



Dubai  
International  
Financial  
Centre

## **CONSULTATION PAPER NO. 6**

May 2018

**DIFC OPERATING LAW, REGULATIONS  
AND RELATED LEGISLATION**

**CONSULTATION PAPER NO. 6**  
**PROPOSALS FOR A NEW DIFC OPERATING LAW, AMENDMENTS TO THE**  
**DIFC OPERATING REGULATIONS AND CONSEQUENTIAL CHANGES TO**  
**OTHER LAWS AND REGULATIONS**

**Why are we issuing this paper?**

1. The Dubai International Financial Centre Authority (“DIFCA”) proposes to enact a new DIFC Operating Law, amend the DIFC Operating Regulations (the “Current Regulations”) and amend existing Laws and Regulations in relation to DIFC Registered Entities to update aspects of business regulation in the DIFC. This Consultation Paper No. 6 of 2018 (“Consultation Paper”) seeks public comments on the proposed new DIFC Operating Law, (the “Proposed Law”) amended DIFC Operating Regulations (the “Proposed Regulations”) and other consequential changes which will be effected by (in the case of the Laws requiring amendment) a new DIFC Laws Amendment Law (No.2) (“the Amendment Law”) and in the case of the Regulations requiring amendment the issue of new consolidated Regulations (“the new Consolidated Regulations”) (collectively the “Legislative Package”).

**Who should read this paper?**

2. This Consultation Paper would be of interest to persons conducting or proposing to conduct business in the DIFC. In particular:
  - a. Companies;
  - b. Partnerships;
  - c. Non Profit Incorporated Organisations;
  - d. Foundations;
  - e. officers and employees of these entities, such as directors, company secretaries, compliance officers, managers, members, partners and senior executive officers;
  - f. shareholders and creditors of DIFC incorporated or registered entities
  - g. liquidators registered in the DIFC;
  - h. legal advisors; and
  - i. auditors undertaking company audits.

### How to provide comments

3. All comments should be provided to the person specified below:

**Jacques Visser**  
**Chief Legal Officer**  
**DIFC Authority**  
**Level 14, The Gate, P. O. Box 74777**  
**Dubai, United Arab Emirates**  
**or e-mailed to: [consultation@difc.ae](mailto:consultation@difc.ae)**

4. You may choose to identify the organisation you represent in your comments.
5. DIFCA reserves the right to publish, on its website or elsewhere, any comments you provide, unless you expressly request otherwise at the time the comments are made.

### What happens next?

6. The deadline for providing comments on the proposals in this Consultation Paper is 24 June 2018.
7. Once we receive your comments, we will consider if any further refinements are required to the Proposed Law, the Proposed Regulations, the Amendment Law or the Consolidated Regulations. Once DIFCA considers the Legislative Package to be in a suitable form, it will be enacted as new and amended DIFC Laws and Regulations to come in to force on a date specified and published.
8. The Proposed Law, Proposed Regulations, and the amendments to other Laws and Regulations are in draft form only. You should not act on it until the legislative package is formally enacted. We will issue a notice on our website when this happens.

### Defined terms

9. 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 Proposed Law, Proposed Regulations or Amendment Laws and Consolidated Regulations. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

### Background

10. The DIFCA has proposed to replace the Companies Law 2009 with a new Companies Law, which was the subject of Consultation Paper No.1 of 2017 (“2017 Proposed Companies Law”) and is proposed to be enacted this year. As part of the review of the DIFC’s overall Wealth Management offer, it has also introduced a Foundations Law 2018. Further, in order to comply with international obligations entered into by the UAE national government, it has enacted legislation relating to the Common Reporting Standard (Common Reporting Standard Law 2017 and Common Reporting Standard Regulations 2017) and proposes to introduce Regulations in relation to the collection and dissemination of information in relation to the Ultimate Beneficial Ownership of entities operating in the DIFC (Ultimate Beneficial Ownership Regulations Consultation Paper No 7, released simultaneously with this Consultation Paper).
11. The result is that there are now a number of regulatory provisions which apply broadly across all DIFC, Companies, General Partnerships, Limited Liability Partnerships, Limited Partnerships, Non Profit Incorporated Organisations and Foundations (“DIFC Registered Entities”).
12. Accordingly, it is proposed that the Companies Law and Companies Regulations deal with matters which affect companies generally, while matters which affect all DIFC Registered Entities under the supervision of the Registrar of Companies (“the Registrar”) will be provided for in the Proposed Law and the Proposed Regulations, unless there are particular reasons to have them as stand-alone Regulations, as is the case with the proposed Ultimate Beneficial Ownership Regulations.
13. The basis of the DIFC’s licensing regime is the prohibition of the carrying on of business in the DIFC without authority, currently found in Article 13(4) of the Companies Law 2009. The 2017 Proposed Companies Law, provided for a wider range of exemptions from the existing commercial licensing regime. However as commercial licences are issued to persons other than companies, these provisions are now proposed to be enacted in the Proposed Law and the Proposed Regulations.

