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**COMPANIES LAW**  
**DIFC LAW NO. 2 OF 2009**

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## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the “Companies Law 2009”.

### **2. Legislative authority**

This Law is made by the Ruler of Dubai.

### **3. Application of the law**

- (1) This Law applies in the jurisdiction of the DIFC.
- (2) This Law repeals and substitutes the DIFC Companies Law 2006.
- (3) This Law applies to any person who conducts or attempts to conduct business from within the DIFC

### **4. Date of enactment**

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

### **5. Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law. As on the date specified in the Enactment Notice in respect of the Law, the DIFC Law No. 3 of 2006 shall be repealed and replaced in its entirety by the Law.

### **6. Interpretation**

- (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 contraventions.

## **PART 2: THE APPOINTMENT OF AND ROLE OF THE REGISTRAR**

### **7. Appointment of the Registrar**

- (1) The office of the Registrar of Companies is created as a corporation sole.
- (2) The Board of Directors of the DIFCA shall appoint a person to serve as Registrar and may dismiss a person from the office of Registrar without cause.
- (3) The Board of Directors of the DIFCA shall consult the President prior to appointing, renewing the appointment of or dismissing the Registrar.
- (4) In exercising his powers and performing his functions the Registrar shall act in an independent manner, notwithstanding that he is an agency of the government of the Emirate of Dubai.

### **8. The powers and functions of the Registrar**

- (1) The Registrar has such functions and powers as may be conferred, or expressed to be conferred, on him:
  - (a) by or under the Law; and
  - (b) by or under any other law made by the Ruler;and shall exercise such powers and perform such functions only in pursuit of his objectives under those laws and any regulations or rules made under those laws.
- (2) Without limiting the generality of Paragraph (1), such powers and functions of the Registrar shall include, so far as is reasonably practicable:
  - (a) preparing or causing to be prepared in a timely and efficient manner:
    - (i) draft Regulations;
    - (ii) draft standards or codes of practice; and
    - (iii) Guidance;reasonably required to enable him to perform his statutory functions;
  - (b) submitting such draft Regulations, draft standards, and draft codes of practice to the Board of Directors of the DIFCA for approval and advising it of any Guidance that is issued;
  - (c) prescribing forms to be used for any of the purposes of this Law or any legislation administered by the Registrar;
  - (d) acquiring, holding and disposing of property of any description;
  - (e) making contracts and other agreements;



- (f) with the prior consent of the President and Board of Directors of the DIFCA, borrowing monies and providing security for such borrowings;
  - (g) employing and appointing persons on such terms as he considers appropriate to assist him in the exercise of his powers and performance of his functions;
  - (h) where he considers it appropriate to do so, delegating such of his functions and powers as may more efficiently and effectively be performed by his officers or employees and, with the approval of the Board of Directors of the DIFCA either generally or in relation to any particular matter, by any other person; and
  - (i) exercising and performing such other powers and functions as may be delegated to the Registrar by the Board of Directors of the DIFCA pursuant to the provisions of this Law.
- (3) The Registrar has power to do whatever he deems necessary, for or in connection with, or reasonably incidental to, the performance of his functions.

### **PART 3: COMPANIES RECOGNISED UNDER THE LAW**

#### **9. Type of companies**

This Law recognizes the following types of companies:

- (1) Companies Limited by Shares;
- (2) Limited Liability Companies; and
- (3) Recognised Companies.

#### **10. Legal personality**

Companies registered under this Law shall have a separate legal personality from that of their Shareholders or Members. 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 Member, or officer of the Company, except as provided by law.

## **PART 4: COMPANY FORMATION AND REGISTRATION**

### **11. Method of formation**

- (1) Any one or more persons may apply for the incorporation of a Company by signing and filing with the Registrar, an application for incorporation.
- (2) The application filed with the Registrar under Paragraph (1) shall be signed by the incorporators and shall include:
  - (a) the name of the Company;
  - (b) the address of the Company's registered office;
  - (c) the nature of the business to be conducted by the Company;
  - (d) the amount of share capital authorised by the Company and the amount of share capital paid upon incorporation, which shall never be less than the minimum share capital required by the Regulations as amended from time to time, and:
    - (i) in case of a Company Limited by Shares, the number of Shares into which such share capital will be divided; or
    - (ii) in case of a Limited Liability Company the number of Membership Interests into which such share capital will be divided and the value of each such Membership Interest;
  - (e) the full name, nationality and address of each of the incorporators;
  - (f) the full name, nationality and address of the persons who are to serve as the first Directors or Managers;
  - (g) the articles; and
  - (h) such other particulars as the Registrar may require.

### **12. Articles of association**

- (1) A Company's articles shall be in the English language and shall be printed and be divided into paragraphs numbered consecutively.
- (2) A Company's articles shall contain:
  - (a) the information set out under Paragraphs (a) through (e) of Article 11(2);
  - (b) matters contemplated by this Law for inclusion in the articles of a Company; and
  - (c) such other matters as the Shareholders or Members wish to include in the articles,

provided that the articles must not contain a provision which is contrary to or inconsistent with this Law.

- (3) For each of Companies Limited by Shares and Limited Liability Companies, the Board of Directors of the DIFCA may prescribe in the Regulations model articles to be known as the Standard Articles, and a Company may, for its articles, adopt the whole or any part of such Standard Articles as are applicable to that entity.
- (4) If Standard Articles have not been adopted by a Company in their entirety, articles specifying regulations for the Company which incorporate sound corporate governance standards, and that do not seek to modify the applicable provisions of this Law, shall be submitted to the Registrar together with a written legal opinion from the Company's external qualified legal adviser stating that the articles proposed to be adopted comply with requirements of the Law prior to such articles being adopted by the Company.
- (5) Any amendment to a Company's articles must be submitted to the Registrar together with a written legal opinion from the Company's external qualified legal adviser stating that the proposed amendments to the articles comply with requirements of the Law prior to such amendment taking effect.
- (6) If the articles of a Company are amended, the rights and obligations of the Shareholders or Members and/or the Company which have arisen under the articles prior to the date of such amendment shall not be affected unless the amendment provides otherwise.

### **13. Registration**

- (1) The Registrar may refuse to register a Company for such reason as he believes to be proper grounds for refusing such registration.
- (2) Where the Registrar refuses to register a Company he shall not be bound to provide any reason for his refusal and his decision shall not be subject to appeal or review in any court.
- (3) Where the Registrar registers a Company he shall register the Company's articles filed with him under Article 12.
- (4) No person shall conduct or attempt to conduct business operations in or from the DIFC unless and until such person has been duly permitted to do so by the Registrar. Due permission by the Registrar for these purposes shall be conclusively evidenced by the issuance to such person by the Registrar of a Certificate of Incorporation, registration or continuation, as the case may be, along with a commercial license as provided for in the Regulations.

### **14. Effect of registration**

- (1) On the registration of a Company and its articles the Registrar shall:
  - (a) issue a certificate that the Company is incorporated; and
  - (b) assign to the Company a number, which shall be the Company's registered number.

- (2) From the date of incorporation mentioned in the certificate of incorporation, those incorporators or such other persons as are from time to time Shareholders or Members of the Company, shall be a body corporate having the name contained in the certificate of incorporation capable forthwith of exercising all the functions of an incorporated Company.
- (3) A certificate of incorporation is conclusive evidence of the following matters:
  - (a) the incorporation of the Company; and
  - (b) that the requirements of this Law have been complied with in respect of the registration of the Company.

**15. Effect of articles**

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

**16. Alteration of articles**

- (1) Subject to the provisions of this Law, a Company may by Special Resolution amend its articles.
- (2) Notwithstanding anything in the articles, a Shareholder or Member of a Company is not bound by an amendment made to the articles after the date on which he became a Shareholder or Member, if and so far as the amendment:
  - (a) requires him to take or subscribe for more Shares or a larger Membership Interest than held by him at the date on which the amendment is made; or
  - (b) in any way increases his liability as at that date to contribute to the Company's share capital or otherwise to pay money to the Company,unless he agrees in writing, either before or after the amendment is made, to be bound by it.

