

Dubai International Finance Center DIFC A Financial ‘Free-Trade Zone’

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In February of 2002, HH Sheikh Mohammed Bin Rashid Al Maktoum announced on behalf of the U.A.E. the intention to establish the Dubai International Financial Centre (the “Centre” or the “DIFC”) as a financial marketplace serving a region extending across the time zones between the financial centres of London and Hong Kong.

Distinguishing the DIFC from other regional financial centres is a robust legal system based on the common law system and having an independent judiciary, a financial regulatory body and an administrative authority. The DIFC proposes its own laws and regulations for enactment, thus enabling DIFC entities to operate in a best-standards environment on par with those of major global centres. Since the DIFC’s inception in 2004, 26 DIFC laws to date have been enacted along with a number of regulations.

Dean Ferris, the Chairman of the DIFC Legislative Committee and Chief Legal Officer of the DIFC oversees the development and procurement of draft legislation that is then recommended to the DIFC Authority (“DIFCA”) Board and the President for enactment. Dean states that a number of laws are currently in the process of being enacted in the DIFC including intellectual property laws and non-profit company legislation that are in the process of being released for public comment.

The DIFC as a financial ‘free-trade zone’ allows entities formed within the Centre tax-free status until the year 2054 or even longer if such period is renewed by the Ruler of Dubai. Unlike certain other Emirates in the U.A.E. which have to an extent enacted corporate income tax (though only enforced on foreign oil companies and branches of foreign banks), the DIFC is guaranteed by law to be tax free and shielded from any federal or Dubai tax legislation until the end of such mandated period.

The three independent bodies comprising the DIFC are the DIFC Courts, DIFCA (oversees strategic development, operational management and administrative aspects of the Centre, including the laws of general application which are not regulated by the DFSA), and the Dubai Financial Services Authority (“DFSA”) which is the financial regulatory authority.

The DIFC within a short span has achieved a number of milestones. At the end of 2008, 20 of the world’s top 25 banks and six of the world’s 10 largest asset managers have reported to become established in the DIFC.

The legislative enactments allowing for the establishment, administration and operation of the DIFC are summarized as follows:

- Article 121 of the UAE Constitution, amended January 2004, concerns the division of powers between the Federal and Emirati authorities and allowed for the subsequent federal legislation enabling the establishment of Financial Free Zones within a particular Emirate.
- Federal Law No. 8, enacted March 2004, allows for the establishment of Financial Free Zones in any Emirate of the U.A.E by Federal Decree. This law exempts Financial Free Zones from all Federal civil and commercial laws within the UAE. The DIFC is subject to UAE criminal law and anti-money laundering legislation.
- Federal Decree No. 35, issued June 2004, established the DIFC as a Financial Free Zone in the Emirate of Dubai along with resolutions of the Federal Cabinet prescribing (i) the geographical area of the DIFC; and (ii) an allowance for DIFC entities to operate outside these physical boundaries for the first four years of the DIFC's operation for the purpose of allowing construction and a smooth transition for occupants.¹
- Dubai Law No. 9, enacted September 2004, facilitates the establishment of the DIFC and sets forth the financial and administrative independence of the DIFC and its exemption from certain Dubai rules and regulations. This law also requires for the establishment of the DIFC Courts and establishes the administrative authority and financial regulating authority of the Centre—respectively, the DIFC Authority (“DIFCA”) and the Dubai Financial Services Authority (“DFSA”). This law enables the Ruler of Dubai to appoint the President of the DIFC, who by Decree issued on 2 June 2009, is HH Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai. This law allows the President to make the laws, regulations and rules applicable within the DIFC, and to create other bodies vital for the operation of the DIFC. This law also sets forth the permitted activities of licensed centre establishments (Centre Establishments as defined in this law).
- Dubai Law No. 12, enacted December 2004, establishes the DIFC Court system (Courts of first instance and appeals). This law guarantees the independent functioning of the judiciary in the DIFC. The judgments of the Court are issued in the name of the Ruler.
- Federal Cabinet Resolution No. 28, issued July 2007, in regard to implementing Regulations of Federal Law No 8 of 2004 concerning Financial Free Zones. Article 2 of this Cabinet Resolution set forth that the location and area of the Financial Free Zone may by resolution and upon application to the concerned Free Zone be specified, added to or changed. Such application to include proposed location, required area, reasons justifying the change of location and area and other required details. Subsequently by Priministerial Resolution in 2008 allowance was made for the Governor of the DIFC to submit to the President on a monthly basis applications updating information on DIFC entities located outside of the DIFC to be included within the DIFC jurisdiction. On this basis DIFC entities with approval were allowed to be located outside of the physical boundaries of the DIFC subject to the availability of space becoming available within the DIFC.

Some of the major milestones since the inception of the Centre include the following:

- September 2005, Dubai International Financial Exchange (DIFX) (now NASDAQ DUBAI) commenced operations.
- October 2005, DIFC Courts commences with the judicial review of cases.
- November 2005, HH Sheikh Mohammed Bin Rashid Al Maktoum issues the directive to incorporate DIFC Investments LLC (“DIFCI”). DIFCI commences operations as a subsidiary of DIFCA with the purpose of undertaking strategic commercial, profit generating activities as opposed to public administrative matters undertaken by DIFCA. DIFCI’s notable transactions include its acquisition of SmartStream Technologies and its issue of a USD 1.25 billion sukuk in 2007.
- February 2008, HH Sheikh Mohammed Bin Rashid Al Maktoum inaugurates the DIFC-LCIA Arbitration Centre. This centre is a joint venture between the London Court of International Arbitration and DIFCA and provides dispute resolution services.
- June 2009, the Rules of Procedure for the Review of Complaints by the Director of Employment Standards/Acting ("Rules of Procedure") issued by the DIFCA Board pursuant to the Employment Law. These Rules set forth the procedures for employment complaints to be determined by the Director of Employment Standards/Acting as per the Employment Law.

The President of the DIFC is HH Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, who is also the Deputy Ruler of Dubai. The Office of the President of the DIFC is headed by the DIFC Governor, HE Dr. Omar Bin Sulaiman.

Entities reporting to DIFCA are the Registrar of Companies (“ROC”), the Registrar of Real Property (“RORP”) and the Registrar of Security (“ROS”).

The ROC is a corporation sole of DIFCA that handles the registration and incorporation of companies, both regulated entities after receiving approval by the DFSA and non-regulated entities which operate on a commercial license issued by the ROC. The ROC administers the Companies Law and Regulations.

The RORP administers the Real Property Law and the Strata Law and registers land and units in the DIFC.

The ROS administers the recording and registering of security interests and establishing the priority of securities pledged against loans, guarantees and other financial transactions. The ROS is also responsible for administering the Law of Security and Regulations.

¹ DFSA website
