UAE: Dubai International Financial Centre (DIFC) Prescribed Company Regulations

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Insights
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In brief

On 31 October 2019, the DIFC enacted the Prescribed Company Regulations 2019 (the "Regulations"). The purpose of the Regulations is to consolidate and simplify the previous special company regimes in the DIFC namely, the Special Purpose Company ("SPC") and the Intermediate Special Purpose Vehicle ("ISPV"). In addition, the Regulations create more flexibility for person(s) permitted to set up these types of companies in the DIFC, which offer a cost efficient and streamlined incorporation process, by widening the scope of applicants that qualify.

The Regulations repeal and replace the Special Purpose Company Regulations issued on 25 November 2008 (the "Previous Regulations"). Effective from 31 October 2019, all existing SPCs and ISPVs registered in DIFC automatically became a Prescribed Company.

In detail

Who can set up a Prescribed Company?

Prior to enactment of the Regulations, an SPC activity or purpose was limited to structured financing transactions and an ISPV could only be established by (i) a DIFC incorporated fund or a DFSA regulated asset or fund manager; or (ii) an investment structure relating to a holding company, proprietary investment company or a Single Family Office already present in the DIFC.

The previous activity and ownership limitations have been amended under the Regulations and a Prescribed Company can now:

1. be controlled by one (1) or more Qualifying Applicants; or
2. be established or continued in the DIFC for a Qualifying Purpose.

Qualifying Applicants are deemed to be any of the following:

1. an Authorised Firm;
2. a Fund;
3. a Family Office;
4. a Fintech Entity
5. a Foundation;
6. a Government Entity;
7. a Holding Company;
8. a Private Trust Company;
9. a Proprietary Investment Company; or
10. a person wholly owned by one (1) or more of the foregoing Qualifying Applicants, and the DIFC Registrar must be satisfied that it or they will Control the Prescribed Company.

Authorised Firm is defined as 'a person who holds a licence from the DFSA or a Recognised Financial Services Regulator to carry out one or more Financial Services, excluding a representative office.

Control is defined as 'the power of a person to secure by means of the holding of shares or the possession of voting power in either case directly or indirectly; or as a result of any powers conferred by the Articles of Association or other document regulating the Prescribed Company or any other body corporate, that the affairs of the Prescribed Company are conducted in accordance with such person's wishes'.

Qualifying Purpose is considered as::

1. an Aviation Structure;
2. a Crowdfunding Structure;
3. a Family Holding Structure; or
4. a Structured Financing.

What are the key features of the new Regulations?

As can be seen from the list of Qualifying Applicants and Qualifying Purpose above, significantly more persons will be eligible to set up a Prescribed Company than would have qualified under the Previous Regulations. Similar to the SPC and ISPV regimes, a Prescribed Company has the benefits of lower incorporation and renewal costs. The fees that apply to a Prescribed Company in comparison to a standard company are as follows:

	Prescribed Company (USD)	**Private Company (USD)**
Incorporation fees	100	• 8,000 for non-retail activities (regulated and non-regulated) • 3,400 for retail activities
Licence renewal	1,000	• 12,000 for non-retail activities (regulated and non-regulated) • 5,100 for retail activities
Lodgement of a confirmation statement* **not applicable for an investment fund*	300	300
Application to transfer an incorporation to/from DIFC	1,000	• 8,000 for non-retail activities (regulated and non-regulated) • Not applicable for retail activities

Additionally, the annual compliance obligations are reduced for Prescribed Companies. They are not required to audit or file their accounts.

Another advantage to highlight in the Regulations is that there is more scope for office space savings. The Regulations allow a Prescribed Company to have its registered office at the office space of (i) its Qualifying Applicant or, where applicable, any one of them; (ii) the registered office in the DIFC of the Registered Person establishing the Prescribed Company for a Qualifying Purpose or, where applicable, any one of them; or (iii) the registered office of a Corporate Service Provider ("CSP"). In comparison, all other company types incorporated in the DIFC are required to have their own registered office in the DIFC.

