

In this document, underlining indicates new text and striking through indicates deleted text



**DIFC AMENDMENT LAW**  
**DIFC LAW NO. 1 OF 2023**

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## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the “DIFC Laws Amendment Law, DIFC Law No.1 of 2023”.

### **2. Legislative authority**

This Law is made by the Ruler of Dubai.

### **3. Date of enactment**

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

### **4. Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

**PART 2: AMENDMENTS TO EMPLOYMENT LAW 2019**

1. The Employment Law 2019 is amended as prescribed in this Part.
2. The following Articles of the Employment Law 2019 are to be amended by inserting the underlined text and deleting the struck through text as shown below:

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## **PART 10: TERMINATION OF EMPLOYMENT**

### **62. Minimum notice periods**

- (1) An Employer or an Employee may terminate an Employee's employment without cause in accordance with this Article.
- (2) Subject to Articles 62(3), 62(4), 62(6) and 63, the written notice required to be given by an Employer or Employee to terminate the Employee's employment shall not be less than:
  - (a) seven (7) days, if the period of continuous employment of the Employee is less than three (3) months, including any period of Secondment;
  - (b) thirty (30) days, if the period of continuous employment of the Employee is in excess of three (3) months but less than five (5) years, including any period of Secondment; or
  - (c) ninety (90) days, if the period of continuous employment of the Employee is in excess of five (5) years, including any period of Secondment.
- (3) Article 62(2) shall not prevent an Employer and Employee from agreeing to a longer notice period in an Employment Contract.
- (4) An Employer may only make a payment of Wages to an Employee in lieu of all or part of the Employee's notice period pursuant to Article 63(2) or if the Employee agrees to such a payment in an agreement entered into pursuant to Article 11(2)(b).
- (5) An Employer may require an Employee not to attend work or undertake their duties during all or part of the Employee's notice period.
- (6) Article 62(2) does not apply:
  - (a) during any probation period agreed in an Employment Contract;
  - (b) where it has been agreed in the Employment Contract that the Employee's employment will terminate on the expiry of a fixed term; or
  - (c) in respect of termination for excessive Sick Leave in accordance with Article 36(1).

### **63. Termination for cause**

- (1) An Employer or an Employee may terminate an Employee's employment with immediate effect for cause in circumstances where the conduct of one (1) party warrants termination and where a reasonable Employer or Employee would have terminated the employment as a consequence thereof.
- (2) If an Employee terminates their employment for cause pursuant to Article 63(1), the Employee shall be entitled to:
  - (a) a payment of Wages in lieu of their notice period;
  - (b) a Gratuity Payment calculated to include the notice period the Employee would have been required to give to terminate their employment in accordance with Article 62(2); and
  - (c) a payment in lieu of the Employee's accrued untaken Vacation Leave calculated to include the notice period the Employee would have been required to give to terminate their employment in accordance with Article 62(2).
- (3) If an Employer terminates the employment of an Employee for cause pursuant to Article 63(1):

- (a) the Employee shall not be entitled to receive any payment of Wages in lieu of their notice period; and
- (b) the Employee's Gratuity Payment and outstanding Vacation Leave shall be calculated up to the Termination Date.

**64. Right to written statement of reasons**

- (1) If so requested by an Employee within a period not later than thirty (30) days after the Termination Date, an Employer shall provide the Employee with a written statement of the reasons for the Employee's termination for cause under Article 63(1) within a period of fourteen (14) days after receipt of such a request.
- (2) Any written statement of reasons provided under Article 64(1) shall have sufficient detail included in order for a reasonable person to understand the reasons for the termination of the Employee's employment for cause under Article 63(1).

**65. Pension for UAE and GCC nationals**

- (1) Where an Employee is a UAE or a GCC national, the Employer shall ensure that the Employee is registered with the GPSSA and shall make the necessary pension contributions in accordance with Federal Law.
- (2) An Employee registered with the GPSSA pursuant to Article 65(1) shall not be eligible to receive a Gratuity Payment on the termination of their employment with their Employer.
- (3) Where an Employee under Article 65(1) is a UAE or a GCC national and that Employee's pension contribution to the GPSSA is less than the amount of Core Benefits that would have been due to that Employee had that Employee not been a UAE or a GCC national, such Employee shall be entitled to a top-up contribution of the difference to a Qualifying Scheme pursuant to the provisions of Article 66(7)(c), provided that the monthly top-up contribution obligation for such Employee is equal to or greater than AED1,000.

**66. Gratuity Payment and Qualifying Scheme Benefits**

- (1) An Employee who is not registered with the GPSSA under Article 65(1), and who completes continuous employment of at least one (1) year or more with their Employer, before or after the Qualifying Scheme Commencement Date, is entitled to a Gratuity Payment for any period of service prior to the Qualifying Scheme Commencement Date on the termination of their employment.
- (2) An Employee's Gratuity Payment shall be calculated as follows:
  - (a) an amount equal to twenty one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement Date; and
  - (b) an amount equal to thirty (30) days of the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date,provided that the total Gratuity Payment shall not exceed an amount equal to two (2) times the Annual Wage of the Employee.
- (3) For the purposes of Article 66(2):
  - (a) an Employee's Basic Wage shall not be less than fifty percent (50%) of the Employee's Annual Wage;
  - (b) the daily rate of an Employee's Basic Wage shall be calculated by dividing the Employee's Basic Wage by three hundred and sixty five (365);

- (c) all references to an Employee's Basic Wage and Annual Wage shall be to those applicable to the Employee on the Employee's Termination Date; and
  - (d) where an Employee is employed by an Employer by way of multiple fixed term contracts, the aggregate of all fixed terms of employment served by the Employee shall determine the years of service of the Employee, provided that the fixed term contracts are in succession of each other, or an offer in respect of a new fixed term contract has already been made to the Employee at the expiry of the existing one.
- (4) Where the Qualifying Scheme Commencement Date or Termination Date occurs part-way through a year of service of an Employee, the Gratuity Payment in respect of the Employee for the part year of service shall be calculated on a pro rata basis.
- (5) An Employer may deduct from a Gratuity Payment any amounts due and owing to the Employer by an Employee pursuant to the provisions of Articles 20 or 28(2).
- (6) An Employer may transfer to a Qualifying Scheme the Gratuity Transfer Amount in respect of an Employee at any point subsequent to the Qualifying Scheme Commencement Date and, where such transfer takes place with the prior written consent of an Employee, the Employer shall be relieved of any obligation to:
- (a) make a Gratuity Payment to the Employee under Article 66(1); or
  - (b) make up any negative difference between:
    - (i) the value of the Money Purchase Benefits acquired in the Qualifying Scheme with the Gratuity Transfer Amount; and
    - (ii) the value of the Gratuity Payment that the Employee would have been entitled to under Article 66(1) at the Employee's actual Termination Date had the Gratuity Transfer Amount not been transferred to a Qualifying Scheme.
- (7) From the Qualifying Scheme Commencement Date an Employer shall, on a monthly basis, pay to a Qualifying Scheme, for the benefit of each Employee who is not an Exempted Employee, an amount equal to at least the Core Benefits, which shall be calculated as follows:
- (a) five point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first five (5) years of an Employee's service, inclusive of any period of employment served prior to the Qualifying Scheme Commencement Date; and
  - (b) eight point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service; or
  - (c) in respect of a UAE or a GCC national Employee that is entitled to a top-up contribution under Article 65(3), the positive difference between:
    - (i) the Core Benefits that would have been payable to the Employee under Article 66(7)(a) or Article 66(7)(b), whichever is applicable, had the Employee not been registered with the GPSSA under Article 65(1); and
    - (ii) the Employee's GPSSA pension contribution for the month in question pursuant to Article 65(1).

provided that where an Employee's Termination Date occurs part-way through a month, the Core Benefits payable by an Employer in respect of an Employee shall be calculated on a pro rata basis in respect of the part of the month served in employment, and which may be paid directly to the Employee pursuant to Article 19(1)(d).

