



# PRESCRIBED COMPANY REGULATIONS

In force on 31 October 2019

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## **PRESCRIBED COMPANY REGULATIONS**

The Board of Directors of the DIFCA, in the exercise of the powers conferred on them under Articles 132 and 151 of the Companies Law, hereby make these regulations.

### **1. INTRODUCTION**

#### **1.1 Title and repeal**

1.1.1 These Regulations may be cited as the “Prescribed Company Regulations 2019”.

1.1.2 These Regulations repeal and replace the Special Purpose Company Regulations (SPCoR) issued by the Board of Directors of the DIFCA on 25 November 2008 (the “Previous Regulations”) as it was in force immediately prior to the commencement of these Regulations.

1.1.3 Except where otherwise provided in these Regulations, anything done or omitted to be done pursuant to or for the purposes of the Previous Regulations is deemed to be done or omitted pursuant to or for the purposes of these Regulations.

1.1.4 Every Special Purpose Company and Intermediate Special Purpose Vehicle shall:

- (a) on the Commencement Date automatically become a Prescribed Company under these Regulations with the same name, provided that if the company makes a request to the Registrar to change its name within ninety (90) days from the Commencement Date to have its name changed in accordance with Regulation 3.4 by removing the words “SPC”, “Special Purpose Company”, “ISPV” or “SPV” from its name, the Registrar shall register the change of name; and
- (b) within one (1) year from the Commencement Date comply with the requirements of these Regulations, including:
  - a. filing a Confirmation Statement in accordance with the Operating Law and these Regulations prior to the next anniversary of its incorporation and obtaining a Licence; and
  - b. (if necessary) amending its Articles of Association in order to comply with Regulation 3.1.2.

#### **1.2 Application and interpretation**

1.2.1 These Regulations apply to:

- (a) every person who falls within the definition of a Prescribed Company;
- (b) every person applying for the incorporation or continuation of a Prescribed Company in the DIFC; and
- (c) the Registrar.

1.2.2 The Relevant Laws apply to a Prescribed Company unless specified otherwise in these Regulations.

1.2.3 To the extent that a Prescribed Company also qualifies as a Special Purpose Vehicle, the provisions of these Regulations shall not exempt it from any requirements resulting from any DFSA administered legislation applicable to it. To the extent any provision in these Regulations conflicts with any provision in DFSA administered legislation in respect of their application to a Prescribed Company that is also a Special Purpose Vehicle, the relevant DFSA administered provision shall prevail.

1.2.4 Defined terms are identified throughout these Regulations by the capitalisation of the initial letter of a word or phrase. Where capitalisation of the initial letter is not used, an expression has its natural meaning.

1.2.5 Any reference to enacted law or regulations, is a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended, applied or otherwise amended by or under another enactment.

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1.2.6 Any reference or requirement in these Regulations for a person to be “physically present in the DIFC”, refers to a Registered Person present in the DIFC by way of owning, leasing, sub-leasing property or sharing a premises with an affiliate with a valid no objection certificate from the DIFCA to do so, but does not include having a presence in the DIFC by way of a Corporate Service Provider or other registered agent in the DIFC.

1.2.7 The following defined terms have the meaning given below:

Defined Term	Definition
Accounting Records	has the meaning given to the term in the Companies Law.
AML Requirements	any requirements under applicable DIFC Law or Federal Law in relation to anti-money-laundering, counter-terrorist financing and sanctions applicable to Registered Persons in the DIFC.
Articles of Association	the articles of association of a Prescribed Company as filed with the Registrar.
Authorised Firm	a person who holds a licence from the DFSA or a Recognised Financial Services Regulator to carry on one (1) or more Financial Services, excluding a Representative Office.
Aviation Structure	a structure of one (1) or more persons having the sole purpose of facilitating the owning, financing, securing, leasing or operating of one (1) or more aircraft.
Board of Directors of the DIFCA	the governing body of the DIFCA.
Collective Investment Law	the Collective Investment Law, DIFC Law No. 2 of 2010.
Commencement Date	the date of commencement of these Regulations.
Companies Law	the Companies Law, DIFC Law No. 5 of 2018.
Confirmation Statement	has the meaning given to the term in the Operating Law.
Control	<p>in relation to a Prescribed Company, the power of a person to secure:</p> <p>(a) by means of the holding of shares or the possession of voting power, in either case directly or indirectly; or</p> <p>(b) as a result of any powers conferred by the Articles of Association or other document regulating the Prescribed Company or any other body corporate,</p> <p>that the affairs of the Prescribed Company are conducted in accordance with such person’s wishes; and</p> <p>“Controlled” has a corresponding meaning.</p>
Corporate Service Provider	a person registered with the DFSA as an Authorised Firm or a Designated Non-Financial Business or Profession licensed to undertake corporate services business in the DIFC.
Crowdfunding Platform	has the meaning given to the term in the Glossary Module of the DFSA Rulebook operated by a Crowdfunding Operator.
Crowdfunding Operator	a person authorised under a licence issued by the DFSA to operate a Crowdfunding Platform.

