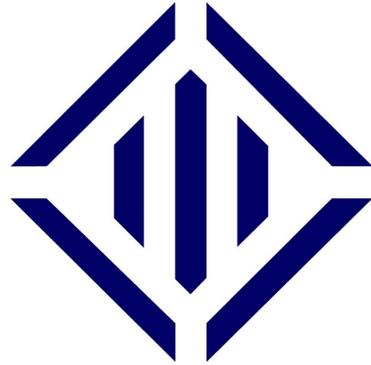


In this document underlining indicates new text and striking through indicates deleted text.



DIFC

COMPANIES LAW AMENDMENT LAW

DIFC LAW NO. 2 OF 2013



PART 1: GENERAL

1. Title

This Law may be cited as the “Companies Law 2009 Amendment Law, DIFC Law No. 2 of 2013”.

2. Legislative authority

This Law is made by the Ruler of Dubai.

3. Application of the law

- (1) This Law applies in the jurisdiction of the DIFC.
- (2) This Law repeals and substitutes the DIFC Companies Law 2006.
- (3) This Law applies to any person who conducts or attempts to conduct business from within the DIFC

4. Date of enactment

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

5. Commencement

This Law comes into force on the date specified in the Enactment Notice in respect of this Law. As on the date specified in the Enactment Notice in respect of the Law, the DIFC Law No. 3 of 2006 shall be repealed and replaced in its entirety by the Law.

6. Interpretation

- (1) Schedule 1 contains:
 - (a) interpretative provisions which apply to this Law; and
 - (b) a list of defined terms used in this Law.
- (2) contains prescribed contraventions.

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PART 2: THE APPOINTMENT OF AND ROLE OF THE REGISTRAR

1. Appointment of the Registrar

- (1) The office of the Registrar of Companies is created as a corporation sole.
- (2) The Board of Directors of the DIFCA shall appoint a person to serve as Registrar and may dismiss a person from the office of Registrar without cause.
- (3) The Board of Directors of the DIFCA shall consult the President prior to appointing, renewing the appointment of or dismissing the Registrar.
- (4) In exercising his powers and performing his functions the Registrar shall act in an independent manner, notwithstanding that he is an agency of the government of the Emirate of Dubai.

2. The powers and functions of the Registrar

- (1) The Registrar has such ~~functions and powers~~ and functions as may be conferred, or expressed to be conferred, on him:

- (a) by or under the Law; and
- (b) by or under any other law made by the Ruler;

and shall exercise such powers and perform such functions only in pursuit of his objectives under those laws and any regulations or rules made under those laws.

- (2) Without limiting the generality of Paragraph , such powers and functions of the Registrar shall include, so far as is reasonably practicable:

- (a) preparing or causing to be prepared in a timely and efficient manner:

- (i) draft Regulations;
- (ii) draft standards or codes of practice; and
- (iii) Guidance;

reasonably required to enable him to perform his statutory functions;

- (b) submitting such draft Regulations, draft standards, and draft codes of practice to the Board of Directors of the DIFCA for approval and advising it of any Guidance that is issued;
- (c) prescribing forms to be used for any of the purposes of this Law or any legislation administered by the Registrar;
- (d) acquiring, holding and disposing of property of any description;



- (e) making contracts and other agreements;
 - (f) with the prior consent of the President and Board of Directors of the DIFCA, borrowing monies and providing security for such borrowings;
 - (g) employing and appointing persons on such terms as he considers appropriate to assist him in the exercise of his powers and performance of his functions;
 - (h) where he considers it appropriate to do so, delegating such of his functions and powers as may more efficiently and effectively be performed by his officers or employees and, with the approval of the Board of Directors of the DIFCA either generally or in relation to any particular matter, by any other person; and
 - (i) exercising and performing such other powers and functions as may be delegated to the Registrar by the Board of Directors of the DIFCA pursuant to the provisions of this Law.
- (3) The Registrar shall assist the United Arab Emirates in complying with its obligations under any international treaty or other agreement to which the United Arab Emirates is a party to through the exercise of his powers and functions.
- ~~(3)~~(4) The Registrar has power to do whatever he deems necessary, for or in connection with, or reasonably incidental to, the performance of his functions.

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PART 9 – ACCOUNTS AND AUDIT

CHAPTER 2 – ACCOUNTS

101. Maintenance of Accounting Records

- (1) Every Company shall keep accounting records including underlying documents which are sufficient to show and explain its transactions so as to:
 - (a) disclose with reasonable accuracy the financial position of the Company at any time; and
 - (b) enable the Directors or Managers to ensure that any accounts prepared by the Company under this Part comply with the requirements of this Law.