- (8) For the purposes of Article 66(7):

- (a) the Employee's Monthly Basic Wage shall be for the month, or any part thereof at commencement of employment, in respect of which the Core Benefits are paid, irrespective of:
    - (i) any deductions from the Employee's Monthly Basic Wage permitted under the Law for the month in question;
    - (ii) any reduced amount payable to an Employee whilst on Sick Leave or Maternity Leave for the month in question; or
    - (iii) the Employee being on unpaid Vacation Leave;
  - (b) any calculation to establish an Employee's Monthly Basic Wage shall not be less than fifty percent (50%) of the Employee's Monthly Wage;
  - (c) where any pro rating is required, the daily rate of an Employee's Monthly Basic Wage shall be calculated by dividing the Employee's Basic Wage by three hundred and sixty five (365), provided that where an Employee's transition from less than five (5) years' service to more than five (5) years' service takes place during a month, the pro rating calculation for that month shall be achieved by:
    - (i) dividing the Employee's Monthly Wage by the number of days in that month; and
    - (ii) applying the relevant percentage in Article 66(7)(a) up to and including the day of the five (5) year anniversary of the Employee's period of service, and applying the relevant percentage in Article 66(7)(b) for the remainder of that month; and
  - (d) where an Employee is employed by an Employer by way of multiple fixed term contracts, the aggregate of all fixed terms of employment served by the Employee shall determine the years of service of the Employee, provided that the fixed term contracts are in succession of each other, or an offer in respect of a new fixed term contract has already been made to the Employee at the expiry of the existing one.
- (9) A Qualifying Scheme is one (1) which:
- (a) holds a valid Certificate of Compliance; or
  - (b) is deemed to be a Qualifying Scheme under the Regulations.
- (10) An Employer shall be required to obtain a Certificate of Compliance and provide any additional confirmations or filings in respect of each Qualifying Scheme it pays Core Benefits to as required under the Regulations.
- (11) Subject to Article 66(12), an Employer shall register each Employee entitled to Core Benefits as a member of a Qualifying Scheme within two (2) months from the date of their Qualifying Scheme Commencement Date, provided that:
- (a) the Employee will be entitled to Core Benefits on a retrospective basis to their Qualifying Scheme Commencement Date;
  - (b) any Core Benefits due for a period prior to the month during which the Employee is registered as a member of a Qualifying Scheme shall be paid in aggregate with the Core Benefits due in respect of the Employee for the month during which such registration took place; and
  - (c) the Employer shall not be responsible for any profit or loss that may have accrued in a Qualifying Scheme in respect of Core Benefits paid on a retrospective basis.



- (12) An Employer may defer the payment of an Employee's Core Benefits to a Qualifying Scheme during the Employee's probation period agreed to in an Employment Contract, in which case:
- (a) if the Employee's employment is confirmed:
    - (i) the Qualifying Scheme Commencement Date for the Employee will be the date of such confirmation;
    - (ii) the Core Benefits due to the Employee will be calculated retrospectively from the date of commencement of the Employee's employment; and
    - (iii) the provisions of Articles 66(11)(b) and (c) shall apply in respect of any Core Benefits due on a retrospective basis; or
  - (b) in the case of non-confirmation of the Employee's employment, no Core Benefits will be payable in favour of the Employee to a Qualifying Scheme,

provided that where an Employer has not deferred the payment of an Employee's Core Benefits during a probation period, the Employee shall remain entitled to any Core Benefits paid to a Qualifying Scheme on their behalf in case their employment is not confirmed.

- (13) Any agreement or arrangement between an Employer and an Employee to the extent that:
- (a) the Employee's Core Benefits shall not be paid into a Qualifying Scheme;
  - (b) the Employee shall be entitled to benefits less than the Core Benefits; or
  - (c) it has the effect of reducing an Employee's Basic Wage by making regular Wage related payments to an Employee appear to be discretionary or non-regular in nature, or made with reference to the profits of the Employer or an Affiliate,

shall be null and void and unenforceable, and an Employee's rights, remedies, claims or actions in respect thereof shall not be capable of waiver under Article 11(2)(b).

- (14) An Employee who wishes to contribute any part of their Remuneration to a Qualifying Scheme shall inform their Employer in writing, and the Employer shall be permitted to deduct the agreed amount from the Employee's Remuneration to pay to the Qualifying Scheme on behalf of the Employee.
- (15) Subject to Article 66(6), the risk in respect of any amounts paid by an Employer on behalf of an Employee to a Qualifying Scheme shall be that of the Employee.
- (16) An Employee shall not have any recourse, claim or action against an Employer in respect of its choice of Qualifying Scheme to pay Core Benefits to, provided that the Qualifying Scheme continues to hold a Certificate of Compliance.
- (17) An Employer who contravenes Articles 66(7), (8), (10), (11), ~~and (13)~~ or (18) is liable to a fine as set out in Schedule 2. Subject to Article 66(11), ~~and (12)~~ and (18), an Employer shall be in contravention of Article 66(7) if Core Benefits in respect of any monthly period is not paid by the Employer by the twenty first (21st) day of the next calendar month to a Qualifying Scheme on behalf of an Employee.
- (18) If, as a result of an Employer or an Employee being a Sanctioned Person, a Qualifying Scheme, its trustee or administrator, is unable to receive or administer Core Benefits payable by an Employer to the Qualifying Scheme on behalf of an Employee, the provisions of Article 66(1) to (5) shall apply (both inclusive) to the Employer for the relevant period, as if a Qualifying Scheme Commencement Date has not yet occurred, until the earlier of:

- (a) the Employer or Employee, whichever is applicable, is not a Sanctioned Person; or

(b) the Employee's Termination Date,

whereupon the Employer shall transfer any accrued Gratuity Payment to a Qualifying Scheme, or to the Employee, as the case may be, within the applicable time periods required under Article 66(17) or Article 19(1)(b).

(19) An Employer shall not be responsible to an Employee for any profit or loss that may have accrued in a Qualifying Scheme in respect of Core Benefits had it not been for the provisions of Article 66(18).

(20) The provisions of this Article 66 shall not derogate from an Employee's right to approach the Court in respect of enforcing any right, remedy, claim or action it may have against an Employer for non-payment of any Gratuity Payment or Core Benefits.

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**SCHEDULE 1  
INTERPRETATION**

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**3. Defined terms**

In this Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Term	Definition
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Exempted Employee	<p>an Employee who is:</p> <ul style="list-style-type: none"> <li>(a) required to be registered with the GPSSA under Article 65(1) <u>and that does not otherwise qualify for Core Benefits contributions to a Qualifying Scheme under Article 65(3);</u></li> <li>(b) referred to in Article 4(2)(a), (b) and (c);</li> <li>(c) serving a notice period under Article 62 on 1 February 2020;</li> <li>(d) employed under a fixed term Employment Contract that will end within three (3) months of 1 February 2020; or</li> <li>(e) an Equity Partner, provided that an Equity Partner is only an Exempted Employee to the extent that they make drawings from a partnership, equity, capital or profit account of the Employer or an Affiliate, or receive profit distributions or dividends from their Employer or an Affiliate.</li> </ul>
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Qualifying Scheme Commencement Date	<p>any one (1) of the following, whichever is applicable:</p> <ul style="list-style-type: none"> <li>(a) 1 February 2020 for an Employee, who is not an Exempt Employee, already employed by an Employer on that date;</li> <li>(b) the date of employment for an Employee, who is not an Exempt Employee, employed on or after 1 February 2020;</li> <li><u>(c) the first day of the month following the date of enactment of the amendment law that added Article 65(3) to this Law for an Employee that is a UAE national or a GCC national that qualifies for a top-up contribution of Core Benefits contribution under Article 66(7)(c);</u></li> <li><del>(d)</del> the day after the Termination Date for an Exempt Employee who is serving a notice period under Article 62 on 1 February 2020, or who is employed under a fixed term Employment Contract that will end within three (3) months of 1 February 2020, but only for purposes of calculating the Gratuity Payment due to the Employee at their Termination Date; and</li> <li><del>(d)</del><u>(e)</u> 1 February 2020 for any other Exempt Employee entitled to a Gratuity Payment under Article 66(1) but only for purposes of calculating the Gratuity Payment due to the Employee at their Termination Date.</li> </ul>
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<u>Sanctioned Person</u>	<p><u>means an individual, entity, body or organisation listed on a sanctions list issued and passed by the United Nations Security Council, any consolidated list of financial sanctions issued by the Federal Cabinet of the United Arab Emirates or any other sanctions list that may apply to a Qualifying Scheme or its trustee or administrator.</u></p>
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**SCHEDULE 2  
CONTRAVENTIONS AND FINES**

