Developments: stimulus offering due to COVID-19

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Introduction

After a period of confinement, on 26 April 2020, subject to certain specific restrictions, DIFC entities were allowed to recommence their operations. In particular, offices were allowed to open (with a maximum of 30 per cent of the workforce being allowed to work from office premises) provided that they comply with social distancing and public health procedures.

Although no sales or promotions were permitted, a number of retailers were able to open their doors to customers.

With the objective in mind of making sure the business environment of the Dubai International Financial Centre remains relevant and attractive in the ever-changing world of today, the DIFC has been working on numerous initiatives, over the past months.

Whilst some are aimed at expanding the Prescribed Companies regime, the others concern certain technical aspects of the DIFC businesses' journey in the context of the DIFC portal experience.

Early this year, the Management of the DIFC Authority was faced with the challenges posed by the outbreak of COVID-19.

On one hand, HR teams of DIFC businesses were receiving enquiries from their employees about the measures the businesses planned to adopt in order to protect the health and safety of their staff. On the other hand, managers of those same businesses were starting to realise they may not be able to achieve financial targets for their organisations and may be forced to adopt certain emergency measures to secure business continuity and often, survival, of their organisations.

The DIFC Authority made it a priority to look into its legal framework and propose changes to its regulations with the aim of easing the financial and operational burden on DIFC businesses.

We share highlights of those changes below.

DIFC fiscal easing measures

Due to the impact of COVID-19 and in line with the UAE Government's efforts to support businesses, the DIFC introduced a number of fiscal easing measures on 31 March 2020 to assist DIFC business throughout the period of April 1 2020 – June 30 2020 ('Timeframe'), which are as follows:

Deferred payment on all leases

The DIFC has provided an opportunity to defer rent payments for three months on a six-month payment plan for all DIFC leases entered into with DIFC Investments Ltd. This covers offices within the Gate Building, Gate District Building 2 to 5, Gate Village Buildings 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 and Gate Avenue.

Full waiver of annual licensing fees for new entities

The licence and registration fee has been waived for new registration applications submitted during the Timeframe.

Licence renewal fee discount

For all existing DIFC entities, the licence renewal fee will be reduced by 10 per cent during the Timeframe. This discount only applies to the licence fee and does not apply to Data Protection fees and DFSA fees (if applicable).

Reduction on fees for property registration from 5 per cent to 4 per cent for three months

Transfer fees for any sale or purchase of property within the Timeframe will be reduced from 5 per cent to 4 per cent provided that the transfer is registered with the DIFC Registrar of Properties, at the latest, within 30 days after the expiry of the Timeframe.

Free movement of labour

Employees are able to freely move in and out of the DIFC to other free zones, so long as the employers concerned have the necessary arrangements and contracts in place with their employees and a request to transfer the visa or issue a seconded access card is submitted to DIFC Government Services and adheres to DFSA’s requirements (where it applies).

New DIFC client portal and process

The DIFC has revamped its client portal to ease the way in which new and existing DIFC entities conduct business.

The key developments are:

Agent account

The introduction of the agent account allows users to have one set of login details to manage the DIFC portal account of multiple DIFC entities.

Super user

Super users have the ability to grant access to an individual to have access to the DIFC portal account without the need to gain approval from the DIFC Registry Services. In the case of adding or removing a super user, the authorised signatory of the DIFC entity would need to provide their approval.

New entity name availability

This new capability allows clients to verify available entity names either when establishing a new entity within the DIFC, or when changing an entity name post incorporation.

Initial approval and final registration both completed on the DIFC portal

This new development will streamline and simplify the application and registration process. In particular, incorporating shareholders, directors, UBO details need to be entered under this new application form only upon the initial approval request process. The information will automatically be generated under the registration application, without the need to provide it again at that stage (which was the case previously).

Initial approval for company structures

This functionality allows an applicant to obtain initial approval for a group of entities that form a structure such as Holding Company Structures without the need for filing a different initial approval form for each entity. It also that information of a repetitive nature, e.g. details of the same directors for more than one entity, does not need to be re-entered on the platform and will automatically appear on future applications.

Passport certifications

Certified passport copies of individual partners or shareholders or those of directors are only required at an entity’s incorporation. Any post incorporation applications will be acceptable based on regular passport copies only; there is no need for certification of the passport copies.

Constitutional documents to be signed electronically

Constitutional documents such as articles, charter or by-laws, partnership agreements etc. can now all be signed electronically via the DocuSign software.

