will only consider an application for a license from an applicant who is a body corporate and who is not an Authorised Firm or an applicant to be an Authorised Firm.

The AMI Rules provides for the regulatory process in relation to Authorised Market Institutions which include, amongst others, the matters in respect of license application, changes in the scope of license, ongoing obligations and supervision of an Authorised Market Institution. These regulatory processes are supplementary to other rules applicable to an Authorised Market Institution namely the General Module, the Enforcement Module, the Supervision Module and Markets Rules Module.

The financial services that can be carried out by an Authorised Market Institution as defined in the AMI Rules are as follows:

i. **Operating an Exchange**

This means operating a facility:

a. organised on a temporary or permanent basis, whether or not governed by enforceable rules;
b. which provides a market, whether primary or secondary or both, for the trading of investments;
c. which provides a system or mechanism, whether an order driven system, a quote driven system or a hybrid of such systems, enabling the market to operate by face to face trading (open outcry), electronic trading or trading by other means; and
d. through which:
    - offers to buy or sell Investments are made or accepted;
    - buyers and sellers can negotiate the purchase or sale of Investments;
    - contracts can be entered into for the transfer of ownership of or to the title to the Investment;

- the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to the transactions in respect of which they provide such services (being rights and liabilities in relation to those transactions) is secured; or
- the prices of Investments, price movements and price and size of the most recent trades are displayed and updated.

ii. **Operating a Clearing House**

a. This means operating a facility:
b. organised on a temporary or permanent basis, whether or not governed by enforceable rules;
c. which provides by electronic or other means mechanism by which or through which clearing or settlement occurs in respect of any transaction in respect of an Investment; and which in the course of providing clearing or settlement services:
   - becomes the legal counterparty to transactions;
   - becomes the guarantor of the performance of contracts;
   - administers and coordinates delivery and settlement of contracts;
   - secures the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to the transactions in respect of which they provide such services (being rights and liabilities in relation to those transactions); or
   - acts as registrar to a market by recording details of matched trades.

In addition to the AMI Rules and other relevant DFSA rules, an Authorised Market Institution will also be subject to the Regulatory Law and the Markets Law 2012. The Regulatory Law 2004 stipulates the provisions on the licensing and supervision of an Authorised Market Institution and the enforcement of regulatory actions against such institutions. The Markets Law 2012 on the other hand establishes a framework in respect of the manner in which an Authorised Market Institution administers and operates an official list of securities and stipulates some specific rules in this respect.

3. Designated Non-Financial Business or Profession

Designated non-financial business or professional services can only be carried out in or from the DIFC by persons or institutions that are registered and authorised by the DFSA as a Designated Non-Financial Business or Profession (DNFBP). A firm providing DNFBP services must be a body corporate or a partnership, formed under the Companies Law 2006 or General Partnership Law, respectively. A DNFBP can be formed either inside the DIFC via the Companies Law, Limited Liability Partnership Law or General Partnership Law, or alternatively, outside the DIFC but having a branch office in the DIFC that is registered with the DIFC Registrar of Companies. In carrying out its services, a DNFBP is subject to the rules which are set out in the DFSA AML Module.

A DNFBP may not carry on any Financial Service in the DIFC unless it is also licensed as an Authorised Firm, and the DFSA will take action against any violations of this restriction.

4. Non-Regulated Entities

Non-regulated entities do not provide Financial Services and therefore fall outside the scope of the DFSA Rules and Regulations. Non-regulated entities include companies or partnerships that provide outsourcing or business processing activities for the DIFC and the regulated community.

Such entities typically include those which are set up to monitor, regulate and provide support to other businesses in terms of back office administrative operations. Other types of non-regulated entities in the DIFC include restaurants and recruitment agencies.

5. Special Purpose Companies

SPCs were introduced by the DIFC in November 2008. Special Purpose Companies (SPC) are non-regulated companies performing a specific activity, that is, acting as a Special Purpose Vehicle (SPV). Accordingly, SPCs do not undertake any Financial Services, and only undertake Exempt Activities as defined in the DIFC's Special Purpose Companies Regulations.

If an SPC undertakes any activities other than Exempt Activities, the Registrar of Companies is entitled to revoke the status of the company as an SPC following which the company will be subject to all provisions of the Laws.

Exempt activities are limited to:

a. the acquisition (be it by way of leasing, title transfer, risk transfer or otherwise), holding and disposal of any asset, (tangible or intangible including but not limited to receivables and shares), in connection with and for the purpose of any transaction;

b. the obtaining of any type of financing (banking or capital markets), the granting of any type of security interest over its assets, the providing of any indemnity or similar support for the benefit of its shareholder(s) or any of its subsidiaries, or the entering into any type of hedging arrangements, in connection with and for the purpose of a transaction;

c. financing of the initiator or another SPC;

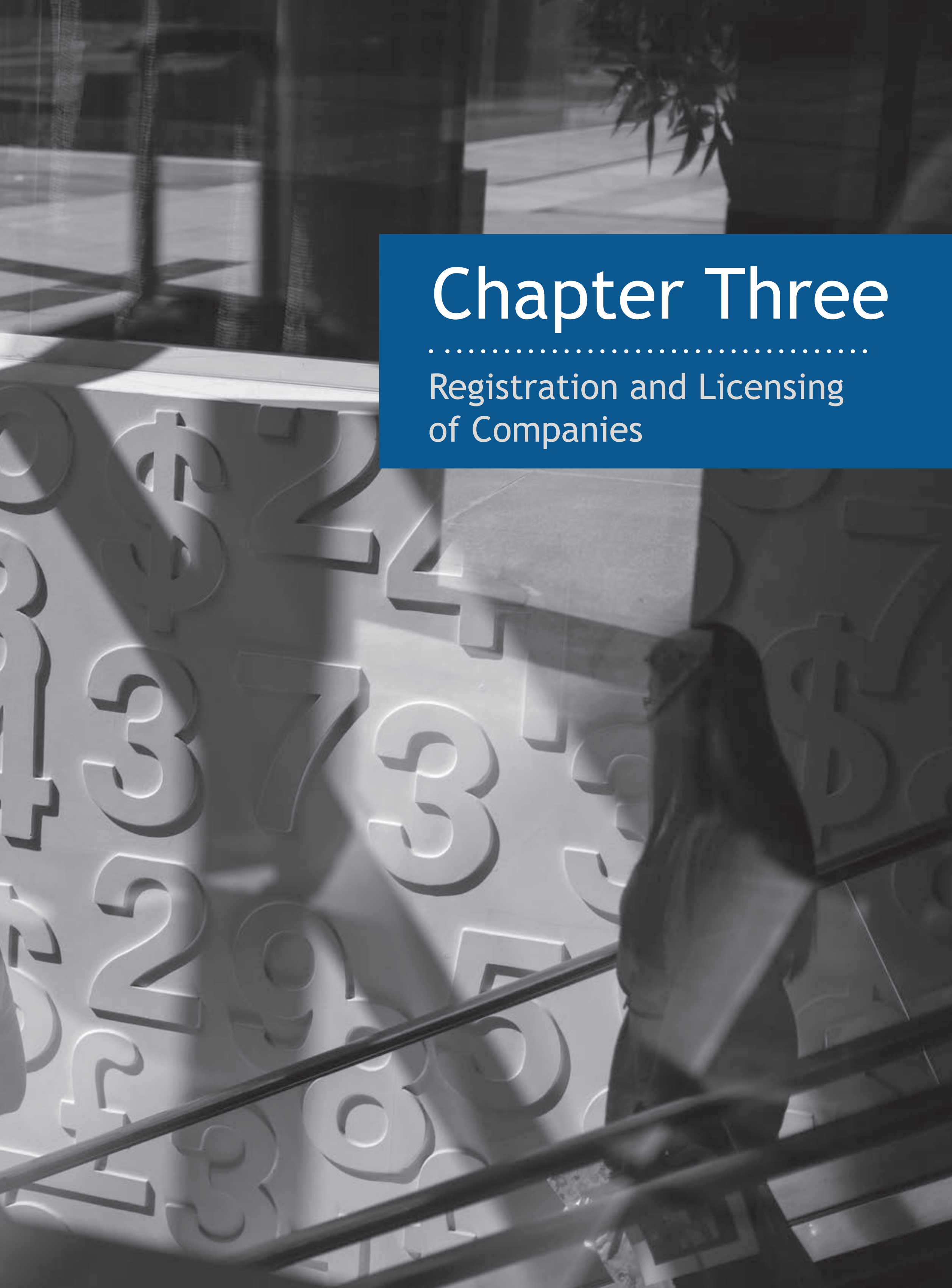
d. acting as trustee or agent for any participant in the transaction;

e. any other activity approved in writing by the Registrar; or

f. any ancillary activities which are related to the activities set out under (a) to (e) above.

Chapter Three

Registration and Licensing of Companies



Registration and Licensing of Companies

Registrar of Companies (ROC)

The office of the Registrar of Companies (the ROC) was established pursuant to Article 7 of the Companies Law, DIFC Law No. 3 of 2006 (which has been repealed and replaced by the DIFC Law No 2 of 2009). Under this Law, the office of the Registrar of Companies is created as a corporation sole. The current Registrar of Companies was appointed by a resolution of the DIFC President, His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, Deputy Ruler of Dubai on 1st June 2010.

The role of the ROC staff is to advise on, receive, review and process all application forms submitted by prospective applicants who seek to establish a presence in the DIFC in accordance with the DIFC Companies Law, the General Partnership Law, the Limited Liability Partnerships Law or the Limited Partnership Law and the implementing regulations applicable thereto.

The Registrar of Companies is supported by an Assistant Registrar of Companies, a Director Registry Services, a Senior Administrative Officer and a Registry Documentarian in fulfilling the duties, powers and functions conferred on him by or under the DIFC Companies Law or by or under any other Law made by the Ruler of Dubai.

The Registrar's powers and functions are set out by the Companies Law and include:

- drafting of DIFC regulations, standards or codes of practice and guidance;
- prescribing forms to be used for any of the purposes of the Companies Law or any other legislation administered by the Registrar; and
- to do whatever he deems necessary, for or in connection with, or reasonably incidental to, the performance of his functions.

1. Setting up a Regulated Entity in the DIFC

An applicant is required to submit an application to the DIFC's regulatory body, the DFSA, which will consider the merits and suitability of the applicant, and the category of license for which the application is made.

The Application Process

1. The DFSA has will informally review a draft Regulatory Business Plan and projected financial and, if satisfied, allow a full formal application (which includes a finalised Regulatory Business Plan to be submitted).
2. The application documents will consist of:
   - various different application forms must be presented when applying to the DFSA depending on the financial services applied for; and
   - Applicants will also be expected to provide the following minimum information:
     - the key staff, major shareholders (10% and above) and controllers, as well as confirmation as to their fitness and propriety to conduct the proposed entity's business;
     - the organisational structure of the proposed entity;
     - the operating systems and controls;
     - the compliance systems, internal audit function and complaints procedures;
     - the anti-money laundering procedures and controls;
     - the financial position of the applicant institution; and
     - the regulatory history of the applicant institution.

3. The DFSA will carry out a review of the application and enter into an ongoing dialogue with the applicant, which may involve interviews with the nominated authorised individuals.
4. Once the DFSA is satisfied with the application and the applicant, it will issue an In-Principle approval to the applicant which will contain a number of conditions to be satisfied before granting of the final license, including:
   - the incorporation or registration of the entity with the DIFC Registrar of Companies;
   - opening a local bank account and providing the DFSA with proof of remittance of capital; and
   - evidence of office space from which it will conduct its financial activities.
5. Once the conditions on the in-principle approval are fulfilled, the DFSA will issue the formal license.

Capital Requirements
The capital requirement for different Authorised Firms varies, and is determined by applying the higher of the (i) applicable Base Capital Requirement set out in the PIB Module, (ii) the Expenditure Based Capital Minimum set out in PIB, or (iii) the Risk Capital Requirement set out in PIB. The Base Capital Requirement for each Category is set out below:

The Capital Requirement for an Authorised Firm in Categories 1 or 5 is set out in the table immediately below, please note the capital requirements are lower than is indicated in this table for fund managers managing certain types of Funds.

Prudential Category	Base Capital Requirement	Risk Capital Requirement	Expenditure based Capital Requirement (EBCM)
Category 1	US $10 million	✓	✗
Category 2	US $2 million	✓	✓
Category 3A	US $0.5 million	✓	✓
Category 3B	US $4 million	✗	✓
Category 3C	US $0.5 million	✗	✓
Category 4	US $10,000	✗	✓
Category 5	US $10 million	✓	✗

In Category 3C if the Authorised Firm is only carrying out the Financial Service of Managing Collective Investment Fund the Base Capital Requirements are lower than what is indicated in the table.

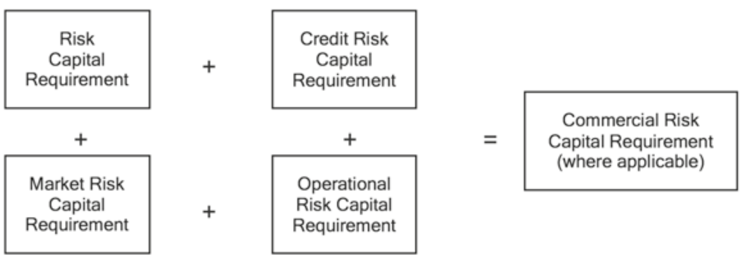
The Expenditure Based Capital Minimum requirement applies to Authorised Firms in Categories 2, 3A, 3B, 3C or 4.

Prudential Category	No Client Assets or Insurance Money Held	Client Assets or Insurance Money Held
Category 2, 3A, 3B, 3C	13/52*	18/52*
Category 4	6/52*	18/52*

(*) of the Annual Audited Expenditure

The Risk Capital Requirements applies to Authorised Firms in Categories in 1, 2, 3A or 5.

The Risk Capital Requirement is the sum of:



Calculated as the higher of the applicable Base Capital Requirement set out in the DFSA's PIB Module section 3.6 or the Risk Capital Requirement set out in section 3.8.

The Capital Requirement for an Authorised Firm in Categories 2 or 3A is the highest of:

a. The applicable Base Capital Requirement; and

b. The Expenditure Based Capital Minimum; or

c. The Risk Capital Requirement.

The capital requirements for an Authorised Firm in Categories 3B, 3C or 4 is the higher of:

a. The applicable Base Capital Requirement; and

b. The Expenditure Based Capital Minimum.

Application costs for a financial entity
The application costs for an Authorised Firm in the DIFC, are set out in the DFSA Fees Module, as noted below:

If an Authorised Firm carries out one or more of the above Financial Services, they must pay to the DFSA the highest of the corresponding fees, plus a fee of US $1,000 for each complete US $1 million of expenditure applicable on the date of the Annual Renewal Fee.