<i>Article</i>	<i>Contravention</i>	<i>Maximum Fine* (USD)</i>
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66(17 <del>3</del> )	Failing to comply with Articles 66(6), (7), (9), (10), <del>(12)</del> <u>and (18)</u> , for each contravention in respect of each Employee.	\$2,000
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**PART 3: AMENDMENTS TO FOUNDATIONS LAW 2018**

1. The Foundations Law 2018 is amended as prescribed in this Part.
2. The following Articles of the Foundations Law 2018 are to be amended by inserting the underlined text and deleting the struck through text as shown below:

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**PART 2: NATURE OF A DIFC FOUNDATION**

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**13. Matters determined by DIFC law**

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- (2) Subject to Articles 14, 15 and 16, Article 13(1) shall:
- (a) not validate any disposition of property which is neither owned by a Founder or Contributor, nor is the subject of a power vested in a Founder or Contributor;
  - (b) not validate any ~~trust or~~ disposition of immovable property situated in a jurisdiction other than DIFC in which such ~~trust or~~ disposition is invalid according to the laws of such jurisdiction;
  - (c) not validate any testamentary ~~trust or~~ disposition which is invalid according to the laws of the testator's last domicile;
  - (d) not affect the recognition of Foreign Laws in determining whether a Founder or Contributor is or was the owner of any property transferred to the Foundation or is or was the holder of a power to dispose of such property;
  - (e) not affect the recognition of the laws of its place of incorporation in relation to the capacity of a corporation; and
  - (f) not affect the recognition of Foreign Laws prescribing generally, without reference to the existence or the establishment of the Foundation, the formalities for the disposition of property within the jurisdiction of those Foreign Laws.

**14. Limitations in Foreign Law**

- (1) Without limiting the generality of Article 13(1), no disposition of property to a Foundation that is valid under the laws of the DIFC is void, voidable, liable to be set aside or defective in any manner by reference to a Foreign Law; nor is the capacity of any Founder in relation to the Foundation or disposition to be questioned nor is the Foundation or any other person to be subjected to any liability or deprived of any power or right, by reason that:
  - (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a foundation;
  - (b) the disposition voids or defeats any rights, claims or interests conferred by Foreign Law upon any person by reason of a Personal Relationship to a founder or any other person related to the foundation or by way of Heirship Rights or contravenes any rule of Foreign Law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests; or
  - (c) the Foreign Law or foreign judicial or administrative order or arbitration award or imposes any obligation or liability on a founder, foundation or any other party in relation to the foundation or the property of the foundation.
- (2) Subject to Article 14(3), a transfer of property to a Foundation shall not be void, voidable or liable to be set aside by reason of a Founder or a Contributor's bankruptcy, the liquidation of a Founder or Contributor, or any action or claims made against a Founder or Contributor by any creditor, notwithstanding any foreign statute providing otherwise.
- (3) Notwithstanding Article 14(2), where the Court determines is satisfied beyond reasonable doubt by a creditor of the that a Founder or a Contributor of a Foundation that, -
  - (a) at the time when the property was transferred to the Foundation, the Founder or Contributor, as

applicable, intended to defraud a creditor; and

(b) at the time such transfer took place the transfer of the property rendered the Founder or Contributor, as applicable, insolvent or without property from which if that creditor's claim had been successful, it could have been satisfied,

then such transfer shall not be void or voidable and the Foundation shall be liable to satisfy the creditor's claim and the Foundation's liability shall only be to the extent of the interest the Founder or Contributor, as applicable, had in the property prior to the transfer and of any accumulation to the property transferred (if any) subsequent thereto.

(4) Where a Foundation is liable to satisfy a creditor's claim in the manner provided for in Article 14(3), that creditor's rights to recovery shall be limited to the property referred to in that Article, or to the proceeds of that property, to the exclusion of any claim, right or action against the Foundation or any other property of the Foundation.

## **15. Heirship Rights**

An Heirship Right conferred by Foreign Law in relation to the property of a living person shall not be recognised as:

- (a) affecting the ownership of immovable property in the DIFC and movable property wherever it is situated for the purposes of Article 13(2)(a) and (b) or for any other purpose; or
- (b) constituting an obligation or liability for any purpose.

## **16. Foreign judgments**

(1) A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with Articles 13, 14 and 15.

(2) No proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than the DIFC against:

(a) a Foundation;

(b) a Founder or Contributor of a Foundation;

(c) a member of the Council of a Foundation;

(d) a Guardian of a Foundation;

(e) a Qualified Recipient of a Foundation;

(f) a person appointed or instructed in accordance with the express or implied provisions of an instrument or disposition to exercise a function or undertake any act, matter or thing in connection with a Foundation; or

(g) property of a Foundation,

shall be entertained by the Court if that judgment is based upon the application of any law inconsistent with the provisions of this Law.

### **16A. Assertion of jurisdiction over Council Member or Guardian**

- (1) If, any action is brought against a person in their capacity as a Foundation Officer in a foreign court or tribunal having authority over the Foundation Officer, and such foreign court or tribunal either fails to dismiss such action, or orders the Foundation Officer to take any action in regards to the administration of such Foundation or in respect of such Foundation's property, the Foundation Officer shall immediately upon the action of such court or tribunal and without the further order of any court, cease in all respects to act in their capacity as a Foundation Officer or to have any authority in respect of the Foundation.
  
- (2) Upon a Foundation Officer ceasing to hold office or have authority in relation to the Foundation in accordance with Article 16A(1), such person's power or authority in regards to the Foundation shall cease and such person, shall immediately, following its removal or loss of authority hereunder, give notice in writing of such removal to the person or persons having the power to appoint a replacement Foundation Officer, as applicable.



### **PART 3: ESTABLISHMENT OF A DIFC FOUNDATION**

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#### **19. Charter**

- (1) A Foundation must have a Charter which shall be in the English language.
- (2) The Charter must contain the following:
  - (a) its name;
  - (b) the object(s);
  - (c) a description of the initial capital;
  - (d) the duration of the Foundation (if it is to subsist for a limited period only); and
  - (e) a declaration by each Founder requesting the Council to comply with the terms of the Charter.
- (3) The Charter may contain any matter:
  - (a) that is otherwise required or permitted to be in the By-laws in accordance with Article 20; or
  - (b) that the Founder(s) think fit,provided that there is no provision which is contrary to or inconsistent with this Law or the Regulations.
- (4) The Charter may be amended only if:
  - (a) the Charter so provides; or
  - (b) the Court so orders under Article 41.
- (5) Where a Charter specifies an exclusively charitable object, it may not provide for the amendment of the Charter so as to specify a non-charitable object in place of the charitable object.
- (6) Each Founder must subscribe to the Charter, if a Founder is:
  - (a) an individual, by signing the Charter in his own name; or
  - (b) a body corporate, by an authorised signatory signing the Charter.
- (7) The Board of Directors of the DIFCA may prescribe in the Regulations model provisions to be known as the “Standard Charter”, and a Foundation may, for its Charter, adopt the whole or any part thereof as are applicable to that Foundation.
- (8) If a Foundation proposes to amend its Charter, it must after completing its internal processes necessary to amend the Charter, lodge the amended Charter with the Registrar within a period of thirty (30) days after such amendment.
- (9) The amended Charter shall come into force upon it being registered by the Registrar, and, if the change involves a change of name, upon the issue of a certificate of name change by the Registrar.

