



Dubai
International
Financial
Centre

COMPANIES LAW

DIFC LAW NO. 5 OF 2018*

[*ISSUED FOR CONSULTATION PURPOSES ONLY]

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PART 1: GENERAL**1. Title and repeal**

- (1) This Law No. 5 of 2018 may be cited as the “Companies Law 2018” or “this Law”.
- (2) This Law together with the DIFC Operating Law No. 6 of 2018 repeals and replaces the Companies Law 2009 (DIFC Law No. 2 of 2009) as it was in force immediately prior to the commencement of this Law (the “Previous Law”).
- (3) Except where otherwise provided in this Law, anything done or omitted to be done pursuant to or for the purposes of the Previous Law is deemed to be done or omitted to be done pursuant to or for the purposes of this Law.
- (4) Without limiting the generality of Article 1(3), and subject only to Article 1(5), such repeal and replacement shall not affect:
 - (a) any right, privilege, remedy, obligation or Liability accrued to or incurred by any person; or
 - (b) any investigation or legal or administrative proceeding commenced, or to be commenced, in respect of any such right, remedy, privilege, obligation or Liability,under the Previous Law, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this Law.
- (5) Where there is no equivalent provision in this Law to a provision in the Previous Law, the relevant provision in the Previous Law is deemed to survive the repeal and replacement under this Article 1 until such time as necessary for the purposes of any investigation or legal or administrative proceeding specified in Article 1(4)(b).
- (6) Unless otherwise provided, any reference to:
 - (a) the Previous Law includes Regulations made under the Previous Law; and
 - (b) this Law includes a reference to the Regulations made under this Law.
- (7) The Board of Directors of the DIFCA may make Regulations prescribing further transitional provisions.

2. Legislative authority

This Law is made by the Ruler.

3. Application of this Law

- (1) This Law applies in the jurisdiction of the DIFC.
- (2) This Law applies to any person who conducts or attempts to conduct business in or from the DIFC.
- (3) To the extent that this Law or the Regulations apply to any person to whom any provision of the DFSA administered Legislation also applies, this Law and the Regulations shall not exempt such person from any requirement applicable to that person under the DFSA administered Legislation.

4. Date of enactment and commencement

- (1) This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

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

5. Effect of Regulations

Any Regulations made under the Previous Law which are not expressly repealed or amended shall be deemed to be Regulations made under this Law only so far as, and to the extent, such Regulations do not conflict with this Law.

6. Schedules

- (1) Schedule 1 contains:
- (a) interpretative provisions which apply to this Law; and
 - (b) a list of defined terms used in this Law.
- (2) Schedule 2 contains prescribed fines for contraventions of this Law.

PART 2: ADMINISTRATION OF THIS LAW

7. The role of the Registrar

- (1) This Law shall be administered by the Registrar.
- (2) The DIFC Operating Law applies to the powers and performance of the functions of the Registrar.

PART 3: INCORPORATION AND REGISTRATION OF COMPANIES**8. Types of companies**

- (1) The types of companies that may be incorporated under this Law are a:
 - (a) Private Company, if it meets the requirements in Article 32(1); and
 - (b) Public Company, if it meets the requirements in Article 32(4).
- (2) A Foreign Company may be registered under this Law as a Recognised Company if it meets the requirements in Part 12.

9. Legal personality

A Company incorporated pursuant to Article 8(1) shall have a separate legal personality from that of its Shareholders. The liabilities of a Company, whether arising in contract, tort or otherwise, are the Company's liabilities and not the personal liabilities of any Shareholder or Officer of the Company, except where otherwise provided in this Law.

PART 4: COMPANY FORMATION AND INCORPORATION**10. Method of forming a Company**

- (1) A Company may be incorporated under this Law by any one (1) or more persons making an application to the Registrar in accordance with the requirements in this Part.
- (2) A Company shall not be incorporated for any unlawful purpose.
- (3) The application for incorporation under Article 10(1) shall:
 - (a) be filed with the Registrar by the Incorporators or their duly authorised representative;
 - (b) contain such information as is prescribed by the Regulations; and
 - (c) be accompanied by the proposed Articles of Association of the proposed Company signed by or on behalf of each Incorporator,

11. Articles of Association

- (1) A Company's Articles of Association shall be in the English language and shall be divided into sub-paragraphs numbered consecutively.
- (2) A Company's Articles of Association shall contain:
 - (a) a statement as to whether the Company is a Private Company or a Public Company;
 - (b) matters required by this Law to be included in the Articles of Association of a Company; and
 - (c) such other matters as the Shareholders wish to include in the Articles of Association,provided that the Articles of Association shall not contain a provision which is contrary to or inconsistent with this Law or, any other DIFC laws prescribed by Regulation.
- (3) The Board of Directors of the DIFCA may prescribe in the Regulations model articles of association to be known as the Standard Articles. A Company may adopt, as its Articles of Association, the whole or any part of such Standard Articles as are relevant to that Company.
- (4) If Standard Articles have not been adopted by a Company in their entirety, the Company shall submit to the Registrar, prior to such Articles of Association being adopted by the Company, a statement by the Incorporators that the Articles of Association proposed to be adopted by the Company complies with the requirements of this Law and any other applicable DIFC laws.
- (5) If any change to this Law or any other applicable DIFC laws results in an inconsistency between the provisions of a Company's Articles of Association and the provisions of this Law or any other applicable DIFC laws:
 - (a) the provisions of this Law and any other applicable DIFC laws shall prevail; and
 - (b) the Company shall not be obliged to amend its Articles of Association except where it is expressly required to do so under this Law or any other applicable DIFC laws.

12. Incorporation

- (1) The Registrar may refuse to incorporate a Company for such reason as the Registrar believes to be proper grounds for refusing such incorporation.

- (2) Where the Registrar refuses to incorporate a Company, the Registrar shall not be bound to provide any reason for the Registrar's refusal and the Registrar's decision shall not be subject to the Decision-making Procedures or appeal or review in any court.
- (3) Where the Registrar incorporates a Company, the Registrar shall register the Articles of Association filed with the Registrar under Article 10(3)(c).

13. Effect of incorporation

- (1) On the incorporation of a Company and registration of its Articles of Association, the Registrar shall:
 - (a) issue a certificate of incorporation confirming that the Company is incorporated as either a Private Company or a Public Company;
 - (b) assign to the Company a number, which shall be the Company's registered number; and
 - (c) enter the name of the Company in the Register.
- (2) On the date of incorporation mentioned in the certificate of incorporation:
 - (a) the Incorporators shall be the shareholders of the Company; and
 - (b) the Company, having the name contained in the certificate of incorporation, shall become a body corporate, capable of exercising all the functions of an incorporated Company.
- (3) A certificate of incorporation issued by the Registrar is conclusive evidence of the following matters:
 - (a) that the Company has been duly incorporated;
 - (b) whether the Company is a Public Company or a Private Company; and
 - (c) that the requirements of this Law have been complied with in respect of the incorporation of the Company.
- (4) Without prejudice to Article 13(3), the Registrar may make alternative arrangements relating to the issue of certificates of incorporation to Companies in circumstances prescribed in Regulations.

14. Licence

A Company shall hold a Commercial Licence pursuant to Article 10 of the DIFC Operating Law.

15. Effect of Articles of Association

- (1) Subject to the provisions of this Law, the Articles of Association, when registered, bind the Company and its Shareholders to the same extent as if they had been signed by the Company and by each Shareholder, and contain covenants on the part of the Company and each Shareholder to observe all the provisions of the Articles of Association.
- (2) Money payable by a Shareholder to the Company under the Articles of Association is a debt due from that Shareholder to the Company.

16. Alteration of Articles of Association

- (1) Subject to the provisions of this Law, a Company may amend its Articles of Association, only by Special Resolution.
- (2) Unless the amendment relates solely to a change of its name in accordance with Article 19 or correcting manifest errors, the Company shall, prior to the amendment to its Articles of Association taking effect, submit to the Registrar:
 - (a) those amendments; and
 - (b) a certification by at least one (1) of the Directors of the Company stating that the proposed amendments to the Articles of Association comply with the requirements of this Law and any other applicable DIFC laws.
- (3) If the Articles of Association are amended, the rights and obligations of the Shareholders and/or the Company which have arisen under the Articles of Association prior to the date of such amendment shall not be affected unless the amendment expressly provides for such effect.
- (4) Notwithstanding anything in the Articles of Association, a Shareholder of a Company is not bound by an amendment made to the Articles of Association after the date on which that Shareholder became a Shareholder, in so far as the amendment:
 - (a) requires that Shareholder to take or subscribe for more Shares than held by that Shareholder at the date on which the amendment was made; or
 - (b) in any way increases that Shareholder's Liability as at that date to contribute to the Company's share capital or otherwise to pay money to the Company,unless that Shareholder agrees in writing, either before or after the amendment was made, to be bound by it.

17. Copies of Articles of Association for Shareholders

- (1) A Company shall, on being so requested by a Shareholder, provide to such Shareholder a copy of the Articles of Association subject to payment of such reasonable fee as the Company may require.
- (2) A Company which fails to comply with the requirements in Article 17(1) is liable to a fine, as set out in Schedule 2.

18. Names

A Company shall not use a name which does not comply with the requirements prescribed in the DIFC Operating Law.

19. Change of name

- (1) A Company may change its name by Special Resolution provided it complies with the requirements of the DIFC Operating Law.
- (2) A Company shall file the Special Resolution by which it changed its name with the Registrar in accordance with Article 24.

20. Registered Office

A Company shall, at all times, have a registered office in the DIFC as required by the DIFC Operating Law.

21. Particulars in communications

A Company shall comply with the requirements of the DIFC Operating Law in respect of the use of its name and other relevant particulars in its communications.

22. Confirmation Statements

- (1) A Company shall comply with the requirements of the DIFC Operating Law in respect of Confirmation Statement for the annual provision of information to the Registrar in respect of its operations and status.
- (2) A person may, on payment of such reasonable fee as the Public Company may require, request a copy of the Confirmation Statement of a Public Company. The Public Company shall, within fourteen (14) days of receipt of the payment, cause a written copy of the Confirmation Statement to be provided to or be made available to that person at the Public Company's registered office. A Public Company which fails to comply with this requirement is liable to a fine as set out in Schedule 2.

23. Records

A Company shall comply with the requirements of the DIFC Operating Law in respect of maintenance of its records.

24. Filing of Special Resolutions and certain other resolutions and agreements

- (1) This Article applies to:
 - (a) any circumstances where a Special Resolution is required to be passed under this Law;
 - (b) any resolution or agreement agreed to by all the Shareholders of a Company that, if not so agreed to, would not have been effective for its purpose, unless passed as a Special Resolution;
 - (c) any resolution or agreement agreed to by all the holders of a class of Shares that, if not so agreed to, would not have been effective for its purpose, unless passed by some particular majority or otherwise in some particular manner; and
 - (d) any resolution or agreement that effectively binds all the holders of a class of Shares, though not agreed to by all those holders.
- (2) References in Article 24(1) to a Shareholder of a Company, or to a class of Shareholders of a Company, do not include the Company itself where it is such a Shareholder by virtue only of its holding shares as treasury shares.
- (3) A copy of every resolution or agreement to which this Article applies, or (in the case of a Resolution or agreement that is not in writing), a written memorandum setting out its terms, shall be submitted to the Registrar within thirty (30) days after it is passed or made.
- (4) A Company which fails to comply with the requirements of Article 24(3) is liable to a fine, as set out in Schedule 2.

PART 5: CORPORATE CAPACITY AND TRANSACTIONS**25. Capacity of Company**

- (1) A Company has the capacity, rights and privileges of a natural person.
- (2) The validity of an act done by a Company shall not be called into question on the ground of lack of capacity by reason of anything in its Articles of Association or by any act of its Shareholders.
- (3) Without limiting the generality of Article 25(2), a person acting in good faith when dealing with the Company is not affected by any limitations in its Articles of Association relating to its Directors' powers to bind the Company, or authorise another to bind the Company.

26. Form of contracts

A person acting under the express or implied authority of a Company may make, vary, revoke or discharge a contract or sign an instrument on behalf of that Company in the same manner as if the contract were made, varied, revoked or discharged or the instrument signed by a natural person.

27. Pre-incorporation contracts

- (1) A contract that purports to be made by or on behalf of a Company prior to its incorporation has effect as a contract made with the person so purporting to act for or on behalf of the Company, and that person is personally liable on the contract and entitled to the benefits of the contract unless Article 27(2) applies.
- (2) A Company may, within such period as may be specified in the relevant contract and, if no such period is specified, within a reasonable time after the Company has been incorporated, adopt any contract referred to in Article 27(1) by act or conduct signifying its intention to be bound by such contract. Where it does so:
 - (a) the Company shall be bound by the terms of such contract and be entitled to its benefits; and
 - (b) the person who purported to act for or on behalf of the Company prior to its incorporation shall cease both to be bound by such contract and to be entitled to the benefits of such contract.

28. Participation in a holding company

- (1) A body corporate cannot be a Shareholder of a Company which is its holding company, unless Article 28(2) applies. An Allotment or transfer of Shares in a Company to its subsidiary shall be void except to the extent otherwise provided in this Article.
- (2) Article 27(1) does not prevent a subsidiary which is, when it becomes a subsidiary, a Shareholder of its holding company, from continuing to be such a Shareholder for a period of twelve (12) months from the date on which it became the subsidiary, provided it:
 - (a) has no right to vote at meetings of the holding company or a class of its Shareholders; and
 - (b) shall not acquire further Shares in the holding company except on an Allotment of Shares to all Shareholders in proportion to the number of Shares held by such Shareholders immediately prior to the Allotment, by way of bonus issue.
- (3) Article 28(1) also applies to a nominee acting on behalf of a subsidiary as if it were the subsidiary itself.

PART 6: CLASS RIGHTS**29. Variation of class rights**

- (1) This Article applies to a variation or abrogation of the rights attached to a class of Shares in a Company.
- (2) If provision for the variation or abrogation of the rights attached to a class of Shares is made in the Articles of Association or pursuant to the terms of issue of the relevant Shares, those rights may only be varied or abrogated in accordance with those provisions.
- (3) If no provision is made as set out under Article 29(2), the rights attached to a class of Shares may only be varied or abrogated by:
 - (a) consent in writing of the holders of at least seventy five per cent (75%) of the nominal value of the Shares of that class; or
 - (b) a Special Resolution passed at a separate meeting of the holders of Shares of that class approving the variation or abrogation.
- (4) For the purposes of this Article, any alteration of a provision in the Articles of Association for the variation or abrogation of the rights attached to a class of Shares, or the insertion of any such provision into the Articles of Association themselves, is to be treated as a variation or abrogation of the relevant rights.

30. Shareholders' right to object to variation or abrogation

- (1) If the rights attached to any class of Shares are varied or abrogated in a manner referred to in Article 29(2) or 29(3), the holders of not less in the aggregate than fifteen per cent (15%) of the nominal value of the Shares of that class (being persons who did not consent to, or vote in favour of a resolution for, the variation or abrogation) may apply to the Court to have the variation or abrogation cancelled. If such an application is made, the variation or abrogation has no effect unless and until it is confirmed by the Court.
- (2) The application to the Court shall be made within thirty (30) days after the consent was given under Article 29(3)(a) or the resolution was passed under Article 29(3)(b). Such an application may be made on behalf of the holders of Shares entitled to make it by one (1) or more of them as appointed in writing.
- (3) Notice signed by or on behalf of the applicants that an application to the Court has been made under this Article shall be given by or on behalf of the applicants to the Registrar within seven (7) days after it is made.
- (4) The Court, after being satisfied that Articles 30(1) and 30(2) has been complied with, and after hearing the applicant and any other persons who appear to the Court to be interested in the application, may, if satisfied having regard to all the circumstances that the variation or abrogation would unfairly prejudice the holders of Shares of the relevant class, disallow the variation or abrogation. If the Court is not so satisfied, it shall confirm the variation or abrogation.

PART 7: PRIVATE COMPANIES AND PUBLIC COMPANIES**CHAPTER 1– FEATURES OF A COMPANY****31. Limited Liability**

- (1) The Liability of a Shareholder of a Company is limited to the amount, if any, that remains unpaid on the Shares held by that Shareholder.
- (2) A reference to a Private Company or a Public Company is a reference to a company limited by shares.

32. Definitions of Public and Private Companies

- (1) A Private Company is a Company which:
 - (a) has, at least, one (1) Shareholder;
 - (b) has no more than fifty (50) Shareholders; and
 - (c) is not a Public Company.
- (2) A Private Company does not breach the fifty (50) Shareholder limit in Article 32(1)(b) if the number of Shareholders in the Company is increased beyond fifty as a result of any transfer or transmission of Shares by operation of law.
- (3) A Private Company which registers a transfer of shares such that it would have more than fifty (50) Shareholders except in the circumstances set out in Article 32(2) is liable, to a fine, as set out in Schedule 2.
- (4) A Public Company is a Company which:
 - (a) is not prohibited from making an offer of its Securities to the public pursuant to Article 46;
 - (b) holds a minimum share capital as specified in Article 39; and
 - (c) has at least one (1) Shareholder, but may otherwise have any number of Shareholders.

33. Name of a Private Company

A Private Company shall exist under a name approved by the Registrar which shall be immediately followed by the word “Limited” or its abbreviation “Ltd.”, which shall be inserted wherever the Company’s name appears. A Company which fails to comply with this requirement is liable to a fine, as set out in Schedule 2.

34. Name of a Public Company

A Public Company shall exist under a name approved by the Registrar which shall be immediately followed by the words “Public Limited Company” or its abbreviation “PLC”, which shall be inserted wherever the Company’s name appears. A Company which fails to comply with this requirement is liable to a fine, as set out in Schedule 2.

CHAPTER 2 –ALTERATION OF COMPANY TYPE**35. Re-registration of a Public Company as a Private Company**

- (1) A Public Company may, subject to Articles 35(2) and (3), be re-registered as a Private Company if:

- (a) it has no more than fifty (50) Shareholders;
 - (b) a Special Resolution that it should be so re-registered is passed; and
 - (c) either:
 - (i) no application has been made under Article 35(2); or
 - (ii) such an application has been made and an order has been made by the Court confirming the Special Resolution; and
 - (d) an application for re-registration is delivered to the Registrar which includes:
 - (i) a statement of the Company's proposed name upon re-registration;
 - (ii) a copy of the Special Resolution that the Company be re-registered as a Private Company;
 - (iii) a copy of the Articles of Association as proposed to be amended; and
 - (iv) a certification by at least one (1) of the Directors of the Company stating that the proposed amendments to the Articles of Association comply with the requirements of this Law, and any other applicable DIFC laws.
- (2) In the case of a Public Company, the holders of not less in the aggregate than five percent (5%) of the nominal value of the Shares, or not fewer than ten (10) Shareholders of that company, who have not voted in favour of the resolution to convert to a Private Company, may apply to the Court within thirty (30) days of the Special Resolution to have that resolution set aside by the Court. Upon such an application being made, the Court may:
- (a) dismiss it, if no grounds are found that the rights of persons making the application are adversely affected; or
 - (b) confirm the Special Resolution; or
 - (c) impose such conditions as it deems necessary before the Company can be re-registered as a Private Company.
- (3) Where an application is made to the Court under Article 35(2), the Registrar shall not re-register the Public Company as a Private Company, except on the grounds specified in Article 35(1)(a), (b) or (c).
- (4) If the Registrar is satisfied that the Company making the application meets the requirements under this Article to be re-registered as a Private Company (including the satisfaction of any conditions imposed by the Court under Article 35(2)(c)), the Registrar shall re-register the Company accordingly. The Registrar shall issue a certificate of conversion to meet the circumstances of the case and stating the date on which it is issued.
- (5) On issue of the certificate of conversion, the Company becomes a Private Company and the proposed change in the Company's name and Articles of Association, as set out in its application, takes effect.

36. Re-registration of a Private Company as a Public Company

- (1) A Private Company may be re-registered as a Public Company if:
 - (a) a Special Resolution that it should be so re-registered is passed;

- (b) it has a share capital that meets the minimum share capital requirement for a Public Company in Article 39;
 - (c) the requirements in Article 36(2) and, where applicable, the requirements in Article 36(3), are met;
 - (d) an application for re-registration is delivered to the Registrar which includes:
 - (i) a statement of the Company's proposed name upon re-registration;
 - (ii) a copy of the Special Resolution that the Company be re-registered as a Public Company;
 - (iii) a copy of the Articles of Association as proposed to be amended;
 - (iv) if Article 36(3), applies, a copy of the relevant valuation report required under Article 42; and
 - (v) a certification by at least one (1) of the Directors of the Company stating that the proposed amendments to the Articles of Association comply with the requirements of this Law, and any other applicable DIFC laws.
- (2) A Private Company applying to re-register as a Public Company shall obtain:
- (a) a balance sheet prepared as at a date not more than seven (7) months before the date the application is delivered to the Registrar;
 - (b) an unqualified report by the Company's auditors that such balance sheet has been prepared in accordance with the accounting principles or standards prescribed in the Regulations or otherwise approved by the Registrar; and
 - (c) a written statement by the Company's auditors that in their opinion, at the balance sheet date, the amount of the Company's net assets was not less than the aggregate of the Company's share capital and its reserves.
- (3) If Shares are allotted by the Company:
- (a) in the period between the date as at which the balance sheet required under Article 36(2) is prepared and the passing of the Special Resolution that the Company be re-registered as a Public Company; and
 - (b) are Paid Up otherwise than in cash,
- the Company shall (other than where the Allotment is in connection with a share exchange) comply with the requirements in Article 42 in respect of the Allotment.
- (4) For the purposes of this Article 36, Shares are allotted by a Company in connection with a share exchange if:
- (a) the consideration for such an Allotment is the transfer of shares in another body corporate or the cancellation of shares in another body corporate, and such Allotment is open to all holders (or all of a particular class of holders) of shares in such other body corporate; or
 - (b) there is a proposed merger with another Merging Company where the Company proposes to acquire all the assets and liabilities of the other Merging Company in exchange for the issue of its Shares or other Securities to the shareholders of the other Merging Company.

- (5) If the Registrar is satisfied that the Company making the application meets the requirements under this Article 36 to be re-registered as a Public Company, the Registrar shall re-register the Company accordingly. The Registrar shall issue a certificate of conversion to meet the circumstances of the case and stating the date on which it is issued.
- (6) On issue of the certificate of conversion, the Company becomes a Public Company and the proposed changes in the Company's name and Articles of Association, as set out in its application, take effect.