	License Application Fee fro the Initial year (US $)	Annual License Renewal Fee (US $)
Accepting Deposits or Providing Credit	$70,000	$70,000
Dealing in Investments as principal (except as a matched principal)	$40,000	$40,000
Effecting Contracts of Insurance or Carrying Out Contracts of Insurance (except as a Captive Insurer, as a PCC or as an ISPV)	$40,000	$40,000
Managing a Collective Investment Fund (except an umbrella fund) which is not a QIF	$10,000	$10,000
Managing a Collective Investment Fund (except an umbrella fund) if only a QIF	$5,000	$5,000
Operating an Alternative trading System	$40,000	$40,000
Dealing in Investments as a matched principal	$25,000	$25,000
Dealing in Investments as an Agent	$25,000	$25,000
Managing Assets	$25,000	$25,000
Providing Custody	$25,000	$25,000
Managing a profit Sharing Investment Account	$25,000	$25,000
Providing Trust Services	$25,000	$25,000
Acting as the Trustee of a Fund	$25,000	$25,000
Arranging Deals in Investments	$15,000	$15,000
Advising on Financial Products	$15,000	$15,000

	License Application Fee fro the Initial year (US $)	Annual License Renewal Fee (US $)
Arranging Custody	$15,000	$15,000
Insurance Intermediation	$15,000	$15,000
Insurance Management	$15,000	$15,000
Arranging Credit and Advising on Credit	$15,000	$15,000
Operating a Credit Rating Agency	$10,000	$10,000
Arranging Credit and Advising on Credit	$15,000	$15,000
Effecting Contracts of Insurance or Carrying Out Contracts on Insurance as a Captive Insurer or as an ISPV	$5,500	$5,500
Effecting Contracts of Insurance of Carrying out Contracts of Insurance as a PCC a. for the core; and b. for each cell	$8,000 $1,000	$8,000 $1,000
Providing Fund Administration	$15,000	$15,000
Managing an Umbrella Fund a. for the Umbrella; and b. for each sub-fund	$8,000 $1,000	$8,000 $1,000
Operating a Crowdfunding Platform	$5,000	$5,000

Application to register as a Representative Office
An applicant applying for a licence authorising it to carry on the Financial Service of Operating a Representative Office must pay to the DFSA an application fee of US $4,000. A Representative Office is not required to show any minimum capital or to meet any minimum capital requirements. The annual renewal fee to be paid to the DFSA is US $4,000.

2. Setting up a Non-Regulated Entity in the DIFC

Non-Regulated entities are those which are set up in the DIFC and which have as their core business, activities that do not fall under the Financial Service Provider category and which do not carry out any of the businesses set out above. Such entities typically include those which are set up to monitor, regulate and provide support to the Applicant's other businesses in terms of back office administrative operations. Examples of non-regulated entities set up in the DIFC include restaurants and recruitment agencies. Non regulated entities must have a share capital paid upon incorporation in the amount at least equal to US $50,000.

It is a requirement that applicants wishing to establish non-regulated businesses must submit a detailed business plan along with the application, which is subject to DIFC approval. Typically fees totalling USD $21,000 must be paid at the application stage. For example this includes the fee for incorporation as a company in the DIFC: US $8,000 and the annual commercial license fee: US $12,000 and the data protection fee. For retail outlets, the application fee for incorporation or registration is US $3,400 and the annual commercial license fee is US $5,100. Please note that the fees may be different depending on the type of legal entity to be incorporated or registered.

3. Setting up a Designated Non Financial Business or Profession ("DNFBP") in the DIFC

A business which qualifies as a DNFBP will have to apply to the DFSA for registration as an DNFBP. Such an application will be considered by the DFSA on the merits and suitability of the applicant firm.

The definition of Designated Non Financial Business or Profession includes the following if the business is carried on in or from the DIFC:

a. a real estate developer or agency which carries out transactions with a customer which involves the buying or selling of real property;

b. a dealer in precious metals or precious stones;

c. a dealer in any saleable item of a price equal to or greater than US $15,000;

d. a law firm, notary firm, or other independent legal business;

e. an accounting firm, audit firm or insolvency firm (that is not a Registered Auditor);

f. a company service provider; or

g. a Single Family Office.

Under the Companies Law, applicants may establish either a Company Limited by Shares (Limited) or a Limited Liability Company (LLC), or a branch office of a pre-existing foreign company (Recognised Company). A party may also seek to transfer the incorporation of an existing company to the DIFC from another jurisdiction.

Under the Limited Liability Partnership Law (DIFC Law No.5 of 2004), applicants may establish a Limited Liability Partnership or apply for a foreign Limited Liability Partnership to become registered with the DIFC as a Recognised Limited Liability Partnership (allowing it to carry on business in the DIFC).

Further, the Collective Investment Law (DIFC Law No. 2 of 2010) applies to a Limited Partnership or a Recognised Limited Partnership which is used specifically for collective investments. Under the Limited Partnership Law (DIFC Law No. 4 of 2006), applicants setting up a fund may establish a Limited Partnership or apply for a foreign Limited Partnership to become registered with the DIFC as a Recognised Limited Partnership (allowing it to carry on business in the DIFC). A party may also seek to transfer a foreign limited partnership to the DIFC from another jurisdiction.
Finally, under the General Partnership Law (DIFC Law No. 11 of 2004), applicants may establish a General Partnership or apply for a foreign General Partnership to become registered with the DIFC as a Recognised Partnership (allowing it to carry on business in the DIFC).

I. Limited Liability Company

A Limited Liability Company, which is required to add ‘Limited Liability Company’ or ‘LLC’ after its name, may be incorporated to conduct any lawful business that is not an activity regulated by the DFSA under the DIFC Regulatory Law of 2004 (as amended from time to time) by one or more persons. A Limited Liability Company may not raise capital through public subscription. It is intended that this form of entity will be used by entities seeking to provide retail and non-regulated services in the DIFC rather than financial activities which are regulated by the DFSA.

II. Company Limited by Shares

A Company limited by shares, which is required to add ‘Limited’ or ‘Ltd’ after its name (or ‘Public Listed Company’ or ‘PLC’ in the event that it has obtained approval for the admission of any securities to the official list of a stock exchange), may be established in the DIFC by one or more persons and is the standard vehicle used for establishing a DFSA regulated presence in the DIFC when constituting a subsidiary or start-up entity.

III. Foreign Recognised Company

When establishing a branch in the DIFC, a Foreign Recognised Company registration is used. A foreign company shall not carry on business in the DIFC unless it is registered as a ‘Recognised Company’. Consequently, a Recognised Company is essentially a registered branch within the DIFC of an existing foreign company. It is ‘Recognised’ in the sense that it is a ‘registered’ entity as opposed to being a separate legal entity in itself and, as such, it is a mere extension of the foreign incorporated company whose head office is registered at the DIFC. Therefore, for purposes of legal authority and liability, a Recognised Company is an inseparable part of the Applicant company.

IV. Limited Liability Partnership (LLP)

LLPs may be established by two or more persons provided that a natural person is the 'designated member' of the LLP, where such person is the shareholder responsible for fulfilling specified requirements under DIFC Law No. 5 of 2004 (Limited Liability Partnership Law).

V. Recognised Limited Liability Partnership

A Recognised LLP, like a Recognised Company, is a 'registered' LLP, whose head office is incorporated elsewhere.

VI. Limited Partnership

The Collective Investment Law 2010 and the Limited Partnership Law, DIFC Law No. 4 of 2006 (and Regulations), apply to all entities which are Limited Partnerships. A Limited Partnership may consist of any number of persons but shall include, one or more persons called 'General Partners', who shall be liable for all debts and obligations of the Limited Partnership. One or more persons called 'Limited Partners' shall at the time of entering into such a Partnership make a contribution either in money, money's worth or any other property, and except as otherwise provided, shall not be liable for debts and obligations of the partnership beyond the amount each has contributed.

At all times the Limited Partnership shall be a legal person and can be sued in its own name and capacity. Any act or instrument relating to the business of the Limited Partnership and done or executed in the Limited Partnership's name, or in any other manner showing an intention to bind the Limited Partnership, by a person authorised to do so, whether a partner or not, is binding on the Limited Partnership and its partners.

VII. Recognised Limited Partnership

A Foreign Limited Partnership may carry on business in the DIFC if it is registered as a Recognised Limited Partnership ("RLP"). A Recognised Limited Partnership must appoint and retain at all times at least one person who is authorised to accept service of any document or notice on behalf of the RLP and to undertake any other function as may be prescribed in the Regulations.

The DIFC Collective Investment Law 2010 applies to all RLP's, and accordingly the RLP must have a principal place of business in the DIFC to which all communications and notices may be addressed.

VIII. General Partnership

Under the General Partnership Law, a prospective registrant may seek to establish a general partnership ("GP"). A General Partnership is a partnership established by two or more persons to carry on any lawful business, purpose or activity with a view to making a profit.

Under Article 24 of the General Partnership Law, a General Partnership has separate legal personality and can sue and be sued in its own name.

IX. Recognised Partnership (RP)

Under the General Partnership Law, a prospective registrant may seek to establish a branch of a pre-existing foreign (recognised) general partnership (RP).

X. Protected Cell Company

A Protected Cell Company ("PCC") is a single company consisting of a core and an indefinite number of cells, which are legally ring-fenced from each other. Each cell has assets and liabilities attributed to it, and its assets cannot be used to meet the liabilities of any other cell. The company will also have non-cellular (core) assets, which will be used to meet liabilities that cannot be attributed to a single cell. A PCC can create and issue cell shares in respect of any cell, but the company is managed by a single board. A cell of a PCC can be used as a captive insurance company, with the cell shares held by the captive's parent.

It is a special type of vehicle used solely for the purpose of carrying on certain financial services. The consent of the DFSA is required in order to incorporate such types of Companies.

XI. Investment Company (Fund)

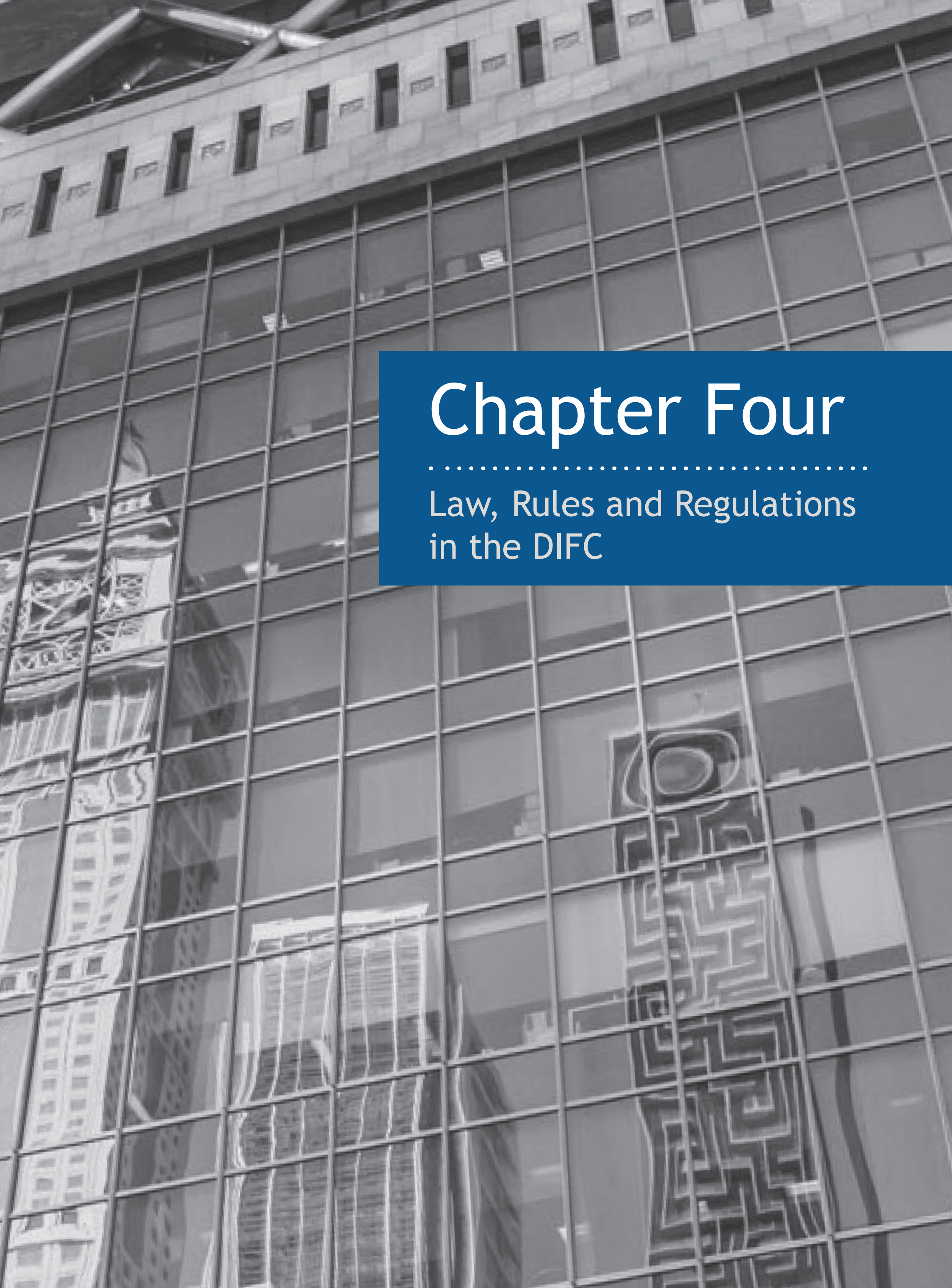
As with a PCC, an Investment Company is a special type of vehicle used solely for the purpose of carrying on certain financial service. The consent of the DFSA is required in order to incorporate such types of Companies.

XII. Special Purpose Company (SPC)

An SPC is a private company limited by shares. SPCs enjoy a number of features not shared by other types of DIFC entity. The SPC is specifically designed to be used in structured finance transactions.

XIII. Representative Office

A Representative Office is a branch of a financial institution regulated in another jurisdiction and subject to supervision by that financial services regulator. The activities permitted are the marketing only of financial products and services offered by its head office or a member of the group located outside the DIFC.



Chapter Four

Law, Rules and Regulations in the DIFC

Law, Rules and Regulations in the DIFC

Laws

When entities are registered in the DIFC, they become subject to the Laws of the DIFC. These laws are independent of the Civil and Commercial Laws that apply in the UAE. The legislation within the DIFC has the purpose of governing the day to day operations of financial institutions and corporate entities including individuals within the DIFC. The laws of the DIFC are designed with best practices of the world's major financial jurisdictions and commercial laws in mind.