- (10) The Charter may provide that if at any time the property of the Foundation includes any property which by reason of the law of the United Arab Emirates or any other specified jurisdiction may be held only by a national of that ~~country~~ jurisdiction or on conditions related to the nationality of persons with an interest in such property, any terms of the Charter which enable compliance with such law (including limitations of the ~~only~~ persons who may be officers of the Foundation Officers or Qualified Recipients under the Foundation) shall have effect, and the Charter may further provide that such provision may not be amended or revoked.
- (11) If the Charter contains a ~~n-irrevocable~~ provision of the type referred to in Article 19(10) then notwithstanding any other provision of this Law, that provision may not be amended or revoked.

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## **20. Guardian**

- (1) If a Foundation has a charitable object, or a specified non-charitable object, the Foundation must have a Guardian in relation to that object.
- (2) A Foundation may, but need not, have a Guardian in respect of an object to provide some or all of its property to a person or class of persons:
  - (a) whether or not immediately ascertainable; or
  - (b) ascertained by reference to a Personal Relationship.
- (3) A Founder or a body corporate may be appointed as Guardian of a Foundation.
- (4) A Guardian:
  - (a) must be so named in the Register;
  - (b) must keep and retain accurate accounts and records of his guardianship for so long as his guardianship subsists and for a period of six (6) years thereafter; and
  - (c) must comply with the provisions this Law, the Charter and the By-laws.
- (5) A person must not be appointed as a Guardian, or be so referred to in the Register, unless he has consented in writing to being the Guardian of the Foundation.
- (6) The appointment of a person as Guardian is void and shall have no effect if the person is also a member of the Council of the Foundation.
- (7) The Guardian must take reasonable steps to ensure that the Council of the Foundation carries out its functions.
- (8) Accordingly, the Guardian may require the Council to account to the Guardian for the way in which it has:
  - (a) administered the Foundation's property; and
  - (b) acted to further the Foundation's objects.
- (9) The By-laws may give a Guardian the power to approve or disapprove any specified actions of the Council.
- (10) Except to the extent that the By-laws provide otherwise, a Guardian may sanction or authorise any action taken or to be taken by the Council that would not otherwise be permitted by the By-laws if the Guardian considers that it is appropriate to do so.

- (11) However, the Guardian must not sanction or authorise any action taken or to be taken by the Council unless he is satisfied:
- (a) that it is in the best interests of the Foundation; and
  - (b) that the Council has acted, or will be acting, in good faith.
- (12) If a Guardian sanctions or authorises any action of the Council under Article 23(10), the Council, in taking that action, may be presumed by third parties to have acted in good faith.
- (13) Nothing in Article 23(10) is to be construed as permitting a Guardian to sanction or to authorise any action taken or to be taken by the Council that would be inconsistent with this Law or any other applicable law.
- ~~(13)~~ (14) The Registrar must be notified of the details of any change in Guardian within thirty (30) days of the occurrence of the change. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.

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#### **26A. Duress**

To the extent any person is granted the power under this Law, the Charter or the By-laws of a Foundation to demand or request any act on the part of a Founder, Contributor, Qualified Recipient or Foundation Officer, each such person is directed, to the extent such person would not be subject to personal liability or personal exposure:

- (a) to accept or recognise only demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are the result of persons acting of their own free will and not under compulsion or pursuant to any legal process, directive, order, or like decree of any court (other than the Court), administrative body, or other tribunal or like authority (other than the Registrar); and
- (b) to ignore any demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, where the person attempting to demand, request, approve, veto, compel the act, or exercise the power is not a person either appointed or so authorised pursuant to this Law, the Charter or the By-laws of the Foundation.

## **PART 5: ADMINISTRATION OF DIFC FOUNDATIONS**

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### **33. Accounts and Accounting Records**

- (1) Unless inconsistent with this Article 33, Articles ~~1224~~ to ~~1248~~ of the Companies Law shall apply to a Foundation, as if it were a private company and any reference to “Director(s)” or “Officer(s)” in relevant Articles in the Companies Law shall be interpreted to refer to member(s) of the Council. A Foundation which fails to keep and maintain accounts or make them available as required under this Law is liable to a fine, as set out in Schedule 3.
- (2) A Foundation’s accounts shall be approved by the Council and signed on their behalf by at least two members of the Council. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.
- (3) A Foundation shall within thirty (30) days after the accounts have been approved by the Council:
  - (a) if it has not appointed a Registered Agent, file a copy of its annual accounts with the Registrar; or
  - (b) if it has appointed a Registered Agent, provide a copy of its annual accounts to its Registered Agent.
- (4) A Foundation which fails to comply with the requirements in Article 33(3) is liable to a fine, as set out in Schedule 3.
- (5) A person who makes a statement that is false, misleading or deceptive in a material way to the Registrar or the Registered Agent in respect of accounts, is liable to a fine as set out in Schedule 3.

## PART 6: REGISTRAR

### 34. Exercise of functions of the Registrar

- (1) In the exercise of his functions under this Law, the Registrar has all the powers and duties conferred upon him by:
  - (a) Articles 6 and 7 of the Operating Law; and
  - (b) Articles 22 to 33 of the Operating Law,including the power of delegation.
- (2) The Registrar may enter into an arrangement with a Registered Agent under which:
  - (a) any document, form or fee required by this Law or the Relevant Laws to be lodged with or paid to the Registrar for the establishment or continuation of a Foundation in the DIFC, may be lodged with or paid to the Registrar by the Registered Agent; and
  - (b) the Registered Agent is required to perform some or all assessments, checks and verifications required under this Law or the Relevant Laws to ascertain and confirm whether an applicant or Foundation:
    - (i) adheres to all AML Requirements, the UBO Regulations and other requirements of the Relevant Laws; and
    - (ii) maintains Accounting Records in accordance with Article 33;and to provide a certification of such matters to the Registrar in an agreed format.
- (3) The Registrar in the performance of any function under the Relevant Laws may in good faith rely, without further enquiry, upon the certification of a Registered Agent given under Article 34(2), provided that a Registered Agent shall not be liable to the Registrar for doing so, unless it has acted in breach of its agreed obligations to the Registrar, in which case (without limiting the generality of its application) Article 34(4) shall apply.
- (4) The Registrar may:
  - (a) revoke any arrangement entered into with a Registered Agent under Article 34(2) if the Registrar is satisfied that the Registered Agent has acted in breach of its agreed obligations to the Registrar;
  - (b) inform the DFSA of any facts or circumstances that may amount to a breach of a Registered Agent's regulatory duties under applicable law; and
  - (c) inform law enforcement agencies of any alleged or suspected criminal offences on the part of a Registered Agent or its clients.
- (5) Where an applicant is represented by a Registered Agent in an application to establish or continue a Foundation, the Registrar shall be permitted to communicate directly with such Registered Agent with no need to directly communicate with the applicant pursuant to this Law.

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## PART 7: JUDICIAL AND NON JUDICIAL PROCEEDINGS

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### 50. Provisions for facilitating Foundation division or amalgamation

- (1) This Article applies where the members of the Council of one or more Foundations unanimously resolve that the property of a Foundation should be divided amongst two (2) or more Foundations, or that two (2) or more Foundations should be combined into a single Foundation.
- (2) An application may made to the Court under Article 50(1) for the division of the property of the Foundation, or the amalgamation of the Foundations, on notice to all persons with sufficient interest in any Foundation affected by the making of such an order.
- (3) On any application under Article 50(1), the Court may make such orders as it considers appropriate to facilitate the division or amalgamation, including:
  - (a) establishing one or more new Foundations;
  - (b) appointing the members of the Council for each of such Foundations;
  - (c) determining that the existing members of the Council shall continue to act as members of the Council or Councils for one or more of such Foundations; or
  - (d) determining that the existing Foundation will continue in accordance with its existing Charter and By-laws and the other Foundation or Foundations will be established with similar or different Charter(s) or By-laws approved by the Court.
- (4) The Court may take into consideration the difference in tax attributes and other pertinent factors in administering the property of any separate Foundation, in making applicable tax elections, and in making applications or distributions.
- (5) A separate Foundation created pursuant to this Article 50 must be treated as a separate Foundation for all purposes from the date on which the order of the Court is made, including, but not limited to any and all issues related to the liability of the Foundation or the property of the Foundation pursuant to a contract, in tort or otherwise.
- (6) In dividing the property of a Foundation between two (2) or more separate Foundations, the Court shall accomplish the division by dividing the property on a fractional basis and transferring any property not retained by the existing Foundation to the other Foundations either—
  - (a) with a pro rata portion of each asset forming part of the property of the existing Foundation;  
or
  - ~~(a)~~(b) on a non-pro rata basis based on either the fair market value of the assets on the date of the order or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.
- ~~(3)~~(7) Each of the Foundations affected by any order of the Court and any Foundation established by order of the Court shall give details of the change of status or establishment of the Foundations to the Registrar in such manner as he may require.
- ~~(4)~~(8) The Registrar shall make such entries in the Register as are required to give effect to the order of the Court and ensure any new or amalgamated Foundation is correctly registered.