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<b>Defined Term</b>	<b>Definition</b>
Crowdfunding Structure	a structure of one (1) or more persons established for the purpose of holding the asset(s) invested into through a Crowdfunding Platform.
Decision Making Procedures	the decision making procedures prescribed in the Regulations for the exercise of the powers of the Registrar under the Law that are stated to be subject to such procedures.
DFSA	the Dubai Financial Services Authority.
DIFCA	the Dubai International Financial Centre Authority.
Director	has the meaning given to the term in the Companies Law.
Domestic Fund	has the meaning given to the term in the Collective Investment Law.
Emirate	any emirate of the UAE.
Family Holding Structure	a structure of one (1) or more persons established for the sole purpose of consolidating the holdings of a specific family member, their spouse and/or bloodline descendants in a Family Office, a Holding Company or a Proprietary Investment Company.
Family Office	a Registered Person established pursuant to the Family Office Regulations that is physically present in the DIFC.
Family Office Regulations	the Single Family Office Regulations.
Federal Government	the federal government of the UAE.
Financial Service	any financial activity prescribed by applicable law in the DIFC or a Recognised Jurisdiction as constituting a financial service.
Fintech Entity	a Registered Person physically present in the DIFC with a Licence issued by the Registrar permitting it to conduct activities related to financial technology.
Foreign Fund	has the meaning given to the term in the Collective Investment Law.
Foundation	a Registered Person established, continued or recognised in the DIFC under the Foundations Law DIFC Law No. 3 of 2018 which is physically present in the DIFC.
Fund	a collective investment scheme that is either: (a) a Domestic Fund; or (b) a Foreign Fund domiciled in a Recognised Jurisdiction.
Fund Manager	the person who is legally accountable for the management of the Fund and includes a person who establishes, operates or winds up a Fund.
General Partner	the general partner of a Fund established as a limited partnership.
Government Entity	any of the following: (a) the Federal Government, the government of Dubai or the government of any Emirate; (b) a person Controlled by any of the government entities listed in (a)

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<b>Defined Term</b>	<b>Definition</b>
	above; or (c) a person in which a government entity listed in (a) above owns (directly or indirectly) a Significant Interest.
Holding Company	a Registered Person physically present in the DIFC with a Licence permitting it to be a holding company.
Initiator	in relation to a Prescribed Company established or continued in the DIFC for a Structured Financing, the person(s) for whose ultimate benefit the transaction or structure is established or maintained.
Intermediate Special Purpose Vehicle	a Private Company that is in existence on the Commencement Date whose Licence is for, or includes, the business activity intermediate holding company.
Licence	has the meaning given to the term in the Operating Law.
Operating Law	the Operating Law, DIFC Law No. 7 of 2018.
Prescribed Company	a Prescribed Company within the meaning of Regulation 2, including a Special Purpose Company.
Proprietary Investment Company	a Registered Person physically present in the DIFC with a Licence permitting it to operate as a proprietary investment company.
Private Trust Company	a Registered Person physically present in the DIFC with a Licence permitting it to be a private trust company.
Qualifying Applicant	any of the following: (a) an Authorised Firm; (b) a Fund; (c) a Family Office; (d) a Fintech Entity (e) a Foundation; (f) a Government Entity; (g) a Holding Company; (h) a Private Trust Company; (i) a Proprietary Investment Company; or (j) a person wholly owned by one (1) or more of the foregoing Qualifying Applicants, and which satisfies the Registrar that it or they will Control the Prescribed Company.
Qualifying Purpose	any of the following: (a) an Aviation Structure; (b) a Crowdfunding Structure; (c) a Family Holding Structure; or

