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Further Expansion of DIFC Prescribed Company Regime

The DIFCA published a consultation paper seeking public comment on a draft of the amended PC Regulations in May of this year. The amendments take effect on 15 July 2024.

The Dubai International Financial Centre Authority (“**DIFCA**”) has enacted amendments to the DIFC Prescribed Company Regulations (the “**PC Regulations**”) which aim to simplify and expand the Prescribed Company (“**PC**”) regime, including to expand the types of persons who may incorporate or continue a PC in the Dubai International Financial Centre (the “**DIFC**”). The DIFCA published a consultation paper (the “**Consultation Paper**”) seeking public comment on a draft of the amended PC Regulations in May of this year. The amendments take effect on 15 July 2024.

The amended PC Regulations allow for the establishment of private limited companies in the DIFC as passive holding company vehicles that benefit from: (i) certain exemptions from requirements that apply to other private limited companies under DIFC laws and regulations (such as the requirement for a company to carry on its principal business activity in the DIFC); and (ii) lower incorporation and licensing fees. The PC regime facilitates the use, by qualifying persons, of PCs as holding or interim holding companies for the purposes of, for example, transaction structuring, financings and/or holding assets.

Since their enactment in 2019 (which repealed and replaced the DIFC Special Purpose Company Regulations), the PC Regulations were further expanded in 2020 and 2022. The latest amendments continue this trend. The continued expansion of the regime has been balanced with the DIFCA’s desire for the DIFC to be a jurisdiction of substance, by limiting the ability of persons to establish companies in the DIFC without having a substantive presence in, or nexus with, the free zone.

Capitalised terms used in this article have the meanings given in the PC Regulations.

Key changes introduced

Qualifying requirements

The previous definition of “Qualifying Applicant” has been removed and, instead, an applicant wishing to incorporate or continue a PC in the DIFC must satisfy the Registrar that:

- the PC shall be Controlled by one or more:
    - GCC Persons (i.e. a GCC citizen, a body corporate or unincorporated body Controlled by a GCC citizen(s), a body corporate that has any class of its securities listed on a securities exchange in the GCC, the UAE government or person in which the UAE government owns (directly or indirectly) an interest of at least 25%, or such other percentage as approved by the DIFCA);
    - Registered Persons (i.e. a legal body incorporated, registered or continued in the DIFC); or
    - Authorised Firms (i.e. a person who holds a licence from the DFSA or financial services regulator in the UAE or certain other recognised jurisdictions);
- the PC is to be established or continued in the DIFC for the purpose of holding legal title to, or Controlling, one or more GCC Registerable Assets (i.e. an asset or property interest that must be registered with a GCC Authority to establish legal ownership, secure rights, etc.);
- the proposed PC is to be established or continued in the DIFC for a Qualifying Purpose; or
- the proposed PC has a Director that is an Employee of a Corporate Service Provider and that Corporate Service Provider has an arrangement with the Registrar to carry out certain compliance functions on behalf of the Registrar as set out in the PC Regulations.

Most notably, the qualifying requirements include new definitions of “GCC Person” and “GCC Registerable Asset”.

A PC is required to file with the Registrar, on each renewal of its licence, a confirmation statement confirming that it continues to meet the qualifying requirements applicable to it.

Qualifying Purpose

While the definition of Qualifying Purpose has been retained from the previous PC Regulations, the former categories of “DIFC Holding Structure” (i.e. a PC used to hold shares in other DIFC registered entities) and “Innovation Holding Structure” (i.e. a PC used to hold shares in certain entities with a business model using, developing or testing new or innovative technology) have been removed. “DIFC Holding Structures” have been made redundant as a qualifying purpose due to the new “GCC Registerable Asset” qualifying requirement (which would include holding shares in a DIFC registered entity), and the DIFCA considers that the expanded qualifying requirements are sufficiently broad to facilitate innovation holding structures (without recognising this as a separate qualifying purpose).