CHAPTER 3 – SHAREHOLDERS AND SHARES GENERALLY

37. Shareholders

- (1) The Incorporators of a Company are deemed to have agreed to become Shareholders of the Company and, on the registration of the Company, shall be entered as Shareholders in the Company's register of Shareholders.
- (2) Persons other than Incorporators may, by:
 - (a) agreeing to become a Shareholder in the Company;
 - (b) acquiring a Share in the Company; and
 - (c) having their name entered in the Company's register of Shareholders,become Shareholders of the Company.

38. Nature of Shares

- (1) Subject to the Articles of Association and the terms of their issue, each Share shall:
 - (a) carry the right to vote at a meeting of the Company;
 - (b) represent a proportionate interest in the Company; and
 - (c) rank, in all respects equally with each other Share of the same class of Shares in the Company.
- (2) Subject to Article 50, the Shares or other interests of a Shareholder of a Company are transferable in the manner provided in its Articles of Association.
- (3) A Company may create different classes of Shares to the extent permitted by its Articles of Association.

39. Minimum share capital

- (1) Each Share in a Company must have a fixed nominal value. A Share may not be allotted by a Company at less than its nominal value. An Allotment of a Share that does not have a fixed nominal value, or is allotted at less than its nominal value, is void.
- (2) A Private Company shall have no minimum share capital.
- (3) A Public Company:
 - (a) shall have an issued and allotted share capital (excluding treasury shares) of no less than \$100,000 at any time; and

- (b) shall not allot a Share except as Paid Up at least as to one-quarter ($\frac{1}{4}$) of its value, provided that this provision does not apply to any Shares allotted pursuant to an Employee Share Scheme.

40. Alteration of share capital

- (1) A Company may, by Ordinary Resolution, alter its share capital unless prohibited by its Articles of Association, or it results in a contravention of the minimum capital requirement for Public Companies under Article 39(3)(a). A Company may:
 - (a) increase its share capital by creating new Shares of an existing class with the same nominal value, or a new class of Shares of such nominal value as it thinks fit;
 - (b) consolidate and divide its share capital (whether allotted or not) into Shares representing a larger nominal value than their existing nominal value; and
 - (c) sub-divide its Shares, or any of them, into Shares representing a smaller nominal value than their existing nominal value, provided that the proportion between the amount paid, and the amount unpaid, if any, on each sub-divided Share shall be the same as it was in the case of the Share from which the sub-divided Share is derived.
- (2) A Company which fails to comply with the requirements of Article 40(1) is liable to a fine, as set out in Schedule 2.
- (3) Subject to Article 44, the Directors may exercise a power of the Company to:
 - (a) allot Shares; or
 - (b) grant rights to subscribe for or convert any Securities into Shares,if they are authorised to do so by its Articles of Association or by Ordinary Resolution.

41. Non-cash consideration for Shares in a Private Company

- (1) A Private Company shall not, except as provided under Article 41(2), allot Shares as Paid Up (in part or in full) other than for cash consideration.
- (2) Where a Private Company allots Shares for consideration other than cash, the board of Directors of the Company shall:
 - (a) determine the reasonable cash value of the consideration for the relevant Shares;
 - (b) resolve that, in its opinion, the consideration for the Shares is fair and reasonable to the Company and to all existing Shareholders;
 - (c) resolve that, in its opinion, the present cash value of the consideration to be provided for the Shares is not less than the nominal value to be credited for the issue of the Shares; and
 - (d) submit a copy of the relevant Resolutions to the Registrar along with the Allotment notice.
- (3) The Resolutions required under Article 41(2) shall describe the consideration in sufficient detail and the present cash value of that consideration, as determined by the board of Directors, and the basis of their valuation.
- (4) Nothing in this Article applies to:
 - (a) the Allotment of Shares in a Company on the conversion of any convertible Securities;

- (b) the exercise of an option to acquire Shares in a Company;
- (c) the Allotment of Shares that are fully Paid Up from the reserves of a Company to all Shareholders in proportion to the number of Shares held by each Shareholder; or
- (d) the consolidation and division, or subdivision, of Shares, or any class of Shares, in a Company in accordance with Article 40(1).

42. Non-cash consideration for Shares in a Public Company

- (1) Subject to Article 42(3), a Public Company shall not allot Shares as Paid Up (in part or in full) otherwise than in cash unless:
 - (a) the Company has obtained an independent valuation of the non-cash consideration for the Allotment in accordance with this Article not more than six (6) months prior to the Allotment; and
 - (b) a copy of the valuation report has been sent to the proposed allottee; and
 - (c) copies of the valuation report and the relevant Resolutions have been submitted to the Registrar along with the Allotment notice.
- (2) A Public Company shall not accept at any time, in payment up of its Shares or any premium on them, an undertaking given by any person that such person or another should do work or perform services for the Company or any other person, which may be performed five (5) years after the date of such Allotment.
- (3) Nothing in this Article applies to:
 - (a) the Allotment of Shares in a Company in connection with a share exchange;
 - (b) the Allotment of Shares in a Company in connection with a proposed merger;
 - (c) the Allotment of Shares in a Company on the conversion of any convertible Securities;
 - (d) the exercise of an option to acquire Shares in a Company;
 - (e) the Allotment of Shares that are fully Paid Up from the reserves of a Company to all Shareholders in proportion to the number of Shares held by each Shareholder; or
 - (f) the consolidation and division, or subdivision, of Shares, or any class of Shares, in a Company in proportion to those Shares or the Shares in that class.
- (4) The valuation report required under Article 42(1) shall be made by any person registered as an auditor who is not:
 - (a) an officer or Employee of the Company or a partner or employee of such a person, or a partnership in which such a person is a partner;
 - (b) an officer or employee of an associated undertaking of the Company or a partner or employee of such a person, or a partnership in which such a person is a partner; or
 - (c) connected in any way with the Company, as prescribed under Regulations.
- (5) The person carrying out the valuation is entitled to require from the Officers and Employees of the Company such information and explanation as such person thinks necessary, and such Officers and Employees shall take reasonable steps to comply with those requests. A person who knowingly or

recklessly makes a statement to which this Article applies, that is misleading, false or deceptive in a material way is liable to a fine in Schedule 2.

- (6) For the purposes of this Article 42, an Allotment is in connection with:
- (a) a share exchange, if the consideration for such an Allotment is the transfer of shares in another company or the cancellation of shares in another company, and such Allotment is open to all holders (or all of a particular class of holders) of shares in such other company; and
 - (b) a proposed merger with another Merging Company, if the Company proposes to acquire all the assets and liabilities of the other Merging Company in exchange for the issue of its Shares or other Securities to the shareholders of the other Merging Company.

43. Bearer Shares

It shall be unlawful for a Company to issue bearer Shares. Any Shares issued by a Company which purport to be bearer Shares shall be void.

44. Shareholders' pre-emption rights

- (1) Subject to Article 45, a Company shall not allot Equity Securities to a person on any terms unless:
- (a) it has made an offer to each person who holds Equity Securities to allot to that person on the same or more favourable terms a proportion of those Equity Securities that is as nearly as practicable equal to the proportion of the Equity Securities held by that person in the Company's share capital; and
 - (b) the period during which any such offer may be accepted has expired or the Company has received notice of the acceptance or refusal of every offer so made.
- (2) A reference to the Allotment of Equity Securities includes:
- (a) the grant of a right to subscribe for, or to convert Securities into, Ordinary Shares; and
 - (b) the sale of Equity Securities in the Company that, immediately before the sale, were held by the Company as treasury shares.
- (3) Shares held by the Company as treasury shares are disregarded for the purposes of this Article, so that the Company is not treated as a person who holds Equity Securities and treasury shares forming part of the Company's share capital.
- (4) A Company's Articles of Association may prohibit a Company from allotting Shares of a particular class in respect of an offer referred to in Article 44(1)(a), unless the Company has complied with the equivalent pre-emption rights included in its Articles of Association. Article 44(1) does not apply in such circumstances and the Company may allot the Shares in accordance with those equivalent pre-emption rights, provided such an offer is communicated in accordance with Article 44(5).
- (5) An offer made pursuant to Article 44(1)(a):
- (a) may be made in hard copy or electronic form;
 - (b) may, if a holder of Equity Securities has not given an address to the Company, be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Appointed Publications;

- (c) shall be open for acceptance for a period of not less than fourteen (14) days from the date on which:
 - (i) the offer is deemed to have been received in accordance with the Articles of Association (or, if the Articles of Association do not contain such provisions, when the offer is reasonably expected to have been received by the offeree); or
 - (ii) the offer is published in the Appointed Publications.
- (6) A Company does not contravene this Article where:
 - (a) an offer has been made to holders of Equity Securities in accordance with this Article; and
 - (b) the Company allots Equity Securities to:
 - (i) an existing holder of Equity Securities; or
 - (ii) a person in whose favour an existing holder of Equity Securities has renounced his right to allotment.
- (7) A Company which fails to comply with the requirements of Article 44 is liable to a fine, as set out in Schedule 2.

45. Exceptions to the Pre-emption Right

Article 44 does not apply in respect of an Allotment of Equity Securities:

- (a) which are bonus Shares;
- (b) which would be held under, or allotted or transferred pursuant to, an Employee Share Scheme;
- (c) to be wholly or partly Paid Up otherwise than in cash in accordance with Article 41 or 42;
- (d) in a Private Company, to the extent that the Pre-emption right has been excluded or varied by its Articles of Association; or
- (e) by any Company, to the extent that such restrictions have been excluded or varied by Special Resolution (unless a higher threshold is required by the Articles of Association), provided that such Special Resolution has been recommended by the Directors of the Company in a written statement circulated to all Shareholders which also sets out:
 - (i) the Directors' reasons for making the recommendation;
 - (ii) the amount to be paid to the Company in respect of such Allotment; and
 - (iii) the Directors' justification of that amount.

CHAPTER 4– PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

46. Prohibition of public offers by Private Companies

- (1) A Private Company shall not:
 - (a) make an offer of its Securities to the public; or
 - (b) allot or agree to allot its Securities to any person with a view to such Securities being offered to the public.

- (2) Unless the contrary is proved, an Allotment or agreement to allot Securities is presumed to be made with a view to such Securities being offered to the public if an offer of the Securities (or any of them) is made to the public:
 - (a) within six (6) months after the Allotment or agreement to allot; or
 - (b) before the receipt by the Company of the whole of the consideration to be received by the Company in respect of the Securities.
- (3) A Private Company does not contravene this Article if it:
 - (a) acts in good faith in pursuance of arrangements under which it is to re-register as a Public Company before the Securities are allotted; or
 - (b) undertakes, as part of the terms of the offer, to re-register as a Public Company within six (6) months from the date on which the offer is first made, and that undertaking is complied with.
- (4) For the purposes of this Article:
 - (a) an offer to the public includes an offer to any section of the public, however selected;
 - (b) an offer is not regarded as an offer to the public if it can be properly regarded, in all the circumstances, as:
 - (i) not being calculated to result, directly or indirectly, in the Securities becoming available to persons other than those receiving the offer;
 - (ii) being made to an existing Shareholder, Officer or Employee of the Company (or a member of their immediate family), an existing debenture holder of the Company, or a trustee of such persons, and if it is made on terms renounceable, it can only be renounced in favour of another person who is entitled to receive that offer; or
 - (iii) being an offer for Securities to be held under an Employee Share Scheme and, if it is made on terms renounceable, it can only be renounced in favour of another person who is entitled to receive that offer.
- (5) A Company which fails to comply with the requirements of Article 46(1) is liable to a fine, as set out in Schedule 2.

47. Enforcement of the prohibition in Article 46

- (1) If it appears to the Court:
 - (a) on an application for an order made by a Shareholder or Creditor of the Company or by the Registrar under this Article; or
 - (b) in a proceeding brought under Article 153,that a Company is acting or proposing to act in contravention of Article 46, the Court shall make an order restraining the Company from contravening or continuing to contravene Article 46.
- (2) If it appears to the Court:
 - (a) on an application for an order made by a Shareholder (being a person holding Shares at the time the offer was made or who became a Shareholder as a result of the offer) or Creditor of the Company or by the Registrar under this Article; or

- (b) in a proceeding brought under Article 153,
- that a Company has acted in contravention of Article 46, the Court may make any one (1) or more orders as specified in Article 47(3).
- (3) The Court may:
- (a) in the case of an application under Article 47(1), make an order restraining the Company from contravening or continuing to contravene that prohibition;
 - (b) in the case of an application under Article 47(2), issue an order requiring the Company to be re-registered as a Public Company; or
 - (c) if it appears to the Court that the Company does not meet the requirements for re-registration as a Public Company and/or it is impractical or undesirable to require the Company to take steps to do so, make one (1) or more of the following orders against either the Company or any person knowingly concerned in the breach (whether or not such person is an Officer of the Company):
 - (i) a remedial order so as to put the affected party back in the position that party would have been in, but for the contravention of Article 46;
 - (ii) without limiting the generality of Article 47(3)(c)(i), an order that any person knowingly concerned in the contravention of Article 46 shall offer to purchase Securities at such price and on such other terms as the court thinks fit;
 - (iii) in the event that a remedial order is made against the Company, an order that the Company's share capital be reduced accordingly;
 - (iv) an order that the Company be subject to a compulsory winding up; or
 - (v) such other order as the Court sees fit.
- (4) For the purposes of this Article, an affected party is a Shareholder or Creditor of the Company.

CHAPTER 5 – REGISTERS AND SHARE CERTIFICATES

48. Register of Shareholders

- (1) Every Company shall establish and maintain a register of its Shareholders and promptly enter in it:
- (a) the names and addresses of its Shareholders, together with a statement of the Shares held by each Shareholder, distinguishing each Share by its number (so long as the Share has a number) and, where the Company has more than one (1) class of issued Shares, by its class;
 - (b) the date on which each person was registered as a Shareholder;
 - (c) the date on which any person ceased to be a Shareholder;
 - (d) the date on which the number of Shares held by any Shareholder increased or decreased;
 - (e) in the case of Shares which are not fully paid, the amount remaining unpaid on each Share;
 - (f) in the case of joint holders of Shares in a Company, unless otherwise provided in its Articles of Association:

- (i) the names of each joint holder;
 - (ii) the nominee shareholder for the purposes of voting; and
 - (iii) a nominated single address to which all communications required to be sent to a Shareholder can be sent; and
 - (g) any other information prescribed by Regulations.
- (2) A Company which fails to comply with the requirements of Article 48(1) is liable to a fine, as set out in Schedule 2.

49. Register of debentures

- (1) If a Company has issued debentures, it shall establish and maintain a register of debenture holders containing the information set out in Article 49(2).
- (2) The register of debenture holders shall contain the name and address of, and the amount of the debentures held by, each debenture holder.
- (3) A Company's failure to comply with the requirements in Article 49(1) in relation to a debenture does not affect the validity of that debenture.
- (4) A Company which fails to comply with the requirements of this Article 49 is liable to a fine, as a set out in Schedule 2.

50. Transfer and registration of Shares and debentures

- (1) Notwithstanding anything in the Articles of Association, and without prejudice to Article 50(5), a Company shall only register a transfer of a Share in, or debenture of, the Company where an instrument of transfer in writing has been delivered to it by the transferee or the transfer is in accordance with any Regulations which enable title to Securities to be evidenced and transferred without a written instrument. The Company shall register any such transfer promptly on its register of Shareholders or register of debenture holders (as the case may be) and in the case of the former, file a notice of transfer of shares with the Registrar in accordance with the Regulations.
- (2) Nothing in Article 50(1) shall prejudice any power of the Company to register as a Shareholder or debenture holder any person to whom the right to any Share in, or debenture of, the Company has been transmitted by operation of law, including pursuant to any order made by a court of competent jurisdiction.
- (3) A transfer of a Share or debenture of a deceased Shareholder or debenture holder made by his Personal Representative, although the Personal Representative is not himself a Shareholder or debenture holder, is as valid as if the Personal Representative had been a Shareholder or debenture holder at the time of the execution of the instrument of transfer.
- (4) On the application of the transferor of a Share in or debenture of a Company, the Company shall promptly enter in its register of Shareholders or register of debenture holders (as the case may be) the name of the transferee in the same manner and subject to the same conditions as if the application for the entry was made by the transferee under Article 50(1).
- (5) If a Company has reasonable grounds to refuse to register a transfer of Shares in, or debentures of the Company as required under Article 50(1) or Article 50(4), it shall, as soon as reasonably practicable and in any case within fourteen (14) days after the date on which the transfer was lodged with it, give to the transferor and transferee notice of its reasons for the refusal. Failure by the Company to do so shall be a contravention by the Company of Article 50(1) or 50(4), as applicable.

- (6) A Company which fails to comply with the requirements in this Article 50, without having reasonable grounds pursuant to Article 50(5), is liable to a fine, as set out in Schedule 2.

51. Place where the registers are kept

- (1) A Company's register of Shareholders and, if it has issued debentures, its register of debenture holders, shall be kept at its registered office except as otherwise provided in Article 51(2).
- (2) A Company's register of Shareholders and, if it has issued debentures, its register of debenture holders, may be maintained by an agent of the Company at the premises of the agent, provided that the Company has immediate access to such registers. For this purpose, the Company may maintain a copy of the register and, where it does so, the Company shall update the copy of the register to reflect any changes to the information contained in the register of Shareholders or register of debenture holders within ten (10) days of the relevant change.
- (3) A Company which fails to comply with the requirements of Article 51(1) or 51(2) is liable to a fine, as set out in Schedule 2.

52. Inspection of registers

- (1) The register of Shareholders and any register of debenture holders shall be open for inspection by any Shareholder or debenture holder of the Company (respectively) during business hours without charge, and, in the case of a Public Company, by any other person on payment of such reasonable sum as the Company may require, in one (1) of the places specified below:
- (a) if the register is maintained at the registered office of the Company, at that office;
 - (b) if the register of Shareholders or register of debenture holders is kept at the offices of an agent, at the offices of such agent if that office is located in the DIFC; or
 - (c) if the register of Shareholders or register of debenture holders is maintained at an office of an agent outside the DIFC, a copy of those registers at its registered office in the DIFC.
- (2) A person other than a Shareholder or debenture holder seeking to exercise the rights conferred under Article 52(1) in respect of a register maintained by a Public Company shall make a request in writing to the Company to that effect and shall include with such request, the following information:
- (a) in the case of an individual, his name and address;
 - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
 - (c) the purpose for which the information is to be used; and
 - (d) whether the information will be disclosed to any other person, and if so:
 - (i) where that person is an individual, his name and address;
 - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf; and
 - (iii) the purpose for which the information is to be used by the person referred to in Article 52(2)(d)(i) or (ii).
- (3) If a Company refuses to allow inspection of its registers upon a request made by a person in accordance with the requirements in Articles 52(1) or 52(2) as applicable, the Registrar may, on application by the person seeking to exercise such right, issue a direction to the Company requiring

it to provide immediate inspection of the registers by the applicant. Any application made by a person other than a Shareholder or debenture holder under this Article shall include the information set out in Article 52(2).

- (4) A Company which fails to comply with each of the requirements in this Article 52 is liable to a fine, as set out in Schedule 2.

53. Rectification of registers

- (1) If:

- (a) the name of a person, or the number of Shares held or the class of Shares held by that person is, without sufficient reason, not entered correctly or omitted from a Company's register of Shareholders; or
- (b) there is a failure or unnecessary delay in entering on the register of Shareholders the fact that a person has ceased to be a Shareholder;

the person aggrieved, or a Shareholder of the Company, may apply to the Registrar for rectification of the register of Shareholders.

- (2) If:

- (a) the name of a person, or the number of debentures held or the type of debentures held by that person is, without sufficient reason, not entered correctly in, or omitted from, a Company's register of debentures; or
- (b) there is a failure or unnecessary delay in entering on the register of debentures the fact that a person has ceased to be a debenture holder;

the person aggrieved, or a debenture holder of the Company, may apply to the Registrar for rectification of the register of debenture holders.

- (3) Upon receipt of a request under Article 53(1) or 53(2), the Registrar:

- (a) may order the Company to rectify the register of Shareholders or the register of debenture holders (as the case may be);
- (b) may refuse the application for reasonable cause, which includes (but is not limited to) a dispute relating to the application or the relevant holding; and
- (c) shall promptly inform the applicant of the Registrar's decision and, if the application is refused, the reasons for the refusal.

- (4) Without prejudice to the Registrar's powers under Article 53(3) the Court may make one (1) or more of the following orders:

- (a) on application of the Registrar, an order enforcing any orders made by the Registrar under Article 53(3);
- (b) on application of a person aggrieved, a Shareholder of the Company or a debenture holder of the Company, an order directing the Company to, or not to, rectify the register of Shareholders or register of debenture holders (as the case may be), or to do any act or thing; or
- (c) on application of a person aggrieved, an order requiring the Company to pay damages or to do any act or thing.

- (5) A Company which fails to rectify its register of Shareholders or register of debenture holders, to the extent ordered by the Registrar, is liable to a fine, as set out in Schedule 2.

54. Share certificates

- (1) Subject to Article 54(2), every Company shall:
- (a) within fourteen (14) days after the Allotment of any of its Shares; and
 - (b) within fourteen (14) days after the date on which a transfer of any of its Shares is lodged with the Company,
- complete and have ready for delivery the certificates of all Shares allotted or transferred, unless title to Shares is evidenced in accordance with other requirements prescribed in Regulations.
- (2) Article 54(1) does not apply to a transfer of Shares which the Company is, for any reason, entitled to refuse to register and does not register.
- (3) If the title or transfer is evidenced without a written instrument, then the registration of the Allotment or transfer shall be completed within fourteen (14) days from the date on which the Allotment occurs or the transfer is notified to the Company.
- (4) A Company which fails to comply with each of the requirements in this Article 54 is liable to a fine, as set out in Schedule 2.