Emergency measures: Directive No. 4 of 2020

Similarly, to the fiscal easing initiatives introduced to assist DIFC companies, the DIFC has also released Directive No. 4 of 2020 to provide emergency measures between 21 April 2020 and 31 July 2020 ('Directive') to provide flexibility and protection to employers and employees during this challenging time.

The objective of the Directive is to ensure that DIFC employers are able to make the necessary changes to their employees' terms of employment which will therefore minimise the risk of employees being terminated.

The measures available to DIFC employers under the Directive are, for example:

- reduced working hours;
- imposed annual leave;
- reduced remuneration;
- restricted workspace access;
- imposed remote working; and
- waivers of application of certain DIFC Employment Law No. 2 of 2019.

Under the Directive:

- DIFC employers should provide their employees with a five-day written notice before imposing any of the measures under the Directive;
- any employee of a DIFC entity who contracts COVID-19 or has been quarantined by the relevant authority to reduce the spread of the virus will still maintain full remuneration; and
- visa cancellations for terminated employees can be deferred, so that, e.g. the terminated employees could continue to benefit from their medical insurance coverage.

Prescribed company regime: expansion

The eligibility requirements to establish a prescribed company ('PC(s)') in the DIFC are now broader.

A PC can be incorporated by a qualifying applicant or with a qualifying purpose.

When the regime was introduced, the following categories were considered as qualifying applicants:

- authorised firm;
- fund;
- fintech entity;
- holding company;
- family office;
- private trust company;
- foundation;
- proprietary investment; and
- Government entity.

Going forward, the following categories of applicants will also be eligible to form a PC:

- non-retail DIFC entities (other than PCs);
- shareholders (body corporate or individual shareholders) and ultimate beneficial owners with a majority interest in a DIFC-based qualifying applicant;
- any Affiliates of a DIFC-based qualifying applicant; and
- family owned businesses that meet the definition of a Single Family under the DIFC Single Family Office Regulations and have a large presence in the UAE, that meets certain criteria (asset value, number of employees, space/sq ft in UAE).

Economic substance

In accordance with the Ministers Resolution No. 31 of 2019 concerning Economic Substance Regulations (‘Resolution’), all DIFC entities must submit an economic substance notification by 12 June 2020 via the DIFC Client Portal, regardless of whether or not the DIFC company conducts a relevant activity under the Resolution.

The contents of the Resolution together with the supporting guidelines will assist DIFC companies in determining whether or not they are captured under the Resolution.

Under the current regime, each DIFC entity shall notify the DIFC Registrar of Companies by 12 June 2020, via their DIFC portal, if the Resolution applies to that entity.

For those entities that are, indeed, captured by the Resolution, the deadline for filing the economic substance report with the DIFC is 31 December 2020.

DIFC foundation and JAFZA vehicles

A DIFC foundation is a unique structure, with its own legal personality that is separate from its founder. Unlike a typical company, it has no shareholders or partners; rather it is ‘self-owned’. A DIFC foundation allows the founder to separate their personal wealth from their commercial interest. Assets owned by the DIFC foundation become part of the founder’s estate.

Despite some previously experienced challenges in utilising DIFC foundations under wider structures, DIFC foundations are now eligible to become a holder of shares in a company incorporated in the Jebel Ali Free Zone (‘JAFZ’). This development is particularly interesting when it comes to succession planning and owning real estate within the UAE as a combination of DIFC foundations and JAFZA entities under a complex asset-ownership model allows parties to benefit from limitation of liability under a JAFZA vehicle while securing a succession planning mechanism under the DIFC foundation.

Assets owned by a JAFZA entity which, in turn, are then owned by a DIFC Foundation allows for the assets to be managed and controlled in a flexible and sophisticated common law jurisdiction.

Conclusion

In line with its vision of continuously developing to meet the dynamically changing needs of the business community, the DIFC has demonstrated commitment to and support for DIFC companies.

Enabling documents’ execution in an electronic manner, the software upgrade that allows DIFC portals to be managed time-efficiently as well as the broadening of the eligibility criteria to form a

PC are perfect examples of those exciting new initiatives.

At the same time, the DIFC has implemented various fiscal easing initiatives to nurture companies during this challenging time, along with new developments that ease the way in which companies operate within the DIFC. Some businesses will be able to benefit from office space rent reduction and possibly work out arrangements with their employees that will allow their financial position to remain relatively stable.

Although the challenges resulting from the pandemic are not yet behind us, the DIFC's measures have been welcomed by the business community and viewed as pain relief to those somewhat painful and bitter times.

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