

Company & Commercial - United Arab Emirates

Special Purpose Companies Permitted in Dubai International Financial Centre

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On November 7 2008 the Special Purpose Company Regulations were enacted, allowing special purpose companies (SPCs) to be formed in the Dubai International Financial Centre (DIFC).

Formation

The apparent intention of the regulations is to provide for a company format which will enable the DIFC to compete with key offshore jurisdictions which allow the formation of SPCs. SPCs can be formed in a relatively short period of time (approximately three days) and relatively inexpensively (the DIFC charges a one-off incorporation fee of \$1,000 and an annual fee of \$1,000 is payable thereafter (Appendix 1 to the regulations)). The minimum share capital required is \$100 (Regulation 3.1.2).

With regard to office space, which is at a premium in the DIFC and represents a considerable expense for companies incorporated in the DIFC, the regulations require that SPCs have a registered office in the DIFC (Regulation 3.4.2). However, each SPC is required to receive corporate administration services from a corporate service provider which is either registered in the DIFC or licensed in a jurisdiction recognized by the Dubai Financial Services Authority or approved by the DIFC registrar of companies (Regulation 3.4.1). As long as such corporate service provider can provide the SPC with a registered address in the DIFC (by the corporate service provider being located in the DIFC), the SPC can fulfil the requirement of having a registered office in the DIFC without having to rent its own office space.

Applications for incorporation of an SPC may be filed electronically (Regulation 7.1) and documents originating from foreign jurisdictions need not be legalized.

Permitted Activities

SPCs may be formed for the following purposes and are prohibited from undertaking any other activities (Regulation 1.1.6 and Regulation 2.1):

- the acquisition (by way of leasing, title transfer, risk transfer or otherwise), the holding and the disposal of any assets (tangible or intangible, including receivables and shares) in connection with and for the purpose of a transaction (which is defined as an Islamic or conventional structured finance transaction in connection with which the SPC has been established, including any type of securitization or other capital markets transaction);
- the obtaining of any type of financing (banking or capital markets), the granting of any type of security interest over its assets, the provision of any indemnity or similar support for the benefit of its shareholders or any of its subsidiaries, or the entering into of any type of hedging arrangement, in connection with and for the purposes of a transaction;
- the financing of the entity for whose transaction the SPC has been established (defined as the initiator) or another SPC;
- the acting as trustee or agent for any participant in the transaction;
- any other activity approved in writing by the registrar of companies; or
- any ancillary activities which are related to the above activities.

As far as financial services are concerned, SPCs may:

- be used by a trustee of an investment trust created under the Investment Trust Law

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- (5/2006) or an investment partnership formed under the Limited Partnership Law (4/2006) for the sole purpose of collective investments (an investment partnership), to hold the property of the relevant fund (Regulation 2.2);
- not be the trustee of an investment trust or the general partner of an investment partnership, or an open or close-ended company established for the sole purpose of collective investment, which is incorporated under Article 114 of the Companies Law (3/2006) (Regulation 2.2); and
- undertake no financial services activity as prescribed in the General Module of the Dubai Financial Services Authority Rulebook (Regulation 2.2).

Officers

An SPC may have no more than three shareholders (Regulation 4.1) and must have a minimum of two directors (Regulation 6.1). Although the directors are not required to be resident in Dubai (Regulation 6.1), the majority must be employees of the SPC's corporate service provider (Regulation 6.2). The corporate service provider must also act as the SPC's secretary (Regulation 6.3).

Filings and Meetings

An SPC is required to file the following documents with the registrar of companies:

- its amended articles of association, within one month of any such amendment (Regulation 3.2.3);
- notice of any change to its directors or secretary, within one month of any such change (Regulation 6.4);
- annual confirmation that since its registration or previous reporting, its articles of association have not been amended (Regulation 10.1.1); and
- notice of any change to its registered address, shareholders, name or principal business activities within one month of any such change (Regulation 10.2).

An SPC is required to make no other filings, including annual returns or accounts (or audited accounts) (Regulations 8 and 9). There is also no requirement for SPCs to hold annual shareholders' meetings (Regulation 5.1).

Comment

The DIFC has previously stated its intention of supporting the increasing number and growing sophistication of transactions taking place in the financial centre by, among other things, committing to international best practices in the area of securitization and other structured finance transactions. By adopting these regulations, the DIFC appears to have given effect to these commitments and to its aim of wanting to support key players in their sectors of activity, while remaining faithful to its founding principles of integrity, transparency and efficiency. Time will tell whether the introduction of SPCs will have a positive impact on securitization transactions in the fields of both Islamic and conventional finance in the DIFC.

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