55. Right of Public Company to request information about interests in its Shares

- (1) A Public Company may give notice to any person whom it knows or has reasonable grounds to believe:
- (a) to be interested in the Company's Shares; or
 - (b) to have been so interested at any time in the three (3) years preceding the date of such notice.
- (2) The notice may require the person to confirm any interest that person has, or has had, in the Shares and, to provide details relating to such interest as specified in the notice.
- (3) For the purposes of this Article, a person has an interest in Shares of a Company if that person:
- (a) enters into a contract to acquire the relevant Shares; or
 - (b) not being the registered holder of the relevant Shares, is entitled to:
 - (i) exercise any right conferred by the holding of the Shares; or
 - (ii) control the exercise of any such right.
- (4) Where a person fails to comply with a notice served on that person by a Company pursuant to Article 55(1), the Company may apply to the Court for an order directing that the relevant Shares be subject to the restrictions that:
- (a) any transfer of the Shares be void;
 - (b) no voting rights be exercisable in respect of the Shares;
 - (c) no further Shares be issued in lieu of the Shares, or in pursuance of an offer made to their holder; and

- (d) except in a liquidation, no payment be made of sums due from the Company on the Shares, whether in respect of capital or otherwise.
- (5) The Court may make any such order, as specified under Article 54(4), as it sees fit, having regard to the rights of third parties in respect of such Shares.
- (6) Any person whose rights are, or are likely to be, unfairly affected by an order of the Court made under Article 55(5) may apply to the Court on those grounds. If the Court is satisfied that its order may unfairly affect the rights of the applicant or any other third party, it may, for the purpose of protecting the rights of the applicant or any third party, and subject to such terms as it thinks fit, direct that:
 - (a) to the extent set out in the order, the acts of a person or persons (or category of persons) do not constitute a contravention of the restrictions imposed under Article 55(4); or
 - (b) the relevant Shares or any part of those Shares shall cease to be subject to the restrictions.
- (7) Where there is a restriction imposed in respect of Shares pursuant to Article 55(4), except to the extent otherwise provided under Article 55(6):
 - (a) any agreement to transfer the Shares or take any other actions reliant on a vote cast in respect of the Shares; or
 - (b) any issue of Shares in lieu of right of the Shares, or in pursuance of an offer made to their holder; or
 - (c) any payment made of sums due from the Company on the Shares, whether in respect of capital or otherwise, except in a liquidation,shall be void.
- (8) An application may be made to the Court, by the Company or any person aggrieved, for an order directing that the Shares shall cease to be subject to restrictions. The Court may not make such an order unless:
 - (a) it is satisfied that the relevant facts about the Shares have been disclosed to the Company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or
 - (b) the Shares are to be transferred for valuable consideration and the Court approves the transfer.

CHAPTER 6 – REDEMPTION AND PURCHASE OF SHARES

56. Power to issue redeemable Shares

- (1) Subject to the provisions of this Article and Article 57, a Company may, if authorised to do so by its Articles of Association:
 - (a) issue and allot; or
 - (b) convert existing non-redeemable Shares, whether allotted or not, into,

Shares which are to be redeemed, or are liable to be redeemed, either in accordance with their terms or at the option of the Company or the Shareholder.
- (2) A Company shall not convert existing non-redeemable Shares into redeemable Shares if, as a result, there are no issued Shares that are not redeemable.

- (3) Shares may be redeemed only if they are fully paid and from the following sources:
 - (a) in the case of the nominal value of the Shares, from the Paid Up share capital, Share premium and other reserves of the Company; and
 - (b) in the case of any premium, from realised or unrealised profits, Share premium or other reserves of the Company.
- (4) A Company shall not redeem any of its Shares unless all of the Directors sign a certificate that they have formed the opinion:
 - (a) that, immediately following the date on which the payment for the redemption is proposed to be made, the Company will be able to discharge its liabilities as they fall due;
 - (b) that, having regard to:
 - (i) the prospects of the Company and to the intentions of the Directors with regard to the management of the Company's business; and
 - (ii) the amount and character of the financial resources that will, be available to the Company,
the Company will be able to:
 - (iii) continue to carry on its business; and
 - (iv) discharge its liabilities as they fall due,
until the expiry of the period of twelve (12) months immediately following the date on which the payment for the redemption is proposed to be made.
- (5) A Director who signs a certificate under Article 56(4) without having reasonable grounds for the opinions expressed in the certificate is liable to a fine, as set out in Schedule 2.
- (6) Upon the redemption of Shares pursuant to this Article, the Shares shall be treated as cancelled and the amount of the Company's share capital shall be reduced accordingly by the nominal value of the Shares redeemed, unless they are held by the Company as treasury shares.
- (7) Where a Company is about to redeem Shares pursuant to this Article, it may issue Shares up to the value of the Shares to be redeemed, as if those Shares had never been issued.
- (8) A Company shall not redeem its Shares pursuant to this Article if as a result of the redemption:
 - (a) there would no longer be a Shareholder of the Company holding Shares other than redeemable Shares; or
 - (b) the Company would be in contravention of any applicable minimum capital requirement under Article 39 or any other applicable DIFC Laws.
- (9) A Company which redeems any of its Shares shall notify the Registrar of the redemption and confirm to the Registrar the share capital of the Company following completion of the redemption.

57. Power of Company to purchase its own Shares

- (1) Subject to any restrictions in its Articles of Association, a Company may purchase its own Shares to the extent permitted by this Article.
- (2) A purchase under this Article shall be:

- (a) sanctioned by a Special Resolution, if it is an off-market purchase, unless the Company is a wholly-owned subsidiary; or
 - (b) sanctioned by an Ordinary Resolution if it is a market purchase.
- (3) The holders of the Shares to be purchased shall not have any right to vote on the Special Resolution or Ordinary Resolution referred to in Article 57(2) as is relevant.
- (4) A Company may not, under this Article, purchase its Shares if:
- (a) as a result of the purchase, there would no longer be a Shareholder of the Company holding Shares other than redeemable Shares or Shares held as treasury shares;
 - (b) such Shares are not fully paid; or
 - (c) the Company would be in contravention of any applicable minimum capital requirement under Article 39.
- (5) Articles 56(4) and 56(5) apply to the purchase by a Company under this Article of its own Shares as it applies to the redemption by the Company of its redeemable Shares.
- (6) Where a Company purchases its own Shares, the Shares shall be paid for, if it is:
- (a) an off-market purchase, upon purchase; or
 - (b) a market purchase, in accordance with the rules of the relevant Regulated Market.
- (7) A copy of the contract setting out the terms for the purchase by the Company of its Shares shall:
- (a) be sent to each Shareholder at or before the time at which the proposed Resolution is sent to him;
 - (b) in the case of a Resolution to be passed at a meeting, be made available for inspection by Shareholders at the Company's registered office for a period no less than fifteen (15) days prior to the date of the meeting, and at the meeting itself; and,
- if the Company is a Public Company, such a contract shall be kept available for inspection, upon request by any Shareholder, at the Company's registered office for a period of 10 years from the date of purchase.
- (8) For the purposes of this Article, a purchase is:
- (a) a 'market purchase', if it is made by a Public Company on a Regulated Market; and
 - (b) an 'off-market purchase' if it is not made on a Regulated Market.
- (9) A Company which purchases its own Shares shall notify the Registrar of the purchase and confirm to the Registrar the share capital of the Company following completion of the purchase within thirty (30) days of the purchase.
- (10) A Company which fails to comply with any of the requirements in Articles 57(2), 57(3), 57(4) and 57(6) is liable to a fine not exceeding the amount set out in Schedule 2.
- (11) Where a Company fails to comply with the requirements in either Article 57(7) or Article 57(9), the Company and any Employee of the Company in default are liable to a fine, not exceeding the amount set out in Schedule 2.

- (12) For the avoidance of doubt, if a director contravenes Article 56(5), as applied by Article 57(5), the director is liable to a fine as set out in Schedule 2.

58. Treasury shares

- (1) A Company may hold any Shares that have been purchased by it under Article 57 as treasury shares provided that:
- (a) there is no restriction in its Articles of Association which prohibits it to do so;
 - (b) it is sanctioned by an Ordinary Resolution; and
 - (c) it complies with the requirements of this Article 58.
- (2) A Company that holds Shares as treasury shares may:
- (a) cancel the Shares – in which case, the amount of the Company’s share capital shall be reduced accordingly by the nominal value of the Shares cancelled;
 - (b) sell the Shares;
 - (c) transfer the Shares for the purposes of, or pursuant to, an Employee Share Scheme;
 - (d) transfer the Shares to existing Shareholders as fully paid bonus Shares; or
 - (e) continue to hold the Shares.
- (3) While Shares are held by a Company as treasury shares:
- (a) the Company shall not, for the purposes of Article 91 and Article 94, be treated as being a Shareholder or as holding Shares in the Company;
 - (b) no voting rights (direct or through proxy) shall attach to the Shares held as treasury shares;
 - (c) if a provision of this Law requires:
 - (i) a proportion of votes attaching to Shares held in the Company to be obtained; or
 - (ii) a proportion of the holders of Shares of the Company, (which may include persons representing by proxy other holders of Shares of the Company), to consent or not to consent,in order for a Resolution to be passed or an action or decision to be taken or not to be taken by any person, the Shares held as treasury shares shall not, for the purposes of that provision, be taken into account in determining:
 - (A) the total number of Shares held in the Company; or
 - (B) whether such a proportion has been attained;
 - (d) the Company shall not make or receive any dividend, or any other Distribution (whether in cash or otherwise) of the Company’s assets (including any Distribution of assets to Shareholders on a winding up), in respect of the Shares held as treasury shares;
 - (e) the rights in respect of the treasury shares shall not be exercised by or against the Company;

- (f) the obligations in respect of the treasury shares shall not be enforceable by or against the Company; and
 - (g) any purported exercise or enforcement of a right, obligation or requirement referred to in Article 58(3)(b) to (f) is void.
- (4) Nothing in Article 58(3) shall prevent:
- (a) an Allotment of Shares as fully paid bonus Shares in respect of treasury shares; or
 - (b) the payment of any amount payable on the redemption of redeemable Shares that are held as treasury shares.
- (5) If under Article 58(2)(a), a Company is about to cancel Shares, it may issue Shares up to the Paid Up amount of the Shares to be cancelled as if those Shares had never been issued.
- (6) Any Shares allotted as fully paid bonus Shares in respect of Shares held as treasury shares by a Company shall be treated as if they were purchased by the Company at the time they were allotted.
- (7) If Shares are held by a Company as treasury shares:
- (a) the register of Shareholders kept under Article 48 shall include an entry relating to the number of Shares held as treasury shares;
 - (b) the Register shall, to the extent it contains details of the Shareholders of the Company, include an entry relating to the number of Shares held as treasury shares; and
 - (c) the Confirmation Statement filed under Article 22 shall include an entry relating to the number of Shares held as treasury shares on 1st January in the year of the return.

59. Prohibition on financial assistance to acquire Shares

- (1) A Company shall not:
- (a) if it is a Public Company, provide financial assistance for a person to acquire Shares, or any units of Shares, in itself, or its holding company; and
 - (b) if it is a Private Company, provide financial assistance for a person to acquire Shares, or units of Shares, in a holding company which is a Public Company, unless the giving of the financial assistance falls within one of the provisions in Articles 59(2) to Article 59(6).
- (2) The giving of the financial assistance:
- (a) does not materially prejudice the interests of the Company or its Shareholders or the Company's ability to discharge its liabilities as they fall due; and
 - (b) is approved by a Resolution of Shareholders holding not less than ninety per cent (90%) in nominal value of the Shares giving a right to attend and vote at any Shareholders' meeting.
- (3) The Company's ordinary business includes providing finance and the financial assistance is given in the ordinary course of that business and on ordinary commercial terms.
- (4) The financial assistance is given in connection with, or for the purposes of, an Employee Share Scheme of the Company.
- (5) The financial assistance is only an incidental part of some larger purpose of the Company and the financial assistance is given in good faith in the interest of the Company.

- (6) The financial assistance is of a kind prescribed in the Regulations as exempted from the prohibition in this Article.
- (7) In this Article a reference to ‘financial assistance’ is a reference to financial assistance of any kind and includes:
- (a) making a loan;
 - (b) making a gift;
 - (c) issuing a debenture;
 - (d) giving security over the Company’s assets; and
 - (e) giving a guarantee or an indemnity in respect of another person’s Liability,
- but excludes:
- (f) any Distribution of the Company’s assets by way of dividend lawfully made or a Distribution in the course of a Company’s winding up;
 - (g) an Allotment of fully paid bonus Shares;
 - (h) a redemption or purchase by a Company of its own Shares pursuant to Chapter 6 of Part 7 of this Law; and
 - (i) a reduction of share capital pursuant to Chapter 7 of Part 7 of this Law;
- (8) When a Company fails to comply with any of the requirements in this Article 59, the Company and any Officer in default are liable to a fine, as set out in Schedule 2.

CHAPTER 7 – REDUCTION OF CAPITAL

60. Reduction of share capital

Annex D

- (1) A Private Company may reduce its share capital by a Special Resolution supported by a solvency statement under Article 61.
- (2) A Public Company or a Private Company may reduce its share capital by a Special Resolution confirmed by the Court, following the procedures in Articles 62 and 63.
- (3) A Company shall not reduce its share capital under Article 60(1) or (2) if:
 - (a) its Articles of Association contain any prohibition or restriction relating to capital reduction;
 - (b) as a result of the reduction, there would no longer be any Shareholder of the Company other than holders of redeemable Shares; or
 - (c) in the case of a Public Company, its share capital falls below the minimum share capital required under Article 39 or any other applicable DIFC laws, except in the circumstances set out in Article 65.
- (4) Subject to Article 60(1), (2) and (3), a Company may reduce its share capital in any way on such terms as it may decide, and in particular:
 - (a) by extinguishing or reducing the Liability on any of its Shares in respect of share capital not Paid Up; or
 - (b) either with or without extinguishing or reducing Liability on any of its Shares, by:
 - (i) cancelling any Paid Up share capital that is lost or unrepresented by available assets, or
 - (ii) by repaying any Paid Up share capital in excess of the Company's requirements; and
 - (c) by causing any of its Shares which have been issued otherwise than as fully paid to be forfeited for failure to pay any sum due and payable on them or by accepting their surrender instead of causing them to be so forfeited.
- (5) For the purposes of this Chapter 7:
 - (a) a reference to share capital of a Company includes any capital reserve of that Company; and
 - (b) a redemption or purchase by a Company of its Shares in accordance with Chapter 6 is not a reduction of the share capital of the Company.
- (6) Subject to Articles 61(3) and (4), a Company, which reduces its share capital otherwise than in accordance with this Chapter 7, is liable to a fine as set out in Schedule 2.

61. Reduction of share capital by a Private Company supported by a solvency statement

- (1) A resolution for reducing share capital of a Private Company is supported by a solvency statement for the purposes of Article 60(1) if:

- (a) at a date not more than thirty (30) days and not less than fifteen (15) days before the date from which the reduction of the share capital is to have effect, the Company has caused a notice to be published in the Appointed Publications stating:
 - (i) the amount of the share capital as most recently determined by the Company;
 - (ii) the nominal value of each Share;
 - (iii) the amount by which the share capital is to be reduced; and
 - (iv) the date from which the reduction is to have effect; and
 - (b) it contains a solvency statement in accordance with Article 61(2).
- (2) A solvency statement is a statement by each Director of the Company that he:
- (a) has formed the opinion, as regards the Company's situation at the date of the statement, that there is no ground on which the Company could be found to be unable to discharge its debts as they fall due; and
 - (b) has also formed the opinion that:
 - (i) if the Company intended to commence its winding up within twelve (12) months of the date of the statement, the Company will be able discharge its debts in full within twelve (12) months of the commencement of the winding up; or
 - (ii) in any other case, the Company will be able to discharge its debts as they fall due during the year immediately following the date of the statement.
- (3) No Director of the Company shall make a solvency statement specified in Article 61(1)(b) unless he has reasonable grounds for the opinion expressed in that statement. In forming his opinion, each Director shall take into account all of the Company's liabilities (including any contingent or prospective liabilities).
- (4) A Director who makes a declaration without having reasonable grounds for the opinion expressed in the declaration is liable to a fine, as set out in Schedule 2.
- (5) Where a Company reduces the amount of its share capital, it shall file with the Registrar within thirty (30) days after the date from which the reduction has effect, a copy of the notice and solvency statement referred to in Article 61(1)(a).

62. Reduction of share capital by Special Resolution confirmed by a Court order

- (1) Where a Company is permitted to do so under its Articles of Association and has passed a Special Resolution for reducing its share capital, it may apply to the Court for an order confirming the reduction.
- (2) If the proposed reduction of share capital involves the payment to a Shareholder of any Paid Up share capital or a diminution of Liability in respect of any unpaid share capital, the requirements in Articles 62(3), 62(4) and 62(5) shall apply, unless the Court directs otherwise pursuant to Article 62(6).
- (3) Where this Article applies, any Creditor of the Company is entitled to object to the reduction of capital if that Creditor, at the date fixed by the Court is entitled to a debt or claim that would be admissible in proof against the Company, if that date were the commencement of the winding up of the Company.
- (4) The Court shall settle a list of Creditors entitled to object as provided in Article 62(3). For that purpose, the Court:

- (a) shall ascertain, as far as possible, without requiring an application from any Creditor, the names of those Creditors and the nature and amount of their debts or claims; and
 - (b) may publish notices fixing a day or days within which Creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.
- (5) If a Creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may dispense with the consent of that Creditor, on the Company securing payment of the Creditor's debt or claim by appropriating, as the Court may direct, the following amount:
- (a) if the Company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
 - (b) if the Company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court.
- (6) The Court may, having regard to any special circumstances of the case it thinks proper, direct that Articles 62(3), 62(4) and 62(5) shall not apply as regards any class or any classes of Creditors.
- (7) An Officer of the Company who:
- (a) intentionally or recklessly:
 - (i) conceals the name of a creditor entitled to object to the reduction of capital, or
 - (ii) misrepresents the nature or amount of the debt or claim of a creditor, or
 - (b) is knowingly concerned in any such concealment or misrepresentation,
- is liable to a fine, as set out in Schedule 2.

63. Court order confirming reduction of share capital

- (1) The Court, if satisfied with respect to every Creditor of the company who under Article 62(3) is entitled to object to the reduction of share capital that either:
- (a) the Creditor's consent to the reduction has been obtained; or
 - (b) the Creditor's debt or claim has been discharged or has determined, or has been secured,
- may make an order confirming the reduction of share capital on such terms and conditions as it thinks fit.
- (2) Where the Court so orders, it may also make an order:
- (a) requiring the Company to publish the reasons for the reduction of share capital or such other information in regard to it as the Court thinks appropriate and expedient with a view to giving proper information to the public and the causes which led to the reduction; and/or
 - (b) if there is any reserve arising out of the reduction of share capital, whether or not it is distributable.

64. Registration of order and statement of capital

- (1) Where the Court confirms the reduction of a Company's share capital, the Company shall deliver to the Registrar:

- (a) the order of the Court confirming the reduction; and
- (b) a statement of capital, approved by the Court, showing in respect of the Company's share capital:
 - (i) the total number of issued Shares;
 - (ii) the aggregate nominal value of those Shares; and
 - (iii) the amount Paid Up and unpaid (if any) on each Share (whether on account of the nominal value or by way of premium).
- (2) The Registrar shall register the order and statement of capital, and thereupon the Special Resolution for reducing the share capital as confirmed by the order shall take effect.
- (3) The Registrar shall certify the registration of the order and statement of capital, and that certificate:
 - (a) shall be signed by the Registrar; and
 - (b) is conclusive evidence that all the requirements of this Law with respect to the reduction of share capital have been complied with, and the Company's share capital is as stated in the statement.
- (4) The statement of capital when registered is deemed to be substituted for the corresponding part of the Articles of Association.

65. Public Company reducing its share capital below its authorised minimum

- (1) No order of the Court which would have the effect of reducing the share capital of a Public Company below the authorised minimum capital under Article 39(3) shall be registered by the Registrar unless either the Company is first re-registered as a Private Company pursuant to Article 35 or the Court has made an order pursuant to Article 65(2).
- (2) The Court may, by order, authorise the Company to be re-registered as a Private Company without it having passed the Special Resolution required under Article 35 and, if it does, it shall specify in the order the changes to the Articles of Association and name in connection with such re-registration.
- (3) The Registrar shall, on receipt of an order referred to in Article 65(2), issue a certificate of incorporation altered to meet the circumstances of the case. On the issuance of such a certificate, the Company shall become a Private Company and the changes to the Articles of Association and its name shall take effect.

66. Liability to Creditors in respect of reduction of share capital by a Court order

- (1) If:
 - (a) a Creditor entitled to object to the reduction of share capital is not entered on the list of Creditors by reason of the Creditor's ignorance of the proceedings for reduction of share capital, or of the nature and effect of the proceedings with respect to the Creditor's claim; and
 - (b) after the reduction of capital, the Company is unable to pay the amount of the Creditor's debt or claim,

every person who was a Shareholder of the Company at the date on which the Special Resolution for reducing the share capital as confirmed by the Court order took effect under Article 63(1) is liable to contribute for the payment of the debt or claim in question an amount not exceeding that

which the person would have been liable to contribute if the Company had commenced to be wound up on the day before that date.

- (2) If the Company is wound up under this Law, the Court, on the application of the Creditor in question and proof of ignorance referred to in Article 66(1)(a), may settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (3) Nothing in this Article affects the rights of the contributories among themselves.

67. Treatment of reserves arising from reduction of capital

Any reserve arising from the reduction of a Company's share capital is not distributable, except as provided in the Articles of Association or authorised by a Special Resolution, unless otherwise provided by a Court order under Article 63(2)(b).