**17. Copies of articles for Shareholders or Members**

A Company shall, on being so required by a Shareholder or Member, send to such Shareholder or Member a copy of the articles subject to payment of such reasonable fee as the Company may require.

**18. Change of name**

- (1) The Shareholders or Members of a Company may, by Special Resolution change its name, provided that the new name is acceptable to the Registrar.

- (2) Where a Company changes its name under this Article, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of name change showing the previous name and new name of the Company.
- (3) The change of name will take effect from the date on which the Registrar issues the certificate of name change.
- (4) In the event that a Company changes its name under this Article, it must amend its articles in order to reflect such change any time within 30 days from the date the Registrar issues the certificate of name change or within such longer period as the Registrar may allow.
- (5) A change of name by a Company under this Law does not affect any rights or obligations of the Company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it under its new name.

**19. Power to require change of name**

- (1) If, in the opinion of the Registrar, the name by which a Company is registered is misleading, conflicting or otherwise undesirable, he may direct the Company to change it.
- (2) A direction by the Registrar under Paragraph (1) shall be complied with within 30 days from the date of the direction or within such longer period as the Registrar may allow.

**20. Registered office and conduct of business**

- (1) A Company shall at all times have a registered office in the DIFC to which all communications and notices may be addressed.
- (2) A Company must carry on its principal business activity in the DIFC, unless the Registrar otherwise permits.
- (3) A document may be served on a Company by leaving it at, or sending it by post to, the registered office of the Company.

**21. Particulars in correspondence**

- (1) The name of a Company and the address of the registered office of a Company shall appear in legible characters in all its business letters and order forms.
- (2) If reference to the amount of share capital is made on the stationery used for any such letters, or on the Company's order forms, the reference shall be to paid up share capital.

**22. Annual return**

- (1) Every Company shall, before the end of March in every year after the year in which it is incorporated, file with the Registrar a return stating in respect of each class of Shares or Membership Interests in the Company either:
  - (a) the name and address of each Shareholder or Member who on the 1st of January in that year:

- (i) in the case of a Company Limited by Shares, held not less than five per cent of the allotted Shares of that class and the number of Shares of that class held by him, together with the number of Shareholders each of whom on that date held less than five per cent of the allotted Shares of that class and the total number of Shares comprised in those holdings;
- (ii) in the case of a Limited Liability Company, held not less than five per cent of the total value of the Membership Interests of that class and the value of the Membership Interest held by him, together with the number of Members each of whom on that date held Membership Interests which represented less than five per cent of the total Membership Interests of that class and the total value of the Membership Interests comprised in those holdings;

or

- (b) the name, and address of every Shareholder or Member who on the 1st of January in that year held any Shares or a Membership Interest of that class and the value of the Shares or Membership Interest of that class held by him.
- (2) The return shall contain such information, declarations and verifications as may be prescribed and be accompanied by the prescribed filing fee.

### **23. Form of Company records**

- (1) The records, which a Company is required by this Law to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
- (2) A Company shall take reasonable precautions to:
- (a) prevent loss or destruction of,
  - (b) prevent falsification of entries in, and
  - (c) facilitate detection and correction of inaccuracies in,
- the records required by this Law to be kept.
- (3) If any record referred to in this Article is kept otherwise than in intelligible written form, any duty imposed on the Company by this Law to allow inspection and copying of, or to require the giving or production of, information or documents shall be treated as a duty to allow inspection and copying of, or to require the giving or production of, information or documents in intelligible written form.

## **PART 5: CORPORATE CAPACITY AND TRANSACTIONS**

### **24. Capacity of Company**

- (1) A Company has the capacity, rights and privileges of a natural person.
- (2) The capacity of a Company is not limited by anything in its articles or by any act of its Shareholders or Members.

### **25. Form of contracts**

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

### **26. Contracts entered into prior to corporate existence**

- (1) Where a contract purports to be entered into by a Company, or by a person as agent for a Company, at a time when the company has not been formed, then, subject to Paragraph (2) and unless otherwise agreed by the parties to the contract, the contract has effect as one entered into by the person purporting to act for the Company or as agent for it, and he is personally bound by the contract and entitled to its benefits.
- (2) Notwithstanding provisions set out in other DIFC laws concerning formation of contract, a Company may, within such period as may be specified in the terms of the contract or if no period is specified, within a reasonable time after it is formed, by act or conduct signifying its intention to be bound thereby, adopt any contract of the nature set out in Paragraph (1), and it shall from that time be bound by such contract and entitled to its benefits and the person who purported to enter into the contract for the Company or as agent for the Company shall cease to be so bound and entitled.

### **27. Participation in a holding company**

- (1) Except in the cases mentioned in this Article, a body corporate cannot be a Shareholder or Member of a Company which is its holding company; and an allotment or transfer of Shares or Membership Interests in a Company to its subsidiary is void.
- (2) Paragraph (1) does not prevent a subsidiary which is, when it becomes a subsidiary, a Shareholder or Member of its holding company, from continuing to be a Shareholder or Member but, subject to Paragraph (4), the subsidiary:
  - (a) has no right to vote at meetings of the holding company or a class of its Shareholders or Members;
  - (b) shall not acquire further Shares or Membership Interest in the holding company except on a capitalisation issue; and
  - (c) shall within 12 months dispose of all of its Shares or Membership Interest therein.



- (3) Paragraphs (1) and (2) apply in relation to a nominee for a body corporate which is a subsidiary as if references to the body corporate included a nominee for it.
- (4) Nothing in this Article applies where the subsidiary is concerned as personal representative.

## **PART 6: CLASS RIGHTS**

### **28. Variation of class rights**

- (1) The provisions of this Article are concerned with the variation or abrogation of the rights attached to a class of Shares or Membership Interests in a Company whose share capital is divided into Shares or Membership Interests of different classes.
- (2) If provision for the variation of the rights attached to a class of Shares or Membership Interests is made in the articles or by the terms of issue of the Shares or Membership Interests, those rights may only be varied in accordance with those provisions.
- (3) If provision is not so made the rights may be varied if, but only if:
  - (a) the holders of two-thirds in Share value of the Shares or total Membership Interest value of the class, consent in writing to the variation; or
  - (b) a resolution passed at a separate meeting of the Shareholders or Members of that class sanctions the variation.
- (4) Any alteration of a provision in the articles for the variation of the rights attached to a class of Shares or Membership Interests, or the insertion of any such provision into the articles is itself to be treated as a variation of those rights.

### **29. Shareholders' and Members' Right to Object to Variation**

- (1) If the rights attached to any class of Shares or Membership Interests are varied in a manner referred to in Article 28(2) or (3), the holders of not less in the aggregate than five per cent of the Share value of Shares or total Membership Interest value, of that class (being persons who did not consent to, or vote in favour of a resolution for, the variation) may apply to the Court to have the variation cancelled and, if such an application is made, the variation has no effect unless and until it is confirmed by the Court.
- (2) The application to the Court must be made within 28 days after:
  - (a) the date on which the rights were varied, where the rights attached to any class of Shares or Membership Interests are varied in a manner referred to in Article 28(2); or
  - (b) the date on which the consent was given or the resolution was passed, where the rights attached to any class of Shares or Membership Interests are varied in a manner referred to in Article 28(3),and may be made on behalf of the Shareholders or Members entitled to make it, by one or more of them, as they may appoint 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 7 days after it is made.

- (4) The Court, after being satisfied that Paragraphs (2) and (3) have 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 would unfairly prejudice the Shareholders or Members of the relevant class, disallow the variation and shall, if not so satisfied, confirm it.

## **PART 7: COMPANY LIMITED BY SHARES**

### **30. Application of this Part 7.**

This Part applies exclusively to Companies Limited by Shares. Wherever the word “Company” appears in this Part, it should be construed as a Company Limited by Shares.