- (2) A Company's accounting records shall be:
 - (a) kept at such place as the Directors or Managers think fit unless specifically prescribed in the Regulations;
 - (b) preserved by the Company for at least ~~10~~ 6 years from the date ~~upon to which~~ they ~~relate~~ were created, or for some other period as may be prescribed in the Regulations;
 - (c) ~~at all reasonable times~~ open to inspection by an officer or auditor of the Company at all reasonable times; and
 - (d) otherwise kept and maintained in such manner as may be provided in the Regulations.

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PART 11: RECOGNISED COMPANIES

115. Foreign companies

- (3) A Foreign Company shall not carry on business in the DIFC unless:
 - (a) it is registered as a Recognised Company under this Part; or
 - (b) it has submitted all necessary documents and information to be so registered in accordance with the requirements of the Registrar and the application has not been dealt within a reasonable time.
- (4) The Board of Directors of the DIFCA may make Regulations prescribing what comprises 'carrying on business' for the purposes of this Part.
- (5) A Foreign Company may apply to the Registrar for registration as a Recognised Company in such manner as shall be prescribed in the Regulations.
- (6) In the event that a Recognised Company becomes continued as a Company the Registrar shall strike off the registration of Recognised Company on registration of the Company.

2. Requirements of a Recognised Company

- (1) A Recognised Company shall:
 - (a) 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 Recognised Company and to undertake any other function as may be prescribed in the Regulations;
 - (b) have a place of business in the DIFC to which all communications and notices may be addressed;
 - (c) file with the Registrar notice of:
 - (i) appointment of persons authorised to accept service for the Recognised Company;
 - (ii) address of the principal place of business of the Recognised Company in the DIFC;
 - (iii) any change in the details of persons authorised to accept service and the address of its principal place of business in the DIFC;
 - (iv) any change in the Recognised Company's shareholders or members;
 - (v) any change in the Recognised Company's directors, managers or secretary; ~~in the form and manner required in the Regulations;~~
 - (d) submit to the Registrar on annual basis a copy of its annual return filed in its jurisdiction of incorporation; and



- (e) comply with any other requirement as may be prescribed in the Regulations.
- (2) The Board of Directors of the DIFCA may make Regulations:
- (a) prescribing procedures in relation to requirements under this Part; and
 - (b) waiving or modifying any requirements under this Part in relation to different cases or classes of case.

116A. Notification of change in registered details of a Recognised Company

If there is a change in the registered details of a Recognised Company prescribed in the Law or the Regulations, the Recognised Company shall notify the Registrar in writing within 14 days of any such change taking place.

116B. Maintenance of Accounting Records

- (1) A Recognised Company shall keep accounting records including underlying documents which are sufficient to show and explain its transactions so as to:
- (a) disclose with reasonable accuracy the financial position of the Recognised Company at any time; and
 - (b) enable the directors or managers to ensure that any accounts prepared by the Recognised Company under this Part comply with the requirements of this Law.
- (2) A Recognised Company's accounting records shall be:
- (a) kept at such place as the directors or managers think fit unless specifically prescribed in the Regulations;
 - (b) preserved by the Recognised Company for at least ~~10~~ 6 years from the date upon which they were created, or for some other period as may be prescribed in the Regulations;
 - (c) open to inspection by an officer or auditor of the Recognised Company at all reasonable times; and
 - (d) otherwise kept and maintained in such manner as may be provided in the Regulations.

PART 13: INSPECTION AND REMEDIES

CHAPTER 3 – POWERS OF INSPECTION

126. Inspectors' reports

- (1) The Inspectors shall make a written report to the Registrar at the conclusion of their investigation.
- (2) The Inspectors shall make such interim reports, if any, to the Registrar that the Registrar may require.
- (3) The Registrar may, upon receipt of a report by an Inspector, do any one or more of the following:
 - (a) provide a copy to the Company to which the report relates with or without a direction that it be disclosed to the members;
 - (b) provide a copy of the report to any person whose financial interests may have been affected by the matters dealt with in the report;
 - (c) cause the report to be published;
 - (d) in the case of a Company licensed, registered or recognised by the DFSA, provide a copy of the report to the DFSA.