### Key Changes proposed

14. The Proposed Law, Proposed Regulations and amendments to existing Laws and Regulations build on this model by including those regulatory requirements which apply generally across all DIFC Registered Entities in the Proposed Law and the Proposed Regulations, rather than in the Companies Law, Companies Regulations or stand-alone

DIFC laws applying to the various DIFC Registered Entities and their associated regulations.

15. The key aspects of the proposal include:
  - a. a framework for the role of the Registrar and the exercise of his powers and functions under the Proposed Law, as well as the regulation of DIFC Registered Entities and the grant of exemptions, temporary licences and commercial permissions thereunder;
  - b. formalisation and standardisation of arrangements relating to names, trading names and registered offices;
  - c. introduction of a requirement for an annual confirmation statement to be filed by all DIFC Registered Entities to update their registered details on the public register, maintained by the Registrar;
  - d. a framework for the issue of certificates and registrations to an entity or arrangement established under DIFC Law, that requires it for the purposes of the laws of other jurisdictions; and
  - e. other miscellaneous enhancements.

### Regulatory Structure

16. The proposal envisages a new DIFC Operating Law (in the form of the Proposed Law) and an enhanced role for the DIFC Operating Regulations (in the form of the Proposed Regulations). The intention is that the Companies Law and Companies Regulations will be the legislative framework for matters affecting companies alone (consistently with the approach currently adopted for other Registered Entities), while matters of a more general nature, affecting all DIFC Registered entities will be provided for within the framework of the Proposed Law and Proposed Regulations, and matters relating to Ultimate Beneficial Ownership in yet another set of stand-alone Regulations. As these provisions will apply to all DIFC Registered Entities, it is proposed that the provisions in the individual Laws and Regulations relating to General Partnerships, Limited Liability Partnerships, Limited Partnerships, Non Profit Incorporated Organisations and Foundations, which duplicate the provisions of the Proposed Law and the Proposed Regulations will be repealed.
17. This will be effected in part by a transfer of the provisions of the 2017 Proposed

Companies Law and existing Companies Regulations relating to those aspects of the Registrar's powers which apply generally to the Proposed Law and Proposed Regulations. The provisions of the 2017 Proposed Companies Law which are to be transferred have already been the subject of Consultation Paper No.1 of 2017. As there has been no material change to the remaining provisions of the 2017 Proposed Companies Law (apart from any arising from the consultation process), except in relation to the replacement of Annual Return with Confirmation Statements (discussed in paragraphs 23 - 25 below), it will be enacted (subject to these changes) as the Companies Law DIFC Law No. 5 of 2018 ("2018 Proposed Companies Law"), without further consultation. New Companies Regulations (which contain amended provisions as a result of the 2018 Proposed Companies Law) are the subject of Consultation Paper No. 5 of 2018 also issued simultaneously with this Consultation Paper.

18. For similar reasons, the provisions of the 2017 Proposed Companies Law which have been transferred to the Proposed Law are not the subject of specific commentary in this Consultation Paper, although the final question in this consultation paper provides an opportunity for comment, should that be thought appropriate.
19. However two changes from the 2017 Proposed Companies Law are noted below (which can be found in Article 32 of the Proposed Law):
  - a. Voluntary strike-off: The Registrar's power to strike Registered Persons off the register may be exercised, at the request of the Registered Person concerned, in certain circumstances. Thus the Proposed Law enables voluntary strike off in circumstances where there are no outstanding issues such as unpaid debts.
  - b. Bona Vacantia: Provision is now made for the vesting of outstanding assets in the DIFCA, subject to any claims which third parties may have had against the Registered person. This is necessary because at common law it is not possible for property to be ownerless – the principle of bona vacantia. The proposed provision is a simplified version of the corresponding United Kingdom provision.
20. As a provision of the Trust Act 2018 referred to a provision in the 2017 Proposed Companies Law which is proposed to be transferred to the Proposed Law, a consequential amendment will be made to that Law.