## **CHAPTER 1 – FORMATION OF A COMPANY LIMITED BY SHARES**

### **31. Definition of a Company Limited by Shares**

A Company Limited by Shares is a Company incorporated by one or more Shareholders whose obligation is limited to the payment of the subscription price of their Shares.

### **32. Name of a Company Limited by Shares**

A Company Limited by Shares will 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.

### **33. Objectives of a Company Limited by Shares**

A Company may be incorporated to conduct any lawful business.

## **CHAPTER 2 – MEMBERS AND SHARES GENERALLY**

### **34. Shareholders**

- (1) The incorporators of a Company are deemed to have agreed to become Shareholders of the Company, and on its registration shall be entered as such in its register of Shareholders.
- (2) Every other person who agrees to become a Shareholder in a Company, has acquired a Share in the Company and whose name is entered in its register of Shareholders, is a Shareholder of the Company.

### **35. Nature of Shares**

- (1) The rights attached to Shares (or to any class of Shares) shall be determined by the articles.
- (2) Subject to the articles, 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 in the Company.
- (3) The Shares or other interests of a Shareholder of a Company are, subject to Article 40, transferable in the manner provided by the Company’s articles.
- (4) All Shares must be fully paid when allotted.

- (5) To the extent permitted by its articles, a Company may create different classes of Shares.

**36. Alteration of share capital**

- (1) A Company may, by Special Resolution:
- (a) increase its share capital by creating new Shares of such Share value as it thinks fit;
  - (b) consolidate and divide all or any of its Shares (whether allotted or not) into Shares representing a larger Share value than their existing Share value;
  - (c) sub-divide its Shares, or any of them, into Shares representing a smaller Share value than their existing Share value; and
  - (d) cancel Shares which, at the date of the passing of the Special Resolution to cancel them, have not been allotted, or agreed to be allotted, to any person, and diminish the amount of the Company's share capital by the aggregate Share value of the Shares so cancelled.
- (2) A cancellation of Shares under this Article does not, for the purposes of this Law, constitute a reduction of share capital to which Article 47 applies.

**37. Non-cash consideration for Shares**

- (1) Where a Company allots Shares the consideration for which will be other than cash, the board of Directors must:
- (a) determine the reasonable cash value of the consideration for the Shares;
  - (b) resolve that, in its opinion, the consideration for the Shares is fair and reasonable to the Company and to all existing Shareholders; and
  - (c) resolve that, in its opinion, the present cash value of the consideration to be provided for the Shares is not less than the Share value to be credited for the issue of the Shares.
- (2) The resolutions required pursuant to Paragraph (1) must describe the consideration in sufficient detail and the present cash value of that consideration, as determined by the board of Directors, and the basis for assessing it.
- (3) 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 the Company;
  - (c) the allotment of Shares that are fully paid up from the reserves of the 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 the Company in proportion to those Shares or the Shares in that class.

**38. Bearer Shares**

It shall not be lawful for a Company to issue bearer Shares.

**CHAPTER 3 – REGISTER OF SHAREHOLDERS AND CERTIFICATES**

**39. Register of Shareholders**

Every Company shall (either itself or through an agent) have 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 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; and
- (d) the date on which the number of Shares held by any Shareholder increased or decreased.

**40. Transfer and registration**

- (1) Notwithstanding anything in its articles, a Company shall not register a transfer of Shares in or debentures of the Company unless an instrument of transfer in writing has been delivered to it or the transfer is in accordance with any Regulations which enable title to Securities to be evidenced and transferred without a written instrument.
- (2) Nothing in Paragraph (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 debentures 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 the Share or other interest of a deceased Shareholder of a Company made by his personal representative, although the personal representative is not himself a Shareholder of the Company, is as valid as if he had been a Shareholder at the time of the execution of the instrument of transfer.
- (4) On the application of the transferor of a Share or interest in a Company, the Company shall enter in its register of Shareholders the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- (5) If a Company refuses to register a transfer of Shares the Company shall, within 14 days after the date on which the transfer was lodged with it, give to the transferor and transferee notice of and reason for the refusal.
- (6) A Company's register of Shareholders shall be kept:
  - (i) at the registered office or,

- (ii) where the register of Shareholders is maintained on behalf of a Company by an agent, kept at the offices of the agent that maintains the register of Shareholders with a copy of such register of Shareholders to be kept at the Company's registered office. Such copy shall be updated to reflect the register of Shareholder within 10 days of any amendment thereto.

#### **41. Inspection of register**

- (1) The register of Shareholders shall during business hours be open to the inspection of any Shareholder of the Company without charge, and of any other person on payment of such reasonable sum as the Company may require, either:
  - (a) at the registered office of the Company; or
  - (b) if the register of Shareholders is kept at the offices of an agent pursuant to Article 40(6)(ii), then the Company shall require that the register be open for inspection during business hours at the offices of such agent and shall ensure that the copy of the register maintained at its registered office is also open for inspection during business hours.
- (2) In the case of a refusal of inspection of the register, the Registrar may issue a direction requiring the Company to provide immediate inspection of the register by a Shareholder or any other person.

#### **42. Rectification of Share register**

- (1) If:
  - (a) the name of a person, the number of Shares held or the class of Shares held is, without sufficient reason, entered in or omitted from a Company's register of Shareholders; or
  - (b) there is a failure or unnecessary delay in entering on the register the fact of a person having ceased to be a Shareholder;the person aggrieved, or a Shareholder of the Company or the Company, may apply to the Registrar for rectification of the register.
- (2) The Registrar may refuse the application or may order rectification of the register.
- (3) Whether or not the Registrar exercises power under Paragraph (2), the Court may make one or more of the following orders:
  - (a) on application of the Registrar, an order enforcing any orders made by him under this Article;
  - (b) on application of a person aggrieved, a Shareholder of the Company or the Company, an order directing the Registrar to, or not to, rectify the register 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.

#### **43. Share certificates**

- (1) Every Company shall:
  - (a) within 14 days after the allotment of any of its Shares; and
  - (b) within 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 Regulations which allow for title to be evidenced in some other manner.
- (2) Paragraph (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. If the title or transfer is evidenced without a written instrument, then the allotment or transfer shall be completed within 14 days from the date on which the allotment or transfer occurs or is notified to the Company.

### **CHAPTER 4 – REDEMPTION AND PURCHASE OF SHARES**

#### **44. Power to issue redeemable Shares**

- (1) Subject to the provisions of this Article and Article 45, a Company may, if authorised to do so by its articles:
  - (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, at the option of the Company or the Shareholder.
- (2) Shares may be redeemed only from the following sources:
  - (a) in the case of the Share value of the Shares, from 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.
- (3) Upon the redemption of Shares under this Article, the amount of the Company's share capital shall be diminished by the Share value of those Shares but the redemption shall not be taken as reducing the authorised share capital of the Company, unless those Shares are cancelled.
- (4) Where pursuant to this Article a Company is about to redeem Shares, it may issue Shares up to the Share value of the Shares to be redeemed as if those Shares had never been issued.
- (5) A Company may not under this Article redeem its Shares if as a result of the redemption there would no longer be a Shareholder of the Company holding Shares.



**45. Power of Company to purchase own Shares**

- (1) A Company may purchase its own Shares (including any redeemable Shares).
- (2) A purchase under this Article shall, unless the Company is a wholly-owned subsidiary, be sanctioned by a Resolution.
- (3) The Shares to be purchased:
  - (a) may only be purchased if such purchase is approved in advance by a Resolution of the Company; and
  - (b) shall not carry the right to vote on the Resolution authorising the purchase.
- (4) A Company may not under this Article purchase its Shares if as a result of the purchase there would no longer be a Shareholder of the Company holding Shares.

**46. Prohibition on financial assistance to acquire Shares**

- (1) A Company shall not provide financial assistance for a person to acquire Shares, or units of Shares, in the Company or a holding company of the Company, unless:
  - (a) the giving of the financial assistance 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 the financial assistance is approved by resolution of Shareholders holding not less than 90 per cent in Share value of the Shares giving a right to attend and vote at any Shareholders' meeting; or
  - (b) 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
  - (c) the financial assistance is of a kind prescribed in the Regulations as exempted from this Article.
- (2) 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; or
  - (e) giving a guarantee or an indemnity in respect of another person's liability.