Arguably there has been a narrowing of the regime as it relates to Funds (and, in particular, Foreign Funds) which were included in the list of "Qualifying Applicants" under the previous PC regime. However, in practice, this may have limited impact as Foreign Funds that were likely to avail themselves of the PC regime were likely to be funds that would meet one of the qualifying requirements for setting up a PC under the amended PC Regulations (e.g. for the purposes of owning or Controlling GCC Registrable Assets).

The amended list of Qualifying Purposes now includes the following:

- an Aviation Structure;
- a Crowdfunding Structure;
- an Intellectual Property Structure;
- a Maritime Structure; or
- a Structured Financing.

<u>Introduction of a grace period</u>

As explained in the Consultation Paper, the DIFCA recognises that PCs may serve a structuring purpose within a future contemplated transaction (whereby it is necessary to establish the structure first before the PC meets the relevant qualifying requirements). Therefore, in respect of PCs established or continued in the DIFC for the purpose of holding or Controlling GCC Registerable Assets or for a Qualifying Purpose, the amendments introduce a grace period to allow such PCs to meet the relevant qualifying requirement within a period of six months of the date of issue of the PC licence (or such longer period as the Registrar may afford).

<u>Ability of PCs to employee Employees</u>

The amendments to the PC Regulations introduce a new provision which makes clear that PCs are not permitted to employ any Employees. However, this would not prevent a PC from appointing directors or hiring third-party service providers (such as advisory firms).

As explained in the Consultation Paper, in relation to the small number of existing PCs that currently have Employees, these entities will be the subject of, what the DIFCA refers to as, a "commercial package" that will return such entities to the status of a regular private company under the Companies Law, but enable such entities to continue to benefit from reduced licensing fees and certain other benefits that were available to them under the previous PC regime.

Key benefits of the PC regime

<u>Registered office</u>

A PC is not required to lease office space in the DIFC, although it must have a registered address in the DIFC which must either be the registered office of its Corporate Service Provider or an

Affiliate that is a Registered Person (provided that such registered office is not a premises designated for any retail purpose in the DIFC).

Operations in the DIFC

PCs are exempt from: (i) the provision of the Operating Law which requires a Registered Person to carry on its principal business activity in the DIFC; and (ii) the provision of the DIFC Companies Regulations 2018 which requires a DIFC company to establish its operations in the DIFC following the approval of its application for incorporation.

Crowdfunding – exemptions

A PC whose Qualifying Purpose is a Crowdfunding Structure: (i) is exempt from the Companies Law requirement to have no more than 50 shareholders; and (ii) where such PC's annual turnover is no more than USD 5,000,000 (calculated on a consolidated basis including all Subsidiaries) it will be exempt from the requirement to prepare and file audited accounts with the Registrar, even if it has more than 20 shareholders (which would ordinarily mean that such exemption in Article 124(6) of the Companies Law would not apply).

Structured Financing – exemptions

A PC whose Qualifying Purpose is a Structured Financing is exempt from any requirement to file its accounts with the Registrar or to have them audited.

A PC whose Qualifying Purpose is a Structured Financing that is making an offer of its Securities to the public to facilitate a bond or sukuk issuance is exempt from the usual prohibition for private companies on making an offer of its Securities to the public and from the Companies Law requirement to have no more than 50 shareholders.

Reduced fees

The PC regime offers low incorporation and licence renewal fees for PCs: a USD 100 application fee (one time) and an annual licence fee of USD 1000 (as at the time of publication of this article).

Conclusion

Owing to, among other things, continued demand and the introduction of UAE corporate tax (and consequent reduced concern around substance requirements), the DIFCA has further expanded the qualifying requirements for establishing PCs. The PC Regulations have also been simplified, including by removing certain qualification requirements that have either become redundant or no longer justify a specific set of rules and detailed definitions.

The expanded PC regime is a welcome development, providing an expanded group of potential applicants with increased structuring options, to facilitate business in and from the DIFC.

As a result of the amendments, existing PCs should consider whether they will continue to meet the qualifying requirements and other operational requirements of the amended PC Regulations.

The following Gibson Dunn lawyers prepared this update: Andrew Steele and Ashley Cywicki.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Mergers & Acquisitions or Private Equity practice groups, or the authors:

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