The Laws of the DIFC constitute a commercial code which includes Companies Law, Contract Law, Arbitration, Data Protection Law and Insolvency Law among others. These are all administered by the DIFC Authority ("DIFCA"). Financial services laws are administered by the Dubai Financial Services Authority (DFSA). The laws include Regulatory Law, Markets Law and the Law Regulating Islamic Finance Business, Trust Law, the Collective Investment Law and Investment Trust Law.

The Laws are created and enacted by HH Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai.

Rules & Regulations

The DIFC has rules under the core financial services legislation which are considered subsidiary legislation. The rules can be found in the DFSA Rulebook. The DFSA Rulebook is divided into specific modules which cater to the variety of regulations that affect all DIFC entities.

The Regulations are created and enacted by the DFSA Board of Directors and the DIFCA Board of Directors. The DIFCA's Operating Regulations and the Company Regulations apply to companies incorporated under the Companies Law, the Limited Partnership Law and General Partnership Law*.

* Or a DIFC Body created under a DIFC Law

Overview of the DIFC Courts Law

The purpose of this Law is to provide for the independent administration of justice in the DIFC in accordance with Dubai Law No. 9 of 2004 and the DIFC Judicial Authority Law. There are two DIFC Courts which are both staffed by common law judges: the Court of First Instance and the Court of Appeal. The DIFC Courts are located in the DIFC District and consist of at least four judges, one of whom is the Chief Justice.

DIFC Court Law No. 10 of 2004 constitutes matters including the jurisdiction, structure and management of the DIFC Courts as well as judicial practice and procedure.

Key Laws and Regulations

Companies Law - DIFC Law No. 2 of 2009 (as amended)

The Companies Law enables Companies Limited by Shares, Limited Liability Companies and Recognised Companies to be established in the DIFC. This law also allows for the transfer of incorporation of companies to and from the DIFC. A practical method has been enacted by the Law to incorporate companies in the DIFC.

Formation registration, administration, membership and share capital matters are all set out in the Companies Law.

The Law also outlines the roles and responsibilities of the Directors, the accounting and auditing procedures and the roles and responsibilities of the Registrar of Companies in a concise manner.

Law on the Application of Civil & Commercial Laws - DIFC Law No. 3 of 2004

This Law governs the general operations of laws, including Civil Laws, and allows for the application of international laws where the DIFC Laws are not yet enacted. The Laws provide assurance in respect of obligations, rights and liabilities of individuals in a civil and commercial context within the DIFC.

If the laws within the DIFC in respect of civil and commercial matters fail, then the following shall prevail (in descending order):

i. Laws of any other jurisdiction expressly chosen by the DIFC Law;

ii. Laws of a jurisdiction as agreed between parties in the matter;

iii. Laws of the jurisdiction which appears to the Court or Arbitrator to be the most closely related to the facts in the matter; failing which

iv. Laws of England and Wales.

Law Relating to the Application of DIFC Laws (amended and restated) - DIFC Law No. 10 of 2005

This Law is applicable to the Law of Contracts, Property and Trusts all constituted under the laws of a jurisdiction other than that of the DIFC. With respect to the validity, existence, effect, interpretation and performance of a contract, the law states that this is determined by the law in the applicable jurisdiction which governs it. With respect to property, it is the law of where the property is located which governs it. Securities are governed by the law in the jurisdiction of the issuer, and finally a Trust is interpreted in terms of its existence, validity and interpretation under the law within which it was constituted.

Limited Liability Partnership Law – DIFC Law No. 5 of 2004 (as amended)

The Law permits the incorporation of a limited liability partnership, that is, liability of an individual partner is thereby limited to the capital contributed by that individual partner. Matters covered in the Law include the formation, registration procedures, administrative duties, duties of the members and conduct with other members, accounting and auditing procedures and requirements with a limited liability partnership. The Law also provides for the incorporation of foreign (recognised) limited liability partnerships in the DIFC.

Contract Law - DIFC Law No. 6 of 2004

Contract Law within the DIFC governs and binds all contractual relationships within the DIFC. The Law is structured to govern the formation, interpretation, content and validity of a contract. Contractual formalities and obligations are set out in the Law in a clear and concise manner with the provision of non performance between contracting parties as well as third parties.

Insolvency Law - DIFC Law No. 3 of 2009

The Law provides clarity in the obligations of the company to its creditors in the event of receivership. The Law further governs the powers and duties of the liquidator with regards to assets in the event of a company going into liquidation. The Insolvency Law is applicable to foreign (recognised) companies and limited liability partnerships within the DIFC.

Arbitration Law – DIFC Law No. 1 of 2008 (as amended)

This Law reflects international arbitration standards, which are used within the DIFC as a cost-effective and timely alternative to the Courts for parties to resolve matters in a commercial context.

This Law established the DIFC-LCIA Arbitration Centre located in the DIFC District. The Arbitration Centre offers dispute resolution services to all business and commercial sectors and provides a cost-effective and timely alternative to the Courts. This Law is based on international standards and hence the Centre's Arbitration and Mediation rules are universally applicable and compatible with both civil and common law systems.

General Partnership Law – DIFC Law No. 11 of 2004 (as amended)

When incorporating a General Partnership within the DIFC this governing law becomes applicable, setting out the procedures for the formation and registration of the partnership. Sections outlined include the duties of the partners in binding and being bound by acts undertaken in the name of the General Partnership.

Employment Law – DIFC Law No. 4 of 2005 (as amended)

This Law governs the employees within the DIFC and deals with matters that include working hours and leave entitlements, maternity rights, obligations of employers and employees and termination of employment. The Law also covers matters such as hiring of employees and non-discrimination.

Law of Obligations – DIFC Law No. 5 of 2005

Matters regarding misrepresentation, deceit, negligence, economic torts, wrongful interference with property, trespass and nuisance are covered within the scope of this Law with the grounds for each being set out in a clear and concise manner.

Implied Terms in Contracts and Unfair Terms Law – DIFC Law No. 6 of 2005

This Law governs how implied terms are governed by the DIFC Laws. The implied terms in contracts that are governed by this Law include contracts for the transfer of property, hire of property and the supply of services.

The exceptions to this Law include contracts relating to real estate; the formation or dissolution of a body corporate or unincorporated associations, including its constitution; and the creation or transfer of securities including any rights or interest in securities. Contracts of insurance, creation transfer or termination of a right or interest in intellectual property or employment, (except when in favour of the employee) is also not applicable.

Law of Damages and Remedies – DIFC Law No. 7 of 2005

In the event of non-performance of a contract, the contract outlines the rights of injured or aggrieved parties to damages. The Courts are given specific powers in issuing orders in favour of an individual's entitlement to compensation, damages, restitution, specific performance or any other available remedy.

Law of Security – DIFC Law No. 8 of 2005

The Law refers to transactions creating a security interest in personal property by contract. The Law is also applicable to promissory notes and sales of receivables. Within the scope of this Law the Security Registry and the Registrar of Securities is established, empowering DIFCA to develop rules and regulations in respect of the administration of the Law. Rights of a secured party in the event of default are also set out in the Law.

Personal Property Law – DIFC Law No. 9 of 2005

Any property that is owned or transferred within the DIFC falls under the scope of this Law. The Law sets out rules in respect of transferring property and the rights of parties to the transfer. The transfer of securities and acquisitions of security are also covered in this Law.

Limited Partnership Law – DIFC Law No.4 of 2006 (as amended)

The Law applies to all entities which are Limited Partnerships. In conjunction with the Collective Investment Law 2006, the Limited Partnership Law is applicable to entities engaged in collective investments: applicants setting up a fund may establish a Limited Partnership or apply for a foreign Limited Partnership to become registered with the DIFC as a Recognised Limited Partnership (allowing it to carry on business in the DIFC). The Law provides that a party may also seek to transfer a foreign limited partnership to the DIFC from another jurisdiction.

Data Protection Law – DIFC Law No. 1 of 2007 (as amended)

This Law sets out the governing law for the processing of personal data, individual rights as to whom personal data belongs and highlights the DFSA's position in accessing and collecting such data in performing its regulatory role.

Real Property Law – DIFC Law No.4 of 2007 (as amended)

Real Property Law in the DIFC allows for foreign companies and individuals to hold freehold ownership of real estate and hold interests in real property within the DIFC. Persons buying real estate, lending on the security of real estate, or taking a lease on real estate, can be assured that their investment is backed by the full protection of the Law.

Strata Title Law – DIFC Law No. 5 of 2007

The Law establishes a system of guaranteed freehold title to units in buildings in the DIFC. In accordance with the Real Property Law, this Law provides guaranteed title of ownership and it sets out a system of rights and responsibilities and an administrative structure designed to handle the day-to-day management of the buildings.

Single Family Office Regulations

The Regulations apply to the category of super-wealthy single families who would like to establish either a company or partnership in the DIFC. The single family may comprise an individual or a group of individuals all of whom are bloodline descendants of a common ancestor. The Regulations set out the rules and requirements relating to the formation and operation of a Single Family Office.

DIFCA Operating Regulations

These Regulations apply to companies incorporated under the Law and incorporators applying for a certificate of incorporation under the Law. Foreign companies and recognised companies under the Companies Regulations are also covered. The Regulations set out the procedure for applying for a Commercial License. The Commercial License effects the contracting of commercial and municipal services essential to the operations of providing a service. The DIFCA has a Foreign Direct Investment form that is to be completed by each registered company; it requires disclosure of particular financial information.

DIFC Companies Regulations

These Regulations cover the procedure for incorporating a company in the DIFC, registering a foreign company and the transfer of incorporation of a foreign company into the DIFC. The Regulations cover the scope of maintaining the public register in the DIFC, the accounting and auditing requirements for non-regulated entities and the regulation of protected cell companies.

Non Profit Incorporated Organisations Law, DIFC Law No 6 of 2012

This law provides a comprehensive legislative framework for the establishment of non-profit organisations incorporated in the DIFC. It covers all aspects regarding the purpose and activities of these organisations, the formation and registration procedures, accounts and auditing, dissolution, governance and other miscellaneous provisions. The Law also grants the Registrar with a wide range of powers in relation to the incorporated organisations.

Regulatory Law – DIFC Law No. 1 of 2004

This Law is the most important in terms of the governing law of regulated and financial activity within the DIFC. The function of the DFSA is identified and set out as the regulator in terms of exercising its regulatory function. Key objectives and principles are highlighted in the Law as well as the powers the DFSA hold in evaluating whether a financial institution is eligible to undertake financial activities in the DIFC. The DFSA has the ability to make rules in order to carry out its regulatory function within the DIFC, at the same time investigating and enforcing such rules. Dispute resolution mechanisms and procedures are also outlined in the Law.

Law Regulating Islamic Financial Business – DIFC Law No.13 of 2004

The Law establishes the governing law and framework for financial institutions wishing to conduct Islamic Financial Business in or from the DIFC. Requirements and Procedures are outlined for the financial institutions wishing to provide a service within the context of Sharia principles.

Markets Law – DIFC Law No. 1 of 2012

The Markets Law sets out the law governing Prospectus content requirements, Authorised Market Institutions (securities exchanges) (and their supervision), governance of listed entities, takeovers, and market abuse provisions (including defences to market abuse). There are also provisions regarding the jurisdiction of the Financial Markets Tribunal.

The Collective Investment Law – DIFC Law No. 2 of 2010

Laws have been compiled to regulate managed funds established within the DIFC. The Collective Investment Law 2006 was created to regulate such activities which include property funds, Islamic funds, hedge funds, funds of funds and private equity funds. The framework sets out the regulations in a detailed and concise way, making the DIFC an attractive centre to operate such funds.

Investment Trust Law – DIFC Law No. 5 of 2006

The Law governs the creation of an Investment Trust. An Investment Trust shall be formed solely for Collective Investment purposes. The Law contains details concerning Trust Deeds and sets out the requirements, duties and powers of a Trustee.

Anti-Money Laundering, Counter-Terrorist Financing & Sanctions Module of the DFSA Rulebook

Anti-Money Laundering Rules have been implemented by the DFSA. The Anti-Money Laundering Rules are interpreted and operate in conjunction with UAE Federal Law Anti-Money Laundering and Terrorist Financing Laws. All entities that set up and who operate in or from the DIFC are bound by these UAE Federal Laws. Regulated entities providing a financial service must also comply with the rules of the DFSA.

Conduct of Business Module of the DFSA Rulebook

The Conduct of Business (COB) Module was created to implement rules and govern Authorised Firms in respect of their regulated activity. The COB rules apply to all Financial Services performed or undertaken by a Company.

Chapter Five

Islamic Finance in the DIFC

Islamic Finance in the DIFC

Three decades ago the concept of Islamic Finance was considered wishful thinking. Today, with in excess of 1.6 billion Muslims worldwide the potential demand for Shari'a-compliant investment products and services is such that the demand for Islamic banking is growing at least at twice the rate of conventional banking. Consequently this demand has led to a number of conventional banks offering Islamic products through 'windows' in branches, and the establishment of new Islamic banks offering Islamic products.

More than three hundred Islamic Financial Institutions are operating worldwide, offering a comprehensive range of products, and are estimated to be managing funds in the region of US$ 260 billion. The current market is forecast to increase by 15-20% per annum. The market is not confined to citizens of Muslim countries, but is spread over Europe, the United States of America and the Far East. Muslims now have the opportunity to invest their financial resources in accordance with the ethics and philosophy of Islam.

The dramatic growth in Islamic or Shari'a compliant financial products reflects a number of trends including:

- economic development in the Arab world giving rise to infrastructure and other projects which require Shari'a compliant forms of financing;
- the emergence of an international market in Sukuk (Shari'a compliant bonds);
- rising incomes among the Arab population resulting in the need for Islamic consumer financial products (mortgages, pension plans and investment funds);
- changing demographics in the Arab world resulting in the growing need for pensions and other retirement savings products; and
- changes in Islamic law such as the approval in 1985 by the Grand Council of Islamic Scholars of the Takaful system as the alternative form of insurance written in compliance with Islamic Shari'a.

What the DIFC offers

As one of the world's newest global financial hubs, the DIFC has acknowledged and embraced the growing demand for innovations in Islamic Finance. One of the DIFC's key sectors of focus is to help in the development and further the cause of Islamic banking.

Operating to global standards of transparency and efficiency, NASDAQ Dubai offers a deep pool of liquidity for the trading of sophisticated Islamic financial instruments.

The DIFC also plans to offer a new domicile for the registration of Islamic collective investment schemes, reflecting an increasing investor preference for Shari'a compliant investment products originated and managed in the region.