CHAPTER 8 –DISTRIBUTIONS

68. Restrictions on Distributions

- (1) A Company may only make a Distribution out of profits available for Distribution, which shall be its accumulated, realised profits, so far as not previously utilised by Distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.
- (2) A Public Company may only make a Distribution:
 - (a) if the amount of its net assets is not less than the aggregate of its share capital and Undistributable Reserves; and
 - (b) if, and to the extent that, the Distribution does not reduce the amount of those net assets to less than that aggregate.
- (3) Whether a Distribution may be made by a Company without contravening this Article is determined by reference to the following items as stated in the relevant accounts:
 - (a) profits, losses, assets and liabilities;
 - (b) provisions of any kind; and
 - (c) share capital and reserves (including Undistributable Reserves).
- (4) The relevant accounts are the Company's last annual accounts, except that:
 - (a) where the Distribution would be found to contravene this Article by reference to the Company's last annual accounts, it may be justified by reference to interim accounts; and
 - (b) where the Distribution is proposed to be declared during the Company's first accounting reference period, or before any accounts have been prepared in respect of that period, it may be justified by reference to initial accounts.
- (5) Where the relevant accounts are:
 - (a) the Company's last annual accounts, such accounts shall be the accounts that were circulated to Shareholders pursuant to Article 128(4);
 - (b) interim accounts, such accounts shall be properly prepared so as to enable a reasonable judgment to be made as to the amounts of the items mentioned in Article 68(3);

- (c) initial accounts, such accounts shall be properly prepared so as to enable a reasonable judgment to be made as to the amounts of the items mentioned in Article 68(3) and, if the Company is a Public Company, accompanied by a report from the Company's auditor stating whether, in its opinion, the accounts have been properly prepared.
- (6) If any applicable requirement in Article 68(5) is not complied with, the accounts may not be relied on for the purposes of this Article and the Distribution is accordingly treated as a contravention of this Article.
- (7) In this Article, "Distribution" means every description of Distribution of a Company's assets to its Shareholders, whether in cash or otherwise, except a Distribution by way of:
 - (a) an issue of bonus Shares;
 - (b) the redemption or purchase of any of the Company's own Shares out of share capital (including the proceeds of any fresh issue of Shares) or out of unrealised profits in accordance with this Law;
 - (c) the reduction of share capital either by:
 - (i) extinguishing or reducing the Liability of any of the Shareholders in respect of share capital not Paid Up; or by repaying any Paid Up share capital; and
 - (ii) a Distribution of assets to Shareholders of the Company on its winding up.
- (8) In this Article "Undistributable Reserves" means, in respect of a Company:
 - (a) its share premium account;
 - (b) any capital redemption reserve;
 - (c) the amount by which its accumulated unrealised profits (so far as not previously utilised by capitalisation) exceeds its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made); and
 - (d) any other reserve that the Company is prohibited from distributing by its Articles of Association or under any applicable Legislation.
- (9) A Company which makes a Distribution in contravention of this Article is liable to a fine, as set out in Schedule 2.

69. Consequences of unlawful Distribution

Where a Distribution, or part of a Distribution, made by a Company to any of its Shareholders is made in contravention of Article 68 and, at the time of the Distribution, the Shareholder knows or has reasonable grounds for believing that it is so made, the Shareholder is liable to repay it, or that part of it, to the Company or, in the case of a Distribution made otherwise than in cash, to pay to the Company an amount equal to the value of the Distribution, or that part, at that time.

CHAPTER 9 – DIRECTORS AND SECRETARIES

70. Directors

- (1) A Private Company shall have at least one (1) Director and a Public Company shall have at least two (2) Directors.
- (2) No person shall be a Director who:
 - (a) is under the age of 18 years;

- (b) is not a natural person;
- (c) is disqualified from being a Director by virtue of:
 - (i) having been convicted of a criminal offence, involving dishonesty or moral turpitude, in any jurisdiction in the past 10 years;
 - (ii) having been found guilty of insider trading or the equivalent in any jurisdiction at any time;
 - (iii) having been judged disqualified by any court;
 - (iv) having been disqualified by the DFSA; or
 - (v) a disqualification specified in the Articles of Association; or
- (d) is an undischarged bankrupt.

71. Election, term and removal of Directors

- (1) The first Directors of a Company shall be elected by the Incorporators and thereafter the Directors shall be elected by Shareholders passing an Ordinary Resolution, or as otherwise provided in the Articles of Association, for such term as the Shareholders may determine.
- (2) Each Director holds office until his successor takes office or until his earlier death, resignation, removal following disqualification or removal by Ordinary Resolution or as otherwise provided in the Articles of Association.
- (3) A vacancy created by the death, resignation or removal of a Director may be filled by an Ordinary Resolution, or in the absence of such Ordinary Resolution, by the remaining Directors, provided that:
 - (a) any Director appointed by the remaining Directors shall be subject to reappointment by an Ordinary Resolution at the next General Meeting; and
 - (b) if no such Ordinary Resolution is passed at that next General Meeting, shall cease to be a Director at the conclusion of that General Meeting.
- (4) The number of Directors shall be fixed by the Articles of Association subject to the requirements in Article 70(1).
- (5) If, at a General Meeting, it is proposed that two (2) or more persons be appointed as Directors, such appointments shall be made by separate resolutions in respect of each person, except where unanimously agreed otherwise by the Shareholders at the meeting.

72. Duties of Directors

- (1) The duties of Directors set out in Articles 73 to Article 79 and Article 81 are owed by a Director of a Company to the Company.
- (2) A person who ceases to be a Director continues to be subject to:
 - (a) the duty in Article 77, as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a Director; and
 - (b) the duty in Article 78, as regards things done or omitted to be done by him before he ceased to be a Director.
- (3) Except as otherwise provided, more than one (1) of the duties of Directors may apply in any given case.

- (4) The Articles of Association of a Company shall not include any provision the effect of which would be to weaken the duties of Directors in this Chapter 9.
- (5) No action or omission of a Director shall be treated as a breach of a duty referred to in Articles 76(1) and (2) if:
 - (a) all the Shareholders of the Company authorise or ratify the act or omission; and
 - (b) the Company remains able to discharge its liabilities as they fall due after the act or omission.

73. Duty to act within powers

A Director of a Company shall:

- (a) act in accordance with the Articles of Association of the Company; and
- (b) only exercise his powers for the purposes for which those powers have been conferred.

74. Duty to promote the success of the Company

- (1) A Director of a Company shall act in the way he considers, in good faith, would be most likely to promote the success of the Company for the benefit of its Shareholders as a whole, and in doing so, have regard, amongst other matters, to:
 - (a) the likely consequences of any decision in the long term;
 - (b) the interests of the Company's employees;
 - (c) the need to foster the Company's business relationships with suppliers, customers and others;
 - (d) the impact of the Company's operations on the community and the environment;
 - (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
 - (f) the need to act fairly as between Shareholders of the Company.
- (2) To the extent that the purposes of the Company consist of or include purposes other than the benefit of its Shareholders, the reference to the benefit of Shareholders in Article 74(1) has effect as if it included those other purposes.
- (3) The duty imposed under this Article has effect subject to any law applicable to the Company requiring Directors, in certain circumstances, to consider or act in the interests of a Company's Creditors.

75. Duty to exercise independent judgement

- (1) A Director of a Company shall exercise independent judgment.
- (2) A Director of a Company does not infringe the duty under Article 75(1) if he is acting:
 - (a) in accordance with an agreement duly entered into by the Company that restricts the future exercise of discretion by its Directors; or
 - (b) in a way authorised by the Articles of Association.

76. Duty to exercise reasonable care, skill and diligence

A Director of a Company shall exercise the care, skill and diligence that would be exercised by a reasonably diligent person with:

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the Director in relation to the Company; and
- (b) the general knowledge, skill and experience that the Director has.

77. Duty to avoid conflicts of interest

- (1) A Director of a Company shall avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company.
- (2) The duty under Article 77(1) applies in particular to the exploitation of any property, information or opportunity.
- (3) The duty under Article 77(1) does not apply to a conflict of interest arising in relation to a transaction or arrangement where the requirements in Article 79 or Article 81 as applicable, are met.
- (4) A Director of a Company does not contravene the duty under Article 77(1) if:
 - (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) the Directors of the Company have authorised the situation in accordance with the Articles of Association and any applicable provisions of the Law.
- (5) A Company's Articles of Association may, subject to Article 77(4), include alternative procedures for avoiding conflicts of interests. A Director does not contravene the provisions of this Article by acting in accordance with such procedures.
- (6) Any reference in this Article to a conflict of interest includes a conflict of an interest and a duty and a conflict of duties.

78. Duty not to accept benefits from third parties

- (1) A Director of a Company shall not accept a benefit from a third party where the benefit is conferred on him:
 - (a) due to his position as a Director of the Company; or
 - (b) for him doing (or not doing) anything as a Director,unless the acceptance of such benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (2) A "third party" in Article 82(1) means a person other than the Company, an associate of the Company or a person acting on behalf of the Company or an associate of the Company.
- (3) In Article 82(2), an "associate" in relation to a Company means:
 - (a) the Company's subsidiaries, and all the subsidiaries in the chain of subsidiaries in which the Company is the ultimate holding company; and
 - (b) the Company's holding company, and all the holding companies up to the ultimate holding company of the Company, and the subsidiaries of each of those holding companies.

- (4) Any reference in this Article to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

79. Duty to declare interest in a proposed transaction or arrangement

- (1) This Article applies when a Director of a Company becomes aware, or ought reasonably to have become aware, that he is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company.
- (2) In the circumstances described in Article 79(1):
- (a) the Director in question shall declare the nature and extent of his interest to the other Directors of the Company in accordance with the requirements of Article 81, and the provisions of this Law to which it refers.
- (b) Such declaration shall be made before entering into the relevant transaction or arrangement.

80. Contraventions

A breach by a Director of a Company of any one (1) or more of the duties in Articles 73 to 79 shall constitute a contravention by that Director of the relevant duty.

81. Duty of Directors to declare interest in existing transaction or arrangement

- (1) A Director of a Company who has, directly or indirectly, an interest in a transaction or arrangement with the Company or by a subsidiary of the Company which, to a material extent, conflicts or may conflict with the interests of the Company and of which he is aware, shall, unless he has previously declared such interest pursuant to Article 79, declare to the other Directors of the Company the nature and extent of his interest in accordance with the requirements in Article 81(2) and (3).
- (2) The declaration under Articles 79 and 81(1) shall be made as soon as practicable after the Director became aware of the circumstances which gave or would give rise to his duty to make such a declaration.
- (3) For the purposes of Article 81(2), the declaration shall be made:
- (a) at a meeting of the Directors; or
- (b) by a general notice in writing given to the other Directors.
- (4) A declaration:
- (a) made at a meeting of the Directors under Article 81(3)(a) shall be tabled at, and recorded in the minutes of, that meeting; and
- (b) made by way of a general notice given to the other Directors under Article 81(3)(b) shall be tabled at, and recorded in the minutes of, the first meeting of the Directors after the declaration is made, or where it is not reasonably practicable to do so, at the next earliest meeting of the Directors.
- (5) A notice given to the Company by a Director that he is to be regarded as interested in a transaction or arrangement with a specified person is sufficient declaration of his interest in any such transaction or arrangement entered into after the notice is given.
- (6) If a declaration of interest for the purposes of Article 79 or this Article 81 proves to be, or becomes, inaccurate or incomplete, a further declaration shall be made, in the same manner as the initial declaration.

- (7) Subject to Articles 81(8) and 81(9), where a Director fails to declare an interest of his under this Article, the Company or a Shareholder of the Company or the Registrar may apply to the Court for an order and the Court may make such order as it thinks fit, including, without limiting the generality of the foregoing:
- (a) an order setting aside the transaction or arrangement concerned; and/or
 - (b) a direction to the Director to account to the Company for any benefit, gain, or profit obtained by reason of the transaction or arrangement in question.
- (8) A transaction or arrangement is not voidable, and a Director is not accountable, under Article 81(7) where, notwithstanding a failure to comply with that Article:
- (a) the transaction or arrangement is ratified by the Company in General Meeting; and
 - (b) the nature and extent of the Director's interest in the transaction or arrangement were declared in reasonable detail in the notice calling the General Meeting at which the ratification occurs in accordance with Article 82.
- (9) Without prejudice to its power to order that a Director account for any profit, gain or benefit realised, the Court shall not set aside a transaction or arrangement unless it is satisfied that:
- (a) the interests of third parties who have acted in good faith would be unfairly prejudiced if the transaction or arrangement were not set aside; or
 - (b) the transaction or arrangement was not reasonable and fair in the interests of the Company at the time it was made.

82. Ratification of interest in existing transaction or arrangement

- (1) This Article applies to the ratification of a transaction or arrangement, referred to in Article 81 of this Law, by a Company.
- (2) Where its Articles of Association do not prohibit it to do so, a Private Company may, by an Ordinary Resolution of the Shareholders of the Company, ratify a transaction or arrangement which would, if not for that ratification, be in contravention of Article 81.
- (3) Where its Articles of Association do not prohibit the Company to do so, a Public Company may, by an Ordinary Resolution of the Shareholders of the Company, ratify a transaction or arrangement which would, if not for that ratification, be in contravention of Article 81. For the purposes of that Resolution, any votes which have been cast by the Director or Directors who have the conflict of interest in the transaction or arrangement, and any other Connected Person to such a Director, shall be disregarded.
- (4) For the purposes of Article 82(3), a Connected Person to a Director is:
- (a) in the case of an individual, the spouse, the child or stepchild, or a grand-child, of that Director;
 - (b) in the case of a body corporate, the Director, alone or together with an individual referred to in Article 81(4)(b), who:
 - (i) has at least 20% of the share capital of the body corporate; or
 - (ii) is entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body;
 - (c) in the case of a partnership in which the Director or an individual referred to in Article 82(4)(a) is also a partner, all the other partners; or

- (d) any other person prescribed as a Connected Person in the Regulations.

83. Prohibition of financial assistance to Directors

- (1) Subject to Article 83(4), a Company shall not provide the following financial assistance to a Director:
 - (a) a loan, debenture, credit facility or other similar form of financial assistance;
 - (b) a guarantee or security or indemnity in connection with a loan, debenture, credit facility or other similar form of financial assistance, whether such financial assistance is provided by the Company or another person; or
 - (c) any other form of financial assistance as may be prescribed in the Regulations,unless:
 - (d) consent is given by Shareholders attending (in person or by proxy) a General Meeting who together hold not less than ninety per cent (90%) of the Shares which are voted at that meeting; and
 - (e) all of the Directors of the Company certify that the giving of the financial assistance does not materially prejudice either of the following:
 - (i) the interests of the Company and its Shareholders; or
 - (ii) the Company's ability to discharge its liabilities as they fall due.
- (2) Any such financial assistance provided pursuant to Article 83(1) shall be:
 - (a) documented in writing; and
 - (b) prior to its provision, recorded in the minutes of the meeting of the Directors of the Company, under signature of all Directors, as being provided in compliance with the requirements of Article 83(1).
- (3) Financial assistance to a Connected Person shall be provided only in compliance with this Article.
- (4) Article 83(1) does not apply to financial assistance where:
 - (a) it consists of remuneration in the ordinary course paid to a Director for his services as a Director;
 - (b) it is Liability indemnity insurance related to the discharge of his duties to the Company;
 - (c) the Company's ordinary business includes providing finance and the financial assistance is given in the ordinary course of that business and on ordinary commercial terms; or
 - (d) it is of a kind prescribed in the Regulations as exempted from this Article.
- (5) Article 77 and Article 78 do not apply to any financial assistance provided in accordance with this Article 83.

84. Validity of acts of Director

The acts of a Director of a Company are valid notwithstanding any defect that may afterwards be found in his appointment or qualification.

85. Secretary

- (1) A Public Company shall have at least one (1) Secretary.
- (2) It is the duty of the Directors of a Public Company to take all reasonable steps to secure that the Secretary (or each joint Secretary) of the Company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of Secretary of the Company and who:
 - (a) has held the office of secretary of a public body corporate for at least three (3) of the five (5) years immediately preceding his appointment as Secretary; or
 - (b) is a person who, by virtue of holding or having held any other position or by being a Shareholder of any other body, appears to the Directors to be capable of discharging the functions of Secretary of the Company.
- (3) A Private Company may have a Secretary.
- (4) In the case of a Private Company without a Secretary:
 - (a) anything authorised or required to be given or sent to, or served on, the Company by being sent to its Secretary may be given or sent to, or served on, the Company itself and anything addressed to the Secretary shall be deemed to be addressed to the Company; and
 - (b) anything else required or authorised to be done by the Secretary may be done by a Director or a person authorised generally or specifically in that behalf by the Directors.

86. Register of Directors and Secretary

- (1) Every Company shall maintain, at its registered office, a register of its Directors and, if applicable, a register of its Secretaries. The Board of Directors of the DIFCA may make Regulations prescribing particulars which each register shall contain.
- (2) Any register required to be kept pursuant to Article 86(1) shall, during business hours (subject to such reasonable restrictions as the Company may by its Articles of Association or in General Meeting impose, but so that not less than two (2) hours in each day be allowed for inspection), be open to the inspection of the Registrar and of a Shareholder or Director of the Company without charge.
- (3) In the case of a refusal of inspection of any register required to be kept pursuant to Article 86(1), the Registrar may issue a direction requiring the Company to provide immediate inspection by the Registrar, a Shareholder or Director.
- (4) A Company which fails to comply with each of the requirements in this Article is liable to a fine as set out in Schedule 2.

87. Assumptions in relation to Directors and Secretary

- (1) Subject to Article 87(3), a person dealing with a Company is entitled to assume that anyone who appears, from the information that is available to the public on the Register, or the registers maintained by the Company, to be a Director or Secretary of the Company:
 - (a) has been duly appointed; and
 - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or company secretary of a similar company.
- (2) A Company is not entitled to assert in proceedings in relation to dealings of the Company that any such assumption is incorrect.

- (3) A person is not entitled to make an assumption under Article 87(1) if at the time of the dealing with the Company such person knew or could have reasonably suspected that the assumption was incorrect.

88. Disqualification orders

- (1) Without prejudice to any other powers available to the Registrar, where it appears to him that it is expedient in the public interest that a person should not, without the leave of the Court, be a Director of, or in any way whether directly or indirectly be concerned or take part in the management of, a Company, the Registrar may apply to the Court for an order to that effect against the person.
- (2) The Court may, on such an application, make the order applied for if it is satisfied that the person's conduct (including, without limitation, any breach by him of any one (1) or more of the duties set out in Articles 73 to 79 and Article 81) makes that person unfit to be involved in the management of a Company.
- (3) An order under Article 88(2) shall be made for such period as the Court considers appropriate but not exceeding 15 years.
- (4) A person who acts in contravention of an order made under this Article is liable to a fine, as set out in Schedule 2.

CHAPTER 10 – MEETINGS

89. Participation in meetings

- (1) Subject to the Articles of Association, a Shareholder may participate in a meeting by phone or by other similar means of communication where each Shareholder present at the meeting can hear what is said by any other Shareholder present at the meeting and each Shareholder so participating at the meeting is deemed to be present at that meeting with the other Shareholders so participating.
- (2) Subject to the Articles of Association, a Director may participate in a meeting by phone or other similar means of communication where each Director present at the meeting can hear what is said by any other Director present at the meeting, and each Director so participating at the meeting is deemed to be present at that meeting with the other Directors so participating.

90. Annual General Meeting

- (1) A Private Company is not required to hold an Annual General Meeting unless expressly required to do so under its Articles of Association.
- (2) Every Public Company shall hold a General Meeting as its Annual General Meeting within six (6) months of the end of each financial year (in addition to any other meetings held during that period) and not more than eighteen (18) months shall elapse between the date of one (1) Annual General Meeting and the date of the next.
- (3) A Public Company which fails to comply with the requirements of Article 90(2) is liable to a fine as set out in Schedule 2.
- (4) A notice calling an Annual General Meeting of a Public Company shall state that the meeting is an Annual General Meeting.

91. Requisition of meetings

- (1) On a Shareholders' request, the Directors or if appointed, the Secretary, of a Company shall, notwithstanding anything in the Articles of Association, forthwith proceed to call a General Meeting or, as the case may be, a meeting of holders of any class of Shares, to be held as soon as practicable but in any case not later than two (2) months after the date of the request.

- (2) For the purposes of this Article, a Shareholders' request is a request of Shareholders of the Company holding, at the date of the request, not less than five per cent (5%) of the share capital of the Shares which at that date carry the right to vote at the meeting requested.
- (3) The Shareholders' request shall state the purpose of the meeting, and shall be made by or on behalf of each Shareholder making the request and be deposited at the registered office of the Company. Such a request may consist of several Documents in similar form each signed by or on behalf of one (1) or more of such Shareholders.
- (4) If, within twenty one (21) days from the date of the deposit of the request, the Directors or Secretary of the Company do not proceed to call a meeting to be held within two (2) months of the date of the request, the Shareholders making the request, or any of them representing more than one half ($\frac{1}{2}$) of the total voting rights of all of them, may themselves call a meeting, but a meeting so called shall not be held after three (3) months from that date.
- (5) A meeting called under this Article shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by Directors or Secretary.

92. Registrar's power to call meeting in default

- (1) If default is made in holding a meeting in accordance with Articles 90 or 91, the Registrar may, on the application of any Director or Shareholder of the Company, call, or direct the calling of, a General Meeting of the Company.
- (2) The Company shall, unless with reasonable excuse, comply with a direction of the Registrar made under Article 92(1). A Company which fails to comply with this requirement is liable to a fine as set out in Schedule 2.

93. Notice of meetings

- (1) Any General Meeting (other than an Annual General Meeting of a Public Company or an adjourned such meeting) shall be called by at least fourteen (14) days' notice in writing. An Annual General Meeting of a Public Company shall be called by at least twenty one (21) days' notice in writing.
- (2) If a General Meeting is called by shorter notice than that specified in Article 93(1), it is deemed to have been duly called if it is so agreed by a majority in number of the Shareholders having a right to attend and vote at the General Meeting, being:
 - (a) in respect of a Private Company, a majority together holding not less than ninety per cent (90%) of the share capital represented by the Shares giving a right to attend and vote at the General Meeting;
 - (b) in respect of a General Meeting other than an Annual General Meeting of a Public Company, a majority together holding not less than ninety five per cent (95%) of the share capital represented by the Shares giving a right to attend and vote at the General Meeting; and
 - (c) in respect of an Annual General Meeting of a Public Company, all Shareholders of the Company.
- (3) A notice of a General Meeting of a Company shall:
 - (a) set out the time, place and date for the General Meeting;
 - (b) state the general nature of the General Meeting's business;
 - (c) set out the intention to propose any Ordinary Resolution or Special Resolution and state such Resolution; and

- (d) include, in relation to a Public Company, a copy of any accounts and auditors report that are to be laid before the General Meeting.

94. General provisions as to meetings and votes

The following provisions apply to any General Meeting of a Company or of the holders of any class of Shares in a Company unless the Articles of Association provide otherwise:

- (a) A notice of every meeting shall be given to every Shareholder entitled to receive it:
 - (i) by delivering or posting it to such Shareholder's registered address;
 - (ii) in such electronic form as agreed by the intended recipient;
 - (iii) by making it available on such website as agreed by the intended recipient; or
 - (iv) in such other manner or form as may be agreed by the intended recipient.
- (b) Except in the case of a Company having a single Shareholder, at any General Meeting of the Company, two (2) Shareholders personally present or represented by proxy shall be a quorum, unless otherwise provided in the Articles of Association.
- (c) At any meeting dealing with a variation of any class rights other than an adjourned meeting, the quorum shall be persons holding or representing by proxy at least one-third ($\frac{1}{3}$) in nominal value of the allotted and issued Shares of that class, and at any such adjourned meeting, one (1) person holding Shares of the class or such person's proxy shall be a quorum.
- (d) Any Shareholder elected by the Shareholders present at any such meeting may be chairman.
- (e) A Resolution passed:
 - (i) at a meeting on a show of hands, every Shareholder present in person at any such meeting has one (1) vote; and
 - (ii) on a poll at a meeting, every Shareholder has one (1) vote for every Share held by that Shareholder.