## CHAPTER 5 – REDUCTION OF CAPITAL

### 47. Reduction of share capital

- (1) A Company, if authorised by a Resolution and its articles, may reduce its share capital in any way on such terms as it may decide, and in particular, by:
  - (a) either with or without extinguishing or reducing liability on any of its Shares, cancelling any paid up share capital that is lost or unrepresented by available assets; or
  - (b) either with or without extinguishing or reducing liability of any of its Shares and either with or without reducing the number of such Shares, paying off any paid up share capital that is in excess of the requirements of the Company.
  
- (2) No Company shall reduce the amount of its share capital by virtue of Paragraph (1) unless it complies with the following:
  - (a) at a date not more than 30 days and not less than 15 days before the date from which the reduction of the share capital is to have effect, the Company shall cause a notice to be published in the appointed newspapers stating:
    - (i) the amount of the share capital as last previously determined by the Company;
    - (ii) the Share value of each Share;
    - (iii) the amount to which the share capital is to be reduced; and
    - (iv) the date from which the reduction is to have effect.
  - (b) on the date from which the reduction is to have effect a certificate shall be signed by at least two Directors of the Company declaring either:
    - (i) that on that date the Company is solvent; or
    - (ii) that all the creditors of the Company on that date have consented to the reduction.
  
- (3) Where Shares are to be cancelled in order to reduce the share capital of a Company the Shares shall be acquired:
  - (a) at the lowest price at which, in the opinion of the Directors, the Shares are obtainable, but not exceeding an amount, if any, stated in or determined by the articles; or
  - (b) where the Shares are traded on a stock exchange either, as determined by the Directors, at:
    - (i) the market value; or

- (ii) a price being not less than the average of the market value of the Shares over the 20 days on which any such Shares were traded on the stock exchange immediately prior to the date on which the decision to reduce the share capital is to have effect.
- (4) Where a Company reduces the amount of its share capital, it shall file within 30 days after the date from which the reduction has effect, a copy of the publications referred to in Paragraph (2)(a) and the certificate referred to in Paragraph (2)(b) with the Registrar stating that this Article has been duly complied with.
- (5) The provisions of this Article shall not be applicable to the reduction of the authorised but not paid up share capital of a Company which shall instead be subject to the provisions governing the amendment of a Company's articles as provided in this Law.

#### **48. Liability of Shareholders on reduced Shares**

If, when a certificate is signed in accordance with Article 47(2)(b)(ii), a creditor who has not consented to the reduction has a debt or claim against the Company which the Company is unable to satisfy as a result of the reduction, every person who was a Shareholder of the Company at the date of the certificate is then liable to contribute to the satisfaction of the debt or claim in question on a proportional basis, an amount not exceeding that which was paid by the Company to him or his assignee by way of acquisition price for the cancelled Shares.

### **CHAPTER 6 – DIVIDENDS AND DISTRIBUTIONS**

#### **49. Restrictions on dividends and distributions**

- (1) A Company may declare a dividend or resolve to make a distribution at any time if the board of Directors of the Company has resolved, on reasonable grounds, that the Company will, immediately after the dividend is paid or the distribution is made, be able to pay its debts as they become due in the normal course of business.
- (2) A Company may pay a dividend or make a distribution at any time if:
  - (a) the dividend has been declared or the distribution has been resolved to be made in accordance with Paragraph (1);
  - (b) the dividend will be paid, or the distribution will be made, out of profits and/or surplus of the Company, as shown in the accounts of the Company prepared:
    - (i) as at the end of the last financial year in accordance with Article 103(2); or
    - (ii) where the dividend or distribution is made which is other than a Year End Dividend or Distribution, as at the end of such period as is sufficient to enable the Directors to form a reasonable view as to the amount of the profits and/or surplus from which the dividend will be paid or the distribution will be made, in a manner consistent with Articles 103(2)(a) and (b); and

- (c) the board of Directors of the Company has resolved immediately prior to the payment of the dividend or the making of the distribution, on reasonable grounds, that:
  - (i) the Company will, immediately after the dividend is paid or the distribution is made, be able to pay its debts as they become due in the normal course of business; and
  - (ii) at no time between the date of the resolution passed pursuant to Paragraph (1) and the date of the resolution passed pursuant to this Paragraph (2)(c) did the board of Directors of the Company consider that the Company would not, after the dividend has been paid or the distribution has been made, be able to pay its debts as they become due in the normal course of business.
- (3) In this Part, “distribution” means every description of distribution of a Company’s assets to its Shareholders, whether in cash or otherwise, except 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 by extinguishing or reducing the liability of any of the Shareholders on any of the Company’s Shares by paying off share capital; and
  - (d) a distribution of assets to Shareholders of the Company on its winding up.

## **50. 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 49 and, at the time of the distribution, the Shareholder knows or has reasonable grounds for believing that it is so made, he 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 the Company a sum equal to the value of the distribution, or that part, at that time.

## **CHAPTER 7 – DIRECTORS AND SECRETARIES**

### **51. Directors**

- (1) Subject to any limitations in the articles, the business and affairs of a Company shall be managed by not less than two Directors.
- (2) No person shall be a Director who:
  - (a) is under the age of 18 years;
  - (b) 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 the Court;
  - (iv) disqualification under the articles;
- (c) is an undischarged bankrupt; or
- (d) is not a natural person.

**52. 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 the Shareholders for such term as the Shareholders may determine.
- (2) Each Director holds office until his successor takes office or until his earlier death, resignation or removal by Resolution.
- (3) A vacancy created by the death, resignation or removal of a Director may be filled by a Resolution or in the absence of such Resolution by the remaining Directors, provided that any Director appointed by the remaining Directors shall be subject to reappointment by a Resolution at the next General Meeting and shall cease to be a Director at the conclusion of that General Meeting if such a Resolution is not passed.
- (4) The number of Directors shall be fixed by the articles.

**53. Duties of Directors and officers**

A Director or other officer of a Company, in exercising his powers and discharging his duties, shall:

- (a) act honestly, in good faith and lawfully, with a view to the best interests of the Company; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**54. Duty of Directors to disclose interests**

- (1) A Director of a Company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by 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 disclose to the Company the nature and extent of his interest.
- (2) The disclosure under Paragraph (1) shall be made as soon as practicable after the Director becomes aware of the circumstances which gave rise to his duty to make it.

- (3) A notice in writing given to the Company by a Director that he is to be regarded as interested in a transaction with a specified person is sufficient disclosure of his interest in any such transaction entered into after the notice is given.
- (4) Subject to Paragraphs (5) and (6), where a Director fails to disclose 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 setting aside the transaction concerned and directing that the Director account to the Company for any profit, gain or benefit realised, and the Court may so order or make such other order as it thinks fit.
- (5) A transaction is not voidable, and a Director is not accountable, under Paragraph (4) where, notwithstanding a failure to comply with this Article:
  - (a) the transaction is confirmed by Resolution; and
  - (b) the nature and extent of the Director's interest in the transaction were disclosed in reasonable detail in the notice calling the General Meeting at which the Resolution is passed.
- (6) 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 unless it is satisfied that:
  - (a) the interests of third parties who have acted in good faith there under would be unfairly prejudiced if the transaction were not set aside; and
  - (b) the transaction was not reasonable and fair in the interests of the Company at the time it was entered into.

## **55. Prohibitions of financial assistance to Directors**

- (1) Subject to Paragraph (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 the meeting who together hold not less than 90 per cent of the Shares which are voted at that meeting; and
  - (e) all of the Directors of the Company resolve that the giving of the financial assistance does not materially prejudice both of the following:
    - (i) the interests of the Company and its Shareholders; and
    - (ii) the Company's ability to discharge its liabilities as they fall due.