The DFSA Rule Book provides a comprehensive Islamic Financial Business (ISF) Module which sets out the rules and requirements for any Authorised Firm which is an Islamic Financial Institution or which operates an Islamic Window (which was recently updated in 2016). In addition to the ISF Module, in 2009 the DIFC produced a comprehensive updated guide to Islamic finance. The guide provides a summary of the key concepts in Islamic finance and further analyses the regional and international challenges facing the Islamic financial services industry.

The Islamic Finance Category in the DIFC

Firms authorised operating in the DIFC may carry out their business in a Shari'a compliant manner if they choose to seek the appropriate permission to do so. Therefore, all categories of Authorised Firms (I - IV) can obtain a license from the DFSA either to become a full-fledged Islamic Finance Institution or to operate an Islamic Window within the Authorised Firms' otherwise conventional (i.e. non-Islamic) business.

Category 5 is given to a full Islamic Bank whose entire business is conducted in accordance with Shari'a and which manages a Profit Sharing Investment Account.

Islamic Financial Institutions can perform the following activities in or from the DIFC:

- Regional/global management of their wholesale and retail Islamic finance activities;
- Product structuring, development and roll-out to branches around the world;
- Centralisation of back-office operations, IT systems and telecommunications network systems;
- Booking Islamic assets whose revenues may be sensitive to tax regulations elsewhere;
- Launching Collective Investment Schemes, utilising the benefits of the
- DTA regime covering more than 43 countries;
- Centralising Murabaha transactions as short-term Money Market activities to manage liquidity;
- Applying of Sukuk, Islamic Funds and other Islamic instruments to be admitted to trading on the NASDAQ Dubai for achieving greater liquidity.

Disclosure

An Authorised Firm must disclose to each client the members of its Shari'a supervisory board and, if the client or commercial customer requests, the manner and frequency of Shari'a reviews. This information is disclosed at the outset of the relationship and thereafter whenever the information changes. All constitutional documents must state that its business operations will be conducted in accordance with Shari'a.

Policy and Procedure

An Authorised Firm undertaking Islamic Financial Business must implement and maintain an Islamic Financial Business Policy and Procedures manual which addresses the following matters:

a. The manner in which the compliance function will be undertaken, in respect of Shari'a compliance;

b. The manner in which the Shari'a Supervisory Board will oversee and advise with regard to the Islamic Financial Business conducted by the Authorised Firm;

c. The manner in which Shari'a Supervisory Board's fatwas, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'a review undertaken;

d. The manner in which disputes between the Shari'a Supervisory Board and the Authorised Firm in respect of Shari'a compliance will be addressed;

e. The process for approving those internal systems and controls which are in place to ensure not only that the Islamic Financial Business is carried out in compliance with Shari'a but the information is disseminated to investors in an appropriate manner;

f. The manner in which conflicts of interest will be identified and managed; and

g. In respect of an Authorised Firm operating an Islamic window, the systems and controls in place to ensure the appropriate separation of the Islamic Financial Business from the conventional business of the Authorised Firm.

If an Authorised Firm undertakes Islamic Financial Business and Manages a Profit Sharing Investment Account (PSIA), the policy and procedures manual must also contain additional information set out in the ISF Module.

Shari'a Supervisory Board

When an Authorised Firm appoints a Shari'a Supervisory Board, it must ensure that the board has at least three members who are competent to perform their functions as the board members.

Any appointments, dismissals or changes in respect of members of the Shari'a Supervisory Board are approved by the governing body of the

Authorised Firm. It should also be noted that no member of the Supervisory Board is allowed to be a Director or Controller of the Authorised Firm.

Finally, reasonable steps must be taken by the Authorised Firm to ensure that the Shari'a Supervisory Board is independent of and not subject to any conflict of interest with respect to the Authorised Firm.

Documentation

An Authorised Firm must document its policy in relation to how appointments, dismissals or changes will be made to the Shari'a Supervisory Board. Documented policy is also required in relation to the process through which the suitability of Shari'a Supervisory Board members and their respective remuneration will be considered. Along with its assessment of the competency of the Board members and agreed terms of engagement, all records are to be established and retained for a period not less than six years.

Reviews

An Authorised Firm must take reasonable steps to ensure that the Firm and its employees provide assistance to the Shari'a Supervisory Board in order to discharge its duties and give the Board right of access at all reasonable times to relevant records and information.

A copy of the annual report of the Shari'a Supervisory Board must be provided to the DFSA within fourteen (14) days of the Authorised Firm having received it.

The Authorised Firm must ensure that the internal Shari'a review is performed by the internal audit function or the compliance function of the Authorised Firm and that the individuals or departments involved in performing the review are competent and sufficiently independent to assess compliance with Shari'a. Where an Authorised Firm operates an Islamic Window, it must perform the internal Shari'a review in accordance with AAOIFI requirements.

Profit Sharing Investment Accounts

Where a Transaction involves a Client becoming a Profit Sharing Investment Account (PSIA) holder, an Authorised Firm must warn the client in writing that the risk of loss rests with the Client alone, and that the Authorised Firm will not share in the losses, unless there is negligence, misconduct or breach of contract for which it is responsible.

In relation to the above, the following information should be provided to the client in the agreement:

a. How the monies of the Client will be managed and invested including details of the policy on diversification of the portfolio;

b. The basis for the allocation of profit between the Authorised Firm and the Client;

c. Confirmation of the Client's investment objectives, including restrictions requested by the Client;

d. Summary of the policies and procedures for valuation of assets or portfolio;

e. Summary of policies and procedures for the transfer of funds to and from the Profit Equalisation Reserve or Investment Risk Reserve accounts;

f. Details of the management of the PSIA and any relative third party who the Authorised Firm has or will delegate or outsource the management of the PSIA;

g. Details of early withdrawal, redemption or other exit arrangement and applicable costs to the Client;

h. Details of the segregation of the funds of the Client from the funds of the Authorised Firm;

i. Details of whether funds from one PSIA will be commingled with the funds of another PSIA; and

j. Details of any applicable charges or deductions of fees that may be made by the Authorised Firm from the profits of the PSIA.

Chapter Six

Collective Investment Funds

Collective Investment Funds

The Applicable Legislation

From a DIFC perspective, Collective Investment Funds are primarily regulated by:

a. the Collective Investment Law 2010, DIFC Law No. 2 of 2010 as amended ("CIL" or "Collective Investment Law");

b. in the case of Collective Investment Funds structured as Investment Trusts, the Investment Trust Law 2006, DIFC Law No. 5 of 2006 as amended ("Investment Trust Law"); and

c. the Collective Investment Rules ("CIR") made to further the purpose of both the Collective Investment Law and the Investment Trust Law.

In terms of the Collective Investment Law, a person shall not make an offer of Units (essentially any unit, share or interest) in a Collective Investment Fund in or through the DIFC unless the offer of such Units is made in accordance with the Collective Investment Law and any applicable Rules of the DFSA (including the Collective Investment Rules).

This chapter will focus on the provisions of the Collective Investment Law and the Collective Investment Rules.

What is a Collective Investment Fund?

Arrangements which, according to the DFSA, amount to Collective Investment Funds are defined in the Collective Investment Law. The definition is very wide in its scope and covers a variety of different types of arrangements.

Arrangements Amounting to a Collective Investment Fund

A Collective Investment Fund is defined in the Collective Investment Law as any arrangement with respect to property of any description, including money, where:

a. the purpose or effect of the arrangement is to enable persons taking part in the arrangement (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;

b. the arrangement must be that the persons who are to participate ("Unitholders") in the arrangement do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and

c. the arrangement has either or both of the following characteristics:

    i. the contributions of the Unitholders and the profits or out of which payments are to be made to them are pooled; or

    ii. the property is managed as a whole by or on behalf of the Fund Manager.

Therefore, from a DIFC perspective, Collective Investment Funds are formalised arrangements that involve the pooling of monies or assets belonging to a number of investors that are, in turn, to be invested on behalf of those investors collectively, normally within certain guidelines and parameters, on a shared risk and return basis.

Arrangements Not Amounting to a Collective Investment Fund

In accordance with the Collective Investment Law, the DFSA has power to make rules excluding certain arrangements or types of arrangement from constituting a Collective Investment Fund. The DFSA has exercised its powers in accordance with the Collective Investment Law and has duly excluded certain arrangements or types of arrangements from constituting

Collective Investment Funds. The excluded arrangements or types of arrangements are detailed in the Collective Investment Rules and are designed to ensure that arrangements or types of arrangements that share some of the characteristics of Collective Investment Funds but are clearly not Collective Investment Funds (such as banking, franchise or insurance arrangements) do not fall under the regime aimed at Collective Investment Funds. Such excluded arrangements or types of arrangements generally have their own regimes.

The Basic Categories of Collective Investment Funds

Under the Collective Investment Fund regime, Collective Investment Funds can be divided into two basic categories based on geographical location namely Domestic Funds and Foreign Funds. Different provisions apply to Domestic Funds and Foreign Funds.

Domestic Funds

Domestic Funds are Collective Investment Funds established or domiciled in the DIFC. Domestic Funds can, in turn, be sub-divided into three basic sub-categories namely Public Funds, Exempt Funds and Qualified Investor Funds which can, in turn, be sub-divided into a number of specialist sub-categories including Islamic Funds, Fund of Funds, Feeder Funds, Master Funds, Private Equity Funds, Property Funds, Real Estate Investment Trusts, Hedge Funds, Umbrella Funds and Money Market Funds which all have their own bespoke DFSA Rules to regulate their particular operations.

Foreign Funds

Foreign Funds are Collective Investment Funds established or domiciled outside the DIFC. Only certain types of Foreign Funds established or domiciled in certain jurisdictions or Foreign Funds that are structured in a certain way or Foreign Funds that meet certain other criteria can be sold in or through the DIFC. Foreign Funds which are eligible to be sold in or through the DIFC can be sub-divided into two different sub-categories namely Designated Foreign Funds and Non-Designated Foreign Funds.

Domestic Funds and Foreign Funds are covered in more detail later in this chapter.

Managing a Collective Investment Fund

What is Considered as Managing?

It is important to consider the concept of "managing" a Collective Investment Fund. Under the Collective Investment Fund regime, a person "manages" a Collective Investment Fund if it:

a. is legally accountable to the Unitholders in the Collective Investment Fund for the management of the Collective Investment Fund, including all the property held for or with the Collective the Investment Fund; and
b. establishes, manages or otherwise operates or winds up a Collective Investment Fund.

Managing a Domestic Fund – General Requirements

In terms of the Collective Investment Law, a Person shall not establish or otherwise manage a Domestic Fund (or act as a Trustee of an Investment Trust) unless:

a. that Person is:
    i. a body corporate; and
    ii. an Authorised Firm whose Licence authorises it to manage a Domestic Fund (or act as a Trustee or to Provide Custody in the case of an Investment Trust), or
c. the Person is an External Fund Manager (essentially a body corporate which manages the Fund from a recognised or other jurisdiction acceptable to the DFSA, or in the case of a Trustee is regulated and supervised by a Financial Services Regulator in a Recognised Jurisdiction).

General Duties of a Fund Manager

In terms of the Collective Investment Law, a Fund Manager of a Domestic Fund must:

a. manage the Fund including the Fund Property in accordance with the Fund's Constitution and its most recent Prospectus;
b. perform the functions conferred on it by the Fund's Constitution and by or under the Collective Investment Law;
c. comply with any conditions or restrictions imposed by the DFSA including those on its Licence or in respect of the Fund; and

d. comply with any requirements or limitations imposed under the Collective Investment Law or the CIR including any limits relating to financial interests it or any of its associates may hold in a Fund, for which it acts as the appointed Fund Manager.

The Fund Manager must also take reasonable steps to ensure that in any dealing in relation to Fund Property such dealings do not give rise to a conflict of interest.

The Fund Manager must also ensure that the fund Property is valued at regular intervals appropriate to the nature of the Domestic Fund except where such valuation has been suspended in accordance with its Constitution or in its most recently issued Prospectus.

The Fund Manager is ultimately responsible to the Unitholders for the safe-keeping of the Fund Property regardless of whether this has been delegated to a third party.

Domestic Funds

As stated above, Domestic Funds are Collective Investment Funds established or domiciled in the DIFC.

What Types of Structures can be used for Domestic Funds?

Domestic Funds can be structured as Investment Companies, Investment Partnerships or Investment Trusts. This provides maximum flexibility and ensures that it is possible to create structures to appeal to the needs and demands of the widest possible investor base worldwide.

Investment Companies can be formed (including as Protected Cell Companies) under the Companies Law, DIFC Law No.2 of 2009 as amended and the Companies Regulations (otherwise known as “(COR)”) made pursuant thereto.

Investment Partnerships can be formed under the Limited Partnership Law, DIFC Law No. 4 of 2006 as amended and the Limited Partnership Regulations (otherwise known as “(LPR)”) made pursuant thereto.

Investment Trusts can be formed under the Investment Trust Law 2006, DIFC Law No. 5 of 2006 as amended.

Categories and Sub-Categories of Domestic Funds

Essential Characteristics of a Public Fund

As noted above, Domestic Funds can be divided into two basic categories namely Public Funds, Exempt Funds and Qualified Investor Funds which can both, in turn, be sub-divided into a number of specialist sub-categories including Islamic Funds, Fund of Funds, Feeder Funds, Master Funds, Private Equity Funds, Property Funds, Real Estate Investment Trusts, Hedge Funds, Umbrella Funds and Money Market Funds which all have their own bespoke DFSA Rules to regulate their particular operations.

Islamic Funds deserve special mention and are Domestic Funds whose entire business operations are conducted in accordance with Sharia principles. The Fund Manager of an Islamic Fund is required to establish and maintain systems and controls which ensure that its management of the Islamic Fund and Fund Property of the Islamic Fund is Sharia compliant. The Fund Manager of an Islamic Fund is required to appoint a Shari'a Supervisory Board in this regard to oversee the management of the Islamic Fund and to advise the Fund Manager on matters concerning Shari'a principles, issuing Fatwas, rulings and guidelines to be followed by the Fund Manager as appropriate.

The essential characteristics of a Public Fund are that the units are offered by way of a public offering and there are no limits placed on the types of investors who may invest in the Public Fund (so both Retail Clients and Professional Clients may invest) or on the number of investors who may invest in the Public Fund.
Public Funds attract a greater level of regulation than Exempt Funds principally by way of being required to:

a. be registered with the DFSA;
b. establish and maintain independent oversight arrangements; and
c. manage the assets within the parameters of the investment and borrowing rules.

Essential Characteristics of an Exempt Fund

The essential characteristics of an Exempt Fund are that the units may only be offered for issue or sale by private placement with a small number of Professional Clients. Participation is limited to a maximum of 100 Unitholders with a minimum USD 50,000 subscription level. Private Funds are not required to be registered with the DFSA but Fund Managers of Private Funds are required to notify the DFSA of their existence.