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Defined Term	Definition
	(d) a Structured Financing.
Recognised Financial Services Regulator	a recognised regulator of financial services activities in a Recognised Jurisdiction.
Recognised Jurisdiction	the UAE, a Zone 1 Country or a jurisdiction recognised by the DFSA under Article 55 of the Collective Investment Law.
Registered Person	has the meaning given to the term in the Operating Law.
Registrar	the Registrar appointed under the DIFC Operating Law.
Relevant Laws	the Companies Law, the Operating Law and the regulations issued pursuant to these laws.
Representative Office	has the meaning given to the term in the General Module of the DFSA Rulebook, or any similar activity undertaken in a Recognised Jurisdiction.
Significant Interest	an interest of at least twenty five percent (25%) or such other percentage approved by the Board of Directors of the DIFCA.
Special Purpose Company	a Special Purpose Company established under the Previous Regulations.
Special Purpose Vehicle	a Special Purpose Vehicle as defined in the Glossary Module of the DFSA Rulebook.
Structured Financing	a structure of one (1) or more persons having the sole purpose of holding assets to leverage and/or manage risk in one (1) or more financial transactions, inclusive of the following: <ul style="list-style-type: none"> <li>(a) complex lending or security arrangements;</li> <li>(b) derivative transactions;</li> <li>(c) hybrid securities; or</li> <li>(d) securitised and collateralised debt instruments,</li> </ul> whether done in an Islamic or conventional financing manner.
Transaction Party	in relation to a Prescribed Company established or continued in the DIFC for a Structured Financing, any person (other than the Initiator) that is a party to any agreement comprising the Structured Financing.
Trustee	a trustee of a Fund that is constituted as an investment trust.
UAE	United Arab Emirates.
UBO Regulations	the Ultimate Beneficial Ownership Regulations 2018.
Zone 1 Country	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom and United States of America.

1.2.8 An undefined term that is used in these Regulations and is also used in the Relevant Laws shall have the same meaning in these Regulations.

1.2.9 The rules of interpretation in the Relevant Laws apply to these Regulations.

### **1.3 References to writing**

- 1.3.1 If a provision in these Regulations refers to a communication, notice, agreement or other document “in writing” then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
- 1.3.2 Regulation 1.3.1 does not affect any other legal requirements which may apply in relation to the form or manner of executing a document or agreement.

## **2. STATUS**

- 2.1.1 A Prescribed Company is a prescribed company incorporated or continued in the DIFC pursuant to the provisions of Article 132 of the Companies Law.
- 2.1.2 Except as otherwise provided in these Regulations, the provisions of the Relevant Laws apply to Prescribed Companies.

## **3. ESTABLISHMENT**

### **3.1 Qualifying requirements**

- 3.1.1 An applicant wishing to incorporate or continue a Prescribed Company in the DIFC must satisfy the Registrar that:
- (a) the Prescribed Company will be Controlled by one (1) or more Qualifying Applicants; or
  - (b) the proposed Prescribed Company is to be established or continued in the DIFC for a Qualifying Purpose.
- 3.1.2 The Articles of Association of a Prescribed Company serving a Qualifying Purpose shall limit its objects and activities to only its Qualifying Purpose and activities ancillary to such purpose.

### **3.2 Financial services**

- 3.2.1 A Prescribed Company may be used by a Fund Manager, a Trustee or a General Partner as a Special Purpose Vehicle to hold property on behalf of a Fund.
- 3.2.2 A Prescribed Company shall not be used to be the Fund Manager, the Trustee or the General Partner of a Fund or as the Fund itself.
- 3.2.3 A Prescribed Company may be used to hold assets invested through a Crowdfunding Platform as part of a Crowdfunding Structure but shall not be used to be the Crowdfunding Operator.
- 3.2.4 A Prescribed Company shall not provide any Financial Service unless it is authorised by the DFSA to do so.