- (2) Any such financial assistance provided pursuant to Paragraph (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 Paragraph (1).
- (3) Financial assistance shall be deemed to be financial assistance to a Director if it is made to:
  - (a) a spouse or child of a Director; or
  - (b) to a company of which a Director, his spouse or child owns or controls directly or indirectly more than 20 per cent of the share capital.
- (4) Paragraph (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.

**56. Alternate Directors**

- (1) A Director may by a written instrument appoint an alternate who need not be a Director and the name of such alternate shall be given in writing to the secretary.
- (2) An alternate for a Director appointed under Paragraph (1) shall be entitled to attend meetings in the absence of the Director who appointed him and to vote in the place of the Director.

**57. Validity of acts of Director**

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

**58. Secretary**

Every Company shall have a secretary who shall not be a Director of that Company.

**59. Register of Directors and Secretary**

- (1) Every Company shall keep at its registered office a register of its Directors and secretary. The Board of Directors of the DIFCA may make Regulations prescribing particulars which each register shall contain.

- (2) The register required to be kept pursuant to Paragraph (1) shall during business hours (subject to such reasonable restrictions as the Company may by its articles or in General Meeting impose, but so that not less than two 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 the register, the Registrar may issue a direction requiring the Company to provide immediate inspection by the Registrar, Shareholder or Director.

**60. Assumptions in relation to Directors and secretary**

- (1) Subject to Paragraph (3), a person dealing with a Company is entitled to assume that anyone who it appears, from information that is available to the public on the register of the Company or on a public register of the Registrar, to be a Director or secretary of the Company:
  - (a) has been duly appointed;
  - (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 as per Paragraph (1) if at the time of the dealing he knew or suspected that the assumption was incorrect.

**CHAPTER 8 – MEETINGS**

**61. Participation in meetings**

- (1) Subject to the articles of a Company, 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 a Company, 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 Shareholder 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.

**62. Annual General Meeting**

- (1) Every Company shall in each year hold an annual General Meeting in addition to any other General Meetings in that year; but so long as a Company holds its first annual General Meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.



- (2) Subject to Paragraph (1), not more than 15 months shall elapse between the date of one annual General Meeting and the date of the next and not more than 6 months shall elapse between the end of the financial year of the Company and its next annual General Meeting.

**63. Request of meetings**

- (1) On a Shareholders' request the Directors or secretary of a Company shall, notwithstanding anything in the Company's articles, forthwith proceed to call a General Meeting or, as the case may be, a meeting of Shareholders of any class of Shares, to be held as soon as practicable but in any case not later than two months after the date of the request.
- (2) A Shareholders' request is a request of Shareholders of the Company holding at the date of the request not less than five per cent of the share capital of the Shares which at that date carry the right of voting at the meeting requested.
- (3) The request shall state the objects of the meeting, and shall be made by or on behalf of each Shareholder making the request and deposited at the registered office of the Company, and may consist of several documents in similar form each signed by or on behalf of one or more of such Shareholders.
- (4) If within 21 days from the date of the deposit of the request the Directors or secretary do not proceed duly to call a meeting to be held within two months of the date of the request, the Shareholders making the request, or any of them representing more than one half 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 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.

**64. Registrar's power to call meeting in default**

- (1) If default is made in holding a meeting in accordance with Articles 62 or 63, the Registrar may, on the application of any officer 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 Paragraph (1).

**65. Notice of meetings**

- (1) Any General Meeting of the Company (other than an adjourned meeting) may be called by at least 21 days' notice in writing.
- (2) If a General Meeting is called by shorter notice than that specified in Paragraph (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 majority together holding not less than 95 per cent of the share capital represented by the Shares giving a right to attend and vote at the General Meeting.
- (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 Resolution or Special Resolution and state such resolution; and
- (d) include a copy of any accounts and auditors report that are to be laid before the General Meeting.

**66. General provisions as to meetings and votes**

The following provisions apply to any General Meeting of the Company or of the Shareholders of any class of Shares in the Company unless the articles provide otherwise:

- (a) notice of every meeting shall be given to every Shareholder entitled to receive it by delivering or posting it to his registered address;
- (b) Shareholders holding not less than five per cent of the share capital of the Shares carrying a right to vote at a meeting may call any such meeting;
- (c) except in the case of a Company having a single Shareholder, at any General Meeting of the Company two Shareholders personally present or represented by proxy shall be a quorum;
- (d) at any meeting of the holders of any class of Shares other than an adjourned meeting, the quorum shall be persons holding or representing by proxy at least one-third in Share value of the allotted Shares of that class and at any such adjourned meeting, one person holding Shares of the class or his proxy shall be a quorum;
- (e) any Shareholder elected by the Shareholders present at any such meeting may be chairman; and
- (f) on a show of hands, every Shareholder present in person at any such meeting has one vote and, on a poll, every Shareholder has one vote for every Share held by him.

**67. Representation of body corporate at meetings**

- (1) A body corporate, whether or not a Company within the meaning of this Law, 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 a Company, or of any class of Shares of a Company, or of creditors of a Company which it is entitled to attend.
- (2) A person so authorised is entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Shareholder or creditor of the Company.

**68. Resolutions in writing**

- (1) Subject to a Company's articles, anything that may be done by a Resolution or Special Resolution (excluding a resolution removing an auditor or Director) passed at a Shareholders' meeting may be done by a Resolution or Special Resolution in writing signed by each Shareholder who, at the date when the Resolution or Special Resolution is deemed to be passed, would be entitled to vote.

- (2) A Resolution or Special Resolution in writing may consist of several instruments in the same form each signed by or on behalf of one or more Shareholders.
- (3) A Resolution or Special Resolution 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 Resolution or Special Resolution.
- (4) Any document attached to a Resolution or Special Resolution in writing under this Article shall be deemed to have been laid before a meeting of the Shareholders signing the Resolution or Special Resolution.
- (5) Article 72 applies to a Resolution or Special Resolution in writing under this Article as if it had been passed at a meeting.
- (6) Nothing in this Article affects or limits any provisions in the articles of any rule of law relating to the effectiveness of the assent of Shareholders, or any class of Shareholders, of a Company given to any document, act or matter otherwise than at a meeting of them.

**69. Recording of decisions by sole Shareholder**

- (1) If:
  - (a) a Company has only one 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 Resolution in writing, the Shareholder shall provide the Company with a record in writing of the decision.
- (2) Failure to comply with Paragraph (1) shall not affect the validity of the decision.

**70. Proxies**

- (1) A Shareholder of a Company entitled to attend and vote at a General Meeting or at a meeting of any class of Shares is entitled to appoint, by notice to the Company in writing, another person (whether a Shareholder or not) as his proxy to attend and vote instead of him.
- (2) A proxy appointed to attend and vote for a Shareholder has the same rights as the Shareholder including without limitation:
  - (a) to speak at the meeting;
  - (b) to vote (but only to the extent allowed by the appointment or by the articles); and
  - (c) join in a demand for a poll.
- (3) In every notice calling a meeting of the Company there shall appear with reasonable prominence a statement that a Shareholder entitled to attend and vote is entitled to appoint a

proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a Shareholder.

**71. Demand for poll**

- (1) A provision contained in a Company's articles is void in so far as it would have the effect either:
  - (a) of excluding the right to demand a poll at a General Meeting, or at a meeting 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) of making ineffective a demand for a poll on any such question which is made either:
    - (i) by not less than five Shareholders having the right to vote on the question; or
    - (ii) by a Shareholder or Shareholders representing not less than five per cent 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 Paragraph (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 vote need not, if he votes (in person or by proxy), use all his votes in the same way.

**72. Minutes and examination of minute books**

- (1) Every Company shall cause minutes of all proceedings at General Meetings, meetings 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 then, until 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 the holders of a class of Shares shall not be entitled to require a copy of minutes of a meeting of the holders of any other class of Shares) and the Company shall,

within 7 days after the receipt of the request and the payment, cause the copy so required to be made available at the registered office of the Company for collection during business hours.