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| <p><b>Q1. Do you agree with the proposed restructuring of the statutory framework? If not, how could it be improved?</b></p> |
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### Names, Trading Names and Registered Offices

21. The names of DIFC registered entities are dealt with in three ways under existing DIFC Laws and Regulations:
- a. at point of incorporation or registration - a name must be approved by the Registrar either as part of the application for incorporation or registration or through an application for name reservation;
  - b. a registered name can be changed – a process which does not require prior approval by the Registrar (although that may be sought), following which adoption by the registrant may occur (although the Registrar may object to the use of a changed name which does not meet the Registrar’s requirements); and
  - c. a DIFC Registered Entity may, with the approval of the Registrar, adopt a trading name.
22. It is proposed that these provisions be streamlined so that all matters relating to registered or trading names and the carrying on of business in the DIFC will be dealt with in the Proposed Regulations. This involves deletion of those corresponding provisions in the various DIFC Laws and Regulations applying to DIFC Registered Entities with the substitution of a reference to the Proposed Law. The Proposed Regulations deal with the requirements of names (Regulation 3.1), adoption of trading names (Regulation 3.2) changes of name (Regulation 3.3) and Registered Offices (Regulation 5.1). The proposed Regulations set out the basis upon which the Registrar can approve a trading or new name, in terms similar to Regulation 2.3.3 of the existing Companies Regulations.

**Q2. Is the transfer of the Registrar’s powers in relation to Registered DIFC Entities generally from the Companies Law and Companies Regulations to the Proposed Law and Proposed Regulations appropriate? If not, what changes should be made to the proposal?**

**Q3. Are the consequential deletions and changes in the individual DIFC Laws and Regulations relating to the various DIFC Registered Entities appropriate? If not, what changes should be made to the proposal?**

**Q4. Are the circumstances in which the Registrar can approve a name, change of name or trading name appropriate? If not, what changes should be made to the proposal?**

### Confirmation Statements

23. As part of the adoption of consistent arrangements for the supervision of DIFC Registered Entities, and to facilitate performance of the Registrar's functions in relation to ultimate beneficial ownership (for the reasons discussed more fully in Consultation Paper No. 7 of 2018 on the proposed Ultimate Beneficial Ownership Regulations, released simultaneously with this Consultation Paper), it is proposed that all DIFC Registered Entities be required to provide the Registrar with an annual Confirmation Statement, confirming that the registered details of the entity on the Public Register are current and accurate. Accordingly, the Proposed Regulations will require all DIFC Registered Entities to provide annual confirmation statements to the Registrar at the time of License renewals. This requirement will, in the case of Companies, replace the requirement for lodgement of an Annual Return.
24. The Confirmation Statement itself is based on the 2016 amendments to the United Kingdom Companies Act which substituted such statements for Annual Returns. It is envisaged that as part of the Licence renewal procedure on the client portal the Confirmation Statement will be prepopulated so that the amount of work involved in completing it (if the licensee has been compliant during the licence period) will be minimal.
25. As part of this change the requirement for company annual returns will be subsumed within this general reporting framework. Where additional material is required (e.g. annual accounts) that requirement will continue under the relevant legislation.

- Q5. Do you agree with the proposal to introduce a general requirement for Confirmation Statements for all DIFC Registered Entities? If not, what changes should be made to the proposal?**
- Q6. Do you agree with the proposed incorporation of the existing requirements for companies to file annual returns within the Confirmation Statement procedure? If not, what changes should be made to the proposal?**
- Q7. Are you able to identify any way in which the DIFC might comply with its obligations under the ultimate beneficial ownership requirements which would be less onerous for DIFC Registered Entities?**

### Licence Exemptions and Restrictions

26. Article 8(3)(e) of the Proposed Law (replicating Article 9(3)(e) of the 2017 Proposed Companies Law as submitted for Consultation in 2017) empowers the Registrar where the Registrar considers it appropriate to do so to:
- a. exempt a person from the obligation to hold a Licence;
  - b. issue a Licence to a person:
    - i. for any period less than 1 year; or
    - ii subject to any conditions or restrictions; or
  - c. issue a Permission to a person to undertake a specified activity in the DIFC.
27. The Proposed Regulations set out the basis upon which the Registrar will consider applications for the separate categories of relief under this provision, which are as follows:
- a. exemptions are intended to be available to persons (usually governmental or supra-national entities) which are not engaged in commercial activity as the principal purpose of their presence in the DIFC.
  - b. short term licences to be available for short periods of commercial activity;
  - c. restricted or conditional licenses for certain specific or limited activities; and
  - d. permissions for activities ancillary to business activities in the DIFC or elsewhere.
28. In addition, both the Foundations Law and the Non Profit Incorporated Organisations Law provide for the issue of a licence without characterizing it. In addition it may be an inaccurate description of the activities of other potential registered entities to describe such activities as commercial. Accordingly it is proposed to create a further category of Licence called an Operating Licence in addition to the pre-existing Commercial Licence, which the Registrar may issue in such circumstances.