.....

- (4) Article 53(2) does not affect any other obligation of a Foundation to supply information about the Foundation under this Law or the power of DIFCA, the Registrar or the DFSA to obtain information under any other applicable law.

**53.A. Limitation of actions**

- (1) No action or proceeding whether pursuant to this Law or at common law or in equity:  
(a) to set aside the establishment of a Foundation;  
(b) to set aside any disposition to any Foundation; or  
(c) for any order under this Part.

shall be commenced, unless such action or proceeding is commenced in the Court before the expiration of three (3) years from:

- (i) the date of the establishment of the Foundation that is sought to be set aside;  
(ii) the disposition to the Foundation that is sought to be set aside; or  
(i) the right to commence the action or proceeding arising as the case may be.

- (2) No action or proceeding whether pursuant to this Law or at common law or in equity shall be commenced by any person:  
(a) claiming to have had an interest in property before that property was settled upon or disposed to a Foundation; and  
(b) seeking to derive a legal or equitable interest in that property.

unless such action or proceeding is commenced in the Court before the expiration of three (3) years from the date that the property referred to in paragraphs (a) and (b) was disposed to a Foundation.

**PART 8: CONTINUATION AND RECOGNISED FOREIGN FOUNDATIONS**

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**62. Recognised Foreign Foundations**

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- (5) Article 24 and Part 5 of this Law and Articles 133 to 139 of the Companies Law shall apply with all necessary modifications to a Recognised Foreign Foundation, including that it shall not be necessary for a Recognised Foreign Foundation to appoint an Approved Person.

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**SCHEDULE 1  
INTERPRETATION**

.....  
**3. Defined terms**

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Term	Definition
AML Requirements	any requirements under applicable DIFC Law or Federal Law in relation to anti-money-laundering, counter-terrorist financing and sanctions applicable to Registered Persons in the DIFC.
Corporate Service Provider	<del>a person registered with the DFSA as an Authorised Firm or a Designated Non Financial Business or Profession licensed to undertake corporate services business in the DIFC.</del>
Foundation Officer	means: (a) <u>a Council member;</u> (b) <u>a Guardian; or</u> (c) <u>any other person who has the authority to approve, veto, or compel any action or exercise any power which affects or will affect a Foundation or any interest in the property of a Foundation.</u>
Guardian	the person who is the guardian of a Foundation by virtue of Article 24 <del>3</del> .
Qualified Person	a person: (a) licenced by DIFCA to undertake the activity of acting as a Registered Agent of Foundation as part of its permitted activities; and (b) registered with the DFSA <u>as an Authorised Firm or a Designated Non-Financial Business or Profession licensed to undertake corporate services business in the DIFC as a DNFBP.</u>
<del>Recognised Foreign Foundation</del>	<del>a Foreign Foundation registered with the Registrar under Article 62.</del>
Records	Documents, information and other records however stored.
Register	the register to be kept by the Registrar pursuant to Article 35.
Registered Agent	a Qualified Person who is the registered agent of a Foundation pursuant to Article 24.
<del>Recognised Foreign Foundation</del>	<del>a Foreign Foundation registered with the Registrar under Article 62.</del>
Registrar	the Registrar appointed under the Operating Law.
Relevant Laws	<u>the Operating Law and the regulations issued pursuant to that law and this Law.</u>
UBO Regulations	<u>the Ultimate Beneficial Ownership Regulations 2018.</u>

**SCHEDULE 3**  
**FINES AND FEES**

**PART 1**

<i>Article</i>	<i>Contravention</i>	<i>Maximum Fine (USD)</i>
10(7)	Person failing to provide a copy of assignment of rights	\$1,500
20(6)	Foundation failing to notify Registered Agent or Registrar of changes to By-laws	\$2,000
22(11)	Foundation failing to notify Registrar of changes to Council	\$2,000
<u>23(14)</u>	<u>Foundation failing to notify Registrar of changes to Guardian</u>	<u>\$2,000</u>
24(4)	Foundation failing to notify Registrar of changes to Registered Agent	\$2,000
33(1)	Foundation failing to keep accounts or Accounting Records, or to make them available	\$10,000
33(2)	Foundation failing to have its accounts approved by Council members	\$5,000
33(4)	Foundation failing to file accounts	\$10,000
33(5)	Person making a statement that is misleading, false or deceptive in a material way in respect of accounts	\$10,000
44(2)	Foundation failing to give notice of changes in Registered Agent	\$2,000
58(1)	Foundation failing to notify the Registrar of cancellation of registration	\$2,000
73(1)	Foundation failing to provide information to its Registered Agent	\$10,000
73(2)	Foundation making a false or misleading statement to its Registered Agent	\$10,000

## PART 2

The following fees are payable in respect of applications and notifications made in accordance with the Regulations

<b>Application or notification</b>	<b>Fee Payable (USD)</b>
Application for registration of a Foundation	Nil
<u>Application for grant or renewal of a Licence</u>	\$350
Notification of appointment and cessation of a Registered Agent (if appointed)	\$100
Notification of change of particulars of the appointed Registered Agent	\$100
Notification of an appointment and cessation of a Council member	\$100
Notification of change of particulars of a Council member	\$100
Notification of an appointment and cessation of a Guardian	\$100
Notification of change of particulars of a Guardian	\$100
Amendment of the Charter by the Founder(s) or in the event of Founder's death by Court Order	\$100
Continuation to DIFCA	\$500
Continuation from DIFCA	\$500
Application for registration of a Foreign Foundation	Nil
Reinstatement of a Foundation on the Register	Nil

**PART 4: AMENDMENTS TO OPERATING LAW 2018**

1. The Operating Law 2018 is amended as prescribed in this Part.
2. The following Articles of the Operating Law 2018 are to be amended by inserting the underlined text and deleting the struck through text as shown below:

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**PART 5: POWERS AND REMEDIES**

.....

**CHAPTER 2 – OTHER POWERS OF THE REGISTRAR**

.....

**32. Powers to strike off names of Registered Persons from the Public Register**

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(18) Where the Registrar strikes-off the name of a Registered Person from the Public Register under this Article, the persons comprising the board, council or governing body of the Registered Person immediately prior to the strike-off shall be obliged, on a joint and several basis, to keep the Registered Person’s books and Records for a period of six (6) years from the date on which the Registered Person’s name is struck-off the Public Register and, upon receipt of a notice from the Registrar, make such information available to the Registrar as specified in such notice, subject to the provisions of Article 32(19).

(19) Where a Registered Person had a registered auditor immediately prior to strike-off or, where it did not have a registered auditor but individuals on its board or governing body acted in an executive or managerial capacity in respect of the Registered Person (“Executive Members”), then the responsibilities set out at Article 32(18) shall rest with the registered auditor or Executive Members on a joint and several basis, as applicable.

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**SCHEDULE 1  
INTERPRETATION**

.....

3. **Defined terms**

- (1) In this Law, unless the context indicates otherwise, the defined terms listed in the table below shall have the corresponding meanings:

<b>Terms</b>	<b>Definitions</b>
Privileged Communication	a communication attracting a privilege arising from the provision of professional legal advice and any other <del>privilege applicable at law advice or from the relationship of lawyer and client or other similar relationship</del> , but does not include a general duty of confidentiality.