- (6) In the case of a refusal or default, the Registrar may make an order compelling 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 9 – PROTECTION OF MINORITIES IN TAKEOVERS**

### **73. Regulations, waiver and modification**

- (1) The Board of Directors of the DIFCA may, without limiting powers conferred upon it elsewhere under the Law, make Regulations extending, waiving or modifying the application of provisions of this Chapter in relation to different cases or classes of cases.
- (2) The provisions of this Chapter are subject to Article 154.

### **74. Takeover Offers**

- (1) In this Part, “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 class.
- (2) In Paragraph (1), “Shares” means Shares which have been allotted on the date of the offer but a takeover offer may include Shares that are subsequently allotted before a date specified in or determined in accordance with the terms 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 Paragraph (4).
- (4) A variation is permitted by this Paragraph where:
  - (a) the law of a country or territory outside DIFC precludes the acceptance of an offer 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 Paragraph (1) to Shares already held by the offeror includes a reference to Shares which he has contracted to acquire (which term shall include Shares which the offeror has an unconditional option to acquire) but that shall not be construed as including Shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder for nothing other than a promise by the offeror to make the offer.

- (6) 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 Part as the making of a fresh offer and references in this Part to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.
- (7) In this Part “the offeror” means, subject to Article 80, the person making a takeover offer and “the Company” means the Company whose Shares are the subject of the offer.

#### **75. 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 in value of the Shares to which the offer relates he may within 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 he 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 in value of the Shares of any class to which the offer relates, he may within 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 he desires to acquire those Shares.
- (3) No notice shall be given under Paragraphs (1) or (2) unless the offeror has acquired or contracted to acquire the Shares necessary to satisfy the minimum specified in those Paragraphs before the end of the period of four months beginning with the date of the offer; and no such notice shall be given after the end of the period of two months beginning with the date on which he has acquired or contracted to acquire Shares which satisfy that minimum.
- (4) When the offeror gives the first notice in relation to an offer he shall send a copy of it to the Company together with a declaration by him 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.
- (5) Where the offeror is a body corporate (whether or not a Company within the meaning of this Law) the declaration shall be signed by a Director.
- (6) If a person is proceeded against in respect of an alleged contravention for failing to send a copy of a notice as required by Paragraph (4) it is a defence for him to prove that he took reasonable steps for securing compliance with that Paragraph.
- (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 Paragraph (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.

**76. Effect of notice under Article 75**

- (1) The following provisions shall, subject to Article 79, have effect where a notice is given in respect of any Shares under Article 75.
- (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 his Shares the notice shall give particulars of the choice and state:
  - (a) that the holder of the Shares may within six weeks from the date of the notice indicate his 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 his indicating a choice as aforesaid,and the terms of the offer mentioned in Paragraph (2) shall be determined accordingly.
- (4) Paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and 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 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 Paragraph (5)(a) shall be accompanied by an instrument of transfer executed on behalf of the Shareholder by a person appointed by the offeror; and on receipt of that instrument the Company shall register the offeror as the holder of those Shares.

- (7) Where the payment referred to in Paragraph (5)(b) is to be made in Shares or Securities to be issued by the offeror, the reference in that Paragraph to the making of payment shall be construed as a reference to the issuance of the Shares or Securities to the Company on behalf of the holders.
- (8) Any sum received by a Company under Paragraph (5)(b) and any other payment received under that Paragraph 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 by a Company under Paragraph (5)(b) and any dividend or other sum accruing from any other payment received by a Company under that Paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

**77. 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 he has acquired or contracted to acquire, amount to not less than nine-tenths 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 him to acquire those Shares.
- (2) If a takeover offer relates to Shares of any class or classes 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 he has acquired or contracted to acquire, amount to not less than nine-tenths 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 him to acquire those Shares.
- (3) Within one month of the time specified in Paragraph (1) or, as the case may be, Paragraph (2) the offeror shall give any Shareholder who has not accepted the offer notice of the rights that are exercisable by him under that Paragraph; and if the notice is given before the end of the period mentioned in that Paragraph it shall state that the offer is still open for acceptance.
- (4) A notice under Paragraph (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;



but no such period shall end less than three months after the end of the period within which the offer can be accepted.

- (5) Paragraph (3) does not apply if the offeror has given the Shareholder notice in respect of the Shares in question under Article 75.
- (6) If the offeror fails to comply with Paragraph (3) he and, if the offeror is a Company, every officer of the Company who is in default or to whose neglect the failure is attributable, commits a contravention.
- (7) If an offeror other than a Company is proceeded against in respect of an alleged contravention for failing to comply with Paragraph (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with that Paragraph.

#### **78. Effect of requirement under Article 77**

- (1) The following provisions shall, subject to Article 79, 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 Shares a choice of payment for his Shares the holder of the Shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under Article 77(3):

- (a) shall give particulars of the choice and of the rights conferred by this Paragraph; and
- (b) may state which payment specified in the offer is to be taken as applying in default of his indicating a choice;

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

- (4) Paragraph (3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and 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 requires the offeror to acquire them is equivalent to the chosen payment.

#### **79. Applications to the Court**

- (1) Where a notice is given under Article 75 to the holder of any Shares, the Court may, on an application made by the holder within six 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 terms of acquisition different from those of the offer.

The Court will not entertain an application made outside the established term.

- (2) If an application to the Court under Paragraph (1) is pending at the end of the period mentioned in Article 76(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 77 the Court may, on an application made by him 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) No order for costs or expenses shall be made against a Shareholder making an application under Paragraphs (1) or (3) unless the Court considers:
  - (a) that the application was unnecessary, improper or vexatious; or
  - (b) there has been unreasonable conduct on his part in conducting the proceedings on the application.
- (5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under Article 75(1) or (2) the Court may, on the application of the offeror, make an order authorising him to give notices under that Article if satisfied:
  - (a) that the offeror has after reasonable enquiry been unable to trace one 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 Sub-Paragraph (a), amount to not less than the minimum specified in that Article; 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.

## **80. Joint offers**

- (1) A takeover offer may be made by two or more persons jointly and in that event this Part has effect with the following modifications.
- (2) The conditions for the exercise of the rights conferred by Articles 75 and 77 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 76 and 78 shall be respectively joint rights and joint and several obligations of the joint offerors.

- (3) It shall be a sufficient compliance with any provision of those Articles 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; but the declaration required by Article 75(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 74, Article 76(7) and Article 81 references to the offeror shall be construed as references to the joint offerors or any of them.
- (5) In Article 76(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 76(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 79 references to the offeror shall be construed as references to the joint offerors except that any application under Paragraph 79(3) or (5) may be made by any of them and the reference in Sub-Paragraph 79(5)(a) to the offeror having been unable to trace one or more of the persons holding Shares shall be construed as a reference to none of the offerors having been able to do so.

#### **81. Associates**

- (1) The requirement of Article 74(1) that a takeover offer must 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; but, subject to Article 74(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 Part 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 75(7)(a) or (b) is satisfied as respects those Shares they shall be treated for the purpose of that Article as Shares to which the offer relates.
- (3) In Article 77(1)(b) and Article 77(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 his has acquired or contracted to acquire.
- (4) In this Article, “associate”, in relation to an offeror, means one 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 body corporate in which the offeror is substantially interested.
- (5) For the purposes of Paragraph (4)(b) a Company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

- (6) For the purposes of Paragraph (4)(c) an offeror has a substantial interest in a body corporate if:
- (a) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
  - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate; or
  - (c) he owns or controls directly or indirectly more than 20 per cent of the share capital of that body corporate.
- (7) Where the offeror is an individual his associates shall also include his spouse and any child or step-child of his.

## **PART 8: LIMITED LIABILITY COMPANY**

### **82. Application of this Part 8.**

This Part applies exclusively to Limited Liability Companies. Wherever the word “Company” appears in this Part, it shall be construed as a Limited Liability Company.

### **83. Definition of a Limited Liability Company**

A Limited Liability Company is a Company incorporated by one or more Members whose obligation is limited to pay the amount of their subscribed Membership Interest, which may not be represented by Securities.