### **3.3 Application to incorporate or continue**

- 3.3.1 An application to incorporate or continue a Prescribed Company in the DIFC shall be made to the Registrar in the prescribed form and accompanied by the documentation required to be lodged in connection with an application for the incorporation or continuation of a Private Company.
- 3.3.2 The Registrar may enter into an arrangement with a Corporate Service Provider under which:
- (a) any document, form or fee required by these Regulations or the Relevant Laws to be lodged with or paid to the Registrar for the incorporation or continuation of a Prescribed Company in the DIFC, may be lodged with or paid to the Registrar by the Corporate Service Provider; and
  - (b) the Corporate Service Provider is required to perform some or all assessments, checks and verifications required under these Regulations or the Relevant Laws to ascertain and confirm whether an applicant:



- (i) adheres to all AML Requirements, the UBO Regulations and other requirements of the Relevant Laws;
- (ii) maintains Accounting Records in accordance with Regulation 4.3.1;
- (iii) where relevant, is a Qualifying Applicant that will, individually or with other Qualifying Applicants, Control the Prescribed Company; and
- (iv) where relevant, has a Qualifying Purpose,

and to provide a certification of such matters to the Registrar in an agreed format.

3.3.3 The Registrar in the performance of any function under the Relevant Laws may in good faith rely, without further enquiry, upon the certification of a Corporate Service Provider given under Regulation 3.3.2, provided that a Corporate Service Provider shall not be liable to the Registrar for doing so, unless it has acted in breach of its agreed obligations to the Registrar, in which case (without limiting the generality of its application) Regulation 3.3.4 shall apply.

3.3.4 The Registrar may:

- (a) revoke any arrangement entered into with a Corporate Service Provider under Regulation 3.3.2 if the Registrar is satisfied that the Corporate Service Provider has acted in breach of its agreed obligations to the Registrar;
- (b) inform the DFSA of any facts or circumstances that may amount to a breach of a Corporate Service Provider's regulatory duties under applicable law; and
- (c) inform law enforcement agencies of any alleged or suspected criminal offences on the part of a Corporate Service Provider or its clients.

3.3.5 Where an applicant is represented by a Corporate Service Provider in an application to incorporate or continue a Prescribed Company, the Registrar shall be permitted to communicate directly with such Corporate Service Provider with no need to directly communicate with the applicant pursuant to these Regulations.

### **3.4 Name requirements**

Unless determined otherwise by the Registrar, the proposed name of a Prescribed Company shall end with "Limited" or "Ltd." and comply with the requirements in the Relevant Laws relating to names.

### **3.5 Permission to incorporate**

3.5.1 Upon deciding to refuse to grant permission to incorporate or continue a Prescribed Company, the Registrar shall without undue delay inform the applicant in writing of such refusal.

3.5.2 Upon deciding to grant permission to incorporate or continue a Prescribed Company, the Registrar shall without undue delay inform the applicant in writing of:

- (a) such decision;
- (b) the date on which the Licence applicable to the Prescribed Company shall be deemed to take effect; and
- (c) any conditions and restrictions applicable to the Licence.

3.5.3 The Licence of a Prescribed Company established for a Qualifying Purpose shall be restricted to the activities specific to the Qualifying Purpose stated in its application to incorporate or continue the Prescribed Company in the DIFC.

3.5.4 The Licence of a Prescribed Company established by a Qualifying Applicant may include any activities permitted by the Registrar in accordance with the categories of commercial licences available in the DIFC.

**3.6 Incorporation Fees**

The application for incorporation shall be accompanied by the relevant fee prescribed in Regulation 5 and set out in Appendix 1.

**4. CONDUCT OF BUSINESS**

**4.1 Registered Office**

4.1.1 A Prescribed Company's registered office for the purpose of Article 13 of the Operating Law shall either be:

- (a) the registered office in the DIFC of its Qualifying Applicant or, where applicable, any one (1) of them;
- (b) the registered office in the DIFC of the Registered Person establishing the Prescribed Company for a Qualifying Purpose or, where applicable, any one (1) of them; or
- (c) the registered office of a Corporate Service Provider appointed for this purpose by:
  - (i) the applicant(s) for its incorporation or continuation; or
  - (ii) the Prescribed Company.

4.1.2 A Corporate Service Provider appointed under Regulation 4.1.1(b) shall consent in writing to such appointment in a format prescribed by the Registrar.

4.1.3 Where the registered office of a Prescribed Company is, pursuant to the provisions of Regulations 4.1.1(a) or (b), the same as that of a Qualifying Applicant or a Registered Person, it or the applicant(s) for its incorporation or continuation shall be required to submit proof to the Registrar that consent to share the premises has been obtained from the Qualifying Applicant or the Registered Person.