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**SCHEDULE 2  
FINES**

.....

**PART 2 – ADMINISTRATIVE FINES**

<i>Article</i>	<i>Contravention</i>	<i>Maximum Fine (USD)</i>
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34(1)	Person contravening the Law, the Regulation or any other Legislation administered by the Registrar	\$ <del>15</del> <u>100</u> ,000
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**PART 5: AMENDMENTS TO TRUST LAW NO. 4 OF 2018**

1. The Trust Law No.4 of 2018 is amended as prescribed in this Part.
2. The following Articles of the Trust Law No.4 of 2018 are to be amended by inserting the underlined text and deleting the struck through text as shown below:

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**PART 1: GENERAL**

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**10. Common law and principles of equity**

(1) The common law of trusts and principles of equity supplement this Law, except to the extent modified by this Law or any other DIFC law or by the Court.

(2) The statute law of England and Wales applicable to trusts does not, except to the extent it is replicated in this Law, apply in the DIFC.

~~(2)~~(3) This Law does not affect the law applicable to resulting or constructive trusts but the powers of the Court under this Law may be exercised in relation to a constructive trust or a resulting trust.

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## PART 2: CHOICE OF GOVERNING LAW; PLACE OF ADMINISTRATION

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### 12. Provision for change of governing law

- (1) Where a term of a trust so provides, the governing law may be changed to or from the laws of the DIFC, in the manner prescribed by the terms of the trust, if:
  - (a) in the case of a change of the governing law to the laws of the DIFC by a foreign trust, such change is recognised by the governing law previously in effect; or
  - (b) in the case of a change of the governing law from the laws of the DIFC, the new governing law would recognise the validity of the trust and either all the trusts, powers and provisions of the trust remain enforceable, capable of being exercised and so taking effect or, prior to the change, the trustee obtains the approval of the Court to the change.
- (2) Where the governing law of the trust changes to DIFC law, that trust shall be for all purposes a DIFC trust.
- (3) A change in the governing law shall not affect the legality or validity of, or render any person liable for, anything done before the change.
- (4) If a foreign trust becomes a DIFC trust, notwithstanding Article 9(2) the trustee may:
  - (a) Exercise any power conferred upon the trustee to postpone the date of termination of the trust without reference to any limitations expressed upon that power by reference to a perpetuity period of any other jurisdiction; and
  - (b) If no power is conferred upon the trustee to postpone the date of termination of the trust, apply to the Court for an order conferring such power which application the Court may grant absolutely or subject to such conditions as to the Court seem fit.
- (5) The terms of a DIFC trust may provide for a severable aspect of the trust (particularly the administration of the trust) to be governed by a different law from the governing law of the trust.
- (6) The terms of a DIFC trust may provide for the law governing a severable aspect of the trust to be changed from the law of one jurisdiction to the law of another jurisdiction.
- (7) Where the law governing a severable aspect of a DIFC trust is changed from the law of another jurisdiction (herein called “the old law”) to the law of the DIFC no provision of the old law shall operate so as to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on a trustee under the law of the DIFC.
- (8) Where the law governing a severable aspect of a DIFC trust is changed from the law of the DIFC to the law of another jurisdiction (herein called the “new law”) no provision of the law of the DIFC shall operate so as to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the new law.

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### 14. Limitations in foreign law

- (1) Without limiting the generality of Article 13(1), no DIFC trust and no disposition of property to be held in trust that is valid under the laws of the DIFC is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law; nor is the capacity of any settlor in relation to the trust

or disposition to be questioned; nor is the trustee or any beneficiary or any other person to be subjected to any liability or deprived of any power or right, by reason that:

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust;
  - (b) the trust or disposition voids or defeats any rights, claims or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or any beneficiary or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, enforce or give effect to any such rights, claims or interest; or
  - (c) the foreign law or foreign judicial or administrative order or arbitration award imposes any obligation or liability on the settlor, trustee, enforcer, protector, beneficiary or any other party in relation to the trust or the trust property.
- (2) ~~Subject to Article 14(3), a~~ A transfer of property to a trust shall not be void, voidable or liable to be set aside by reason of a ~~S~~settlor's bankruptcy, the liquidation of a ~~S~~settlor, or any action or claims made against a ~~S~~settlor by any creditor, notwithstanding any foreign statute providing otherwise.

(3) ~~Notwithstanding Article 14(2), where the Court determines that:~~

- ~~(a) at the time when the property was transferred to a trust, thea Settlor was insolvent or intended to defraud any that creditor; and~~
- ~~(b) at the time such transfer took place the transfer of the property rendered the settlor insolvent, or without sufficient property to satisfy a creditor's claim had the creditor been successful in such claim.~~

~~then such transfer shall not be void or voidable and the DIFC trust shall be liable to satisfy the creditor's claim and the trust's liability shall only be to the extent of the interest the settlor had in the property prior to the transfer and of any accumulation to the property transferred (if any) subsequent thereto..~~

(4) ~~Where a trust is liable to satisfy a creditor's claim in the manner provided for in Article 14(3), that creditor's rights to recovery shall be limited to the property referred to in that Article, or to the proceeds of that property, to the exclusion of any claim, right or action against any trustee or any other property of the trust.~~

~~(3) (5) In making claims to set aside transfers of property to a trust under Article 14(3), the burden of proof shall rest with the creditor.~~

## 15. Heirship rights

An heirship right conferred by foreign law in relation to the property of a living person shall not be recognised as:

- (a) affecting the ownership of immovable property in the DIFC and movable property wherever it is situated for the purposes of Article 13(2)(a) and (b) or for any other purpose; or
- (b) constituting an obligation or liability for any purpose.

## 16. Foreign judgments

(1) A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with Articles 13, 14 and 15.

~~(1)~~(2) No proceedings for or in relation to the enforcement or recognition of a judgement obtained in a jurisdiction other than the DIFC against:

(a) a DIFC trust;

(b) a settlor of a DIFC trust;

(c) a trustee of a DIFC trust;

(d) a protector of a DIFC trust;

(e) a beneficiary of a DIFC trust;

(f) a person appointed or instructed in accordance with the express or implied provisions of an instrument or disposition to exercise a function or undertake any act, matter or thing in connection with a DIFC trust; or

(g) property of either a DIFC trust or of a trustee or a beneficiary thereof.

shall be entertained by the Court if that judgment is based upon the application of any law inconsistent with the provisions of this Law.

### 16A Assertion of jurisdiction over trustee and protector

(1) If, any action is brought against a person in their capacity as a trustee of a DIFC trust in a foreign court or tribunal having authority over the trustee, and such foreign court or tribunal fails to dismiss such action, or orders such trustee to take any action in regards to the administration of such trust or in respect of such trust's property, the trustee shall immediately upon the action of such court or tribunal and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the Court, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this Law.

(2) Upon a trustee ceasing to be trustee under Article 16A(1), such trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the Court in accordance with this Article.

(3) If, in any action brought against a person in their capacity as a protector of a DIFC trust in a foreign court or tribunal having authority over the protector, such foreign court or tribunal fails to dismiss such action, or orders such protector to take any action in regards to the administration of such trust or in respect of such trust's property, such the protector shall immediately upon the action of such court or tribunal and without the further order of any court, cease in all respects to be a protector of such trust. Upon such protector ceasing to be a protector, such protector shall have no power or authority in regards to the trust. The protector shall, immediately following its removal hereunder, give notice in writing to the trustee of the DIFC trust of such removal.

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## PART 4: CREATION, VALIDITY AND MODIFICATION OF A DIFC TRUST

### 33. Creation of a trust

A trust may be created by:

- (a) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (b) the transfer of property from one (1) trust to another;
- (c) declaration by the owner of identifiable property that thereupon the owner will hold the property as trustee; or
- (d) exercise of a power of appointment in favour of a trustee; or
- (e) an instrument in writing including a will or codicil.