### **84. Name of a Limited Liability Company**

A Company will exist under a name approved by the Registrar which shall be immediately followed by the words “Limited Liability Company” or their abbreviation “LLC”, which shall be inserted wherever the Company’s name appears.

### **85. Limited Liability Companies’ objectives**

A Company may be incorporated to conduct any lawful business that is not an activity regulated by the DFSA under the DIFC Regulatory Law of 2004, as amended from time to time.

### **86. No Public Offering or issuance of Securities**

- (1) A Company may not raise capital by offering Membership Interests by way of a public offer.
- (2) A Company may not issue Securities of any kind.

### **87. Members**

- (1) The incorporators of a Company are deemed to have agreed to become Members of the Company, and on its registration shall be entered as such in its register of Members.
- (2) Every other person who agrees to become a Member in a Company, who is admitted as such by the current Members in accordance with that Company’s articles and has paid the subscribed Membership Interest, shall have his name entered in the register of Members.

### **88. Nature of Membership Interests**

- (1) The capital of a Company shall be divided into Membership Interests, each of which may be of a different value and class.
- (2) The rights attached to Membership Interests (or to any class of Membership Interests) shall be determined by the articles of the Company.
- (3) Each Member’s subscription in the Company’s share capital shall be considered a Membership Interest which shall not be represented by Securities and may only be transferred in accordance with the requirements set out in this Law.

- (4) At the time of incorporation of a Limited Liability Company its authorised share capital must be fully subscribed and paid for.
- (5) Each Member will hold only one Membership Interest of each class of Membership Interest. When a Member makes a new subscription or acquires an increased interest in the share capital of the Company from another Member, the value of his Membership Interest shall be increased accordingly, provided both Membership Interests are of the same class. If the Membership Interests are of a different class, then each Membership Interest will be registered separately in the Members' register.
- (6) Unless otherwise provided in the Company's articles, the allocation of profits, losses and distributions of a Limited Liability Company will be made proportionally to the value of each Membership Interest.

#### **89. Transfer of Membership Interests**

- (1) Subject to Paragraph (3), the transfer of a Membership Interest (in whole or in part) or the admission of a new Member will only be valid if authorised by a Special Resolution, unless the articles require a unanimous resolution.
- (2) When a Membership Interest will be transferred to a person that is not a Member of the Company, the existing Members will have the right of first refusal to acquire the Membership Interest to be transferred, in proportion to their Membership Interest in the Company's share capital, on the same terms as to the approved transferee. The Members will have 15 days to exercise such right of first refusal from the date the Special Resolution authorising the transfer was adopted; unless otherwise provided in such Special Resolution.
- (3) The transfer of a Membership Interest by inheritance or otherwise by operation of law, including any transfer pursuant to any order made by a court of competent jurisdiction, shall not require a Special Resolution, unless the articles provide for the dissolution of the Company upon the death of one of the Members, the liquidation of the Membership Interest of the deceased Member or otherwise.

#### **90. Reduction of share capital**

- (1) A Company if authorised by a Resolution and its articles may reduce its share capital in any way on such terms as it may decide, and in particular, by:
  - (a) either with or without extinguishing or reducing liability on any of its Membership Interests, cancelling any paid up share capital that is lost or unrepresented by available assets; or
  - (b) either with or without extinguishing or reducing liability of any of its Membership Interests, paying off any paid up share capital that is in excess of the requirements of the Company.
- (2) No Company shall reduce the amount of its share capital by virtue of Paragraph (1) unless it complies with the following:
  - (a) at a date not more than 30 days and not less than 15 days before the date from which the reduction of the share capital is to have effect, the Company shall cause a notice to be published in the appointed newspapers stating:

- (i) the amount of the share capital as last previously determined by the Company;
  - (ii) the amount to which the share capital is to be reduced; and
  - (iii) the date from which the reduction is to have effect.
- (b) on the date from which the reduction is to have effect a certificate shall be signed by any one of the Managers of the Company declaring either:
  - (i) that on that date the Company is solvent; or
  - (ii) that all the creditors of the Company on that date have consented to the reduction.
- (3) Where a Company reduces the amount of its share capital, it shall file within 30 days after the date from which the reduction has effect, a copy of the publications referred to in Paragraph (2)(a) and the certificate referred to in Paragraph (2)(b) with the Registrar stating that this Article has been duly complied with.

**91. Redemption of Membership Interests**

The redemption of a Membership Interest shall not be allowed, unless as provided in the articles and provided the redemption is carried out from net profits of the Company that may validly be used for payment of dividends or with excess share capital.

**92. Capital Increase**

- (1) A Company may increase its share capital if authorized by a Resolution.
- (2) Where a Company proposes to increase its share capital, the Members shall have a preferential right, in proportion to their Membership Interests, to increase their Membership Interests, unless otherwise provided in the articles or the Resolution approving the share capital increase.

**93. Restrictions on dividends and distributions**

- (1) A Company may pay a dividend or make a distribution at any time if:
  - (a) the dividend will be paid, or the distribution will be made, out of profits and/or surplus of the Company, as shown in the accounts of the Company prepared:
    - (i) as at the end of the last financial year in accordance with Article 103(2); or
    - (ii) where a dividend or distribution is made which is other than a Year End Dividend or Distribution, as at the end of such period as is sufficient to enable the Members to form a reasonable view as to the amount of the profits and/or surplus from which the dividend will be paid or the distribution will be made, in a manner consistent with Articles 103(2)(a) and (b); and

- (b) a Resolution has been passed immediately prior to the payment of the dividend or the making of the distribution, on reasonable grounds, that the Company will, immediately after the dividend is paid or the distribution is made, be able to pay its debts as they become due in the normal course of business.
- (2) In this Part, “distribution” means every description of distribution of a Company’s assets to its Members, whether in cash or in specie.

**94. Consequences of Unlawful Distribution**

Where a distribution, or part of a distribution, made by a Company to any of its Members is made in contravention of Article 93 and, at the time of the distribution, the Member knows or has reasonable grounds for believing that it is so made, he 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 the Company a sum equal to the value of the distribution, or that part, at that time.

**95. Members’ Register**

- (1) Limited Liability Companies shall maintain an up to date register of Members in which:
  - (a) the name;
  - (b) date of birth or incorporation;
  - (c) nationality;
  - (d) address; and
  - (e) value of Membership Interest;of each Member shall be recorded.
- (2) The particulars of the transfer of Membership Interests shall also be recorded in the Members’ register and a transfer shall not be valid before the date such transfer is recorded therein.
- (3) The Members’ register shall, during business hours, be open to the inspection of any Member of the Company without charge, and of any other person on payment of such reasonable sum as the Company may require, at the registered office of the Company, or if kept at the offices of an agent that maintains the Members’ register, then the Company shall require that the register be open for inspection during business hours at such location.
- (4) In the case of a refusal of inspection of the register, the Registrar may issue a direction requiring the Company to provide immediate inspection of the register by a Member or any other person.

**96. Administration of a Limited Liability Company**

- (1) A Limited Liability Company shall be managed by one or more Managers, which may be Members or any third party appointed by the Members.
- (2) The Managers may be appointed for a limited or undetermined term.



- (3) Unless otherwise provided in the articles, the Members may, pursuant to a Resolution, remove any Manager at any time.
- (4) If a Company does not appoint Managers, all the Members shall collectively be considered Managers of the Company.

**97. Managers' Liability**

- (1) The Members may, by Resolution, bring legal action on behalf of the Company against any Manager, for the recovery of the Company's assets.
- (2) An individual Member may also bring legal action against a Manager, unless the Members have absolved the Manager from liability by way of a Special Resolution.
- (3) A Company's creditor may bring legal action against a Manager, only through a Liquidation Committee established as per the DIFC Insolvency Law 3 of 2009 as may be amended or restated from time to time.