95. Representation at meetings

- (1) A Company may, by resolution of its Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company, or of the holders of any class of Shares of the Company, or of Creditors of the Company which it is entitled to attend.
- (2) A person so authorised is entitled to exercise the same powers on behalf of the Company which such person represents as that Company could exercise if it were an individual Shareholder or Creditor of the Company.

96. Resolutions in writing of a Company

- (1) Subject to any restrictions in its Articles of Association, anything that may be done by a Resolution of a Company (excluding a Resolution to remove an auditor or Director) passed at a Shareholders' or a class of Shareholders' meeting, may be done either by an Ordinary Resolution or by a Special Resolution in writing, as is relevant, in accordance with this Article.
- (2) A Resolution in writing is passed, unless otherwise prescribed in the Regulations:

- (a) as an Ordinary Resolution, if it is passed by Shareholders representing a simple majority of the total voting rights of Shareholders who, at the date when the Ordinary Resolution is deemed to be passed, would be entitled to vote; and
- (b) as a Special Resolution, only if:
 - (i) it stated that it was proposed as a Special Resolution; and
 - (ii) it is passed by Shareholders representing not less than seventy five per cent (75%) of the total voting rights of Shareholders who, at the date when the Resolution is deemed to be passed, would be entitled to vote.
- (3) An Ordinary Resolution or Special Resolution in writing may consist of several instruments in the same form each signed by or on behalf of one (1) or more Shareholders.
- (4) An Ordinary Resolution or Special Resolution in writing under this Article shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as is specified in the Ordinary Resolution or Special Resolution.
- (5) Any Document attached to an Ordinary Resolution or Special Resolution in writing under this Article shall be deemed to have been laid before a meeting of the Shareholders signing the Ordinary Resolution or Special Resolution.
- (6) Article 100 applies to an Ordinary Resolution or Special Resolution in writing under this Article as if it had been passed at a meeting.
- (7) Nothing in this Article affects or limits any provisions in the Articles of Association relating to the effectiveness of the consent of Shareholders, or any class of Shareholders, of a Company given to any Document, act or matter otherwise than at a meeting of them.

97. Recording of decisions by sole Shareholder

- (1) If:
 - (a) a Company has only one (1) Shareholder;
 - (b) the Shareholder takes a decision which may be taken by the Company in a General Meeting and has effect as if agreed by the Company in a General Meeting; and
 - (c) the decision is not taken by way of Ordinary Resolution in writing,the Shareholder shall provide the Company with a record in writing of the decision.
- (2) Failure to comply with Article 97(1) shall not affect the validity of the decision.

98. Proxies

- (1) A Shareholder of a Company entitled to attend and vote at a General Meeting or at a meeting of the holders of any class of Shares is entitled to appoint, by notice to the Company in writing, another person (whether a Shareholder or not) as such Shareholder's proxy to attend and vote instead of such Shareholder.
- (2) A proxy appointed to attend and vote for a Shareholder has the same rights as the Shareholder including without limitation to:
 - (a) speak at the meeting;
 - (b) vote (but only to the extent allowed by the appointment or by the Articles of Association); and

- (c) join in a demand for a poll.
- (3) Every notice calling a meeting of the Company shall contain a reasonably prominent statement that a Shareholder entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one (1) or more proxies to attend and vote instead of that Shareholder, and that a proxy need not also be a Shareholder.

99. Demand for poll

- (1) A provision contained in the Articles of Association is void in so far as it would have the effect either of:
 - (a) excluding the right to demand a poll at a General Meeting, or at a meeting of the holders of any class of Shares on a question, other than the election of the chairman of the meeting or the adjournment of the meeting; or
 - (b) making ineffective a demand for a poll on any such question which is made either:
 - (i) by not less than five (5) Shareholders having the right to vote on the question; or
 - (ii) by a Shareholder or Shareholders representing not less than ten per cent (10%) of the total number of Shares having the right to a vote on the question.
- (2) The instrument appointing a proxy to vote at such a meeting is deemed also to confer authority to demand or join in demanding a poll, and for the purposes of Article 99(1), a demand by a person as proxy for a Shareholder is the same as a demand by the Shareholder.
- (3) On a poll taken at such a meeting, a Shareholder entitled to more than one (1) vote need not, if that Shareholder votes (in person or by proxy), use all such Shareholder's votes in the same way.

100. Minutes and examination of minute books

- (1) Every Company shall cause minutes of all proceedings at General Meetings, meetings of the holders of any class of Shares, meetings of its Directors and of committees of Directors to be entered in books kept for that purpose, and the names of the Directors present at each such meeting shall be recorded in the minutes.
- (2) Any such minutes, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, is evidence of the proceedings.
- (3) Where minutes have been made in accordance with this Article, unless the contrary is proved, the meeting is deemed duly held and convened, and all proceedings which took place at the meeting are deemed to have duly taken place.
- (4) The books containing the minutes of a General Meeting or of a meeting of the holders of a class of Shares shall be kept at the Company's registered office, and shall during business hours be open to examination by a Shareholder without charge.
- (5) A Shareholder may require, on submission to the Company of a written request and on payment of such reasonable sum as the Company may require, a copy of any such minutes (provided that a Shareholder shall not be entitled to require a copy of minutes of a meeting of the holders of a class of Shares if that Shareholder is not a holder of such class of Shares) and the Company shall, within seven (7) days after the receipt of the request and the payment, cause the copy so required to be provided to that Shareholder.
- (6) In the case of a refusal or default, the Registrar may make an order directing an immediate inspection of the books in respect of all proceedings of General Meetings, or meetings of the holders of a class of Shares or directing that the copies required be furnished to the persons requiring them.

CHAPTER 11– PROTECTION OF MINORITIES IN TAKEOVERS**101. Takeover offers**

- (1) In this Chapter 11, “a takeover offer” means an offer to acquire all the Shares, or all the Shares of any class or classes, in a Company (other than Shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the Shares to which the offer relates or, where those Shares include Shares of different classes, in relation to all the Shares of each relevant class.
- (2) In Article 101(1), “Shares” means Shares which:
 - (a) have been allotted on the date of the offer;
 - (b) that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer; and
 - (c) any rights convertible into shares before a date specified or determined in accordance with the term of the offer.
- (3) The terms offered in relation to any Shares shall, for the purposes of this Article, be treated as being the same in relation to all the Shares or, as the case may be, all the Shares of a class to which the offer relates, notwithstanding any variation permitted by Article 101(4).
- (4) A variation is permitted where:
 - (a) the law of a country or territory outside the DIFC precludes the acceptance of an offer in that jurisdiction in the form or the forms specified, or precludes it except after compliance by the offeror with conditions with which it is unable to comply or which it regards as unduly onerous; and
 - (b) the variation is such that the persons by whom the acceptance of an offer in that form is precluded are able to accept an offer in a different form but of substantially equivalent value.
- (5) The reference in Article 101(1) to Shares already held by the offeror includes a reference to Shares which the offeror has an unconditional right to acquire under an unconditional option to acquire. Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Chapter 11 as the making of a fresh offer and references in this Chapter 11 to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.
- (6) In this Chapter 11, “the offeror” means, subject to Article 107, the person making a takeover offer, and “the Company” means the Company, whose Shares are the subject of the offer.

102. Right of offeror to buy out minority Shareholders

- (1) If, in a case in which a takeover offer does not relate to Shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire not less than nine-tenths ($\frac{9}{10}$) in value of the Shares to which the offer relates, the offeror may, within one hundred and twenty (120) days of the close of the takeover offer, give notice to the holder of any Shares to which the offer relates which the offeror has not acquired or contracted to acquire that the offeror desires to acquire those Shares.
- (2) If, in a case in which a takeover offer relates to Shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire not less than nine-tenths ($\frac{9}{10}$) in value of the Shares of any class to which the offer relates, the offeror may, within one hundred and twenty (120) days of the close of the takeover offer, give notice to the holder of any Shares of

that class which the offeror has not acquired or contracted to acquire that the offeror desires to acquire those Shares.

- (3) No notice shall be given under Article 102(1) or 102(2) unless the offeror has acquired or contracted to acquire the Shares necessary to satisfy the minimum specified therein before the end of the period of four (4) months beginning with the date of the offer, and no such notice shall be given after the end of the period of two (2) months beginning with the date on which the offeror has acquired or contracted to acquire Shares which satisfy that minimum.
- (4) When the offeror gives the first notice in relation to an offer, the offeror shall send a copy of it to the Company together with a declaration by the offeror stating that the conditions for the giving of the notice are satisfied. A person who makes such a declaration must have reasonable grounds for believing it to be true. An offeror which fails to comply with this requirement is liable to a fine, as set out in Schedule 2.
- (5) Where the offeror is a Company, the declaration shall be signed by a Director of that Company. A director who makes such a declaration without having reasonable grounds for believing it to be true is liable to a fine, as set out in Schedule 2.
- (6) In a proceeding against a person for an alleged failure to send a copy of a notice as required by Article 102(4), it is a defence for such a person to prove that the person took reasonable steps for securing compliance with that Article.
- (7) Where, during the period within which a takeover offer can be accepted, the offeror acquires or contracts to acquire any of the Shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then if:
 - (a) the value of that for which they are acquired or contracted to be acquired (“the Acquisition Value”) does not, at that time, exceed the value of that which is receivable by an acceptor under the terms of the offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the Acquisition Value, at the time mentioned in Article 102(7)(a), no longer exceeds the value of that which is receivable by an acceptor under those terms,

the offeror shall be treated for the purposes of this Article as having acquired or contracted to acquire those Shares by virtue of acceptances of the offer; but in any other case those Shares shall be treated as excluded from those to which the offer relates.

103. Effect of notice under Article 102

- (1) The following provisions shall, subject to Article 106, have effect where a notice is given in respect of any Shares under Article 102.
- (2) The offeror shall be entitled and bound to acquire those Shares on the terms of the offer.
- (3) Where the terms of an offer are such as to give the holder of any Shares a choice of payment for such holder’s Shares, the notice shall give particulars of the choice and state:
 - (a) that the holder of the Shares may, within six (6) weeks from the date of the notice, indicate such holder’s choice by a written communication sent to the offeror at an address specified in the notice; and
 - (b) which payment specified in the offer is to be taken as applying in default of such holder indicating a choice as aforesaid,

and the terms of the offer mentioned in Article 103(2) shall be determined accordingly.

- (4) Article 103(3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be met. If the payment chosen by the holder of the Shares:
- (a) is not cash and the offeror is no longer able to make that payment; or
 - (b) was to have been made by a third party who is no longer bound or able to make that payment,
- the payment shall be taken to consist of an amount of cash payable by the offeror which, at the date of the notice, is equivalent to the chosen payment.
- (5) At the end of six (6) weeks from the date of the notice, the offeror shall forthwith:
- (a) send a copy of the notice to the Company; and
 - (b) make payment to the Company on behalf of the holders for the Shares to which the notice relates.
- (6) The copy of the notice sent to the Company under Article 103(5)(a) shall be accompanied by an instrument of transfer executed on behalf of the Shareholder by a person appointed by the offeror. On receipt of that instrument, the Company shall register the offeror as the holder of those Shares.
- (7) Where the payment referred to in Article 103(5)(b) is to be made in Securities to be issued by the offeror, the reference in that Article to the making of payment shall be construed as a reference to the issuance of such Securities to the Company on behalf of the holders of the Shares to which the notice relates.
- (8) Any sum or other payment received by a Company under Article 103(5)(b) shall not be the property of the Company but shall be held by the Company on behalf of the person entitled to the Shares in respect of which the sum or other payment was received.
- (9) Any sum received, including any dividend or other sum accruing from any other payment, by a Company under Article 103(5)(b) shall be paid into a separate bank account, being an account the balance of which bears interest at an appropriate rate and can be withdrawn by such notice, if any, as is appropriate.

104. Right of minority Shareholder to be bought out by offeror

- (1) If, in a case in which a takeover offer does not relate to Shares of different classes, at any time before the end of the period within which the offer can be accepted:
- (a) the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire some (but not all) of the Shares to which the offer relates; and
 - (b) those Shares, with or without any other Shares in the Company which the offeror has acquired or contracted to acquire, amount to not less than nine-tenths ($\frac{9}{10}$) in value of all the Shares in the Company,
- the holder of any Shares to which the offer relates who has not accepted the offer may, by a written communication addressed to the offeror, require the offeror to acquire those Shares.
- (2) If, a takeover offer relates to Shares of any class other than that referred to in Article 104(1) and, at any time before the end of the period within which the offer can be accepted:
- (a) the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire some (but not all) of the Shares of any class to which the offer relates; and
 - (b) those Shares, with or without any other Shares of that class which the offeror has acquired or contracted to acquire, amount to not less than nine-tenths ($\frac{9}{10}$) in value of all the Shares of that class,

the holder of any Shares of that class who has not accepted the offer may, by a written communication addressed to the offeror, require the offeror to acquire those Shares.

- (3) Within one (1) month of the time specified in Article 104(1) or 104(2), the offeror shall give any Shareholder or holder of Shares of that class who has not accepted the offer a notice of the rights setting out:
 - (a) the rights that are exercisable by that Shareholder or holder of Shares of that class under that Article, as is relevant; and
 - (b) the period within which the rights are exercisable,and, if the notice is given before the end of the period within which the offer can be accepted, it shall state that the offer is still open for acceptance.
- (4) A notice under Article 104(3) may specify a period for the exercise of the rights conferred by this Article, and in that event, the rights shall not be exercisable after the end of that period. No such period shall end less than three (3) months after the end of the period within which the offer can be accepted.
- (5) Article 104(3) does not apply if the offeror has given the Shareholder notice in respect of the Shares in question under Article 102.
- (6) An offeror which fails to comply with the requirements in Article 104(3) or 104(4) is liable to a fine, as set out in Schedule 2.
- (7) In a proceeding against an offeror other than a Company for an alleged failure to comply with the requirements of this Article 104, it is a defence for such an offeror to prove that the offeror took all reasonable steps for securing compliance with this Article.

105. Effect of requirement under Article 104

- (1) The following provisions shall, subject to Article 106, have effect where a Shareholder exercises his rights in respect of any Shares under this Article.
- (2) The offeror shall be entitled and bound to acquire those Shares on the terms of the offer or on such other terms as may be agreed.
- (3) Where the terms of an offer are such as to give the holder of any Shares a choice of payment for his Shares, the holder of the Shares may indicate his choice when requiring the offeror to acquire them, in accordance with the terms specified in Article 103(3).
- (4) Article 105(3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be met. If the payment chosen by the holder of the Shares:
 - (a) is not cash and the offeror is no longer able to make that payment; or
 - (b) was to have been made by a third party who is no longer bound or able to make that payment,

the payment shall be taken to consist of an amount of cash payable by the offeror which, at the date when the holder of the Shares required the offeror to acquire them, is equivalent to the chosen payment.

106. Applications to the Court

- (1) Where a notice is given under Article 102 to the holder of any Shares, the Court may, on an application made by the holder within six (6) weeks from the date on which the notice was given:

- (a) order that the offeror shall not be entitled and bound to acquire the Shares; or
 - (b) specify the terms of acquisition different from those of the offer.
- (2) If an application to the Court under Article 106(1) is pending at the end of the period mentioned in Article 103(5), then, unless otherwise ordered by the Court, that Article shall not have effect until the application has been disposed of.
- (3) Where the holder of any Shares exercises his rights under Article 104, the Court may, on an application made by such holder or the offeror, order that the terms on which the offeror is entitled and bound to acquire the Shares shall be such as the Court thinks fit.
- (4) On an application made under Article 106(1) or (3), the Court may not require consideration which is:
- (a) a higher value than that specified in the notice containing the terms of the offer ('offer value') to be paid for the Shares to which the application relates, unless the holder of the Shares shows that the offer value would be unfair; or
 - (b) a lower value than the offer value in the notice to paid for the Shares.
- (5) No order for costs or expenses shall be made against a Shareholder making an application under Article 106(1) or (3) unless the Court considers:
- (a) that the application was unnecessary, improper or vexatious; or
 - (b) there has been unreasonable conduct on such Shareholder's part in conducting the proceedings on the application.
- (6) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under Article 102(1) or 102(2) the Court may, on the application of the offeror, make an order authorising the offeror to give notices under that Article if satisfied:
- (a) that the offeror has, after reasonable enquiry, been unable to trace one (1) or more of the persons holding Shares to which the offer relates;
 - (b) that the Shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the Shares held by the person or persons mentioned in Article 106(6)(a), amount to not less than the minimum specified in Articles 102(1) or 102(2); and
 - (c) that the terms offered are fair and reasonable,

but the Court shall not make an order under this Article unless it considers that it is just and equitable to do so having regard, in particular, to the number of Shareholders who have been traced but who have not accepted the offer.

107. Joint offers

- (1) A takeover offer may be made by two (2) or more persons jointly, and in that event, this Chapter 11 has effect with the following modifications.
- (2) The conditions for the exercise of the rights conferred by Articles 102 and 104 shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary Shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those Articles and Articles 103 and 105 shall be respectively joint rights and joint and several obligations of the joint offerors.

- (3) It shall be sufficient compliance with any provision of Articles 106 and 108 requiring or authorising a notice or other Document to be given or sent by or to the joint offerors that it is given or sent by or to any of them, except that the declaration required by Article 102(4) shall be made by all of them and, in the case of a joint offeror being a Company, signed by a Director of that Company.
- (4) In Article 101, Article 103(7) and Article 108, references to the offeror shall be construed as references to the joint offerors or any of them.
- (5) In Article 103(6), references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.
- (6) In Article 103(4)(a) and Article 109(4)(a), references to the offeror being no longer able to make the relevant payment shall be construed as references to none of the joint offerors being able to do so.
- (7) In Article 106, references to the offeror shall be construed as references to the joint offerors, except that any application under Article 106(3) or 106(6) may be made by any of them. The reference in Article 106(6)(a) to the offeror having been unable to trace one (1) or more of the persons holding Shares shall be construed as a reference to none of the joint offerors having been able to do so.

108. Associates

- (1) The requirements in Article 101(1) that a takeover offer shall extend to all the Shares, or all the Shares of any class or classes, in a Company shall be regarded as satisfied notwithstanding that the offer does not extend to Shares which associates of the offeror hold or have contracted to acquire. Subject to Article 101(2), Shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Chapter 11 to the Shares to which a takeover offer relates.
- (2) Where, during the period within which a takeover offer can be accepted, any associate of the offeror acquires or contracts to acquire any of the Shares to which the offer relates, then, if the condition specified in Article 102(7)(a) or 102(7)(b) is satisfied in respect of those Shares, such Shares shall be treated for the purpose of that Article as Shares to which the offer relates.
- (3) In Article 104(1)(b) and Article 104(2)(b), the reference to Shares which the offeror has acquired or contracted to acquire shall include a reference to Shares which any associate of the offeror has acquired or contracted to acquire.
- (4) In this Article, “associate”, in relation to an offeror, means one (1) or more of the following:
 - (a) a nominee of the offeror;
 - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary; or
 - (c) a company in which the offeror is substantially interested.
- (5) For the purposes of Article 108(4)(b), a Company is a fellow subsidiary of another company if both are subsidiaries of the same company but neither is a subsidiary of the other.
- (6) For the purposes of Article 108(4)(c), an offeror has a substantial interest in a company if:
 - (a) that company or its Directors are accustomed to act in accordance with the offeror’s directions or instructions; or
 - (b) the offeror is entitled to exercise or control the exercise of one-third ($\frac{1}{3}$) or more of the voting power at general meetings of that company; or

- (c) the offeror owns or controls directly or indirectly more than twenty per cent (20%) of the share capital of that company.
- (7) Where the offeror is an individual, the offeror's associates shall also include the offeror's spouse and any child, step-child, or grandchild of the offeror.

PART 8: MERGERS**CHAPTER 1 – GENERAL****109. Application and interpretation**

- (1) This Part applies to all the persons who are parties to a merger where at least one Merging Company is:
 - (a) a Public Company; or
 - (b) a Private Company, provided that each such Private Company has express authority to enter into the merger in accordance with this Part:
 - (i) under its Articles of Association; or
 - (ii) by Special Resolution.
- (2) If a Foreign Company is a party to a merger referred to in Article 109(1):
 - (a) the merger shall not be concluded unless the requirements in Article 118 are satisfied; and
 - (b) the Foreign Company shall comply with the other provisions in this Part so far as reasonably practicable and required to give effect to the merger, while also taking into consideration any applicable requirements in its home jurisdiction.
- (3) In this Part, a reference to a:
 - (a) “Merging Company” means a Company or Foreign Company which is a party to a merger to which this Part applies;
 - (b) “Merged Company” means the body resulting from a merger, which can be either:
 - (i) a “New Company” incorporated under this Law or the companies legislation in another jurisdiction; or
 - (ii) a “Survivor Company” incorporated under this Law or the companies legislation in another jurisdiction;
 - (c) “Merger Agreement” means an agreement referred to in Article 110 and
 - (d) “Group Merger” means a merger of:
 - (i) a holding company and one (1) or more wholly-owned subsidiaries of that holding company; or
 - (ii) two (2) or more wholly-owned subsidiaries of a company.
- (4) Nothing in Chapter 11 (Protection of Minorities in Takeovers) of Part 7 is to be construed as preventing the acquisition or takeover of one (1) Merging Body by another by way of a merger under this Part.
- (5) This Part does not apply to a Company if such company is being wound up pursuant to the provisions of the Insolvency Law.
- (6) For the purposes of this Part, the Regulations may prescribe:
 - (a) pre-registration steps applicable to mergers under this Part; and

- (b) any other procedure or matter that is required to assist or facilitate a merger to which this Part applies.