**4.2 Operation in the DIFC**

Article 13(3) of the Operating Law (conducting principal business activity in the DIFC) and Regulation 2.1.4 of the Companies Regulations (establishment of operations in the DIFC) shall not apply to a Prescribed Company.

**4.3 Accounting Records**

4.3.1 A Prescribed Company shall maintain Accounting Records as required under the Companies Law.

4.3.2 A Prescribed Company shall be exempt from any requirement to file its accounts with the Registrar or have them audited.

**4.4 Reporting and disclosure**

4.4.1 The Confirmation Statement filed by a Prescribed Company shall:

- (a) comply with the requirements of the Relevant Laws as they apply to a Private Company; and
- (b) confirm that:
  - (i) it continues to be Controlled by one (1) or more Qualifying Applicants; or
  - (ii) it continues to serve its Qualifying Purpose,

whichever applies.

4.4.2 Each Initiator and Director of a Prescribed Company whose Qualifying Purpose is a Structured Financing that does not have an Authorised Firm involved as either an Initiator or a Transaction Party shall file with the Registrar, at incorporation or continuation of the Prescribed Company in the DIFC, additional

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confirmations stating that, after due and careful enquiry, the Initiator or Director making the confirmation is satisfied that the Structured Financing of the Prescribed Company is not being used and will not be used, whether in the UAE or elsewhere, to:

- (a) circumvent foreign ownership restrictions;
- (b) change the nationality of a shareholder or interest holder in an entity to avoid foreign investor registration requirements; or
- (c) avoid the imposition of any tax or duty as a consequence of the UAE nationality of the Prescribed Company.

4.4.3 The additional confirmations referred to in Regulation 4.4.2 shall be repeated by each Director of such Prescribed Company and filed with the Registrar along with its Confirmation Statement.

4.4.4 Any report, disclosure or confirmation made by a Corporate Service Provider on behalf of a Prescribed Company pursuant to this Regulation 4 shall be done as the Prescribed Company's agent and the Corporate Service Provider may require self-certification of the content by the members of the Prescribed Company's board of directors. The Corporate Service Provider shall not be liable to the Registrar in respect of any such report, disclosure or confirmation where it has acted with due care in ensuring their contents are correct and has not omitted any material facts or circumstances of which the Corporate Service Provider is aware of, or ought reasonably be aware of.

4.4.5 Without limiting the generality of the application of Regulation 3.3.4, the Registrar may revoke any arrangement with a Corporate Service Provider under to Regulation 3.3.4 in circumstances where a Corporate Service Provider has acted in contravention of Regulation 4.4.4.

### **4.5 Revocation of status**

4.5.1 If:

- (a) there is a change of Control of a Prescribed Company resulting in it no longer being Controlled by one (1) or more Qualifying Applicants;
- (b) a Prescribed Company undertakes any activities which are not consistent with its Qualifying Purpose; or
- (c) a Prescribed Company otherwise fails to comply with these Regulations,

the Registrar may, after following the Decision-Making Procedures and in the case of a Prescribed Company authorised by the DFSA to provide financial services, notifying the DFSA, revoke its status as a Prescribed Company.

4.5.2 If a Prescribed Company's status is revoked under Regulation 4.5.1, it shall:

- (a) cease to be a Prescribed Company;
- (b) no longer be entitled to the benefit of any exemption or concession (including as to fees) in these Regulations; and
- (c) be required to adhere to all the requirements of the Relevant Laws.

### **5. FEES**

For the purposes of Article 151(2)(h) of the Companies Law, Regulation 9.1 of the Companies Regulations and Regulation 2.3.2 of the Operating Regulations, the fees in respect of matters set out in Appendix 1 of these Regulations shall be paid to the Registrar instead of the fees specified in the Relevant Laws.

**APPENDIX 1  
FEES**

**Table of fees**

Upon receipt by the Registrar of:	Fee (USD)
Application for incorporation of a Prescribed Company	\$100
Application for grant or renewal of a Licence	\$1,000
Lodgement of a Confirmation Statement	\$300
Application to continue incorporation of a Prescribed Company in the DIFC	\$1,000
Application to transfer incorporation of a Prescribed Company from the DIFC	\$1,000