~~(2) A trust shall come into existence by an instrument in writing including a will or codicil.~~

### 34. Requirements for creation

(1) A trust is created if:

- (a) the settlor has the capacity to create a trust;
- ~~(b)~~ the settlor indicates an intention to create the trust;
- ~~(b)~~(c) the trust either:
  - (i) has a definite beneficiary;
  - (ii) is a charitable trust, as provided for in Article 38; or
  - (iii) is a non-charitable purpose trust, as provided for in Article 39;

~~(c)~~(d) the trustee holds or has vested in him or it, property for the benefit of a beneficiary or for a purpose;

~~(d)~~(e) the trustee has duties to perform; and

~~(e)~~(f) the same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future.

(3) A trust may have at the same time a definite beneficiary and a purpose.

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### 40. Variation and revocation of a trust

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- (11) The terms of a trust may provide that if at any time the trust property includes any property which by reason of the law of the United Arab Emirates or any other specified jurisdiction may be held only by a national of that country or on conditions related to the nationality of persons with an interest in such property, any terms of the trust which enable compliance with such law (including limitations

~~of the only persons who may be a trustee, protector or beneficiary under the trust) are nationals of that jurisdiction at that time shall have effect, and may further provide that such provision may not be varied or revoked.~~

- (12) If the terms of a trust contain ~~an irrevocable~~ provision of the type referred to in Article 40(11), notwithstanding any other provision of this Law (including Article 9(1)), that provision may not be varied or revoked.

.....

## PART 5: THE BENEFICIARIES OF A DIFC TRUST.

### 45. Beneficiaries of a trust

- (1) A beneficiary shall be:
  - (a) identifiable by name; or
  - (b) ascertainable by reference to:
    - (i) a class; or
    - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.
- (2) The terms of a trust may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit.
- (3) A settlor, protector or a trustee of a trust may also be a beneficiary of a trust.

### 46. Disclaimer

- (1) A beneficiary may disclaim his whole interest.
- (2) A disclaimer made under Article 46(1) shall be in writing and shall be irrevocable.
- (3) Subject to the terms of a trust, a beneficiary under a trust may disclaim part of his interest, whether or not he has received some benefit from his interest.
- (4) A disclaimer made under Article 46(3) may, subject to the terms of the trust, be revocable and it shall be exercisable in the manner and under the circumstances so expressed.

### 47. Interest of beneficiary and dealings thereof

- (1) The interest of a beneficiary shall constitute movable property.
- (2) Subject to the terms of a trust, a beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

### 48. Termination of interest of beneficiary upon trust being challenged

- (1) The terms of a trust may provide that the interest of a beneficiary shall terminate (or may be terminated in exercise of a power in that regard) upon:
  - (a) the validity of the trust being challenged by the beneficiary, in whole or in part, in any court within or outside the DIFC;
  - (b) any action being taken by the beneficiary to assist, promote or encourage a such a challenge; ~~or~~
  - (c) the beneficiary refusing to agree to have a dispute or difference in relation to the affairs of the trust referred to arbitration; or

~~(e)~~(d) the beneficiary having acted in a manner detrimental to the welfare of the settlor or the settlor's family or business, or the administration of the trust.

~~(2)~~ Article 48(1) applies whether or not the challenge or action:

~~(a)~~ is brought or taken by the beneficiary; or

~~(b)~~ is brought or taken in good faith or with reasonable cause.

~~(3)~~(2) Unless otherwise provided in the trust instrument, no rule of law or equity giving relief against forfeiture shall apply to a provision referred to in Article 48(1).

~~(4)~~(3) In this Article:

(a) in relation to a beneficiary who is the object of a power or whose interest arises by virtue of his membership of a class, the termination of his interest includes his ceasing to be an object of the power or a member of the class;

(b) the "validity of the trust" includes the validity of any disposition of property to be held upon the trusts of the trust and any question whether any settlor of the trust intended to create a trust on the terms of the trust instrument.



## PART 6: PROTECTIVE TRUSTS AND CREDITORS' CLAIMS

### 49. Protective trusts

- (1) The terms of a trust may make the interest of the beneficiary liable to termination.
- (2) Without prejudice to the generality of Article 49(1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to:
  - (a) a restriction on alienation or disposal; or
  - (b) a diminution or termination in the event of the beneficiary becoming ~~bankrupt~~ insolvent or any of his property becoming liable to sequestration for the benefit of his creditors.
- (3) A trust under which the interest of a beneficiary is subject to restriction, diminution or termination under Article 49(2) is a protective trust.
- ~~(4)~~ A provision in the terms of a trust requiring the interest of a beneficiary in trust property to be held upon a protective trust shall be construed as a requirement that the interest of the beneficiary be subject to restriction, diminution or termination as mentioned in Article 49(2).
- ~~(5)~~ Where any property is directed to be held as protective trust for the benefit of a beneficiary, the trustee shall hold that property—
  - (a) in trust to pay the income to the beneficiary until the income terminates in accordance with the terms of the trust or a determining event occurs; and
  - (b) if a determining event occurs while the interest of the beneficiary continues, in trust to pay the interest to such of the following (and including more than one in such shares) as the trustee in his or her absolute discretion shall determine:
    - (i) the beneficiary;
    - (ii) any spouse or child of the beneficiary; or
    - (iii) if there is no such spouse or child, persons who would be entitled to the estate of the beneficiary if the beneficiary had died intestate and such persons were domiciled in the same jurisdiction of domicile as the beneficiary.
- ~~(6)~~ In Article 49(5) above, a “determining event” shall mean the occurrence of any event or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property), which would result in the trust property becoming payable to a person other than the beneficiary.

### 50. Creditors' claim in relation to a discretionary trust

- ~~(1)~~ A Discretionary Interest in a DIFC trust is not a property interest or an enforceable right but is a mere expectancy of a right, which a creditor of a beneficiary (including the settlor) may not attach, garnish or otherwise reach.
- ~~(1)~~~~(2)~~ In the case of a discretionary trust, whether or not such trust contains a protective provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:
  - (a) the discretion is expressed in the form of a standard of distribution; or

- (b) the trustee has abused the discretion.

~~(2)~~(3) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

- (a) a distribution may be ordered by the Court to satisfy a judgment or Court order against the beneficiary for support or maintenance of the beneficiary's child, spouse or former spouse; and
- (b) the Court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(4) A creditor of a beneficiary (including the settlor) may not compel or force a protector to exercise a power to direct a trustee to make a distribution to any beneficiary of a DIFC trust.

**50A General power of appointment granted to a beneficiary**

A creditor shall have no right against the interest of a beneficiary of a DIFC trust or against the beneficiary or trustee of the trust with respect to such interest unless:

- (a) the beneficiary (other than the settlor) has a power to appoint all or part of the trust property to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate by will or other instrument such that the appointment would take effect only upon the beneficiary's death and the beneficiary actually exercises such power in favour of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise; or
- (b) the beneficiary (other than the settlor) has a power, including a power of withdrawal, to appoint all or part of the trust property to the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate during the beneficiary's lifetime and the beneficiary actually exercises such power in favour of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise.

**50B Right of revocation retained by settlor**

A creditor shall have no right against the interest of a beneficiary of a DIFC trust who is the settlor or against the settlor or trustee of the trust with respect to such interest unless the settlor has a power to revoke the trust and appoint all or part of the trust property to the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate during the settlor's lifetime and the settlor actually exercises such power in favour of the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate but then only to the extent of such exercise.