Essential Characteristics of a Qualified Investor Fund

The essential characteristics of a Qualified Investor Fund are that units may only be offered for issue or sale by private placement to 50 or fewer unitholders with a minimum subscription level of USD 500,000. Regulation is less stringent than for Public or Exempt Funds.

Common Characteristics of every Domestic Fund

Every Domestic Fund is required to have a written Constitution which contains certain statements and disclosures as prescribed in the Collective Investment Rules.

Every Domestic Fund (and any Sub-Fund of a Domestic Fund) is required to have a name which is not undesirable, misleading or conflicts with the name of any other Domestic Fund and which does not include certain words such as “guaranteed”, “protected” or any other words with a similar meaning implying a degree of security unless authorised by the DFSA.

Every Domestic Fund is required to have a written Prospectus which contains certain statements and disclosures as prescribed in the Collective Investment Rules (with more onerous requirements applying to Public Funds) and which must be in the English language. A Public Fund is required to have a “long form” Prospectus, however, there is no detailed prescribed disclosure content for the offering document of an Exempt Fund or a Qualified Investor Fund although specific requirements will apply to each sub-category of Domestic Fund.

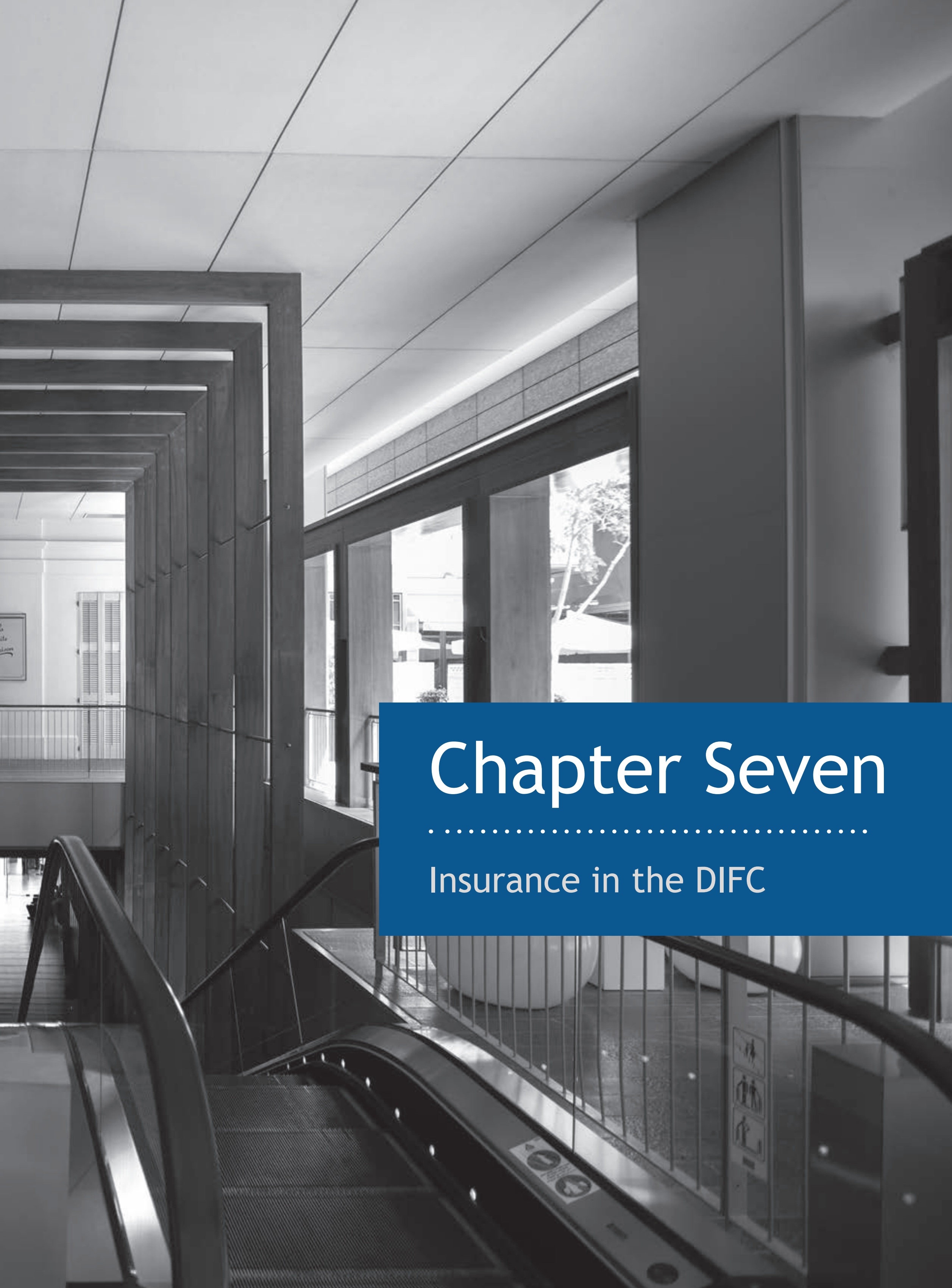
Every Domestic Fund is required, amongst other things, to appoint an auditor recognised by the DFSA and (except in limited circumstances in the case of Domestic Funds structured as Investment Trusts where the Trustee holds the Fund Property and Domestic Funds qualifying as Property Funds or Private Equity Funds where alternative arrangements are permitted by the DFSA) to arrange for the legal title of the Domestic Fund’s assets to be placed with an Eligible Custodian for safekeeping.

Fund Managers of Domestic Funds are permitted, within certain parameters, to delegate certain activities and to outsource functions to third party providers who may (depending on the parameters) be located outside the DIFC. More onerous requirements apply in the case of Public Funds.

Conclusion

The DIFC provides a modern regime that is tailored specifically to the needs of suitably licensed Authorised Firms who wish to establish and manage Collective Investment Funds in the DIFC. The framework provides maximum flexibility from a structuring perspective and ensures that structures created are subject to the most appropriate degree of regulation and oversight.

The DIFC also provides a modern regime for suitably licensed Authorised Firms who wish to sell certain types of Collective Investment Funds established outside the DIFC in or through the DIFC.



Chapter Seven

Insurance in the DIFC

Insurance in the DIFC

Introduction

Insurance is a core industry which the DIFC wishes to attract. The changes to the DFSA Rulebook allowing the entrance of “Retail Clients” has seen noticeable changes in the level of Insurance in the DIFC.

Both UAE Insurance Laws and DFSA Regulations restrict the direct insurance of UAE-located risks (as distinct from DIFC-located risks of which insurance is not restricted). With appropriate structuring and with due consideration to the relevant regulatory constraints, the DIFC offers unique opportunities for market participants to become involved in the growth of the Middle East region in an environment that offers regulatory certainty and familiarity.

The Domestic Insurance Market

Any understanding of the conduct of insurance activities within the DIFC requires some understanding of the domestic market. The domestic UAE market falls under the federal jurisdiction of the UAE. By contrast, as a free zone, the DIFC is a separate jurisdiction from on-shore UAE, having its own laws and its own regulator, the DFSA. UAE Federal Law No. 6 of 2007 ("the Insurance Law") established the Insurance Authority ("the Authority") to regulate the domestic UAE insurance market which excludes UAE free zones. A DIFC company is therefore not a UAE company and is regarded as a foreign company for insurance purposes.

Restrictions on Writing UAE Risk

Federal Law 8 of 2004, the UAE law establishing free zones, and the Insurance Law allows insurance companies licenced to operate in a free zone to engage only in reinsurance activities with respect to the on-shore UAE market. The Insurance Law prohibits the insurance and broking of insurance "over assets or property located in the state or liability arising in the state" unless the insurer or broker is registered with the Insurance Authority (Article 26). References to the "state" refers to the UAE and excludes the free zones such as the DIFC. The Insurance Law makes void any contract made by an unregistered company and entitles the aggrieved party to recover damages (Article 24).

These restrictions mean that insurers that are not licensed to engage in insurance activities in on-shore UAE and they are prevented from participating in the domestic market. The Authority has also shown a reluctance to licence foreign insurers. However, the restriction on insuring UAE-risks does not apply to reinsurance. The Domestic Law is reinforced by Rule 7.2.2 of the DFSA Conduct of Business Module which states that an Authorised Firm cannot:

a. if it is an Insurer, effect or carry out a Contract of Insurance through an establishment maintained by it in the DIFC;

b. if it is an Insurance Intermediary, act in relation to a Contract of Insurance;

where the Contract is in relation to a risk situated within the UAE unless the risk is situated in the DIFC or unless it is a contract of reinsurance.

Effects of regulatory framework on UAE and DIFC Insurance

The regulatory matters detailed above have meant that foreign insurers and other market participants such as insurance agents, insurance brokers and loss adjusters have had difficulty entering the UAE domestic market and have looked at opportunities to enter the UAE's insurance market through reinsurance where the restriction on the insurance of UAE located risks does not apply. In addition, foreign insurers have used insurance management based in the DIFC to establish a presence in the UAE and regionally where, barring any local regional law to the contrary, foreign insurers will not be restricted from insuring regional risks.

Changes to the DFSA regulations in the last few years have encouraged this aspect of the industry, particularly where companies and individuals are dealing with DIFC banks or advisors and require insurance as part of these arrangements.

What Roles are regulated by the DFSA

The DFSA Rule Book provides that any person conducting financial services from the DIFC must be authorised by the DFSA to do so. For the purposes of insurance, the definition of "financial services" includes:

a. effecting and/or carrying out contracts of insurance;

b. Insurance intermediation; and

c. Insurance management.

Effecting and/or carrying out contracts of insurance requires those contracts to be carried out as principal and these activities encapsulate the traditional idea of insurer/reinsurer, a takaful/retakaful company and captives. Intermediation governs traditional roles such as agent and broker. Insurance management is defined to mean the provision of management services or exercising managerial functions for an insurer that includes administration and underwriting. Contracts of insurance are widely defined to include all lines of life and non-life business.

Insurance Intermediaries and Management

Insurance intermediation is defined to include advising on insurance, acting as agent for another person in relation to the buying or selling of insurance or making arrangements with a view to another person, whether as principal or agent, buying insurance (including arrangements which do not bring about the transaction). Advising is widely defined to incorporate the provision of advice to or for a person as a policyholder or potential policyholder and includes generic advice that contains information about particular insurance cover or could reasonably be regarded as being intended to influence a person making a decision as to whether to acquire particular insurance cover.

Importantly, a person does not arrange a contract of insurance merely by providing the means by which one party to a transaction is able to communicate with the other party.

The restrictions on DIFC-licensed insurers being able to insure UAE-located risks have deterred brokers and other intermediaries wishing to focus on the UAE insurance market from setting up in the DIFC. Instead most entrants have been specialist operators focusing on the DIFC insurance market and/or the UAE and DIFC reinsurance markets.

The DIFC rules and regulations, as currently worded, are designed to encourage the use of the DIFC as a jurisdiction where regional contracts can be formed and governed . Intermediaries are able to write business for and on behalf of non-UAE companies and residents in the DIFC. For example, if a non-UAE citizen is dealing with a private bank in the DIFC and requires a life insurance policy, that policy can now be sold. The DIFC hopes that this will lead to the DIFC becoming a regional centre for these sorts of legal arrangements.

Insurance management is an area that foreign insurers are beginning to make increasing use of. Insurance management services are not restricted in respect of UAE located risks. Therefore, foreign insurers are able to set up insurance management operations in the DIFC to provide marketing and claims management support along with general administration and underwriting in or from the DIFC. Although the DIFC entity cannot be the risk carrier, the provision of insurance management provides flexibility for a foreign company to establish a regional base in the DIFC and to develop brand and reputation awareness of the entity within the region.

Both “Insurance Management” and “Insurance Intermediation” are classified as a Category 4 DFSA Licence. The minimum “Base Capital Requirement” for these licenses is currently US$10,000, although the actual minimum capital requirement would be determined by the expenditure based capital requirement calculated on the basis of the projected financials of the entity that looking to set up in the DIFC.

How must business be conducted?

The Conduct of Business Module within the DFSA Rulebook provides the rules which all Authorised Firms must follow in conducting business in the DIFC. An Authorised Firm must classify its clients as retail or professional clients, advise them accordingly and have records of the client relationship.

Chapter 7 of the Conduct of Business Module specifically deals with insurance and lays down various additional requirements which include:

a. communicating with and providing information/marketing material to clients;

b. client's duty of disclosure;

c. Authorised Firm's duty of disclosure;

d. disclosure of costs and remuneration;

e. information about the proposed insurance;

f. specific disclosure for long term insurance;

g. suitability of cover;

h. managing conflicts of interest;

i. placement of cover;

j. providing ongoing services to clients; and

k. use of insurance monies and segregation.

Previously, the DFSA Rulebook contained restrictions on dealing with individual clients. This limited the ability of firms to deal in the retail market for insurance and re-insurance. These restrictions have since been removed.

Types of Insurers within the DIFC and Requirements for Insurance

The Prudential Insurance Business Module (PIN) of the DFSA Rulebook governs the requirements for licenced insurance companies in the DIFC and expands upon the Conduct of Business Module addressing insurance specific issues. Matters covered in the PIN module include capital adequacy, long term insurance business, management of assets and liabilities, transfer or risks, financial reporting, audits and actuarial review.

The DIFC has focused both on the traditional insurance/takaful market together with the captive market. The use of the term insurer includes Takaful companies which are subject to the same prudential requirements. There are five (5) types of insurance licences that are provided for in the DIFC Rule book. In relation to each type of licence, the DFSA regulations require that all insurers, whether captive or not, be subject to risk based capital requirements. Therefore, if those capital requirements lead to a higher figure than the minimum base capital detailed below, the higher figure will apply.

The five categories of Insurance licence and some of the more important points relating thereto are:

i. Insurer/Reinsurer
  - Subject to regulatory requirements and DFSA licence able to accept all risk;
  - Minimum Capital of US$10,000,000;
  - Strictest form of regulatory supervision and review.

ii. Class 1 Captive Insurer/Reinsurer
  - This is designed for insurance of risk only from its parent or related companies;
  - Requires minimum capital US$150,000;
  - Subject to easier prudential regime than a traditional insurer due to the group risk nature of the companies operations.

iii. Class 2 Captive Insurer/Reinsurer
  - Designed for the insurance of risk only from its parent or related firm but may also accept up to 20% of its business from non-related sources;
  - Requires minimum capital US$250,000;
  - Subject to stricter regulatory regime.

iv. Class 3 Captive Insurer/Reinsurer
  - A group captive insurer;
  - Requires minimum capital of US$1,000,000;
  - Strict capital regime.

v. Protected Cell Company
  - Designed for smaller organisations to provide a low fixed cost alternative and to facilitate access to reinsurance and specialist risk cover with lower establishment and management costs;
  - The protected cell has a core with an indefinite number of cells, which are kept separate from each other. Each cell has assets and liabilities attributed to it, which cannot be used to pay the liabilities of any other cell;
  - Company also has core assets, which can be used toward liabilities that cannot be attributed to a single cell;
  - A cell requires minimum assets of US$50,000 but can also operate as class 1, 2 and 3 captives;
  - The core must also have assets of at least US$50,000.

