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## News Alert – UAE – Corporate – The new DIFC Companies Law

On 12<sup>th</sup> November 2018 the Dubai International Financial Centre (DIFC) enforced the new Companies Law (**Law or New Law**) with the objective to promote better shareholder and creditor protection and adapt the international best practice and comparable models by introducing a new classification of companies. The law intends to provide greater certainty and flexibility for companies.

The new companies law No. 5 of 2018 and Companies regulation (**Regulation or new Regulation**) of 2018 overrules the pre-existing companies law No. 2 of 2009 as amended by DIFC Amendment Law No. 1 of 2013.

In the following we have outlined significant key changes, which we deem relevant for existing and future DIFC companies and how these changes differ from the previous DIFC Companies Law no. 2 of 2009 (**Previous Law**) and effect the companies in practice.

### Application of the new Law

The new law applies in the jurisdiction of the DIFC and to any natural person and entities who conducts or attempt to conduct business in or from the DIFC.

Previous Law	New Law	Summary of change / practical consideration
<p><b>Type of companies:</b></p> <ol style="list-style-type: none"> <li>1) Companies Limited by Shares (<b>Ltd.</b>)</li> <li>2) Limited Liability Companies (LLC)</li> <li>3) Recognised Companies</li> </ol>	<p><b>Types of companies:</b></p> <ol style="list-style-type: none"> <li>1) Private Company</li> <li>2) Public Company</li> <li>3) Recognised Company</li> </ol>	<p>Introducing a public and private company regime. The Limited Liability Company (LLC) regime under the previous law has been removed in favour of the companies limited by shares.</p> <p><u>Current existing LLC and Ltd.</u> established prior to the new law, were automatically converted into Private companies (Ltd.).</p> <p>Article of Association (AOA) shall be adopted and amended within 12 months from the date of law enforcement, to the extent that it is necessary in accordance with the new law. Until then the AOA continue to apply to that</p>

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		<p>company, but only to the extent that such articles do not conflict with the new Law.</p> <p><u>A company limited by Shares;</u> and which was a Public listed company under the Market Law 2012 or had any of its shares admitted to trading on regulated market; or had more than 50 shareholders, is automatically converted into a Public Company (PLC).</p> <p>The PLC has <u>12 months from the date of law enforcement</u> to adopt the AOA so that they are consistent with the requirements of the law as applicable to that company.</p> <p>If the companies do not adopt within set dead line <u>a fine will we imposed.</u></p>
<p><b>Minimum share capital:</b></p> <p>All companies (except of the Dubai Financial Services Authority – DFSA- regulated companies) had a minimum capital requirement of USD 50,000.</p>	<p><b>Minimum share capital:</b></p> <p>Private Company: No Minimum share capital share requirement.</p> <p>Public Company: Minimum share capital of no less than USD 100,000, paid up at least to one -quarter of its value .</p>	<p>All automatic converted PLC have 12 months from the date of law enforcement to adopt the AOA and <u>increase its share capital</u> to comply with the mandatory minimum share capital requirements.</p> <p>Subscribed Membership interest of a former LLC will be converted into shares and the Register of Shareholders of the Company must be updated accordingly.</p>
<p><b>Features of a Company:</b></p> <p><b>LLC :</b> Minimum of 1 or more Members</p> <p><b>LLC:</b> Minimum of 1 or more Managers</p> <p><b>Companies Limited by Shares:</b> Minimum of 1 or more</p>	<p><b>Features of a Company:</b></p> <p><b>Private Company:</b> Minimum of 1 shareholder and maximum of 50</p> <p><b>Private Company:</b> Minimum of 1 Director</p> <p><b>Public Company:</b> Minimum</p>	<p><u>Manager of LLC</u> which are automatically converted to a Private Company shall be deemed to be a Director of that Company. This amendment must be reflected in the AOA within the 12 months deadline.</p>