**Q8. Do you agree with the classification of exemptions, restricted or conditional licences, short term licences and permissions?**

**Q9. Do you agree with the proposed new category of Licence (i.e. Operating Licence)?**

**Q10. Are there any other activities for which provision should be made to obtain such relief? To what extent, if at all, do these require modification of the Proposed Regulations?**

### Certificates and Registers for the purposes of other Laws

29. Regulation 2.1.2 of the Current Regulations recognises that one of the purposes of the DIFC's Commercial Licence regime is to facilitate commercial engagement by DIFC Licensees in the regulatory system of the wider United Arab Emirates.
30. In addition there are other DIFC entities and legal arrangements that may be established under current and future DIFC laws which may need to either be categorised for DIFC purposes or given the status of registered bodies, in order to operate satisfactorily outside the DIFC.
31. DIFC entities and arrangements may not always coincide with their corresponding bodies outside the DIFC, and at times it will be necessary for the precise character and status of a DIFC incorporated or registered entity or arrangement to be certified, to enable it to function effectively outside the DIFC.
32. The proposed regulation will enable the Registrar, at the request of a DIFC entity or arrangement, to give certifications, place bodies or arrangements on a register and issue certificates where this will assist the DIFC entity or arrangement in its operations outside the DIFC.
33. It needs to be kept in mind that often the issue of characterisation of a DIFC entity or arrangement will be a matter for the law of the jurisdiction for whose purposes the characterisation needs to be made, so that the proposed power will not be a solution to all characterisation problems.

**Q11. Do you agree with the proposal to grant the Registrar this power?**

**Q12. Are the proposed powers adequate to deal with presently foreseeable circumstances? If not, how might they be usefully enhanced?**

### Requirements relating to Auditors

34. Under the Proposed Regulations, an auditor registered in another jurisdiction will be required to have been so registered for 8 years in a Relevant Jurisdiction (prescribed by the Registrar for this purpose) before an application for registration in the DIFC as an auditor can be made. The objective is to ensure that registered auditors have sufficient experience as an auditor. The existing Companies Regulations do not contain this requirement.

**Q13. Is the proposed requirement for the prior registration of auditors for a period of at least 8 years in another jurisdiction appropriate?**

**Q14. If not, what prior experience (and/or registration) should be required before a person can be registered as an auditor in the DIFC?**

### **Decision Making Procedures**

35. The 2017 Proposed Companies Law provided for the Regulations to detail Decision-making Procedures, particularly (but not necessarily limited to) the imposition of fines. The Decision-making Procedures will now be included in the Proposed Regulations. These are set out in Appendix 2, and need to be read in the context of provisions in the Proposed Law enabling the Court to grant relief under Article 42.

36. The proposed Decision-making Procedures are required to be adopted in all decisions made by the Registrar unless they are:

- a. specifically dis-applied;
- b. other process requirements are specified in the provision that requires the decision to be made;
- c. the decision itself is a relieving one; or
- d. the affected party has consented to the Decision-making Procedures not applying.

37. The form adopted is the conventional administrative law approach, in alternative forms:

- a. where the procedures are adopted as part of the process of making a decision; or
- b. after (so as to provide the basis for judicial review), which applies in the case of automatic fines.

**Q15. Do the proposed Decision-making Procedures satisfactorily address the issues in respect of which they make provision? If not, how could they be improved?**

### DIFC Laws Amendment Law - Amendments to other Laws

38. As the Proposed Law and Proposed Regulations are intended to apply generally to DIFC Registered Entities as explained above, it is accordingly proposed to amend each of the following Laws:

- a. General Partnership Law;
- b. Limited Partnership Law
- c. Limited Liability Partnership Law 2006;
- d. Non Profit Incorporated Organisations Law 2012;
- e. Foundations Law 2018; and
- f. Trust Law 2018,

and the regulations thereunder to give effect to the general regulatory scheme adopted in the Proposed Law and Proposed Regulations.

**Q16. Are the proposed amendments to the other laws adequate for their intended purpose?**

**Q17. Are other amendments required for these laws? If so please provide justification for any further suggested changes.**

### Miscellaneous

**Q18. Are there any other matters which should be dealt with in the Proposed Law and Proposed Regulations?**

**Q19. Are there any other aspects of the Proposed Law and Proposed Regulations which can be improved?**

### Legislative Proposal

39. This legislative proposal contains the following:

- a. the Proposed Law (at Annex A)
- b. the Proposed Regulations (at Annex B);

- c. the Current Regulations (at Annex C);
- d. a comparison of the Current Regulations and the Proposed Regulations (at Annex D);
- e. the DIFC Laws Amendment Law showing the proposed changes to the Laws it will amend (at Annex E); and
- f. table of comments to provide your views and comments on the Consultation Paper (at Annex F).