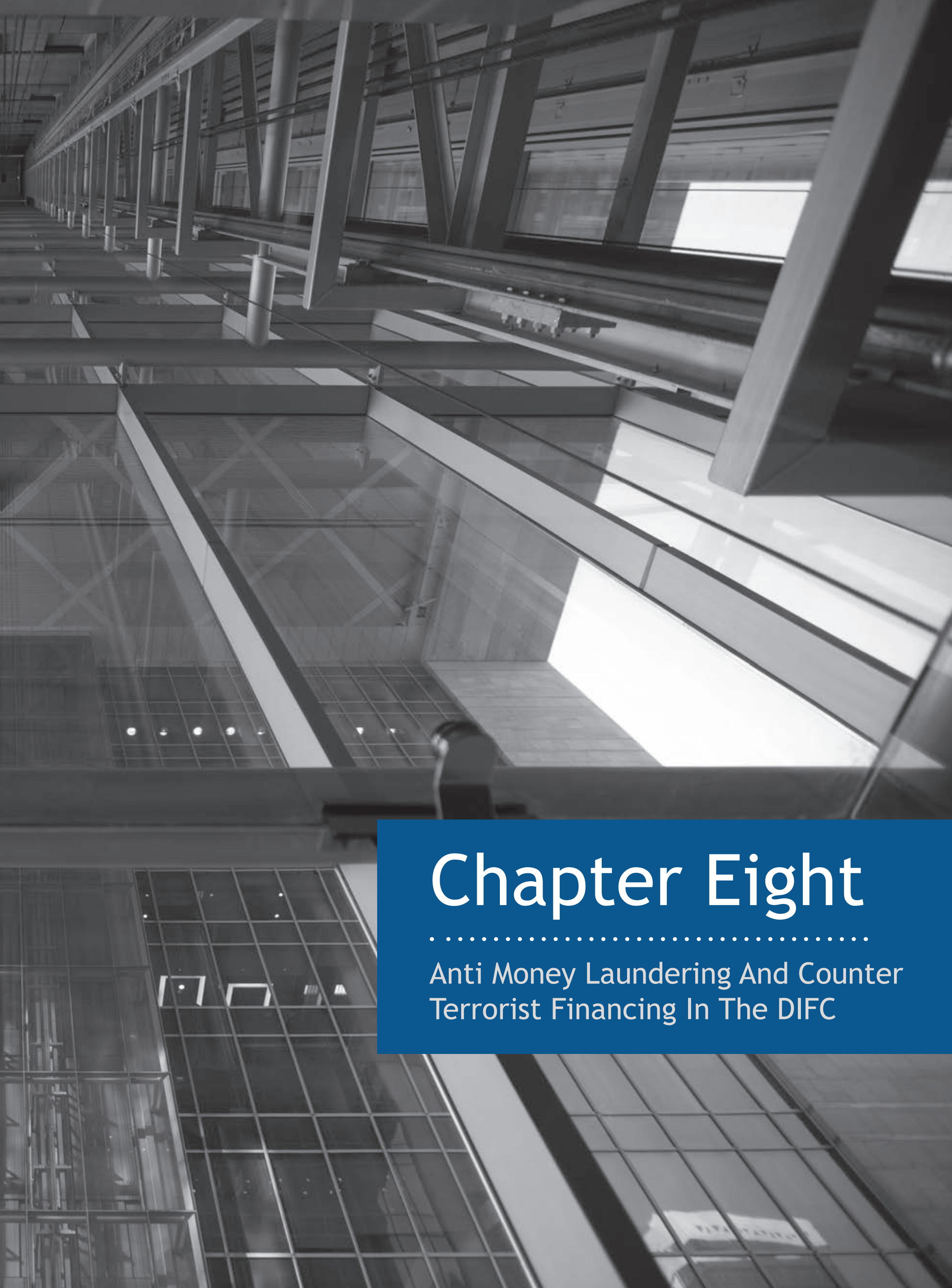
Takaful

Takaful providers are subject to the same prudential and operating rules as other insurance providers in the DIFC. However, the DFSA Rule book also contains an Islamic Financial Business Module (ISF) which governs Islamic financial operations and the appointment and operation of Shari'a supervisory boards and other issues specific to Islam. Takaful providers will need to abide by the provisions of these rules also.

Opportunities

Despite the restriction on underwriting UAE-located risks, the DIFC continues to attract new participants and new business. Some of the opportunities for insurance include:

- Using the DIFC to attract high net worth individuals. This is particularly the case given the large number of private banks and specialist advisors now present in the DIFC.
- The captive market has seen recent growth together with the establishment of specialist captive insurance management companies.
- Insurance management companies and joint ventures with local insurers.
- As the DIFC continues to develop as a financial hub for the region, insurance strategies will provide an integral part of this development.



Chapter Eight

Anti Money Laundering And Counter Terrorist Financing In The DIFC

Anti Money Laundering And Counter Terrorist Financing In The DIFC

Under the DIFC Regulatory Law 2004, the DFSA has jurisdiction for the regulation of anti-money laundering in the DIFC. The DFSA's Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML Rules) set out the regulatory requirements imposed by the DFSA. Accordingly the AML Rules applies to all Authorised Firms, Authorised Market Institutions, Designated Non-Financial Businesses or Professions and Registered Auditors (Relevant Persons), but in differing degrees. The AML module takes into consideration the fact that Relevant Persons have differing AML risk profiles. Therefore a Relevant Person should assess the extent to which the chapters and sections of the AML Rules apply to it.

The UAE Federal criminal and money laundering laws apply in the DIFC and therefore Relevant Persons must be aware of their obligations in respect of the relevant UAE Federal laws as well as the DFSA AML Rules. Some of the relevant UAE Federal laws include, but are not limited to, the following:

1. UAE Federal Law No. 4 of 2002 concerning Combating Money Laundering, as amended by UAE Federal Law No. 9 of 2014;

2. UAE Federal Law No. 7 of 2014 concerning Combating Terrorism Crimes; and
3. UAE Cabinet Resolution No. 38 of 2014 concerning the Executive Regulation of the Federal Law No. 4 of 2002.

As reflected in the DFSA AML Rules, the above listed regulatory framework cannot be read in isolation from other relevant legislation or developments in international policy and best practice (i.e. the UAE being a member of the United Nations is required to comply with sanctions issued and passed by the United Nations Security Council). Therefore the DFSA expects a Relevant Person to take steps to be aware and make use of other legislation, sanctions, resolutions, guidance or notices applicable to its business.

What is Money Laundering?

Money Laundering is when a person intentionally commits one of the following acts, with the knowledge that the assets are acquired from an offence or misdemeanour, such a person shall be considered to have committed a crime of money laundering:

- converts, transfers, deposits, saves, invests, exchanges or manages any proceeds, with intent to conceal or disguise the illicit origin of such proceeds;
- conceals or disguises the true nature, origin, location, way of disposition, movement, rights related to any proceeds or the ownership of such proceeds; or
- acquires, possesses or uses such proceeds

Duties of a Company with respect to Money Laundering

The AML Rules require a Relevant Person to adopt an approach to AML which is proportionate to the risks to which the company is exposed as a result of the nature of its business, customers, products and services (the "risk-based approach"). A Relevant Person is expected to have in place processes to identify, assess, monitor, manage and mitigate money laundering risks to which it is exposed.

In accordance with the AML Rules, some of the main requirements of a company in combating money laundering include, but are not limited to, the following:

1. establishing and maintaining effective policies, procedures, systems and controls to prevent opportunities for money laundering in relation its activities;
2. taking appropriate steps to identify and assess money laundering risks to which its business is exposed, taking into consideration the nature, size and complexity of the company's activities. Also to take appropriate measures to ensure that any risk identified as part of this assessment is taken into account in the company's day to day operations;
3. undertaking a risk-based assessment of every customer and assign the customer a risk rating proportionate to the customer's money laundering risks;
4. undertaking customer due diligence (CDD) in a manner proportionate to the customer's money laundering risks identified under the customer risk assessment.
5. establishing and maintaining effective systems and controls to obtain and make appropriate use of the relevant findings, recommendations, guidance, directives, notices, resolutions or sanctions issued by relevant authorities.
6. appointing an individual as Money Laundering Reporting Officer (MLRO), who has an appropriate level of seniority and independence, with the responsibility for implementation and oversight of the AML Rules;
7. providing AML training to all relevant employees at appropriate and regular intervals;
8. having policies, procedures, systems and controls in place to ensure internal and external suspicious activity reports (SAR) are made; and
9. ensuring that its audit function includes regular reviews and assessments of the effectiveness of the company's money laundering policies, procedures, systems and controls, and its compliance with its obligations in the AML Rules.

The AML Rules prohibit Relevant Persons from doing the following:

- establishing or maintaining a business relationship with a shell bank or continuing a corresponding banking relationship with, a bank which is known to permit its accounts to be used by shell banks;
- establishing or maintaining a business relationship with the customer which is a legal person if the ownership or control arrangements of the customer prevent the Relevant Person from identifying one or more of the customer's beneficial owners; and
- establishing or maintaining an anonymous account, an account in a fictitious name, or a nominee account which is held in the name of

one person, but controlled by or held for the benefit of another person whose identity has not been disclosed to the company.

The Client

Under the AML Rules a Relevant Person must undertake CDD on all its customers. CDD should be undertaken in a manner proportionate to the customer's money laundering risks identified under customer risk assessment. The standard CDD should at least include:

- verification of the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source;
- understanding the customer's source of funds and source of wealth; and
- undertaking on-going due diligence of the customer business relationship.

In addition to the above, the Relevant Person should undertake enhanced CDD as described in the AML Rules in respect of any customer it has assigned as high risk. Simplified CDD may be undertaken for any customer that has been assigned as low risk.

Record-Keeping Procedures

A Relevant Person must keep all documentation and information obtained in relation to CDD, a customer's relationship and transactions, the company's internal policies and risk assessments, internal notifications made to the MLRO and all communication in relation to external SARs.

Role of the Money Laundering Reporting Officer

In accordance with the DFSA's AML Rules, every Relevant Person must appoint a MLRO. The MLRO's main duty is implementation and oversight for establishing, maintaining and monitoring the company's anti-money laundering policies, procedures, systems and controls.

The MLRO will be the point of contact for the company regarding money laundering issues and must respond promptly to relevant findings or requests. The MLRO must receive and handle internal SARs and where required, make external SARs to the relevant department in the UAE Central Bank with a copy to the DFSA.

Training

Irrespective of seniority, all relevant employees must receive anti-money laundering awareness training. This training should enable a company's employees to understand the relevant money laundering legislation, the type of activities which may constitute money laundering, the company's AML policies, procedures, systems and controls. Employees should undergo training at intervals appropriate to the role and responsibility of the employee, but at least annually.

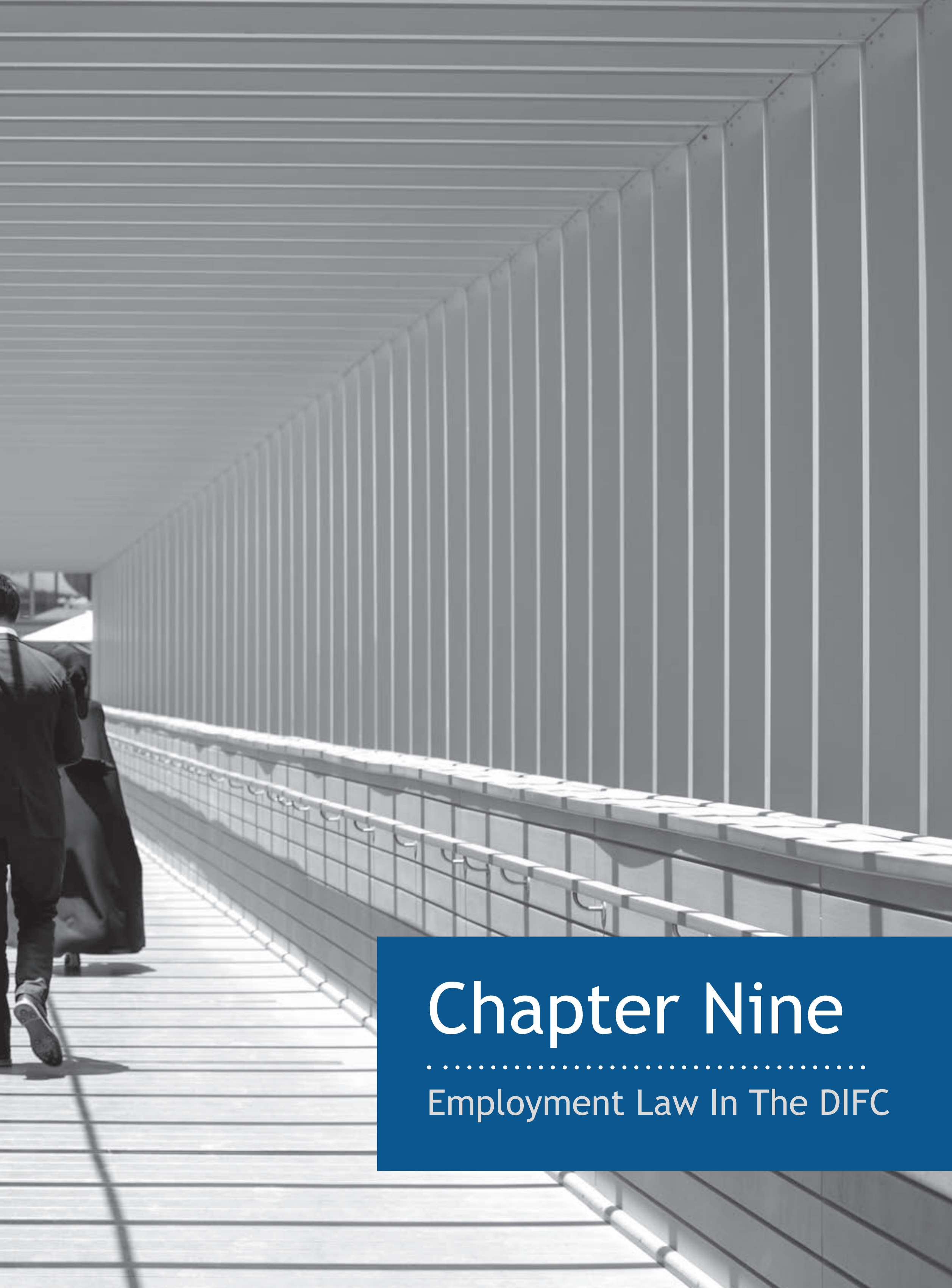
Suspicious Activity Reporting

If it is determined by the MRLO that, after investigation of a notification of suspected money laundering from an employee, that an external SAR must be made to the relevant department of the UAE Central Bank, the MLRO must make that notification as soon as practical and also send a copy to the DFSA. Circumstances that might give rise to suspicion may include, but are not limited to, the following;

- the transaction has no business or apparent lawful purpose, which makes no obvious economic sense, or which are designed or structured to avoid detection;
- the transaction is not the sort in which the customer would normally be expected to engage;
- the customer refuses to provide the information requested without reasonable explanation; or
- there is unnecessary routing of funds through third party accounts.