CHAPTER 2 – REQUIREMENTS APPLICABLE TO A MERGER

110. Merger agreement

- (1) For the purposes of a merger, each Merging Company shall enter into a Merger Agreement with each other which shall state the terms and means of effecting the merger including:
 - (a) the details of the proposed Merged Company, including:
 - (i) whether it is to be a Survivor Company or a New Company;
 - (ii) whether it is to be a Company or a Foreign Company; and
 - (iii) the names and addresses of the persons who are proposed to:
 - (A) be its directors; or
 - (B) manage it, if it is a Foreign Company that does not have directors;
 - (b) the details of any arrangements necessary to complete the merger and to provide for the management of the Merged Company;
 - (c) the details of any payment, other than those specified in Article 110(2), proposed to be made to a shareholder, member or director of a Merging Company; and
 - (d) in the case of transfer of any Securities of a Merging Company, the information specified in Article 110(2).
- (2) The information referred to in Article 110(1)(d) is:
 - (a) if the Securities of the Merging Company are to be converted into Securities of the Merged Company, the manner in which that conversion is to be made; or
 - (b) otherwise, what the holders of the Securities are to receive instead, and the manner in which and the time at which they are to receive it.
- (3) If the Merged Company is to be a New Company, the Merger Agreement shall also set out:
 - (a) the proposed articles of association of the New Company; and
 - (b) a draft of any other Document or information that would be required to be delivered to the Registrar if that New Company were to be incorporated under this Law (other than by merger).
- (4) If the Merged Company is to be a Survivor Company, the Merger Agreement shall also state if:
 - (a) any amendments to the Articles of Association of the Survivor Company are proposed, the details of those amendments; and
 - (b) any person is to become, or cease to be, a director of the Survivor Company upon merger, the name and address of each such person.
- (5) If shares of a Merging Company are held by or on behalf of another Merging Company and the Merged Company is to be a New Company:
 - (a) the Merger Agreement shall provide for the cancellation of such shares, without any repayment of capital, when the merger is completed; and

- (b) no provision may be made in the Merger Agreement for the conversion of such shares into Securities of the New Company.
- (6) A Merger Agreement may provide that, at any time before the completion of the merger, the agreement may be terminated by any one (1) or more of the Merging Companies, notwithstanding that it has been approved by the shareholders or members of all or any of those Merging Companies.
- (7) If a Merger Agreement is terminated pursuant to the terms of the agreement referred to in Article 110(6), nothing in this Part requires or authorizes any further steps to be taken to complete the merger.
- (8) The requirement for a Merger Agreement in this Article 110 shall not apply in respect of a Group Merger.

111. Resolutions and certificates

- (1) Before notice is given of a meeting of a Merging Company to approve a Merger Agreement under Article 112, the Directors of that Company shall pass a Director's resolution that, in the opinion of the Directors voting for the resolution, the merger is in the best interests of the Company. Such a resolution shall contain either a solvency statement referred to in Article 111(2) or a statement referred to in Article 111(4).
- (2) If the Directors voting for the resolution under Article 111(1) are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the Merging Company, the resolution shall include a statement that they are so satisfied.
- (3) For the purposes of Article 111(2), a solvency statement is a statement that, having made full inquiry into the affairs of the Merging Company, the person making the statement reasonably believes that the Company is, and will remain until the merger is completed, able to discharge its liabilities as they fall due.
- (4) If Article 111(2) does not apply, the resolution shall, instead, contain a statement that the Directors voting for it are satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the Court under Article 116.
- (5) After the Directors' resolution under Article 111(1) is passed, but before notice is given as mentioned in that Article, each Director who voted in favour of it shall sign a certificate setting out the grounds for the solvency statement under Article 111(2) or the statement under Article 111(4), as is relevant.
- (6) Before notice is given under Article 111(1), each person falling within Article 111(7) shall sign a certificate stating:
 - (a) that, in his opinion, the Merged Company will be able to continue to carry on business and discharge its liabilities as they fall due for a period of twelve (12) months after the signing of the certificate or the date on which the merger is completed, whichever is the later; and
 - (b) the grounds for that opinion, having particular regard to:
 - (i) the prospects of the Merged Company;
 - (ii) the proposals in any Merger Agreement with respect to the management of the Merged Company's business, or any proposals in the Special Resolutions proposed to be passed under Article 112(1) with respect to that matter; and
 - (iii) the amount and character of the financial resources that will, in the view of the person signing, be available to the Merged Company.

- (7) The persons referred to in Article 111(6) are:
- (a) the persons proposed in any Merger Agreement, or in a Special Resolution in the case of a Group Merger:
 - (i) to be Directors of the Merged Company; or
 - (ii) to manage the Merged Company, if it is to be a body corporate that does not have Directors; and
 - (b) if none of the Directors of the Merging Companies is a person referred to in Article 111(7)(a), each person who signs a certificate under Article 111(5).

112. Approval of the Merger Agreement

- (1) Each Merging Company shall submit the Merger Agreement for approval by a Special Resolution of that Company and, where there is more than one class of Shareholders, for approval by a Special Resolution of a separate meeting of each class.
- (2) Notice of each meeting:
 - (a) shall be accompanied by:
 - (i) a copy or summary of any Merger Agreement;
 - (ii) copies of the proposed Article of Association or other constitutional documents for the Merged Company, or a summary of the principal provisions of those Documents;
 - (iii) if a summary is supplied under Article 112(2)(a)(i) or (ii), information as to how a copy of the Document summarised may be inspected by the Shareholders of the Company;
 - (iv) a copy of the certificates signed under Article 111(5) and 111(6) in respect of that Company;
 - (v) a statement of the material interests in the merger of the Directors of each Merging Company, and of the persons managing any Merging Company that does not have Directors; and
 - (vi) such further information as a Shareholder would reasonably require to make an informed decision with regard to the merger; and
 - (b) shall contain sufficient information to alert Shareholders to their right to apply to the Court under Article 114.
- (3) A merger is approved under this Article when all the Special Resolutions referred to in Article 112(1) have been passed in respect of all the Merging Companies.
- (4) A merger, other than a Group Merger, may not be completed unless it is approved under this Article 112 and a period of twenty eight (28) days has elapsed to allow a Shareholder to exercise its rights under Article 114(1).

113. Simplified approval of a Group Merger

- (1) A Group Merger may be approved by a Special Resolution of each Merging Company under this Article if such a merger is either a:
 - (a) holding company merger; or

- (b) an inter-subsiary merger.
- (2) For the purposes of this Article:
- (a) a “holding company merger” is a merger in which:
 - (i) the Merging Companies are:
 - (A) a holding company; and
 - (B) one (1) or more wholly-owned subsidiaries of that holding company; and
 - (ii) the Merged Company is the holding company, continuing as a Survivor Company; and
 - (b) an ‘inter-subsiary merger’ is a merger in which:
 - (i) the Merging Companies are wholly-owned subsidiaries of the same holding company; and
 - (ii) the Merged Company is one of the Merging Companies continuing as a Survivor Company.
- (3) In the case of a holding company merger:
- (a) each Special Resolution of a Merging Company which is a subsidiary shall provide that its Shares are to be cancelled without any repayment of capital; and
 - (b) the Special Resolution of the holding company shall:
 - (i) provide that the capital accounts of each subsidiary that is merging are to be added to the capital accounts of the holding company;
 - (ii) provide that no Securities are to be issued and no assets distributed by the holding company in connection with the merger;
 - (iii) specify any changes to the holding company’s Articles of Association that are to take effect on the merger; and
 - (iv) state the names and addresses of the persons who are proposed to be the Directors after the merger.
- (4) In the case of an inter-subsiary merger:
- (a) each Special Resolution of a Merging Company, other than the Survivor Company, shall provide that:
 - (i) its Shares are to be cancelled without any repayment of capital; and
 - (ii) its capital accounts are to be added to the capital accounts of the Survivor Company;
 - (b) the Special Resolution of the Survivor Company shall:
 - (i) provide that the capital accounts of each other Merging Company are to be added to the capital accounts of the Survivor Company;
 - (ii) specify any changes to the Articles of Association of the Survivor Company that are to take effect on the merger;

- (iii) state the names and addresses of the persons who are proposed to be the Directors of the Survivor Company after the merger.
- (5) A Group Merger is approved under this Article when all of the Merging Companies have passed the Special Resolutions required under this Article.
- (6) A Group Merger may not be completed unless it is approved under this Article.
- (7) Where a Group Merger is approved under this Article, the requirements in Articles 110 and 111 do not apply to such a merger.

114. Objection by Shareholders

- (1) A Shareholder of a Merging Company may apply to the Court for an order under Article 153 on the ground that the merger would unfairly prejudice the interests of the Shareholder.
- (2) An application may not be made:
 - (a) more than twenty eight (28) days after the merger is approved under Article 112(3), or
 - (b) by a Shareholder who voted in favour of the merger.

CHAPTER 3 – CREDITORS

115. Notice to Creditors

- (1) No later than twenty eight (28) days after a merger is approved under Article 112(3), each Merging Company shall send written notice to each of its Creditors who, after its Directors have made reasonable enquiries, is known to the Directors to have a claim against the company exceeding \$5,000.
- (2) The notice shall state:
 - (a) that the Company intends to merge, in accordance with this Part, with one (1) or more Merging Companies specified in the notice; and
 - (b) that the merger agreement and the Company's Special Resolution is available to Creditors from the Company, free of charge, on request.
- (3) If Article 116 applies to the merger, the notice shall, in addition:
 - (a) state that a Merging Company has applied or will apply for the permission of the Court under that Article;
 - (b) state that any Creditor of any of the Merging Companies may request the Company making the application to send a copy of the application to the Creditor; and
 - (c) set out information as to:
 - (i) a means by which a Creditor may contact the Company making the application, or a person representing it in that application; and
 - (ii) the effect of Article 116(4), including the date of the application if known at the time of the notice.
- (4) If Article 116 does not apply to the merger, the notice shall state (in addition to the matters in Article 115(3)) that any Creditor of the Company may:

- (a) object to the merger, within twenty eight (28) days of the date of the publication of the notice, under Article 117(2)(a); or
 - (b) require the Company to notify the Creditor if any other Creditor of the Company applies to the Court under Article 117(2)(b).
- (5) The Company shall, within the time set out in Article 115(6), publish the contents of the notice in an Appointed Publication or in any other manner approved by the Registrar.
- (6) The notice under Article 115(5) shall be published:
- (a) no later than twenty eight (28) days after the merger is approved under Article 112; or
 - (b) as soon as practicable after the Company sends the last of the notices under Article 115(1),
- whichever occurs earlier.

116. Company to apply to Court if solvency statement not made

- (1) This Article applies to a merger if a certificate signed by a Director of any of the Merging Companies under Article 111(5) does not contain the statement referred to in Article 111(3).
- (2) The merger may not be completed unless the Court has permitted the merger on the ground that the merger would not be unfairly prejudicial to the interests of any Creditor of any of the Merging Companies.
- (3) A Merging Company to which a certificate mentioned in Article 116(1) relates, or all such Companies jointly if there are more than one, shall as soon as is practicable after the proposed merger is approved under Article 112:
 - (a) apply to the Court for permission for the merger; and
 - (b) send a copy of that application:
 - (i) to any Creditor known to the Directors, following reasonable enquiries to have a claim against any of the Merging Companies exceeding the amount specified in Article 115(1);
 - (ii) to any other Creditor of any of the Merging Companies who request a copy from that Company; and
 - (iii) the Registrar.
- (4) The Court shall not hear the application for at least twenty eight (28) days after the application is made to the Court.

117. Objection by Creditor if a solvency statement is made

- (1) This Article applies to a merger where a certificate signed by a Director of any of the Merging Companies under Article 111(3) contained a solvency statement.
- (2) A Creditor of a Merging Company who objects to the merger:
 - (a) may, within twenty eight (28) days of the date of the publication of the notice under Article 115(5), give notice of the Creditor's objection to the Merging Company; and

- (b) may, within twenty eight (28) days of the date of the notice of objection, if the Creditor's claim against the Merging Company has not been discharged, apply to the Court for an order restraining the merger or modifying the Merger Agreement.
- (3) If a Creditor makes an application under Article 117(2)(b), the Merging Company shall, within a reasonable time after receiving a copy of the application, send a copy of it to each other Creditor:
 - (a) to whom a notice was sent under Article 115(1);
 - (b) who has required notification under Article 115(3)(b);
 - (c) who has given notice of objection under Article 117(2)(a); or
 - (d) to whom the Court orders that a copy should be sent.
- (4) If, on an application under Article 117(2)(b), the Court is satisfied that the merger would unfairly prejudice the interests of the applicant, or of any other Creditor of the Merging Company, the Court may make such order as it thinks fit in relation to the merger, including, but not limited to, an order:
 - (a) restraining the merger; or
 - (b) modifying the Merger Agreement (if any) or Special Resolution in such manner as may be specified in the order.
- (5) Article 117(6) applies if a Court is considering making an order under Article 117(4)(b) to modify a Merger Agreement or Special Resolution that does not contain a provision in accordance with Article 110(6) allowing each of the Merging Companies to terminate the merger following the modification.
- (6) The Court shall not make the order unless:
 - (a) the order also inserts such a provision in the Merger Agreement or Special Resolution; and
 - (b) the Court is satisfied that each Merging Company will have an adequate opportunity to reconsider whether to proceed with or withdraw from the merger following the modification.

118. Consent of Registrar required for mergers involving Foreign Companies

- (1) If any one (1) or more of the Merging Companies that are parties to a merger referred to in Article 113(2)(a) or (b) is a Foreign Company:
 - (a) all the Merging Companies shall apply jointly, in the published form and manner (if any), to the Registrar for consent to the merger; and
 - (b) the merger may not be completed unless the Registrar gives consent and any conditions attached to the consent are complied with.
- (2) The application for consent shall not be made until after the date of the publication of a notice under Article 115(5).
- (3) The application shall be accompanied by:
 - (a) a copy of the Merger Agreement and the Special Resolutions passed under Article 112;
 - (b) a copy in respect of each Merging Company, of:

- (i) the Director's Resolution passed under Article 111(1), together with, if that information is not contained in the resolution, a list identifying the Directors who voted in favour of that resolution; and
 - (ii) the certificates signed under Article 111(5) and 111(6);
- (c) a copy, in respect of each Merging Company, of the notice to Creditors under Article 115(5), with the date of its publication under Article 115(5); and
- (d) information, as at the time of the application under this Article, as to:
 - (i) any application made by a Shareholder of a Merging Company to the Court under Article 114; or
 - (ii) if no such application has been made to the Court, the date on which the time for doing so has elapsed or will elapse.
- (4) If the solvency statement under Article 111(2) has been made:
 - (a) the application under this Article shall, in addition, be accompanied by information, as at the time of that application, as to the application made, or to be made, to the Court under Article 116; and
 - (b) the applicants shall:
 - (i) keep the Registrar informed of the progress of the application under that Article; and
 - (ii) provide, when available, a copy of the Court order permitting the merger.
- (5) If the solvency statement under Article 111(2) has not been made, the application shall, in addition, be accompanied by:
 - (a) information, as at the time of the application under this Article, as to:
 - (i) any notice of objection given by a Creditor under Article 117(2)(a); or
 - (ii) if no such notice has been given, the date on which the time for doing so has elapsed or will elapse; and
 - (b) evidence satisfactory to the Registrar that the merger would not be unfairly prejudicial to the interests of any Creditor of any Merging Company.
- (6) If the Merged Company is to be a New Company, the application shall, in addition, be accompanied by:
 - (a) the consent of the proposed Directors to act as such; and
 - (b) a copy of its proposed Articles of Association.
- (7) If the Merged Company is to be a Survivor Company, the application shall be accompanied by:
 - (a) the consent of any proposed new Directors to act as such; and
 - (b) if there are any amendments proposed to the Articles of Association, those amendments, and if there are no such proposed amendments, a statement to that effect; and

- (8) With regard to each Merging Company which is a Foreign Company, the application shall, in addition, be accompanied by evidence satisfactory to the Registrar, in respect of each such Foreign Company, that:
- (a) the laws of the jurisdiction in which the Foreign Company is incorporated do not prohibit either or both of:
 - (i) the proposed merger; or
 - (ii) if the Merged Company is to be a New Company incorporated in that jurisdiction, the incorporation of that company as the result of that merger;
 - (b) if those laws or the constitution of the Foreign Company require that an authorisation be given for the application under Article 118 or for the merger, the authorisation has been given; and
 - (c) if the Foreign Company is not to be a Survivor Company, the Foreign Company will, in due course, after the completion of the merger, cease to be a company incorporated under the law of the jurisdiction in which it is presently incorporated.
- (9) If the New Company is to be a Foreign Company, the application shall, in addition, be accompanied by evidence satisfactory to the Registrar that the laws of the jurisdiction in which the New Company is to be incorporated provide that upon the merger:
- (a) the property and rights to which the Merging Bodies were entitled immediately before the merger will become the property and rights of the New Company;
 - (b) the New Company will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the Merging Companies were subject immediately before the merger; and
 - (c) any actions and other legal proceedings that, immediately before the merger, were pending by or against any of the Merging Companies may be continued by or against the New Company.
- (10) Articles 118(11) and 118(12) apply unless, at the time of the application under this Article:
- (a) there has been no objection by a Shareholder or by a Creditor of any of the Merging Companies to the merger; and
 - (b) the time for making any objection has elapsed.
- (11) The applicants shall:
- (a) notify the Registrar of any objection of which they become aware after the application;
 - (b) notify the Registrar of the result once any objection, whenever made, has been disposed of; and
 - (c) provide to the Registrar any further information or Document reasonably required by the Registrar in connection with any such objection.
- (12) Until the applicants have complied with Article 118(10), the Registrar:
- (a) shall not make any decision on the application other than to refuse consent on grounds unconnected to an objection; and
 - (b) may, in respect of the application, take any other action short of making a decision, or take no further action.

- (13) In Articles 118(10), 118(11) and 118(12), ‘objection’ means:
- (a) the making by a Shareholder of an application to the Court under Article 114 in respect of any Merging Company; and
 - (b) the giving of notice of objection under Article 117(2)(a) by a Creditor of any Merging Company.

CHAPTER 4– COMPLETION OF MERGER AND CONTRAVENTIONS

119. Effect of completion of merger

- (1) On the completion date of a merger:
- (a) the Merging Companies are merged and continue as one Merged Company as provided in any Merger Agreement or the Special Resolution; and
 - (b) any Merging Company which is not a Survivor Company ceases to be incorporated as a separate Company.
- (2) When a merger is completed in which the Merged Company is a New Company:
- (a) the New Company becomes entitled to all the property and rights to which each Merging Company was entitled immediately before the merger was completed;
 - (b) the New Company becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the Merging Company was subject immediately before the merger was completed; and
 - (c) any legal or other proceedings which, immediately before the merger, were commenced by or against any of the Merging Company may be continued by or against the New Company.
- (3) Entries made on the Register, as prescribed in the Regulations made pursuant to Article 109(6), are conclusive evidence of the following matters to which they refer:
- (a) that, on the completion date specified in the entry, the Merging Companies merged and are continued as the Merged Company; and
 - (b) that the requirements of this Law in respect of the merger of the Merging Companies, including the matters precedent and incidental to the merger, have been fully complied with.
- (4) The operation of this Article shall not be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

120. Contraventions relating to merger

- (1) A person who, in or in connection with an application under this Part, knowingly or recklessly provides to the Registrar:
- (a) any information which is false, misleading or deceptive in a material particular; or

- (b) any Document containing any such information,

is liable to a fine, as set out in Schedule 2.
- (2) A person who signs a certificate under Article 111(5) and (6) or as prescribed in the Regulations made pursuant to Article 109(6) without having reasonable grounds for the opinion expressed in the certificate or for the statement made in the certificate is liable to a fine, as set out in Schedule 2.

PART 9: COMPROMISES AND ARRANGEMENTS**121. Power of company to compromise with creditors and Shareholders**

- (1) This Article 121 applies where a compromise or arrangement is proposed between a Company and:
 - (a) its Creditors or a class of Creditors; or
 - (b) its Shareholders, or a class of Shareholders.
- (2) The Court may, on the application of:
 - (a) the Company;
 - (b) a creditor or Shareholder of the Company; or
 - (c) in the case of a Company being wound up, its liquidator,order a meeting of the Creditors or class of Creditors, or of the Shareholders or class of Shareholders, of the Company (as the case may be), in a manner as the Court directs.
- (3) The Court may only sanction a compromise or arrangement if a majority in number representing:
 - (a) three quarter (3/4) in value of the Creditors or class of Creditors; or
 - (b) three quarter (3/4) of the voting rights of the Shareholders or class of Shareholders,as the case may be, present and voting either in person or by proxy at the meeting, agree to the compromise or arrangement.
- (4) Where the Court has sanctioned a compromise or arrangement under Article 121(3), such a compromise or arrangement shall be binding on:
 - (a) all the Creditors or the class of Creditors; or
 - (b) all the Shareholders or class of Shareholders,as the case may be, and also on the Company or, in the case of a Company in the course of being wound up, on the liquidator and contributories of that Company.
- (5) The Company, or the person on whose application the Court issued the order under Article 121(3), shall deliver a duly certified copy of that order, by the Court, to the Registrar as soon as practicable, and in any case, no later than within seven (7) days of the date of the order.
- (6) The court order referred to in Article 121(3) has no effect, until a duly certified copy of that order has been delivered to the Registrar.
- (7) The Registrar shall, as soon as practicable after receipt of a copy of the court order referred to in Article 121(5), include that order in the Company's Articles of Association.
- (8) If the person referred to in Article 121(5) fails to comply with the requirement in that Article, that person is liable to a fine, as set out in Schedule 2.

122. Information relating to compromise to be circulated

- (1) This Article applies where a meeting of creditors or a class of creditors, or of Shareholders or a class of Shareholders, is called under Article 121.

- (2) The notice calling for the meeting of creditors or Shareholders shall include a statement containing the following particulars:
 - (a) an explanation of the effect of the compromise or arrangement;
 - (b) any material interests of Directors in the compromise or arrangement, including his interest as an officer, creditor or Shareholder of the Company;
 - (c) if there any debentures issued by the Company, how the arrangement or compromise would affect the rights of the debenture holders; and
 - (d) any other matter which has a material impact on the Company, its creditors and Shareholders, and debenture holders, if any, resulting from the compromise or arrangement.
- (3) If the notice calling the meeting is given by advertisement, the advertisement shall include either the statement referred to in Article 122(2), or a notification of the place at which, and the manner in which the creditors or Shareholders entitled to attend the meeting may obtain copies of that statement.
- (4) Where a notice given by advertisement includes a notification that copies of the statement referred to in Article 122(2) can be obtained by creditors or Shareholders entitled to attend the meeting, the Company shall provide to such a creditor or Shareholder, upon application, a copy of the statement free of charge.
- (5) If a Company fails to comply with a requirement of this Article, the Company and every officer of it who is in default is liable to a fine, as set out in Schedule 2.