The Regulations specifically expand the scope of use by funds and other firms with a licence from a 'Recognised Financial Services Regulator', which is defined as a financial services regulator in a 'Recognised Jurisdiction' (the UAE, a Zone 1 country or a jurisdiction recognised by the Dubai Financial Services Authority ("DFSA") under Article 55 of the DIFC Collective Investment Law, DIFC Law No.2 of 2010).

Previously, there was no advantageous company regime in the DIFC available to a fund, fund manager or other financial regulated firm that is not registered in the DIFC and regulated by the DFSA. The ISPV was only available to those registered in the DIFC and licensed by the DFSA. However, the Regulations now mean that a Prescribed Company can be incorporated by a fund manager, a trustee or general manager (to hold assets on behalf of a fund) registered in a Recognised Jurisdiction outside of the DIFC, as well as other firms with a licence from a Recognised Financial Services Regulator.

Under the Regulations it is optional for any applicant to appoint a CSP, which as mentioned above can provide the registered office. Previously, the appointment of a CSP was mandatory for an SPC. In addition, an SPC had a special form Articles of Association. Under the Regulations, all Prescribed Companies, including those with a Qualifying Purpose, will have a standard form Articles of Association. However, the Articles of Association of a Prescribed Company serving a Qualifying Purpose shall limit its objects and activities to only its Qualifying Purpose and activities ancillary to such purpose. SPCs incorporated under the Previous Regulations should, therefore, ensure that their Articles of Association are updated accordingly.

What does this mean for existing SPCs and ISPVs?

Every SPC and ISPV incorporated in the DIFC will:

1. automatically become a Prescribed Company under the Regulations;
2. automatically have its name changed so it ends with "Limited" or "Ltd", unless the company makes a request to the DIFC Registrar to retain its name within the ninety (90) day period; and
3. need to comply with the requirements of the Regulations, including (if necessary) amending its Articles of Association within one year from the enactment date.

Should a Prescribed Company no longer meet the requirements outlined in the Regulations, the DIFC Registrar may, after following certain procedures, revoke its status as a Prescribed Company.

How can PwC assist you?

- Advise on how the Regulations may impact your existing SPC or ISPV.
- Assist with amending your Articles of Association to comply with the Regulations, if required.
- Advise on whether you meet the requirements under the Regulations to incorporate a Prescribed Company.
- Advise on the structuring and governance framework of a Prescribed Company, and assist with incorporating the structure.
- Assist with ensuring the compliance obligations of the Prescribed Company are met.

Key takeaways:

- A prescribed company can now be controlled by one or more qualifying applicants, or be established or continued in the DIFC for a qualifying purpose. This enables more persons to be eligible for setting up a Prescribed Company than would have qualified under the Previous Regulations
- There are significant benefits for setting up a prescribed company, i.e. lower costs than a private company, reduced ongoing compliance obligations and more scope for office space savings.
- The Regulations specifically expand the scope of use by funds and other firms with a licence from a 'Recognised Financial Services Regulator'.
- Existing SPCs and ISPVs will need to comply with the new Regulations by amending their Articles of Associations (if necessary), and will automatically be converted to a Prescribed Company.

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Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

PwC Middle East Tax and Legal contacts

Darren Harris,
Middle East Legal Services Leader
+971 (0) 4 304 3309
darren.harris@pwc.com

James Pollard,
UAE Partner, Tax
+971 (0)52 280 6194
james.pollard@pwc.com

Nadia Taousi,
UAE Senior Manager, Entity Governance & Compliance
+971 (0) 4 515 7112
nadia.taousi@pwc.com

Stephanie Williams-Quinn,
UAE Director, Entity Governance & Compliance
+971 (0) 54 7933941
stephanie.williams-quinn@pwc.com