Tipping Off

Pursuant to UAE Federal Law, a Relevant Person or any of its employees must not inform a suspected person that his transaction is being scrutinised for possible involvement in a suspicious activity, or that any other competent authority is investigating their possible involvement in suspicious activity related to money laundering. Failure to adhere to this may result in a fine or imprisonment in accordance with UAE Federal Law.



Chapter Nine

Employment Law In The DIFC

Employment Law In The DIFC

Introduction

Employment in the DIFC is governed by the provisions of the DIFC Employment Law No. 4 of 2005, as amended by DIFC Employment Law Amendment Law No. 3 of 2012 (collectively "DIFC Employment Law"). Where employment is for a period of less than thirty (30) days, the employee is not necessarily required to enter into an employment contract with the employer.

Types of Employment Contracts

Under the DIFC Employment Law a contract may be for a fixed term (where the duration or date of termination is specified), or for an unlimited period (where no duration or termination date is specified). Where the contract does not specify a termination date or a fixed term, the contract is deemed to be for an unlimited term.

Information to be included in an Employment Contract

Under the DIFC Employment Law the parties (upon commencement of the employment) are required to enter into a written employment agreement setting out the particulars of employment which must include:

a. The names of the employer and employee;

b. The date when the employment began;

c. The employee's wages;

d. The applicable pay period;

e. Any terms and conditions relating to hours of work;

f. Any terms and conditions relating to:

- vacation leave and vacation pay, national holidays and holiday pay; and
- sick leave and sick pay;

g. The length of notice that the employee and the employer is obliged to give and is entitled to receive to terminate the employment;

h. The title of the employee's job or a brief description of the employee's work;

i. Where the employment is not intended to be for an indefinite duration, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;

j. The place of work;

k. Any disciplinary rules and/or grievance procedures applicable to the employee; and

l. Any other matter that may be prescribed under the DIFC Employment Law.

In addition, the employer must expressly state in writing which terms of the contract shall be subject to the employer's policies and which may be changed at the employer's discretion from time to time by written notice

Probation Period

The DIFC Employment Law does not provide for a probation period and parties are free to agree to a probation period in the contract of employment.

Termination of Employment

Termination on notice:

Unless otherwise agreed, where a person has been continuously employed for at least one (1) month, an employer or employee terminating employment shall provide at least:

- seven (7) days' notice if the period of continuous employment is less than three (3) months;
- thirty (30) days' notice if the period of continuous employment is three (3) months or more but less than five (5) years; and
- ninety (90) days' notice if the period of continuous employment is five (5) years or more.

Parties may agree to waive notice or accept a payment in lieu of such notice.

Other forms of termination:

i. An employer and an employee may terminate employment without notice for cause; or

ii. An employer may terminate employment immediately with written notice in the event an employee takes more than an aggregate of sixty (60) working days sick leave in any twelve (12) month period.

Although a contract of employment may provide additional circumstances under which the employment may be terminated, the DIFC Employment Law prohibits termination by reason of an employee's pregnancy or maternity leave.

Rights of the employee on termination:

On termination an employee is entitled to the following:

i. Payment of all wages owed to the employee within fourteen (14) days of the employer or employee terminating the employment. It should be noted that a failure to make such payment within the above timescale shall result in a penalty (equivalent to the employee's last daily wage) for each day that the employer is in default;

ii. Payment in lieu of any accrued but untaken annual leave.

iii. However, in the event that the employee has taken more leave than that accrued, the employee shall repay the employer (by deduction from wages or otherwise) the corresponding sum at the time of termination;

iv. Upon request of the employee, who has been continuously employed for a period of not less than one (1) year, a written statement of the reasons for dismissal from the employer;

v. If continuously employed for one year or more, the employee is entitled to an end of service gratuity payment, unless the termination was for cause.

vi. Where an employer has established a pension scheme for employees, he shall provide in writing to the employee, the option to choose between participating in the pension scheme or to receive the end of service gratuity payment.

vii. Where an employee has received a document described in point vi above, he shall expressly state his choice in writing and submit it to the employer.

End of Service Gratuity

Under the DIFC Employment Law, an employee who completes continuous employment of one (1) year or more is entitled to an end of service gratuity ("gratuity") payment at the termination of the employee's employment calculated as follows:

- twenty-one (21) days' basic wages for each year of the first five (5) years of service; and
- thirty (30) days' basic wages for each additional year of service, provided that the total gratuity payment shall not exceed the wages of two (2) years of service.

Gratuity is calculated based on the basic wage of the employee and does not include that portion of an employee's wage received in-kind or as allowance for housing, travel, currency exchange, children's education, social and entertainment or any other type of allowance.

An employee is not entitled to gratuity where termination is for cause, i.e., where an employee's conduct warrants termination and where a reasonable employer would have terminated the employment.

Employees' pension scheme

Where an employer has established a pension scheme for its employees in lieu of gratuity, it must provide in writing to the employee the option to choose between participating in the pension scheme or receive gratuity. An employee who has received such notification from the employer is required to expressly state his choice in writing. Where an employee opts to participate in the pension scheme, he thereby waives his right to receive an end of service gratuity.

Medical Insurance for Employees

The DIFC Employment Law requires all employers to obtain and maintain health insurance cover for all their employees. Additionally, the Dubai Health Authority now also requires that health insurance for employees in Dubai be provided from within a list of approved insurance providers and plans.

Leave Entitlements

Annual leave

Employees are entitled to a minimum of twenty (20) working days annual leave which is accrued pro rata for employees who have been employed for at least ninety (90) days.

Employees are entitled to carry forward accrued but untaken annual leave up to a maximum of twenty (20) working days into the next calendar year for a maximum period of twelve (12) months following which any unutilised leave will lapse. An employee is entitled to compensation in lieu of leave days accrued but not taken upon termination of employment, except where they have lapsed.

The annual leave entitlement is exclusive of any public holidays declared in the UAE. Most employers in the DIFC will follow public holidays declared for the private sector. There is no obligation on an employer to compensate employees where a public holiday is declared on a weekend.

Sick leave

An employee is entitled to maximum annual sick leave of sixty (60) working days in any twelve (12) month period.

Where an employee is absent due to sickness, the employer is obliged to pay the employee sick pay provided that the employee or someone on his/her behalf:

a. at least once every seven (7) days, notifies the employer of the absence due to the employee's sickness; and

b. upon the request of the employer, provides a medical opinion stating that the employee cannot fulfil the duties reasonably expected of the employee's position;.

Payment of sick pay is computed based on the employee's normal daily rate.

Where an employee takes more than sixty (60) working days of sick leave in the year, he or she may be terminated with written notice.

Maternity leave

All employees are entitled to minimum maternity leave of sixty-five (65) working days. An employee shall be entitled to paid maternity leave as described in the paragraph below, provided the employee has been continuously employed with the employer for at least twelve (12) months preceding the expected or actual week of childbirth. The employee must also notify the employer of the pregnancy at least eight (8) weeks before the expected week of birth, provide a medical certificate showing the expected date of birth and notify the employer in writing at least twenty one (21) days before the employee proposes to begin maternity leave.

Maternity leave pay is calculated on the following basis:

a. employee's normal daily wage for the first thirty-three (33) days of maternity leave; and

b. fifty percent (50%) of the employee's normal daily wage for the next thirty-two (32) days of maternity leave.

An employee is not entitled to receive payment in lieu of maternity leave.

Haj leave

A Muslim employee who has completed at least one (1) year of employment is entitled to thirty (30) days leave without pay in order to perform Haj pilgrimage.

Becoming an employee at the DIFC: Visa Sponsorship

The DIFC will provide visa sponsorship to all persons employed by DIFC registered entities. This is arranged by an employer via the DIFC Authority Government Services Department. The visa is valid for a period of three (3) years from the date of issue.

Documents required for visa sponsorship

1. DIFC Sponsorship Application Form;
2. Emirates ID Application Form;
3. Passport copy including personal detail page;
4. Eight (8) coloured passport size photographs;
5. Three (3) copies of the company's establishment card; and
6. A signed DIFC Employment Law compliant employment contract.
7. Attested copy of birth certificate if the applicant has Arab ancestry or holds an Arabic name;
8. Copy of highest educational certificate attested by UAE embassy in the country of certificate origin (if job title requires this); and
9. Proof that employee is covered by the employer's medical insurance scheme.

By sponsoring each individual the DIFC essentially becomes responsible for each individual. However, the DIFC requires all DIFC entities to sign a "Personnel Sponsorship Agreement", the purpose of which is to transfer the responsibility for each sponsored individual from the DIFC to the respective employer.

Upon grant of the employment visa, the employee is then also issued with a DIFC ID card.

Medical test

A medical examination is also required in order to obtain an employment visa. The medical test is conducted inside the premises of the Government Services Department.

Chapter Ten

DIFC Courts and Arbitration

DIFC Courts and Arbitration

Under UAE Law the Dubai International Financial Centre (the DIFC) is a financial free zone. As such, the DIFC has its own legal framework for the conduct and regulation of civil and commercial matters within its jurisdiction, including its own English-language, common law courts (the DIFC Courts). The DIFC Courts are a division of the recently established Dispute Resolution Authority. UAE federal civil and commercial laws do not apply within the DIFC.

A broad range of English-language civil, commercial and regulatory laws are in force in the DIFC and govern its constituent bodies and establishments. More detail on the DIFC's laws and regulations can be found in Chapter 5. The DIFC civil and commercial laws encompass a wide range of areas, including but not limited to arbitration, companies, contracts, damages and remedies, data protection, employment, implied and unfair terms, insolvency, tortious liability, partnership, personal property, securities, real estate and trusts.

a. DIFC Courts

Organisation

The DIFC Courts were established in December 2004 pursuant to Dubai Law No. 12 of 2004, known as the Judicial Authority Law or JAL. The Judicial Authority Law provides that:

1. The DIFC Courts are established and shall carry out their function in an independent manner, in accordance with the provisions of the JAL and the other DIFC Laws and Regulations. The Courts comprise the Court of First Instance and the Court of Appeal.
2. The DIFC Courts shall be situated in the DIFC.
3. The Court of First Instance shall be composed of a single judge and the Court of Appeal of a presiding judge and two further judges. The Chief Justice, or the most senior of the judges when necessary, shall preside over the Court of Appeal.
4. The judges, including the Chief Justice, shall be appointed by a decree issued by the Ruler.
5. Judgments of the DIFC Courts shall be issued in the name of the Ruler.

The DIFC is an English-language jurisdiction whose courts are modelled on the English Commercial Court. Anyone familiar with the practices and procedures of English Courts and the English Civil Procedure Rules will quickly understand the main features of DIFC Court proceedings.

The first trial before the DIFC Court of First Instance took place in early 2007, with judgment handed down by the then Deputy Chief Justice in July that year. The first appeal to the DIFC Court of Appeal was heard in January 2008, with judgment handed down in March 2008. Judgments are published on the DIFC Courts' website: www.difccourts.ae.

The laws establishing the DIFC Courts are designed to ensure the highest international standards of legal process and procedure, which in turn create a legal and judicial environment that is conducive to trade, finance and investment and provides the certainty, transparency and efficiency expected by the global financial institutions operating within the DIFC. Since their establishment in 2004, the DIFC Courts have become a prominent feature of the legal landscape in Dubai, with the number of cases filed consistently rising.

The jurisdiction of the DIFC Courts was initially restricted to matters and disputes arising within the DIFC. However, Dubai Law No. 16 of 2011 amended the JAL to enable contracting parties to agree to submit to the jurisdiction of the DIFC Courts without having any other connection to the DIFC. As a result, the DIFC Courts have become a so-called "opt-in jurisdiction", a forum of choice for parties.

Article 5A(2) of the JAL (as amended) provides that the DIFC Courts shall have jurisdiction over civil and commercial claims submitted to them by the clear agreement of the parties in writing (whether before or after the dispute arises). Pursuant to Article 9 of DIFC Law No. 10 of 2005, the DIFC Courts will uphold an express choice of governing law in a contract, provided it does not conflict with public policy or public morals. Article 13 of the same law provides that the DIFC Courts will recognise a clear submission to the courts of another jurisdiction, or to arbitration, in a contract.

Where parties have not agreed clearly in writing to refer their disputes to the DIFC Courts, the DIFC Courts still maintain exclusive jurisdiction over disputes if they fall within one of the jurisdictional gateways set out in Article 5A(1) of the JAL. Although these jurisdictional gateways have also been amended by Dubai Law No. 16 of 2011, they still involve a connection to the DIFC, such as the presence of one of the parties, or the performance of the disputed contract, in the DIFC.

Judges

The judges in the DIFC Courts are highly experienced and have a diverse range of nationalities and backgrounds. Most of the judges are from countries with common law systems, but there are also several resident judges who are UAE nationals with civil law backgrounds.

The Chief Justice of the DIFC Courts, Michael Hwang SC, is a former Judicial Commissioner of the Supreme Court of Singapore and a well-known arbitrator.

The other DIFC Court judges are:

- Deputy Chief Justice Sir David Steel;
- Justice Sir Jeremy Cooke
- Justice Roger Giles;
- Justice Tun Zaki Azmi;
- Justice Sir Richard Field;
- H.E. Justice Ali Al Madhani;

- H.E. Justice Omar Juma Al Muhairi; and
- H.E. Justice Shamlan Al Sawalehi

Upon appointment, judges are eligible to sit in both the Court of First Instance and the Court of Appeal.

