



Dubai
International
Financial
Centre

CONSULTATION PAPER NO. 1

June 2016

PROPOSED AMENDMENTS TO DIFC LEGISLATION

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Proposed Amendments to the DIFC Legislation

Why are we using this paper?

1. This Consultation Paper seeks public comment on the DIFC Authority's ("DIFCA") proposal to amend a number of DIFC laws through the DIFC Laws Amendment Law, DIFC Law No. 1 of 2016 ("DIFC Laws Amendment Law"), in order to comply with the requirements set out by the OECD Global Forum on Transparency and the Exchange of Information for Tax Purposes ("OECD Global Forum").
2. The DIFC Laws Amendment Law amends the following laws:
 - (a) Companies Law, DIFC Law No.2 of 2009 ("Companies Law");
 - (b) the General Partnership Law, DIFC Law No.11 of 2004 ("General Partnership Law");
 - (c) Limited Partnership Law, DIFC Law No.4 of 2006 ("Limited Partnership Law"); and
 - (d) Limited Liability Partnership Law, DIFC Law No.5 of 2004 ("Limited Liability Partnership Law").

The General Partnership Law, Limited Partnership Law and the Limited Liability Partnership Law are collectively referred to as the "Partnership Laws" in this Consultation Paper.

Who should read this paper?

3. This Consultation Paper would be of interest to:
 - (a) directors, company secretaries, compliance officers, partners, senior executive officers of companies and partnerships incorporated or registered under any legislation administered by the Registrar; and
 - (b) legal advisors.

How to provide comments

4. 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: jacques.visser@difc.ae

5. You may choose to identify the organisation you represent in your comments.
6. 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?

7. DIFCA is releasing this Consultation Paper No. 1 of 2016 for public consultation.
8. Given the nature of the amendment sought and its urgency, the deadline for providing comments on this proposal is 29 July 2016.
9. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to enact the changes to the DIFC Laws Amendment Law. Because these are still proposals, you should not act on them until the DIFC Laws Amendment Law is enacted. We will issue a notice on our website advising you when this happens.

Defined terms

10. 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 DIFC Laws Amendment Law. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

11. The Registrar of Companies (the “Registrar”) is proposing urgent amendments to the Companies Law and Partnership Laws, which stem from the DIFC’s involvement in a UAE working group led by the UAE Ministry of Finance. This group is dealing with the assessment of the UAE by the OECD Global Forum against 10 principles under three broad categories:
 - (a) Availability of Information (i.e. whether jurisdictions have ownership and identity information, accounting records and detailed banking information for companies, partnerships, trusts, foundations and other entities);
 - (b) Access to Information (i.e. whether jurisdictions have the power to obtain information and records from relevant persons); and
 - (c) Exchanging Information (i.e. whether jurisdictions have effective international tax agreements and protect the confidentiality of information).
12. The assessment of the UAE’s legislative requirements commenced in 2011 (Phase 1 review). The OECD Global Forum will also test whether the UAE’s legislative requirements enable the effective exchange of tax information (Phase 2 review).
13. The OECD Global Forum published its Phase 1 review report on the UAE in 2012 (“Phase 1 Report”). The report highlighted some matters which required action by DIFCA and the Registrar under the laws they administer.
14. Accordingly in December 2013 DIFCA enacted the DIFC Laws Amendment Law, DIFC Law No. 1 of 2013 to address the issues highlighted in the Phase 1 Report.
15. The OECD Global Forum published the Phase 1, Supplementary Peer Review Report (“Phase 1 Supplementary Report”) which recognised that the legislative amendments made by DIFCA in December 2013 addressed a number of the issues highlighted in the Phase 1 Report.
16. However, the Phase 1 Supplementary Report noted that: *“The requirements to keep underlying documentation by DIFC entities other than entities regulated by the financial regulator are worded in a general way and do not go into detail regarding the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation. The UAE should clarify its requirements that underlying documentation must be kept in respect of all relevant*

entities and arrangements in the DIFC.”

Proposed Amendments

17. In order to address the finding contained in the Phase 1 Supplementary Report, the Registrar proposes to incorporate the following definition of “Accounting Records”, prescribed by the International Standard on Auditing, into the Companies Law and the Partnership Laws, which clarifies the type of underlying documentation to be retained by companies and partnerships in the DIFC:

Accounting Records	<p>records and underlying documents comprising initial and other accounting entries and associated supporting documents such as</p> <ul style="list-style-type: none"> (a) cheques; (b) records of electronic funds transfers; (c) invoices; (d) contracts; (e) the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries; and (f) work sheets and spread sheets supporting costs allocations, computations, reconciliations and disclosures.
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18. The new definition of “Accounting Records” is consistent with the definition used by the Dubai Financial Services Authority, to ensure that the obligation to keep underlying documentation applies evenly to all relevant entities in the DIFC.
19. The Registrar also proposes to make amendments to the Schedule of Fines in the Companies Law and the Partnership Laws in order to clarify contraventions and correct mistaken references to articles of the law creating contraventions.
20. The Registrar considers that the proposed amendments are necessary to ensure that

the DIFC, and therefore the UAE, complies with the standards set by the OECD Global Forum.

Legislative Proposal

21. The legislative proposal is contained in Annex A.