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## PART 8: DUTIES AND POWERS OF TRUSTEES

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### CHAPTER 2 – GENERAL POWERS OF TRUSTEES

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#### 72. Combination and division of trusts

- (1) Subject to the terms of the trust, a trustee may combine two or more trusts into a single trust or divide a trust into two (2) or more separate trusts, if the result does not impair rights of any beneficiaries or adversely affect achievement of the purposes of the trusts.
- (2) Subject to the terms of the trust and Article 72(1), where a trustee divides a trust into two (2) or more separate trusts, he shall have the power to: -
  - (a) appoint trustees for each of such trusts;
  - (b) continue to act as trustee for each of such trusts; or
  - (c) determine that one such trust will continue in accordance with its existing terms and the other trust or trusts will be established on similar or different terms.
- (3) Subject to the terms of the trust, the trustee may take into consideration the difference in tax attributes and other pertinent factors in administering the trust property of any separate trust, in making applicable tax elections, and in making applications or distributions.
- (4) A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective, including, but not limited to any and all issues related to the liability of a trustee or the trust assets pursuant to a contract, in tort or otherwise.
- (5) In dividing a trust into two (2) or more separate trusts, a trustee shall accomplish the division by severing the trusts on a fractional basis and funding the separate trusts either:
  - (a) with a pro rata portion of each asset held by the undivided trust; or
  - (b) on a non-pro rata basis based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

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## PART 10: RESERVED AND RESTRICTED POWERS AND INTERESTS

### 84. Reserved and restricted powers

- (1) Without prejudice to the generality of Article 40, the reservation by the settlor to himself or grant to any other person (in this Law called the protector) in the trust instrument of a DIFC trust of any limited beneficial interest in the trust property whether of income or capital, or any or all of the powers specified in Article 84(2) (or both such an interest and any or all of such powers) shall not:
  - (a) invalidate the trust;
  - (b) prevent the trust taking effect according to its terms; or
  - (c) cause any or all of the trust property, or the interests or powers reserved, to be part of the real estate or personal estate of the settlor for any purpose.
- (2) The powers referred to in Article 84(1) are:
  - (a) in the case of a reservation to the settlor or other donor of trust property, power to revoke the trusts in whole or in part;
  - (b) power to vary or amend the terms of the trust instrument or any of the trusts, purposes or powers arising thereunder in whole or in part;
  - (c) a general, intermediate or special power to advance, appoint, pay, apply, distribute or transfer trust property (whether income or capital or both) or to give directions for the making of any such advancement, appointment, payment, application, distribution or transfer;
  - (d) power to act as, or give binding directions as to the appointment or removal of, a director or an officer of any company wholly or partly owned by the trust or to direct the trustee as to the manner of exercising voting rights attaching to any of the shares held in such company;
  - (e) power to give binding directions in connection with the purchase, retention, holding, sale or other commercial or investment dealings with trust property or any investment or reinvestment thereof or the exercise of any powers or rights arising from such trust property;
  - ~~(e)~~(f) power to give binding directions with regard to investment decisions, including the appointment of investment advisers or an investment committee whose decisions are to be implemented by the trustees;
  - ~~(f)~~(g) power to give binding directions that the trustee shall not be under any duty nor be bound to interfere in the business of any company to which any such direction applies in which the trust is interested, the manner in which the trustee shall act in respect of exercise of any right or power arising from the ownership of the shares of such company or any loan or advance of money to such company, and the liability of the trustee arising as a result of any such direction;
  - ~~(g)~~(h) power to appoint, add, remove or replace any trustee, protector, enforcer or any other office holder;
  - ~~(h)~~(i) power to add, remove or exclude any beneficiary, class of beneficiaries or purpose;
  - ~~(i)~~(j) power to change the governing law and the forum for administration of the trust or any part of the trust property; and

- (k) power to restrict the exercise of any powers, discretions or functions of a trustee by requiring that they shall only be exercisable with the consent, or at the direction of, any person specified in the trust instrument or any other written notice to the trustee.
- (3) A trustee who:
- (a) has acted, or refrained from acting, in compliance with, or as a result of, a valid exercise of any of the powers set out in Article 84(2), shall not, by reason only of such compliance, commit a breach of trust or other fiduciary or equitable duty; or
- (b) is or has been prevented from acting in accordance with any of the powers specified in Article 84(2), or any exercise of those powers by reason of the provisions of any applicable law or because insufficient rights or powers are exercisable by the trustee in relation to the trust property, shall not, by reason only of such non-compliance or failure to act, commit a breach of trust or other fiduciary or equitable duty.
- ~~(4)~~ The trustee's right to approach the Court under Article 20(1) includes the right to apply to the Court as to whether or not a direction pursuant to any of Articles 84(2)(d) to 84(2)(g) inclusive should be complied with.
- ~~(5)~~ Whenever the terms of a DIFC trust provide that a trustee shall follow the direction of the protector with respect to decisions of the trustee, then, except to the extent that the trust provides otherwise, the trustee shall have no duty to—
- (a) monitor the conduct of the protector;
- (b) provide advice to the protector or consult with the protector; or
- (c) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the protector.
- and absent evidence to the contrary, the actions of the trustee pertaining to matters within the scope of the protector's authority (such as confirming that the protector's directions have been carried out and recording and reporting actions taken at the protector's direction), shall be presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the governing instrument and such administrative actions shall not be deemed to constitute an undertaking by the trustee to monitor the protector or otherwise participate in actions within the scope of the protector's authority.
- ~~(4)(6)~~ No person other than a person in whom trust property or an interest in trust property is vested and who is formally appointed as a trustee, shall be or become a trustee by reason only of the reservation or grant of any of the powers set out in Article 84(2).
- ~~(5)(7)~~ The terms of a DIFC trust may provide that the reservation or grant of any of the powers set out in Article 84(2) shall not impose a fiduciary duty on the holder of such powers.
- ~~(6)(8)~~ In the absence of any contrary provision of the terms of a DIFC trust:
- (a) in the case of the reservation by a settlor, or the grant to another person, of any of the powers specified in Article 84(2), where so long as the holder of the power is not the sole trustee, such powers shall be personal and non-fiduciary; and
- (b) in any other case, such powers shall be fiduciary.

## 85. Incapacitation of protector or settlor

- (1) If the settlor becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the protector (if appointed) or by any other person designated by the trust instrument or appointed for that purpose by the Court declaring or confirming him to be incapacitated.
- (2) If the protector becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the person designated by the trust instrument or appointed for that purpose by the Court declaring or confirming him to be incapacitated.
- (3) For the purposes of this Article:
  - (a) a person shall be deemed to be incapacitated if declared to be of unsound mind by a court of competent jurisdiction or if declared by two (2) qualified examining physicians to be of unsound mind or physically impaired so as to be unable to act responsibly prudently or effectively and shall be deemed to remain incapacitated until declared otherwise by such court or such physicians; and
  - (b) a corporation shall be deemed to be incapacitated if it has been dissolved, or if it is under administration or a petition for its winding up has been presented in any Court and has not been finally determined by the Court.
- (4) The trustee may declare in writing a person to be incapacitated during any period in which the trustee is of the opinion that such person is unable freely to exercise his rights or powers or to fulfil his duties or obligations hereunder because of duress or undue influence brought to bear on such person by any other person or persons but the trustee shall not be under any duty to make any inquiries as to whether any person is suffering from duress or undue influence and in any case the trustee shall not be under any duty to make any declaration as aforementioned.

## 85A Duress

- (1) Subject to Article 85A (2), to the extent any person is granted the power under the terms of a trust to demand or request any act on the part of a settlor, beneficiary, trustee, protector, or other person, or has the authority to approve, veto, or compel any action or exercise any power which affects or will affect a trust or any interest therein, each such person is directed, to the extent such person would not be subject to personal liability or personal exposure:
  - (a) to accept or recognise only demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are the result of persons acting of their own free will and not under compulsion or pursuant to any legal process, directive, order, or like decree of any court (other than the Court), administrative body, or other tribunal or like authority; and
  - (b) to ignore any demands or requests, or the effects of any approval, veto, or compelled action or the exercise of any power, where the person attempting to demand, request, approve, veto, compel the act, or exercise the power is not a person either appointed or so authorised pursuant to the terms of such trust.
- (2) Article 85A(1) shall not apply to any decision, directive, notice or order issued by the Registrar in relation to a trust, pursuant to the powers of the Registrar under the Operating Law.

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**SCHEDULE 1**

**INTERPRETATION**

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**3. Defined terms**

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

<b>Term</b>	<b>Definition</b>
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<u>Discretionary Interest</u>	<u>a beneficiary's interest in a discretionary trust</u>
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<u>Relevant Percentage</u>	<u>has the meaning given to it in the DIFC Ultimate Beneficial Ownership Regulations 2018.</u>
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