Jurisdiction

The Court of First Instance

The JAL sets out the jurisdiction of the Court of First Instance. It provides that the Court of First Instance shall have exclusive jurisdiction over:

a. Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

b. Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within the DIFC or which will be performed or is supposed to be performed within the DIFC pursuant to express or implied terms stipulated in the contract;

c. Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within the DIFC and is related to DIFC activities;

d. Appeals against decisions or procedures made by DIFC Bodies where DIFC Laws and DIFC Regulations permit such appeals;

e. Any claim or action over which the DIFC Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

DIFC Law No. 10 of 2004, knows as the “Court Law”, confirms at Article 28 that the Court of First Instance has jurisdiction to hear and determine an appeal of a decision of a tribunal provided for in DIFC Laws or Rules of Court where the appeal relates to:

a. a question of law;

b. an allegation of a miscarriage of justice;

c. an issue of procedural fairness; or

d. a matter provided for in or under DIFC Law.

The Court Law confirms the power of the Court of First Instance to judicially review statutory decisions as provided for in DIFC Laws or in the Rules of Court.

The Court of Appeal

The jurisdiction of the DIFC Court of Appeal is also set out in the JAL and provides that the Court of Appeal shall have exclusive jurisdiction over:

a. appeals filed against judgments and decisions made by the Court of First Instance;
b. requests of interpretation by the Chief Justice of any article of the DIFC Laws and DIFC Regulations upon an application submitted to him from any DIFC Body, DIFC Establishment or Licensed DIFC Establishment.

Further, judgments issued by the Court of Appeal shall be final and shall not be subject to further appeal.

Governing Law

The DIFC Courts apply DIFC Laws and Regulations, however, as noted above, contracting parties are generally free to agree to the application of a substantive law other than the Laws of the DIFC, provided that such other law does not conflict with the public policy and public morals of the UAE.

The Law on the Application of Civil and Commercial Laws in the DIFC (DIFC Law No. 3 of 2004) is a pivotal piece of legislation as far as questions of applicable law are concerned. The first objective of this law is to provide certainty as to the rights, liabilities and obligations of persons in relation to civil and commercial matters arising in the DIFC.

One of the most interesting aspects of DIFC Law No. 3 of 2004 is that it provides that the laws of England and Wales shall apply where no other applicable law can be ascertained. It provides that the rights and liabilities in any civil or commercial matter are to be determined according to the laws in force in accordance with the below:

a. so far as there is a regulatory content, the DIFC Law in force in the DIFC; failing which,

b. the law of any jurisdiction other than that of the DIFC expressly chosen by any DIFC Law; failing which,

c. the laws of a jurisdiction as agreed between all the relevant persons concerned in the matter; failing which,

d. the laws of any jurisdiction which appears to the Court or Arbitrator to be the one most closely related to the facts of and persons concerned in the matter; failing which,

e. the laws of England and Wales.

Powers

General

The general powers of the DIFC Courts are set out in the DIFC Court Law. The DIFC Courts have the power to make orders and give directions as to the conduct of any proceedings before them that they deem appropriate, including:

a. orders prescribed by any legislation under DIFC Laws;

b. injunctions, including requiring an act to be done;

c. interim or interlocutory orders;

d. orders made without notice to any other party and the circumstances in which such orders are appropriate;

e. contempt orders;

f. orders made in the interests of justice; or

g. referral of matters to the Attorney General of Dubai.

The scope of possible orders is thus extremely wide. The DIFC Court Law specifically authorises the suspension or staying of any decision, order or proceeding; the joining of a party to existing proceedings; the production of documents and attendance of witnesses; the waiving of technical defects; the payment of costs; and the provision of security for costs.

The Court of First Instance

In addition to the general powers referred to above, the Court of First Instance is expressly given the following powers by the DIFC Court Law:

a. the power to issue or direct the issue of writs in matters over which it has jurisdiction;

b. the power to waive any procedural requirement where it believes that the applicant is for any reason unable to meet such requirements; and

c. the power to make final and interim orders for restitution, disgorgement, compensation, damages, damages in substitution for an injunction.

The Court Law gives the Court of First Instance power and jurisdiction to ratify, among other things, any judgment, order or award of any recognised Foreign Court; Court of Dubai or the United Arab Emirates; and Domestic or Foreign Arbitral Tribunal.

The DIFC Court Law also gives the Court of First Instance power to appoint a receiver or provisional liquidator.

In the exercise of its appellate jurisdiction for decisions issued by the Small Claims Tribunal (the SCT), the Court of First Instance has the power to:

a. affirm, reserve or vary the decision appealed;

b. set aside the decision appealed, in whole or in part;

c. make any other order it considers appropriate;

d. remit proceedings to the SCT, subject to any directions the Court of First Instance considers appropriate; or

e. make any order or direction that is in the interests of justice.

There is no appeal from a decision of the Court of First Instance that is itself the result of an appeal from the SCT. In all other cases, permission from the Court of First Instance or Court of Appeal is required before any appeal to the Court of Appeal can be brought.

The Court of Appeal

In addition to the general powers referred to above, the DIFC Court Law gives the Court of Appeal the power to:

a. make or give any order that could have been made or given by the Court of First Instance or SCT from where the appeal was made;

b. attach terms or conditions to an order it makes;

c. annul or set aside a decision;

d. require or prohibit the taking of a specific action or an action of a specific class;

e. make a declaration of facts; or

f. make any other order that the Court of Appeal considers appropriate or just.

Enforcement of Judgments and Orders

The DIFC Court Law provides that judgments, orders and awards issued or ratified by the DIFC Courts may be enforced within the DIFC in the manner prescribed by the Rules of Court. This law prescribes that the DIFC Courts shall appoint one or more of the Courts' judges as execution judge(s).

The DIFC Court Law further provides that judgments, orders and awards issued or ratified by the DIFC Courts may be enforced outside the DIFC in accordance with the Judicial Authority Law. Where a DIFC Court judgment is to be enforced outside of Dubai, in another Emirate, enforcement will proceed in accordance with the relevant procedures that apply with respect to the enforcement of Dubai Court judgments in other Emirates.

Judgments, orders and awards made by the DIFC Courts but which require execution outside the DIFC will be enforced by the Dubai Courts. Judgments, orders and awards will be enforced by the Dubai Courts provided that the judgment, order or award is final, appropriate for enforcement and translated into Arabic. Article 7 of Dubai Law No. 16 of 2011, which amended the JAL, sets out the processes and procedures relating to the enforcement of judgments, orders and awards inside and outside the DIFC.

A DIFC Court judgment is therefore given the same status and enforced in the same manner as a Dubai Court judgment and vice versa. This is particularly important when considering issues relating to the enforcement of DIFC Court judgments outside the UAE, such as in the GCC, where treaties exist to facilitate the enforcement of judgments between GCC countries.

Limitation

The DIFC Court Law provides that subject to any other DIFC Laws, a proceeding may not be commenced more than 6 years after the date of the events that have given rise to the proceedings.

Practices and Procedures

The practices and procedures of the DIFC Courts are set out in the Rules of the Dubai International Financial Centre Courts (the RDC). The RDC, which are available on the DIFC Courts' website, are closely modelled on the English Civil Procedure Rules (CPR) and are updated periodically.

DIFC Court claims are commenced using one of two types of Claim Form (Form P7/01 or P8/01), each of which is available on the DIFC Courts website. The type of form used will depend on the nature of the claim being brought. Claims are filed electronically through the DIFC Courts' website.

An Acknowledgment of Service or a Defence should be filed by any party served with a claim issued in the DIFC Courts within the required timeframe. Where an Acknowledgment of Service or Defence is not filed, the Claimant may be entitled to a default judgment.

At present the majority of hearings take place with the advocates and judges present in the DIFC Court chamber, although they occasionally appear by video link from their home jurisdictions.

Evidence

Under Article 50 of the DIFC Court Law, the rules of evidence to be applied to proceedings instituted in the DIFC Courts will be the rules that:

a. are prescribed in the DIFC Laws; or

b. are applied in the Courts of England and Wales; or

c. the DIFC Courts considers appropriate to be applied in the circumstances.

Rights of Audience

A practitioner must be registered in the DIFC Courts' Register of Legal Practitioners in order to conduct proceedings and have rights of audience before the DIFC Courts. Unlike the position in England and Wales, there is no distinction between barristers and solicitors. The DIFC Courts allow the registration of practitioners from any jurisdiction provided they have been admitted to practice in their home country.

The DIFC Courts' Register of Legal Practitioners comprises two parts. Part I is for law firms only and entry in Part I is in the name of a firm with a list of practitioners employed by the firm and who are authorised to issue and conduct proceedings on behalf of the firm. Part II is for individual practitioners and registration can only be in the name of an individual. Part II registration is provisional until the registration is confirmed by the Registrar, Deputy Registrar or Assistant Registrar.

Whilst there is no distinction between solicitors and barristers in that they both enjoy rights of audience in the DIFC Courts subject to registration in Part II of the Register, the established roles of instructing solicitor and barrister as they are recognised in England and Wales are still observed in many DIFC Court proceedings. The active registered practitioners in the DIFC Courts include many barristers from prominent English sets of chambers.

The Small Claims Tribunal

The Small Claims Tribunal (the SCT) was established in 2007 and generally hears claims of up to AED 500,000. Parties are not permitted to be legally represented in SCT proceedings without permission. Full details of the SCT are available on the DIFC Courts' website and there is a section in the RDC dealing with the SCT.

Hours of Business and Contact Details

- The Court is open from 8am to 5pm, and the Registry is open from 10am to 4pm, Sunday to Thursday, except on national holidays that are announced in UAE.
- The Court is situated at Ground Floor, Building 4, The Gate District, DIFC, Dubai, UAE.
- Mark Beer is the Registrar and Chief Executive of the DIFC Courts

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b. DIFC Arbitration

The UAE as a state is a signatory to the New York Convention. The DIFC and DIFC Courts are themselves supportive of arbitration as evidenced by the DIFC's regulatory framework with regard to arbitration, including 1) the establishment of the DIFC-LCIA Arbitration Centre and 2) the enactment of DIFC Law No. 1 of 2008 (the DIFC Arbitration Law).

The DIFC-LCIA Arbitration Centre

In February 2008 the DIFC and the London Court of International Arbitration (LCIA) launched a regional international arbitration centre: the DIFC-LCIA Arbitration Centre.

The LCIA is one of the longest-established international institutions for commercial dispute resolution and has played a significant part in the development of arbitration practice. Drawing on the experience and reputation of the LCIA, the DIFC and LCIA formed their joint venture, establishing a centre in the heart of the DIFC for the administration of international arbitration and mediation complementary to the DIFC's framework.

The DIFC-LCIA promulgated its own arbitral rules called the DIFC-LCIA Arbitration Centre's Arbitration and Mediation Rules (the DIFC-LCIA Rules). These rules closely model the LCIA rules, with minor amendment to account for local requirements. Amongst other things, the DIFC-LCIA Rules set out detailed provisions that govern the arbitration request, response, submission of written statements and documents, experts, hearings and the tribunal's powers to order interim measures.

Arbitration under the auspices of the DIFC-LCIA is not limited in scope: the DIFC-LCIA Arbitration Centre offers dispute resolution services to parties internationally, irrespective of the seat and location of arbitration, so long as the parties have agreed in writing that their arbitration will be conducted under the DIFC-LCIA Rules.

The LCIA is the administrative arm of DIFC-LCIA arbitrations. The LCIA holds the same supervisory role it does under the LCIA's own rules, including in connection with the selection and appointment of tribunals, determining challenges against arbitrators and determining costs.

In DIFC-LCIA arbitrations, as with most institutional arbitrations, the designated seat informs the procedural law of the arbitration proceeding. Under the DIFC-LCIA Rules the parties may designate any legal place as the seat of the arbitration. Failing agreement, the LCIA will designate the DIFC as the seat unless the circumstances dictate that another seat is more appropriate. If the DIFC is slated as the seat of arbitration, the DIFC Arbitration Law governs the procedural aspects of the case.

Enforcement of a DIFC-LCIA arbitration award within the DIFC is relatively straightforward. The party relying on the award must present it to the DIFC Court, in accordance with the DIFC Arbitration Law, for ratification. Once ratified, the award will be enforceable within the DIFC and beyond.

A DIFC-LCIA arbitral award that has been recognised and ratified by the DIFC Courts may be enforced in the UAE outside the DIFC without re-examination of its merits in accordance with the Judicial Authority Law.

The DIFC Arbitration Law

Arbitration continues to be an alternative to the DIFC Courts and other UAE Courts for dispute resolution. In supporting arbitration as a preferred method for resolving disputes and improving international commercial arbitration within its borders, the DIFC enacted the DIFC Arbitration Law.

The DIFC Arbitration Law is based closely on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) and thus will be familiar to any legal practitioner with expertise in international commercial arbitration.

The DIFC Arbitration Law is notably different from the Model Law in the following respects:

1. the DIFC Arbitration Law provides a unified arbitration regime without distinguishing between international and domestic arbitration or between commercial and other types of arbitration;
2. the DIFC Arbitration Law stipulates it may not be applied in disputes related to employment and/or consumer (other than residential property) contracts;
3. an arbitration agreement is considered to be "in writing" if its "content is recorded in any form";
4. incorporation of an arbitration agreement by reference does not require the incorporating contract to be in writing;
5. proceedings under the DIFC Arbitration Law are confidential;
6. it contains detailed provisions for interim measures;
7. the DIFC Arbitration Law makes provision for multi-party arbitrations; and
8. it stipulates grounds for refusing the recognition or enforcement of awards.

The DIFC Arbitration Law does not require parties to have any connection with the DIFC in order to provide that an arbitration be seated in the jurisdiction. In the absence of an agreement to the contrary, the DIFC is automatically the seat for disputes governed by DIFC Laws.

After the rendering of an award in the DIFC, a party may apply for an order of the DIFC Courts recognising the award under Article 43 of the Arbitration Law. The DIFC Courts may set aside or refuse recognition of an award for any the following reasons:

1. a party to the arbitration agreement was under an incapacity;
2. the arbitration agreement is invalid under the governing law;
3. a party was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or a party was unable to present its case;
4. the award falls outside the terms of the submission to arbitration;
5. the composition of the arbitral tribunal was not in accordance with the agreement of the parties, provided such agreement does not conflict with the governing law or the DIFC law;
6. the DIFC Court finds that the subject matter of the dispute is not capable of resolution by arbitration under DIFC Laws;
7. the dispute is expressly referred to a different body or tribunal for resolution under the Arbitration Law or other DIFC law; or
8. the award is contrary to UAE public policy.

DIFC Courts' recognition makes an award enforceable within the DIFC as well as beyond the DIFC pursuant to the JAL. The Dubai Court has no jurisdiction to review the merits of the DIFC Courts-recognised award and is required to execute it as it would any other judgment of the Dubai Courts.

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