<p>Shareholders</p> <p><b>Companies Limited by Shares:</b> Minimum of 1 Director</p>	<p>of 1 shareholder with no limitation</p> <p><b>Public Company:</b> Minimum of 2 Directors</p>	
<p><b>Duties of Directors:</b></p> <ul style="list-style-type: none"> <li>- Duty to act in good faith and for the interest of the company and exercise reasonable care and diligence.</li> <li>- Duty to disclose interest in a proposed or existing transaction or arrangement</li> </ul>	<p><b>Duties of Directors:</b></p> <ul style="list-style-type: none"> <li>- Duty to act within powers.</li> <li>- Duty to promote the success of the company.</li> <li>- Duty to exercise independent judgement.</li> <li>- Duty to avoid conflicts of interest.</li> <li>- Duty not to accept benefits from third parties.</li> <li>- Duty to declare interest in a proposed or existing transaction or arrangement.</li> </ul>	<p>The new law enhanced the duties of the Director(s) significantly and is based on the UK Companies Act 2006.</p> <p>The AOA shall not include any provisions with the effect to weaken the duties of Directors.</p> <p>The DIFC Registrar of Companies can initiate court proceedings against any director contravening one or more of those duties.</p>
<p>Merger and compromises arrangements:</p> <p>Merges and scheme of compromises and arrangements provisions were not available in the previous law.</p>	<p>Merger and compromises arrangements:</p> <p>Merges and scheme of compromises and arrangements provisions introduced in Part 8 and 9 of the law.</p>	<p>The new provision provides for <u>Public Companies</u> established in the DIFC to merge with other companies, including those established in <u>jurisdictions outside of the DIFC</u>.</p> <p><u>Private Companies</u> are allowed to merge provided that the AOA or special resolution expresses such authority.</p> <p>The provision dealing with <u>compromises and arrangements</u> (e.g. amalgamation) of Companies registered in DIFC applies equally to Private and Public companies.</p>
<p><b>Audit requirements:</b></p> <p>All companies were required to prepare an accounting and audit report and lay it out before a General meeting for approval by the shareholders.</p>	<p><b>Audit requirements:</b></p> <p>Audit requirements are still applicable for all companies.</p>	<p><u>Small Private company</u> carve – out from the requirement for a company’s annual audit report.</p> <p>Small Private companies are companies with an annual turnover of not more than USD</p>

		<p>5,000,000 and has not more than 20 shareholders.</p> <p>Existing companies should assess whether they do fall under the small company requirements. The turnover calculation must include all subsidiaries of the Private company. The carve -outs approach is consistent with the similar carve -outs scheme in other jurisdictions, such as the UK, Australia and Singapore. The objective is to free small companies from the associated costs relating to annual audits and filing with the Registrar, which are usually not appropriate with the size and nature of such companies.</p>
<p><b>Annual General Meeting:</b></p> <p>LLC and Ltd. were required to hold annual General Meetings in</p>	<p><b>Annual General Meeting:</b></p> <p>Private Companies are not required to hold annual General Meeting, unless expressly required to do so under its AOA. PLC are still required to hold annual General Meetings.</p>	<p>Privat Companies should adopt the AOA according to their needs of introducing or opting out of the annual General Meeting.</p>
<p><b>Director's Report:</b></p> <p>Director's Report for Public companies was not available in previous law.</p>	<p><b>Director's Report:</b></p> <p>Director's report preparing has now been introduced as a mandatory requirement for Public Companies.</p>	<p>Public Companies must prepare a Director's report along with the audit and accounting report for approval before the General Meeting.</p>
<p><b>Pre -emption rights:</b></p> <p>Pre-emption rights was only regulated for existing shareholders of an LLC and not for other companies.</p>	<p><b>Pre- emption rights:</b></p> <p>Introduction of formal pre-emption rights for existing shareholders of all company types.</p>	<p>Companies should review their AOA adapt appropriate exclusions or restrictions of such rights as they deem necessary (for instance prohibiting allotting shares of a particular class) through special resolution recommended by the Directors in written statement circulated to all shareholders.</p> <p>The regulation aims to guard against undue dilution of exist-</p>

		ing shareholder rights and contains appropriate exclusions of certain shares such as shares from an employee share scheme.
<p><b>Special Resolution:</b></p> <p>Special Resolution requirements were not applicable in the previous law.</p>	<p><b>Special Resolution:</b></p> <p>Special Resolution requirements were introduced for certain transactions (e.g. alteration of AOA). Special Resolution requires at least 75% of shareholder votes in a General meeting and further submission of the resolution to the Registrar within 30 days after it is passed.</p>	<p>AOA of companies should be adopted accordingly from <u>ordinary resolution to the special resolution</u> requirements set forth by law, to ensure legitimacy of certain decisions and <u>avoid fines for no or late submission to the Registrar.</u></p>

**Conclusion**

Companies are urged to undertake all necessary steps to abide to the new law, in particular adopting their AOA accordingly and making amendments / changes to company name to avoid any penalty fines. MENA LEGAL would be delighted to assist with advising on the required procedures for each company to ensure compliance with the new law.

Future investors who are planning to set up a small business in DIFC can now opt for a Private company (Ltd.) but can also still consider the possibility of registering a Limited Liability Partnership (LLP) under the current LLP law if this company type caters more to their needs of small business.

MENA LEGAL will remain attentive to the evolution of the process and keep you informed.

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