123. Provisions for facilitating company reconstruction or amalgamation

Where an application is made to the Court under Article 121 for the sanctioning of a compromise or arrangement proposed between a Company and any persons mentioned in that Article, the Court may make any orders as it considers appropriate to facilitate the compromise or arrangement, including a reconstruction of the Company, or an amalgamation of the Company with any other company.

PART 10 : ACCOUNTS, REPORTS AND AUDIT**CHAPTER 1 – GENERAL****124. Application of this Part**

- (1) This Part does not apply in relation to any Company which is an Authorised Person, Public Listed Company or a Recognised Person which are subject to the reporting requirements of the Regulatory Law 2004 or the Markets Law 2012.
- (2) The requirements of this Part as to accounts and audit apply in relation to each financial year of a Company.

125. Waiver and modification of this Part

- (1) The Board of Directors of the DIFCA may, without limiting powers conferred upon it elsewhere under this Law, make Regulations extending, waiving or modifying the application of the provisions of this Part in relation to a specific person or class of persons.
- (2) In particular, such Regulations may provide for:
 - (a) the inclusion in accounts of group accounts dealing with the affairs of a Company and its subsidiaries;
 - (b) the inclusion in accounts of a report by the Directors dealing with such matters as may be specified;
 - (c) the accounting standards or principles to be applied in the preparation of accounts, including:
 - (i) the creation or adoption of one (1) or more accounting standards or principles, or codes of practice;
 - (ii) which of, and the manner in which, such accounting standards or principles may apply to particular Companies and in particular circumstances; or
 - (iii) periods in which an accounting standard or principle may apply;
 - (d) the extending or shortening of a financial year in certain circumstances, including to facilitate synchronisation of accounts;
 - (e) the appointment, qualifications, remuneration, removal, resignation, rights and duties of auditors;
 - (f) the creation or adoption of auditing standards or codes of practice; and
 - (g) the waiver of the requirement for the preparation of accounts and examination and reporting thereupon by auditors.
- (3) The provisions of this Article are subject to Article 156.

CHAPTER 2 – ACCOUNTS AND REPORTS**126. Maintenance of Accounting Records**

- (1) Every Company shall keep Accounting Records which are sufficient to show and explain its transactions so as to:
 - (a) disclose with reasonable accuracy the financial position of the Company at any time; and

- (b) enable the Directors to ensure that any accounts prepared by the Company under this Part comply with the requirements of this Law.
- (2) A Company's Accounting Records shall be:
- (a) kept at such place as the Directors think fit except where otherwise prescribed in the Regulations;
 - (b) in the case of a Public Company where Accounting Records are kept outside of the DIFC, returns with respect to the business dealt with in the Accounting Records shall be kept in the DIFC;
 - (c) preserved by the Company for at least six (6) years from the date upon which they were created, or for some other period as may be prescribed in the Regulations;
 - (d) open to inspection by an Officer or auditor of the Company at all reasonable times; and
 - (e) otherwise kept and maintained in such manner as may be provided in the Regulations.
- (3) A Company which fails to comply with each of the requirements in this Article 126 is liable to a fine, as set out in Schedule 2.

127. Financial years

- (1) Subject to Article 127(2), the first financial year of a Company starts on the day on which it is incorporated and lasts for a period not exceeding eighteen (18) months as may be determined by the Directors.
- (2) Where a body corporate has become a Company by virtue of a transfer of incorporation pursuant to Articles 144 and 145, the first financial year of that Company under this Law may, at the option of the Directors, be deemed to have started at the end of the previous financial year in the jurisdiction from which it transferred, in which case such financial year shall last twelve (12) months from the date it is deemed to have started.
- (3) The second and any subsequent financial year shall start at the end of the previous financial year and shall last twelve (12) months or some other period, which is within seven (7) days either shorter or longer than the twelve (12) months, as may be determined by the Directors.

128. Accounts

- (1) The Directors of every Company shall cause accounts to be prepared in relation to each financial year of the Company. Any reference to Company's accounts is a reference to accounts of the Company prepared in accordance with the requirements in this Article.
- (2) The accounts shall:
 - (a) be prepared in accordance with accounting principles or standards prescribed in the Regulations or otherwise approved by the Registrar;
 - (b) show a true and fair view of the profit or loss of the Company for the period and of the state of the Company's affairs at the end of the period; and
 - (c) comply with any other requirements of this Law.
- (3) A Company's accounts shall be approved by the Directors and signed on their behalf by at least one of them.
- (4) Within six (6) months after the end of the financial year, the accounts for that year shall be:
 - (a) prepared and approved by the Directors;

- (b) examined and reported upon by an auditor;
 - (c) in respect of a Public Company, laid before a General Meeting, together with a copy of the auditor's report and Directors' report, for discussion and, if thought fit, approval by the Shareholders; and
 - (d) in respect of all Companies, sent, together with (if applicable) a copy of the auditor's report and/or Directors' report, to every Shareholder, excluding those Shareholders for whom the Company does not have a current postal address.
- (5) A Company shall file with the Registrar within thirty (30) days after circulation to Shareholders in accordance with Article 128(4)(d), a copy of the accounts and the auditor's report and, in the case of a Public Company, a copy of the Directors' report prepared in accordance with Article 130.
- (6) Unless otherwise provided in its Articles of Association, a Private Company is not required to comply with the requirements in Article 128(4)(b) and Article 128(5) if that Company, during the current year for which the accounts are being prepared and, if the Company has existed for more than one (1) financial year, the year immediately preceding that financial year, has:
- (a) an annual turnover of not more than \$5,000,000; and
 - (b) an average of not more than twenty (20) Shareholders.
- (7) Notwithstanding Article 128(6), the Shareholders representing not less than ten per cent (10%) of the nominal value of the share capital of a Company referred to in that Article may, by notice in writing given no earlier than the start of any financial year and no later than one (1) month before the end of such financial year, require the Company to obtain an audit of its accounts for that financial year.
- (8) A Company which fails to comply with each of the requirements in this Article 128 is liable to a fine, as set out in Schedule 2.

129. Provision of copy of accounts to a Shareholder

- (1) Any Shareholder of a Company is entitled, on written request made by that Shareholder to the Company and without charge, to be furnished with a copy of the Company's latest:
- (a) accounts, if Article 128(6) applies; or
 - (b) audited accounts and auditor's report, in all other cases.
- (2) A Company shall comply with such a request within seven (7) days of receipt of the request.
- (3) A Company which fails to comply with each of the requirements in this Article 129 is liable to a fine, as set out in Schedule 2.

130. Directors' report for Public Companies

- (1) The Directors of a Public Company shall prepare a Directors' report for each financial year of the Company.
- (2) The Directors' report for a financial year shall state:
- (a) the names of the persons who, at any time during the financial year, were Directors;
 - (b) the principal activities of the Company in the course of the year;
 - (c) the amount if any that the Directors recommend should be paid by way of dividend or other Distribution;

- (d) a business review containing:
 - (i) a fair view of the Company's business;
 - (ii) a description of the risks and uncertainties facing the Company;
 - (iii) an analysis of the development, performance and position of the Company's business; and
 - (iv) such other information as is necessary for an understanding of the development, performance and position of the Company's business;
 - (e) that the Directors are not aware of any relevant audit information of which the Company's auditor is not aware, and that they have taken all reasonable steps to become aware of such relevant audit information; and
 - (f) such other matters as may be prescribed in the Regulations.
- (3) The Directors' report shall be signed on behalf of the Directors by a Director or the secretary of the Company.
- (4) In the case of any failure to comply with the requirement to prepare a Directors' report or if any Directors' report does not comply with the requirements of this Article 130, each Director is liable to a fine, as set out in Schedule 2.

CHAPTER 3 – AUDITORS

131. Appointment and removal of auditors

- (1) In this Chapter, unless otherwise provided, a reference to an auditor is a reference to a person registered by the Registrar as an auditor in accordance with the requirements in the Operating Law.
- (2) A Company which is required by this Law to have its accounts examined and reported on by an auditor shall appoint an auditor who shall examine and report in accordance with this Law upon the accounts prepared pursuant to Article 128.
- (3) A person shall not:
- (a) consent to be appointed as an auditor of a Company;
 - (b) act as an auditor of a Company; or
 - (c) prepare any report required by this Law to be prepared by an auditor;
- unless the person has applied, and been registered, as an auditor under this Law. A person who acts as an auditor of a Company contrary to the requirements of this Article is liable to a fine, as set out in Schedule 2.
- (4) The appointment of a firm as an auditor of a Company is taken to be an appointment of each person who is a partner of the firm.
- (5) A Company which is:
- (a) a Public Company shall, at each Annual General Meeting at which the accounts for the previous year are laid, appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next Annual General Meeting at which the accounts are laid; and

- (b) a Private Company shall, within six (6) months after the end of the financial year or, if earlier, before the date on which the accounts are sent to Shareholders, appoint an auditor to hold office from such date until the end of the next period for appointing auditors. The appointment of an auditor by a Private Company shall be by a resolution of its Directors unless the Shareholders, at a General Meeting, have appointed an auditor by an Ordinary Resolution.
- (6) The Directors may, in respect of a Public Company, at any time before the first General Meeting at which the accounts for the previous year are laid, appoint an auditor who shall hold office to the conclusion of such General Meeting.
- (7) The Directors of a Company may fill any casual vacancy in the office of auditor on such terms as they see fit, who shall hold office:
 - (a) in respect of a Public Company, until the conclusion of the next General Meeting at which the accounts for the previous year are laid; or
 - (b) in respect of a Private Company, until the end of the next period for appointing auditors.
- (8) Subject to Article 131(7), the Company may, by Ordinary Resolution, fix the auditor's remuneration.
- (9) The Company shall not appoint an auditor under this Article unless:
 - (a) the auditor has, prior to the appointment, consented in writing to the Company; and
 - (b) the Company is not, on reasonable inquiry, aware of any matter which should preclude the auditor from giving the auditor's consent under Article 131(9)(a).
- (10) An auditor shall not consent to an appointment as an auditor of a Company if:
 - (a) the auditor has, or may reasonably be perceived to have, a conflict of interest;
 - (b) the auditor does not have, or may reasonably be perceived not to have, a requisite degree of independence from the Company; or
 - (c) the auditor or any associate of the auditor in a firm or business undertaking has acted as an auditor of the Company within such earlier period or frequency as prescribed in the Regulations.
- (11) A Company may, notwithstanding anything in Article 131(5) or any agreement between it and the auditor, remove an auditor at any time by Ordinary Resolution.
- (12) The Court may, on application made by the Registrar, order the removal of the auditor of a Company.
- (13) Nothing in this Article is to be taken as depriving an auditor removed pursuant to it of compensation or damages payable to the auditor in respect of the termination of appointment as the auditor.
- (14) Every Company and its Officers shall take reasonable efforts to provide such information and assistance as required by an auditor for the purposes of the auditor carrying out its duties under this Law and the Regulations.

132. Auditor's report to the Company

- (1) A Company's auditor shall make a report to the Company's Shareholders on the accounts examined by the auditor.
- (2) The auditor's report shall state:

- (a) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with this Law;
 - (b) in particular, whether the accounts give a true and fair view of the profit or loss of the Company for the financial year and of the state of the Company's affairs at the end of the financial year; and
 - (c) any other matter or opinion required under the Regulations.
- (3) An auditor which fails to comply with each of the requirements of this Article 132 is liable to a fine, as set out in Schedule 2.

133. Auditors' duties and powers

- (1) A Company's auditor shall, in preparing the report in relation to the accounts of a Company, carry out such investigations as will enable the auditor to form an opinion as to the following matters:
- (a) whether proper Accounting Records have been kept by the Company and proper returns adequate for the audit have been received from branches not visited by the auditor;
 - (b) whether the Company's accounts are in agreement with the Accounting Records and returns; and
 - (c) whether the Company's accounts have been prepared in compliance with any applicable accounting standards as prescribed in the Regulations.

An auditor which fails to comply with the requirements of Article 133(1), is liable to a fine, as set out in Schedule 2.

- (2) If the auditor is of the opinion that proper Accounting Records have not been kept, or that proper returns adequate for the audit have not been received from branches not visited by the auditor, or if the accounts are not in agreement with the Accounting Records and returns, or that the accounts do not comply with the applicable accounting standards, the auditor shall state that fact in the report.
- (3) The auditor has a right of access, at all reasonable times, to the Company's Records, and is entitled to require from the Company's Officers such information and explanations as the auditor considers necessary for the performance of its duties.
- (4) Every auditor is entitled to receive notice of, and attend, any meeting of Shareholders and to be heard on any part of the business of the meeting which concerns the auditor.
- (5) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief are necessary for the purposes of the audit, the auditor shall state that fact in the report. An auditor which fails to state that fact in the report is liable to a fine, as set out in Schedule 2.

134. Resignation of an auditor

- (1) An auditor of a Company may resign from office by depositing a notice in writing to that effect together with a statement under Article 134(2) at the Company's registered office. Such notice operates to bring the auditor's term of office to an end on the date on which the notice is deposited, or on such later date specified in the notice. The Company shall send to the Registrar a copy of the notice of resignation of the auditor.
- (2) When an auditor ceases for any reason to hold office, the auditor shall deposit at the Company's registered office either:

- (a) a statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the notice of the Shareholders or Creditors of the Company; or
 - (b) a statement of any circumstances as are mentioned in Article 134(2)(a).
- (3) In the case of a statement that falls within Article 134(2)(b), the Company shall, within fourteen (14) days of the Auditor depositing such notice at the Company's registered office, send a copy of the statement to every Shareholder of the Company and to every person entitled to receive notice of General Meetings. A Company which fails to comply with this requirement is liable to a fine, as set out in Schedule 2.
- (4) If an auditor ceases for any reason to hold office, the Directors shall, within thirty (30) days of the cessation of office, appoint a replacement pursuant to Article 131(7).
- (5) An auditor which fails to comply with the requirements in Articles 134(1) or 134(2) is liable to a fine, as set out in Schedule 2.

135. Co-operation with auditors

- (1) A Company, and any Officer of a Company, shall not, knowingly or recklessly:
- (a) provide information to its auditor which is false, misleading or deceptive; or
 - (b) omit to provide information to its auditor which the auditor reasonably requires, or is entitled to require, where the omission of such information is likely to mislead or deceive the auditor.
- (2) A Company, any Officer of a Company and any person acting under the direction or authority of such a Company or Officer, shall not, without reasonable excuse, engage in any of the following conduct:
- (a) destruction or concealment of Documents;
 - (b) coercion, manipulation, misleading, or influencing of the auditor;
 - (c) failure to provide access to information or Documents specified by the auditor; or
 - (d) failure to give any information or explanation which the person is able to give,

where the Company, Officer or other person knows or ought to know that such conduct could:
 - (e) obstruct the auditor in the performance of its duties or the exercise of its powers under this Chapter 3, or
 - (f) result in the rendering of the accounts of the Company or any other aspect of the auditor's report materially misleading.
- (3) A person who fails to comply with each of the requirements in this Article 135(1) or Article 135(2) is liable to a fine, as set out in Schedule 2.

PART 11: OTHER TYPES OF COMPANY**136. Incorporation of prescribed types of Company**

- (1) A company may be incorporated as, or an existing Company may be converted to, a type of Company as specified in this Part or prescribed under the Regulations where such a type of Company is desirable in the interests of the DIFC.
- (2) The Board of Directors of the DIFCA may make Regulations:
 - (a) prescribing:
 - (i) such a type of Company;
 - (ii) the circumstances in which such a Company may be incorporated or an existing Company may be converted, including any requirements for approval by another regulatory authority;
 - (iii) any requirements or restrictions in relation to such a Company's articles of association or its constitution generally; and
 - (iv) forms and procedures for the incorporation and administration of such a Company; and
 - (b) extending, excluding, waiving or modifying the application of provisions of this Law, the Regulations or any other Legislation administered by the Registrar, with the exception of Part 1, Part 2 and Part 14 of this Law and Part 5 of the DIFC Operating Law, where considered necessary or desirable to facilitate the incorporation of, conversion to, and management and functions of, such a Company.
- (3) Except where otherwise provided in the Regulations, this Law shall apply to a Company established pursuant to this Article.

PART 12: RECOGNISED COMPANIES**137. Foreign Companies**

- (1) A Foreign Company shall not carry on business in the DIFC unless it is registered as a Recognised Company under this Part. A Foreign Company which fails to comply with this requirement is liable to a fine, as set out in Schedule 2.
- (2) The Board of Directors of the DIFCA may make Regulations prescribing what comprises 'carrying on business' for the purposes of this Part.
- (3) A Foreign Company may apply to the Registrar for registration as a Recognised Company in such manner as shall be prescribed in the Regulations.
- (4) Upon a Recognised Company becoming a Company, the Registrar shall strike off its registration as a Recognised Company.

138. Registration

- (1) The Registrar may refuse to register a Foreign Company for such reason as the Registrar believes to be proper grounds for refusing such registration, including the undesirability of permitting the Foreign Company to carry on business in the DIFC under its name.
- (2) Where the Registrar refuses to register a Foreign Company, the Registrar shall not be bound to provide any reason for the Registrar's refusal and the Registrar's decision shall not be subject to the Decision-making Procedures or appeal or review in any court.

139. Effect of registration

- (1) Upon registration of a Foreign Company as a Recognised Company, the Registrar shall:
 - (a) issue a certificate of registration;
 - (b) assign a number, which shall be the Recognised Company's registered number; and
 - (c) enter the name of the Recognised Company in the Register.
- (2) A certificate of registration issued by the Registrar shall be conclusive evidence:
 - (a) of registration of a Foreign Company as a Recognised Company; and
 - (b) that the requirements of this Law have been complied with in respect of such registration.
- (3) Without prejudice to Article 139(1)(a), the Registrar may make alternative arrangements relating to the issue of certificates of registration to Recognised Companies in circumstances prescribed in Regulations.

140. Requirements of a Recognised Company

- (1) A Recognised Company shall:
 - (a) appoint and retain at all times at least one (1) person who is authorised to accept service of any Document or notice on behalf of the Recognised Company and to undertake any other function as may be prescribed in the Regulations;
 - (b) have a place of business in the DIFC to which all communications and notices may be addressed;

- (c) hold a Commercial Licence pursuant to Article 10 of the DIFC Operating Law, unless exempted by the Registrar;
 - (d) file with the Registrar a notice of:
 - (i) appointment of persons authorised to accept service for the Recognised Company;
 - (ii) address of the principal place of business of the Recognised Company in the DIFC;
 - (iii) details of persons authorised to accept service and the address of its principal place of business in the DIFC;
 - (iv) details of the Recognised Company's shareholders or members;
 - (v) details of the Recognised Company's directors or secretary,
 in the form and manner required in the Regulations;
 - (e) submit to the Registrar on an annual basis a copy of any Confirmation Statement or comparable document filed in its jurisdiction of incorporation, within thirty (30) days from the date of filing of such statement in its jurisdiction of incorporation; and
 - (f) comply with any other requirement prescribed in the Regulations.
- (2) The Board of Directors of the DIFCA may make Regulations:
- (a) prescribing procedures in relation to the requirements under this Part; and
 - (b) waiving or modifying any requirements under this Part in relation to different cases or classes of case.
- (3) A Recognised Company which fails to comply with each of the requirements in this Article 140 is liable to a fine, as set out in Schedule 2.

141. Notification of change in Registered Details of a Recognised Company

If there is a change in the Registered Details of a Recognised Company prescribed in this Law or the Regulations, the Recognised Company shall notify the Registrar in writing within thirty (30) days of any such change taking place. A Recognised Company which fails to comply with this requirement is liable to a fine, as set out in Schedule 2.

142. Maintenance of Accounting Records

- (1) A Recognised Company shall keep Accounting Records which are sufficient to show and explain its transactions so as to:
- (a) disclose with reasonable accuracy the financial position of the Recognised Company at any time; and
 - (b) enable its directors or managers to ensure that any accounts prepared by the Recognised Company under this Part comply with the requirements of this Law.
- (2) A Recognised Company's Accounting Records shall be:
- (a) kept at such place as the directors or managers think fit unless specifically prescribed in the Regulations;

- (b) preserved by the Recognised Company for at least 6 years from the date upon which they were created, or for some other period as may be prescribed in the Regulations;
 - (c) open to inspection by an officer or auditor of the Recognised Company at all reasonable times; and
 - (d) otherwise kept and maintained in such manner as may be provided in the Regulations.
- (3) A Recognised Company which fails to comply with each of the requirements in this Article 142 is liable to a fine, as set out in Schedule 2.

143. Inspection and Remedies

The provision of Part 14 shall apply equally to Recognised Companies and references to "Company" in Part 14 shall be construed to include Recognised Companies.

PART 13: TRANSFER OF INCORPORATION**144. Transfer of incorporation to DIFC**

- (1) A Foreign Company may, if authorised by the laws of the jurisdiction in which it is incorporated, apply to the Registrar for the continuation of the Foreign Company as a Company.
- (2) An application for continuation shall be made to the Registrar in the manner prescribed in the Regulations and shall:
 - (a) be executed under seal and signed by an officer of the Foreign Company and verified by an affidavit, or other similar sworn statement, of the person signing the application;
 - (b) be accompanied by articles of continuation that comply with Articles 11(1) and 11(2); and
 - (c) be accompanied by any other Document prescribed by the Registrar.
- (3) The articles of continuation shall make any amendments to the original articles of incorporation and any amendments thereto necessary to make the articles of continuation conform to this Law and any other relevant law applicable in the DIFC.

145. Certificate of continuation

- (1) Once the Registrar approves the application, the Registrar shall:
 - (a) issue a certificate of continuation on the terms and conditions the Registrar considers appropriate;
 - (b) register the Company and enter its name on the Register; and
 - (c) allocate to the Company a number, which shall be the Company's registered number.
- (2) The Registrar may refuse to issue a certificate of continuation if the Registrar considers it appropriate to do so. This decision is final and not subject to the Decision-making Procedures or appeal or review by the Court.
- (3) The Registrar is not required to provide reasons for refusing to issue a certificate of continuation.

146. Effect of certificate

From the date of continuation stated in the certificate of continuation:

- (a) the Foreign Company becomes a Company to which this Law applies as if it has been incorporated under this Law;
- (b) the articles of continuation become the Articles of Association of the Company; and
- (c) the certificate of continuation is treated as the certificate of incorporation of the Company.

147. Copy of certificate of continuation

The Registrar shall, if requested by the Company, send a copy of the certificate of continuation to the appropriate official or public body in the jurisdiction in which the application for continuation was authorised.