CHAPTER 4 – OTHER POWERS OF THE REGISTRAR

127A. Powers to Obtain Information

- (1) The Registrar may require any person incorporated or registered under any legislation administered by the Registrar, including any director, officer, partner, employee or agent of such person, by written notice, to:
 - (a) give, or procure the giving of, such specified information; or
 - (b) produce, or procure the production of, such specified documents,

to the Registrar as the Registrar considers necessary or desirable in the performance of its powers and functions under the Law and such person shall comply with such request.
- (2) Information given or a document produced as a result of the exercise by the Registrar of powers under Article 127A is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (3) The requirement to give, produce or procure the information or documents prescribed under Article 127A(1) shall not apply if such information or documents are subject to legal privilege.



- (4) The Registrar may apply to the Court for an order to require a person to give, produce or procure the information or documents prescribed under Article 127A(1) and the Court may make such an order as it deems fit.

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SCHEDULE 1
CONTRAVENTIONS WITH FINES STIPULATED

| <i>Article of Law creating contravention</i> | <i>General nature of contravention</i> | <i>Maximum Fine</i> |
|--|--|---------------------|
| 13(4) | Conducting business in the DIFC without proper registration | \$ 25000 |
| 19(2) | Company failing to change name on direction of Registrar | \$2,000 |
| 20(1) | Company failing to have a registered office | \$2,000 |
| 21(1) | Company failing to have name on certain documents | \$1,000 |
| 22(1) | Company failing to lodge annual return | \$2,000 |
| 27(1) | Company being a member of its holding company | \$5,000 |
| 37 | Company Limited by Shares failing to keep a register of Shareholder | \$2,000 |
| 38 | Company Limited by Shares issues bearer Shares | \$5,000 |
| 40(1) | Non-compliant registration of transfer of Shares | \$2,000 |
| 43(1) | Non-compliance with requirements in relation to certificates of Shares | \$2,000 |
| 59(1) | Failure to keep register of Directors and secretaries | \$2,000 |
| 64(2) | Company Limited by Shares default in complying with Registrar's direction to hold company meeting | \$15,000 |
| 75(5) | Failure to sign declaration | \$5,000 |
| 77(3) | Offeror failing to give minority Shareholder notice of rights | \$10,000 |
| 86 | Limited Liability Company raising capital through public subscription or listing Securities on an exchange | \$50,000 |
| 88(2) | Limited Liability Company representing Membership Interests by negotiable instruments | \$50,000 |
| 95 | Limited Liability Company failing to keep a register of Members | \$2,000 |
| 98(6) | Limited Liability Company default in complying with Registrar's direction to hold Members' meeting | \$15,000 |
| 101(1) | Failure to keep accounting records | \$15,000 |
| 101(2)(a) or (b) | Non-compliant maintenance of accounting records | \$2,000 |
| 101(2)(c) | Failure to keep accounting records open to inspection | \$1,000 |
| 102(3) | Failure of Directors to approve and sign accounts | \$10,000 |
| 102(4) | Failure to comply with requirements within 6 months | \$5,000 |
| <u>103</u> | <u>Failure to keep accounts or prepare accounts as required</u> | <u>\$15,000</u> |
| 107 | Company failing to appoint auditors | \$10,000 |
| 107(1) | Acting as auditor when not registered | \$20,000 |
| 107(7) | Company appointing auditor without consent | \$10,000 |
| 108 | Failure of auditor to make a report as required | \$10,000 |
| 109(1) | Auditor failing to fulfil duties | \$10,000 |
| 110(1) | Failure of auditor to comply with resignation requirements | \$5,000 |
| 111(1) | Company not co-operating with auditor | \$5,000 |
| 111(2) | Company obstructing auditor | \$10,000 |
| <u>116A</u> | <u>Failure of Recognised Company to notify the Registrar of any change in registered details</u> | <u>\$2,000</u> |
| <u>116B(1)</u> | <u>Failure of Recognised Company to keep accounting records</u> | <u>\$15,000</u> |
| <u>116B(2)(a) or (b)</u> | <u>Non-compliant maintenance of accounting records by Recognised Company</u> | <u>\$2,000</u> |



CONTRAVENTIONS WITH FINES STIPULATED

| <i>Article of Law creating contravention</i> | <i>General nature of contravention</i> | <i>Maximum Fine</i> |
|--|--|-------------------------|
| <u>116B(2)(c)</u> | <u>Failure of Recognised Company to keep accounting records open to inspection</u> | <u>\$1,000</u> |
| <u>127A</u> | <u>Failure to provide information or documents</u> | <u>\$15,000</u> |
| 155(1) | Company or auditor failing to disclose | \$10,000 |
| 158 | Provision of false or misleading information to the Registrar | \$50,000 |
| 159 | Failure to comply with a direction or order of the Registrar | \$15,000 |
| | | |