



DIFC

CONSULTATION PAPER NO. 5

December 2011

NON PROFIT INCORPORATED ORGANISATIONS

Non Profit Incorporated Organisations

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on a new legislative proposal relating to non-profit organisations operating or intending to operate in or from the DIFC.

Who should read this paper?

2. The proposals in this Consultation Paper would be of interest to:
 - (a) non-profit organisations currently operating or intending to operate in or from the DIFC;
 - (b) legal advisors;
 - (c) members of non-profit organisations;
 - (d) persons interested to become members of non-profit organisations.

How to provide comments

3. All comments should be provided to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. DIFCA reserves the right to publish including on its website any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

4. The deadline for providing comments on this proposal is 14 January 2012. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to issue the Law and the Regulations. Because this is still a proposal, you should not act on them until relevant changes to the Law and Regulations are made. We will issue a notice on our website advising you when this happens.

Comments to be addressed to:

Roberta Calarese
Chief Legal Officer
Legal Affairs
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, UAE
or e-mailed to: roberta.calarese@difc.ae

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Defined Terms

5. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Law. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

6. At present there are a number of non-profit incorporated organisations which operate in or from the DIFC. As there is no bespoke legislative framework applicable to these types of organisations, these non-profit organisations have had to incorporate as limited liability companies or companies limited by shares. As such, all the capital requirements and fees prescribed by law to companies carrying on business in the DIFC have been applied in the same way to these non-profit organisations currently operating in the DIFC.
7. Generally non-profit organisations in other peer jurisdictions are permitted by law to operate without having to incur high set up costs or annual fees as their purposes benefit diverse communities in a number of ways.
8. It is the view of the DIFC that financial services and professional non-profit organisations assist the DIFC in fulfilling its vision of becoming a global financial hub as they support and develop relevant industries, set best practice standards and act as a forum for discussion.
9. As a result, the DIFC would like to propose a bespoke legislative framework specifically designed for non-profit organisations, based on international standards, to encourage the establishment of such types of organisations in the DIFC and promote their growth.

Legislative Proposal

10. The legislative proposal contains two parts:
 - (a) a draft Non Profit Organisations Law, ("Law") (attached at Annex A); and
 - (b) draft Non Profit Organisations Regulations ("Regulations") (attached at Annex B).

Brief summary of the Legislative Proposal

11. Requirement to be a body corporate

The Law requires that non-profit organisations wanting to establish in the DIFC shall have to incorporate as body corporates and will be known as "Incorporated Organisations." This allows for greater legal certainty in relation to the rights and liabilities of members of such Incorporated Organisations and third parties dealing with them.

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12. Types of members

The proposal is to have two types of members in an Incorporated Organisation:

- (a) Founding Members which are responsible for the incorporation and the management of the Incorporated Organisation; and
- (b) Members which join for the purpose of participating in the activities of the Incorporated Organisation.

13. The Board

The Board of an Incorporated Organisation shall be composed solely of Founding Members who must be resident in the UAE. The Board may appoint new Founding Members by passing a Special Resolution. A Founding Member may not be a Member at the same time.

14. Incorporation, Licensing and Authorised Purposes

The Law sets out the requirements for incorporation and licensing of Incorporated Organisations and limits the activities of such organisations to professional and financial services and any other ancillary activities related to the development and promotion of financial services and related activities. The Authorised Purposes have been specifically selected to support the fulfillment of the DIFC vision to become a global financial hub.

15. Audited accounts

The Law also requires Incorporated Organisations to prepare annual audited accounts which need to be filed with the Registrar within the prescribed time period. Auditors appointed to an Incorporated Organisations must be auditors registered under the Companies Law 2009.

16. General contraventions

The Law provides for a general contraventions regime and prescribed a list of fines in Schedule 2 where a person fails to comply with the requirements prescribed in the Law or the Regulations.

17. Regulations

The Regulations prescribe the procedural steps to give effect to the requirements in the Law such as:

- (a) requirements for the application for the certificate of incorporation and the Licence;
- (b) requirements relating to the register of Founding Members and Members to be maintained by an Incorporated Organisation;

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- (c) what information the Registrar shall publish in the Public Register;
- (d) notifications to be made to the Registrar; and
- (e) schedule of fees.