148. Rights and liabilities

Where a Foreign Company is continued as a Company under this Law, the Company:

- (a) continues to have all the property, rights and privileges and is subject to all the liabilities, restrictions and debts that it had before the continuation; and
- (b) remains a party in any legal proceedings commenced in any jurisdiction in which it was a party before the continuation.

149. Transfer of incorporation from DIFC to another jurisdiction

(1) A Company may, if it is authorised by:

- (a) a Special Resolution; and
- (b) the Registrar in the manner prescribed in the Regulations,

apply to the appropriate official or public body of a foreign jurisdiction to transfer its incorporation to the foreign jurisdiction and request that the Company be continued as a Foreign Company.

(2) A Company shall not apply under Article 149(1) unless the laws of the foreign jurisdiction provide that the Foreign Company:

- (a) shall continue to have all the property, rights and privileges and is subject to all the liabilities, restriction and debts that it had before the continuation; and
- (b) shall remain a party in any legal proceedings commenced in any jurisdiction in which it was a party before the continuation.

(3) A Company ceases to be a Company within the meaning of this Law when the Company is continued as a Foreign Company and when the Foreign Company files with the Registrar a copy of the certificate or instrument of continuation certified by the appropriate official of the foreign jurisdiction.

(4) When the Registrar receives the foreign jurisdiction's certificate or instrument of continuation, the Registrar shall strike the name of the company off the Register.

150. Refusal to grant authorisation to transfer incorporation

- (1) The Registrar may refuse to authorise a Company to apply to be continued under Article 149(1).
- (2) The Company may appeal to the Court from a decision of the Registrar under Article 150(1).

PART 14: POWERS AND REMEDIES**151. Application of DIFC Operating Law**

Part 5 of the DIFC Operating Law applies to a Company or Recognised Company.

152. Directions issued by the Registrar

- (1) A Company and Recognised Company shall comply with any direction issued by the Registrar under this Law or the DIFC Operating Law.
- (2) The Registrar may apply to the Court under the DIFC Operating Law if a company or Officer fails to comply with a direction under Article 152(1).

153. Orders in event of unfair prejudice

- (1) Where a Company's affairs are being or have been conducted in a manner whereby the conduct is unfairly prejudicial to the interests of its Shareholders generally or of one (1) or more Shareholders, or an actual or proposed act or omission of the Company (including an act or omission on its behalf) is or would be so prejudicial, the Court may, on application of one (1) or more Shareholders of the Company, make one (1) or more of the following orders:
 - (a) an order regulating the conduct of the Company's affairs in the future;
 - (b) an order requiring a person to do, or refrain from doing, any act or thing;
 - (c) an order authorising proceedings to be brought in the name of and on behalf of the Company by such person or persons and on such terms as the Court may direct;
 - (d) an order providing for the purchase of the rights of any Shareholders of the Company by other Shareholders or by the Company itself and, in the case of a purchase by the Company itself, the reduction of the Company's capital accounts accordingly; or
 - (e) any other order as the Court sees fit.
- (2) If an order under this Article requires the Company not to make any, or any specified, alterations in its Articles of Association, the Company shall not, without leave of the, Court make any such alteration.
- (3) An alteration to the Articles of Association made by virtue of an order under this Article is of the same effect as if duly made by Special Resolution of the Company, and the provisions of this Law apply to the Articles of Association as so altered accordingly.
- (4) The copy of the order of the Court under this Article altering, or giving leave to alter, the Articles of Association shall, within fourteen (14) days from the making of the order or such longer period as the Court may allow, be delivered by the Company to the Registrar for registration.
- (5) Nothing in this Article affects the rights, powers or remedies that any person or the Court may have apart from this Article.

154. Strike off and Restoration

- (1) The provisions of Articles 32 and 33 of the DIFC Operating Law apply to a Company and, so far as the law allows, a Recognised Company.
- (2) The Directors of a Company shall maintain its books and Records for a period of six (6) years from the date on which its name has been struck off the Register.

PART 15: REGULATIONS**155. Power to make Regulations**

- (1) The Board of Directors of the DIFCA may make Regulations in respect of this Law to facilitate the administration of, or further the purposes of this Law.
- (2) Without limiting the generality of Article 155(1), such Regulations may be made in relation to:
 - (a) the objectives, powers or functions of the Registrar under this Law;
 - (b) forms, procedures, notice and requirements under this Law;
 - (c) the filing of certain material;
 - (d) the manner in which such material shall be filed;
 - (e) which material, or parts of the material, shall be made available for viewing by the public during the normal business hours;
 - (f) the use of an electronic or computer-based systems for the filing, delivery or deposit of, documents or information required under or governed by the Law and Regulations;
 - (g) the circumstances in which persons shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose under the Law; and
 - (h) the payment of fees to the Registrar.
- (3) The Board of Directors of the DIFCA may issue a standard or code of practice which it may incorporate by reference into the Regulations. Such a standard or code of practice shall have the same effect as Regulations except where otherwise stated.
- (4) Where any legislation made for the purposes of this Law purports to be made in the exercise of a particular power or powers, it shall be taken also to be made in the exercise of all the powers under which it may be made.
- (5) Articles 45 and 46 of the DIFC Operating Law apply to the making of Regulations under this Law.
- (6) Without limiting the generality of Article 155(1), the Regulations under this Article may:
 - (a) make different provision for different cases or circumstances;
 - (b) include supplementary, incidental and consequential provisions;
 - (c) make transitional and savings provisions for the purposes of giving effect to, or to facilitate, the transition from the Previous Law to this Law, including in relation to the conversion of:
 - (i) each Company Limited by Shares registered under the Previous Law, into a Private Company or a Public Company; or
 - (ii) each Limited Liability Company registered under the Previous Law, into a Private Company;
 - (d) be made to facilitate the administration of, or further the purposes of this Law and another Law, or other Laws; and

- (d) require the doing of an act or thing, the default of which may result in a fine payable under that Law.

156. Waivers and Modification of the Regulations

The powers to waive and modify the Law or Regulations made pursuant to the Law are contained in Article 59 of the DIFC Operating Law 2018, which shall apply to this Law and Regulations made thereunder.

SCHEDULE 1
INTERPRETATION

1. Rules of interpretation

- (1) In this Law, unless otherwise provided, a reference to:
- (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a “person” includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state.
 - (c) an obligation to publish or cause to be published a particular Document shall, unless expressly provided otherwise in this Law, include publishing or causing to be published in printed or electronic form;
 - (d) a “day” means a calendar day, unless expressly stated otherwise. If an obligation falls on a calendar day which is either a Friday or Saturday, or a Public Holiday, the obligation shall take place on the next calendar day which is a business day;
 - (e) a “week” shall mean a calendar week or seven (7) days, whichever is applicable in the circumstances;
 - (f) a “month” shall mean a period of thirty (30) days;
 - (g) a “year” shall mean period of three hundred and sixty five (365) days and a “calendar year” shall mean a year of the Gregorian calendar;
 - (h) a reference to the masculine gender includes the feminine and vice versa;
 - (i) the singular shall include the plural and vice versa; and
 - (j) this Law includes any Regulations made under this Law.
- (2) The headings in this Law shall not affect its interpretation.
- (3) References in this Law to a body corporate include a company incorporated outside the DIFC.
- (4) A reference in this Law to a Part, Chapter, Article or Schedule by number only, and without further identification, is a reference to the Part, Chapter, Article or Schedule of that number in this Law.
- (5) A reference in an Article or other division of this Law to an Article by number or letter only, and without further identification, is a reference to the Article of that number or letter contained in the Article or other division of this Law in which that reference occurs.
- (6) Unless the context otherwise requires, where this Law refers to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.
- (7) References in this Law to a writing, filing, instrument or certificate include any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means. For the avoidance of doubt, a Company may, with the consent of a Shareholder, communicate with that Shareholder by electronic means.

2. Legislation in the DIFC

References to Legislation and Guidance in this Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, this Law), as applicable in the DIFC;
- (d) this Law is the Companies Law, DIFC Law No. 5 of 2018 made by the Ruler;
- (e) the Regulations are Legislation made by the Board of Directors of the DIFCA under this Law and are binding in nature;
- (f) the Enactment Notice is the enactment notice pursuant to which this Law is brought into force.
- (g) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the Registrar under this Law or the Regulations; and (ii) any standard or code of practice issued by the Board of Directors of the DIFCA which has not been incorporated into the Regulations; and
- (h) references to “Legislation administered by the Registrar” are references to any DIFC Law and regulations conferring functions and powers on the Registrar.

3. Defined terms

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

Terms	Definitions
Accounting Records	Records and underlying Documents comprising initial and other accounting entries and associated supporting Documents such as: <ul style="list-style-type: none"> (a) cheques; (b) Records of electronic funds transfers; (c) invoices; (d) contracts; (e) the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries; and (f) work sheets and spread sheets supporting costs allocations, computations, reconciliations and disclosures.
Acquisition Value	has the meaning set out in Article 102(7)(a).
Allotment	in relation to Shares, a transaction by which a person acquires the unconditional right to be included in a Company’s register of Shareholders in respect of such Shares.
Annual General Meeting	the General Meeting held by the Shareholders of a Public Company as an annual General Meeting in each year.

Terms	Definitions
Appointed Publication	<p>a publication which is either:</p> <p>(a) a newspaper published in English with national circulation in the UAE and, if different, a newspaper with national circulation in the country where the Company has its principal place of business and would reasonably be capable of bringing the matter to the attention of any persons who may be affected; or</p> <p>(b) a website written in English and is appointed by the Registrar for such purpose.</p>
Articles of Association	in relation to a Company, its articles of association as originally adopted or as altered in accordance with this Law.
Authorised Person	A person defined as such in Schedule 1 – item 3 of the Regulatory Law No. 1 of 2004.
Board of Directors of the DIFCA	the governing body of the DIFCA.
Commercial Licence	has the meaning given to the term in the DIFC Operating Law.
Company	a Private Company or a Public Company.
Company Limited by Shares	a body corporate incorporated as such in the DIFC under the Previous Law.
Confirmation Statement	has the meaning given to the term in the DIFC Operating Law.
Connected Person	has the meaning given under Article 82(4).
Court	the DIFC Court as established under Dubai Law.
Creditor	includes a present, prospective and contingent creditor.
Decision-making Procedures	has the meaning given to the term in the DIFC Operating Law.
DFSA	the Dubai Financial Services Authority.
DIFC	the Dubai International Financial Centre.
DIFC Operating Law	the DIFC Operating Law No. 6 of 2018.
DIFCA	the DIFC Authority established under Dubai Law.
Director	<p>a person, by whatever name called, who is:</p> <p>(a) appointed to the position of a director; or</p> <p>(b) appointed to the position of an alternate director, and is acting in that capacity; or</p> <p>(c) not validly appointed as a director, but is acting in the position of a director.</p>
Distribution	has the meaning given in Article 68(7).
Document	includes summons, notice, statement, return, account, order and other legal process, and registers.
Employee	in relation to a Company means any individual who is appointed or employed by the Company whose services are provided to, or for the purposes of the Company, and includes any Officer of the Company.

Terms	Definitions
Employee Share Scheme	a scheme or arrangement for encouraging or facilitating the holding of Shares or debentures in a Company by or for the benefit of: (a) the bona fide Employees or former Employees of the Company, the Company's subsidiary or holding company or a subsidiary of the Company's holding company; or (b) the wives, husbands, widows, widowers or minor children or minor step-children of the individuals referred to in (a).
Equity Securities	means: (a) Ordinary Shares in the Company; or (b) rights to subscribe for, or to convert securities into, Ordinary Shares in the Company.
Financial Services Regulator	means any financial services regulator outside the DIFC.
Foreign Company	a body corporate incorporated in any jurisdiction other than the DIFC.
General Meeting	a meeting of Shareholders of a Company.
Guidance	has the meaning given in Article 2 of Schedule 1 to this Law.
Incorporator	a person who agrees to subscribe to Shares and to whom Shares are allotted and issued upon incorporation of a Company.
Insolvency Law	the Insolvency Law No. 3 of 2009.
Issued Share Capital	shares of a Company that have been issued.
Law	the Companies Law 2018.
Legislation	includes Regulations or rules made under Legislation.
Liability	includes any debt or obligation.
Limited Liability Company	a body corporate incorporated as such in the DIFC prior to the commencement date of this Law.
Officer	in relation to a Company, means: (a) a Director or Secretary of that Company; (b) a senior manager of that Company; (c) a receiver or a receiver and manager of that Company; (d) an administrator of a deed of company arrangement executed by that Company; (e) an official manager of that Company; or (f) a liquidator or a provisional liquidator of that Company.
Ordinary Resolution	a resolution passed by a simple majority of the votes of such Shareholders as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a General Meeting for which notice specifying the intention to propose the resolution has been duly given.
Ordinary Shares	Shares other than those which carry a right to participate in dividends or capital (i.e. Distributions) only up to a specified amount.
Paid Up	includes an amount paid or credited.
Personal Representative	the executor or administrator for the time being of a deceased person.
President	the president of the DIFC appointed by a decree of the Ruler pursuant to Dubai Law.

Terms	Definitions
Previous Law	the Companies Law 2009 (DIFC Law No. 2 of 2009) as it was in force immediately prior to the commencement of this Law.
Private Company	a body corporate which is incorporated as, or converted to, a Private Company under this Law.
Public Company	a body corporate which is incorporated as, or converted to a Public Company under this Law.
Publicly Listed Company	A company defined as such in Schedule 1 – item 3 of the Regulatory Law No. 1 of 2004.
Recognised Company	a Foreign Company registered pursuant to Article 137.
Recognised Person	A person defined as such under Article 37(3) of the Markets Law No. 1 of 2012.
Records	Documents, information and other records however stored.
Register	the register of Companies incorporated under this Law and Recognised Companies, as maintained by the Registrar.
Registered Details	information included in the Register about a Company or Recognised Company.
Registrar	the Registrar appointed under the DIFC Operating Law.
Regulated Market	an exchange regulated by the DFSA or a Financial Services Regulator outside the DIFC.
Resolution	Special Resolution or Ordinary Resolution passed at a General Meeting or in writing, as appropriate.
Ruler	the Ruler of the Emirate of Dubai.
Schedule	a schedule to this Law.
Share	a share in the share capital of a Company.
Shareholder	a person entered in the register of Shareholders of a Company as the holder of a Share in that Company.
Secretary	a person occupying the position of Secretary of a Company, by whatever name called.
Securities	any negotiable instrument including but not limited to stocks, shares, debentures, warrants, certificates, units, options or any right to or interest in any such instrument.
Special Resolution	a resolution passed by at least seventy five per cent (75%) of the votes of such Shareholders as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a General Meeting for which notice specifying the intention to propose the resolution has been duly given.
Standard Articles	a model set of articles of association prescribed by the Registrar under Article 11.

4. Meaning of “holding company”, “ultimate holding company”, “subsidiary” and “wholly-owned subsidiary”

- (1) A body corporate (the ‘first body corporate’) is a subsidiary of another body corporate (the ‘second body corporate’) if the second body corporate:
- (a) holds a majority of the voting rights in the first body corporate;

- (b) is a shareholder of the first body corporate and has the right to appoint or remove a majority of the board of directors or managers of the first body corporate; or
 - (c) is a shareholder of the first body corporate and controls alone, pursuant to an agreement with other shareholders, a majority of the voting rights in the first body corporate,
- or if the first body corporate is a subsidiary of another body corporate which is itself a subsidiary of the second body corporate, which is its holding company.
- (2) A body corporate is a wholly-owned subsidiary of another body corporate if the first body corporate has no shareholders except:
 - (a) the second body corporate; and
 - (b) wholly-owned subsidiaries of or persons acting on behalf of the second body corporate or the second body corporate's wholly owned subsidiaries.
 - (3) A body corporate is the holding company of another body corporate if the second body corporate is a subsidiary of the first body corporate, and a reference to a holding company includes an ultimate holding company.
 - (4) A holding company is a holding body corporate which is a company and, a reference to an ultimate holding company is a reference to a holding company which is:
 - (a) not itself a subsidiary of another body corporate; and
 - (b) the top-most holding company of a chain of bodies corporate which have a subsidiary and holding company relationship with each other.
 - (5) In Article 4(1)(a) and (c) of this Schedule 1, the references to the voting rights in a body corporate are to the rights conferred on shareholders in respect of their shares , or (in the case of a body corporate not having a share capital) on partners, to vote at general meetings of the body corporate on all or substantially all matters.
 - (6) In Article 4(1)(b) of this Schedule 1, the reference to the right to appoint or remove a majority of a board of directors or managers is to the right to appoint or remove directors or managers holding a majority of the voting rights at meetings of the board on all or substantially all matters; and for the purposes of that provision:
 - (a) a body corporate shall be treated as having the right to appoint to a directorship or manager position if:
 - (i) a person's appointment to it follows necessarily from his appointment as director or manager of the body corporate; or
 - (ii) the directorship or manager position is held by the body corporate itself; and
 - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship or manager position.
 - (7) Rights which are exercisable only in certain circumstances shall be taken into account only:
 - (a) when the circumstances have arisen, and for so long as they continue to obtain; or
 - (b) when the circumstances are within the control of the person having the rights,and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

- (8) Rights held by a person in a fiduciary capacity shall be treated as not held by that person.
- (9) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (10) Rights attached to shares held by way of security shall be treated as held by the person providing the security:
- (a) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
- (11) Rights shall be treated as held by a body corporate if they are held by any of its subsidiaries. For the purposes of Article 4(11) of this Schedule, rights shall be treated as being exercisable in accordance with the instructions or in the interests of a body corporate if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of:
- (a) any subsidiary or holding body corporate of the first body corporate; or
 - (b) any subsidiary of a holding body corporate of the first body corporate.
- (12) The voting rights in a body corporate shall be reduced by any rights held by the body corporate itself.
- (13) Reference in any of Article 4(9) to (11) of this Schedule 1 to rights held by a person include rights falling to be treated as held by such person by virtue of any other provision of those Articles.

5. Provision of information

Where any provision of this Law requires a Company to provide any information to a Shareholder or to any other person, the Company may provide such information either in print or in electronic form where accessible to such Shareholder or other person.

SCHEDULE 2
ADMINISTRATIVE FINES

<i>Article</i>	<i>Contravention</i>	<i>Maximum Fine</i>
17(2)	Company failing to send a copy of its Articles of Association to a Shareholder	\$10,000
21(4)	A Company failing to comply with prohibition against the use of misleading, deceptive or conflicting names	\$15,000
19(1)	Company failing to comply with requirements for changing its name	\$15,000
22(2)	Public Company failing to provide a copy of its Confirmation Statement or make Confirmation Statement available	\$10,000
24(4)	Company failing to file a resolution or agreement with the Registrar	\$5,000
33	Private Company failing to use its approved name	\$10,000
34	Public Company failing to use its approved name	\$15,000
35(1)(a)	Private Company having more than 50 Shareholders	\$30,000
40(2)	Company altering its share capital otherwise than by Special Resolution	\$10,000
42(5)	Person making a statement that is misleading, false or deceptive in a material way	\$20,000
44(7)	Company allotting Shares in breach of Shareholders' pre-emption rights	\$25,000
46(5)	Private Company making an offer to the public	\$30,000
50(6)	Company failing to register a transfer of Shares or debentures or file a notice of transfer of shares with the Registrar	\$10,000
51(3)	Company failing to keep its register of Shareholders or register of debenture holders (or a copy thereof) at its registered office	\$10,000
52(4)	Company failing to allow inspection of its register of Shareholders or register of debenture holders	\$15,000
53(5)	Company failing to comply with an order of the Registrar to rectify its register of Shareholders or register of debenture holders	\$2,000
54(4)	Company failing to comply with requirements in relation to Share certificates	\$2,000
56(5)	Director signing a certificate without reasonable grounds	\$10,000
57(10)	Company failing to comply with requirements relating to the purchase of its own Shares	\$15,000
57(11)	Company and any Employee failing to comply with requirements relating to the purchase of its own Shares	\$10,000
57(12)	Director failing to comply with requirements relating to the purchase of the Company's own Shares	\$10,000
59(8)	Company giving unlawful financial assistance	\$15,000
60(6)	Company making an unlawful reduction in its share capital	\$15,000
61(4)	Director making a declaration in connection with a reduction in share capital without having reasonable grounds	\$10,000
62(7)	Officer of the company who conceals or misrepresents information relating to a creditor	\$10,000
68(9)	Company making an unlawful Distribution	\$20,000
86(4)	Company failing to maintain a current register of Directors and Secretaries and to make	\$2,000

<i>Article</i>	<i>Contravention</i>	<i>Maximum Fine</i>
	it available for inspection	
88(4)	Person acting as a Director while disqualified	\$25,000
90(3)	Public Company failing to comply with Annual General Meeting requirements	\$30,000
92(2)	Company failing to comply with the Registrar's direction to call a General Meeting	\$15,000
102(4)	Offeror failing to send to Company whose Shares are the subject of the offer a notice and declaration	\$10,000
102(5)	Person making a declaration without have reasonable grounds	\$10,000
104(6)	Offeror failing to give minority Shareholder notice of rights	\$10,000
120	Person providing false, misleading or deceptive information or Document to the Registrar in connection with a merger	\$25,000
120(2)	Person signing a certificate without having reasonable grounds	\$25,000
122(5)	Company or Officer failing to meet requirements relating to the notice calling for the meeting	\$10,000
126(3)	Company failing to meet requirements relating to the maintenance of Accounting Records	\$25,000
128(8)	Company failing to meet requirements relating to accounts	\$10,000
129(3)	Company failing to provide accounts to a Shareholder on request	\$5,000
130(4)	Director failing to comply with requirements as to the Directors' report	\$10,000
131(3)	Person acting as an auditor in breach of requirements	\$15,000
132(3)	Auditor failing to make a report as required	\$15,000
133(1)	Auditor failing to carry out investigations required	\$15,000
133(5)	Auditor failing to state fact in report	\$10,000
134(3)	Company failing to comply with auditor resignation requirements	\$15,000
134(5)	Auditor failing to comply with resignation requirements	\$10,000
135(3)	Person failing to cooperate with the auditor	\$5,000
137(1)	Foreign company carrying out business in the DIFC without being registered as a Recognised Company	\$50,000
140(3)	Recognised Company failing to comply with its requirements	\$15,000
141	Recognised Company failing to notify the Registrar of any change in Registered Details	\$2,000
142(3)	Recognised Company failing to keep proper Accounting Records as required	\$25,000