**98. Members' Meeting**

- (1) Unless otherwise provided in the articles, the Manager's authority may be overridden by a Resolution.
- (2) Subject to special voting rights attached to certain classes of Membership Interests, each Member shall have a right to vote at a Members' meeting, and shall have a vote valued proportionally to the percentage his Membership Interest represents in the Company's share capital.
- (3) Members' meetings may be called by the Managers or by a Member or Members whose Membership Interests represent more than one third of the Company's share capital.
- (4) The procedures for calling and conducting a Members' General Meeting shall be as set out in the articles.
- (5) If a Company fails to call a General Meeting in accordance with Paragraph (3), the Registrar may, on the application of a Manager or Member call or direct the calling of a General Meeting.

## **PART 9: ACCOUNTS AND AUDIT**

### **CHAPTER 1 – GENERAL**

#### **99. Application of this part**

This Part does not apply in relation to any Company which is an Authorised Firm, Authorised Market Institution, Recognised Body or Recognised Member under the Regulatory Law 2004 as amended from time to time.

#### **100. Waiver and Modification of Regulations**

- (1) The Board of Directors of the DIFCA may, without limiting powers conferred upon it elsewhere under the Law, make Regulations extending, waiving or modifying the application of provisions of this Part in relation to different cases or classes of case.
- (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 principles to be applied in the preparation of accounts, including:
    - (i) the creation or adoption of one or more accounting standards or codes of practice;
    - (ii) which of, and the manner in which, such accounting standards may apply to particular Companies and in particular circumstances; or
    - (iii) periods in which an accounting standard may apply; and
  - (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 154.

## **CHAPTER 2 – ACCOUNTS**

### **101. 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 or Managers 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 or Managers think fit unless specifically prescribed in the Regulations;
  - (b) preserved by the Company for at least 10 years from the date to which they relate, or for some other period as may be prescribed in the Regulations;
  - (c) at all reasonable times open to inspection by an officer or auditor of the Company; and
  - (d) otherwise kept and maintained in such manner as may be provided in the Regulations.

### **102. Financial Years**

- (1) Subject to Article 103(2) the first financial year of a Company starts on the day on which it is incorporated and lasts for a period not exceeding 18 months as may be determined by the Directors or Managers.
- (2) Where a company has become a Company by virtue of a transfer of incorporation pursuant to Articles 117 and 118, the first financial year of that Company under this Law may, at the option of the Managers or 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 for 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 for 12 months or some other period which is within 7 days either shorter or longer than 12 months as may be determined by the Directors or Managers.

### **103. Accounts**

- (1) The Directors or Managers of every Company shall cause accounts to be prepared in relation to each financial year of the Company.
- (2) The accounts shall:
  - (a) be prepared in accordance with accounting principles or standards approved by the Registrar or prescribed in Regulations;

- (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 or Managers and signed on their behalf by at least one of them.
- (4) Within 6 months after the end of the financial year, the accounts for that year shall be:
  - (a) prepared and approved by the Directors or Managers;
  - (b) examined and reported upon by an auditor; and
  - (c) laid before the annual General Meeting for discussion and, if thought fit, approval of the Shareholders or Members together with a copy of the auditor's report.
- (5) A Company shall file with the Registrar within 7 days after the annual General Meeting, a copy of the accounts and auditors report.
- (6) In this Part, references to "accounts" are to those prepared in accordance with this Article.

**104. Provision of Copy of Accounts to a Shareholder or Member**

- (1) Any Shareholder or Member of a Company is entitled, on written request made by him to the Company and without charge, to be furnished with a copy of the Company's latest audited accounts and auditor's report.
- (2) A Company shall comply with such a request within 7 days.

**CHAPTER 3 – AUDITORS**

**105. Qualification and registration of auditors**

- (1) In this Part, unless expressed otherwise, a reference to an auditor is a reference to an auditor who is registered under this Law.
- (2) The Board of Directors of the DIFCA shall make Regulations containing a set of requirements which an application for registration as an auditor must meet before such application can be accepted and registration be granted by the Registrar. Such Regulations may include requirements relating to the qualifications, experience and fitness and propriety of applicants.
- (3) The Board of Directors of the DIFCA may make Regulations providing for such requirements referred to in Paragraph (2) to be varied in cases where an application is made by a firm that is, at the time of application, regulated in a jurisdiction other than the DIFC.
- (4) The Registrar may in his absolute discretion refuse to grant an application for registration.
- (5) The Registrar may cancel the registration of an auditor on that firm's request or as otherwise provided under this Law.

**106. Register of Auditors**

- (1) The Registrar shall publish and maintain a register of current and past registrations of auditors in such manner as may be prescribed in the Regulations.
- (2) The Registrar shall make a reasonably current version of any registers maintained under this Article freely available for viewing by the public during the normal business hours of the Registrar.

**107. Appointment and Removal of Auditors**

- (1) A Company shall appoint a firm of auditors who shall examine and report in accordance with this Law upon the accounts prepared pursuant to Article 103.
- (2) A firm 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 firm has applied and been registered as an auditor under this Law.
- (3) The appointment of a firm as an auditor of a Company is taken to be an appointment of all persons who are partners of the firm and are registered as an auditor under this Part.
- (4) A Company shall at each annual General Meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual General Meeting.
- (5) The Directors or Managers may, at any time before the first annual General Meeting, appoint an auditor who shall hold office to the conclusion of the first annual General Meeting.
- (6) The Directors or Managers of a Company may fill any casual vacancy in the office of auditor on such terms as they see fit, who shall hold office to the conclusion of the next annual General Meeting.
- (7) Subject to Paragraph 6, the Company in a General Meeting may fix the auditor's remuneration.
- (8) 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 his consent under Sub-Paragraph (a).
- (9) 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.
- (10) A Company may by Resolution at any time remove an auditor notwithstanding anything in any agreement between it and the auditor.
- (11) The Court may, on application made by the Registrar, order the removal of an auditor from a Company.
- (12) Nothing in this Article is to be taken as depriving an auditor removed under it of compensation or damages payable to the auditor in respect of the termination of appointment as auditor.

**108. Auditors' Report to the Company**

- (1) A Company's auditor shall make a report to the Company's Shareholders or Members 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.

**109. Auditors' Duties and Powers**

- (1) A Company's auditor shall, in preparing the report in relation to 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.
- (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 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 the duties of the auditor.
- (4) Every auditor is entitled to receive notice of, and attend, any meeting of Shareholders or Members 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.

#### **110. 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 Paragraph (2) at the Company's registered office; and any such notice operates to bring its term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.
- (2) When an auditor ceases for any reason to hold office the auditor shall deposit at the Company's registered office:
  - (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 Members or creditors of the Company; or
  - (b) a statement of any circumstances as are mentioned above.
- (3) Where a statement under Paragraph (2) falls within Sub-Paragraph (2)(b), the Company shall within 14 days send a copy of the statement to every Shareholder or Member of the Company and to every person entitled to receive notice of General Meetings.

#### **111. Co-operation with Auditors**

- (1) A Company, and any officer of a Company, shall not knowingly or recklessly make to the Company's auditor a statement (whether written or oral) which:
  - (a) conveys or purports to convey any information or explanation which the auditor requires, or is entitled to require, as auditor of the Company; and
  - (b) is either or both:
    - (i) false, misleading or deceptive in a material particular; or
    - (ii) is such that it omits information where the omission of such information is likely to mislead or deceive the auditor.

- (2) A Company, or any officer of a Company, or any person acting under the direction or authority of such a Company or officer, shall not engage in conduct, including without limitation the:
- (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, if successful:
  - (e) obstruct the auditor in the exercise of any powers under this Chapter, or
  - (f) result in the rendering of the accounts of the Company or any other aspect of the auditor's report materially misleading.

**112. Obligation of disclosure to the Registrar**

- (1) An auditor is subject to the obligations of disclosure under Article 155.
- (2) Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the Registrar:
- (a) a notification as required under Article 155; or
  - (b) any other information or opinion in relation to any such matter;
- if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the Registrar.

**113. Supervision of Auditors**

- (1) The Court may, on application of the Registrar, and upon being satisfied that an auditor:
- (a) has contravened a provision of the Law, Regulations, or other legislation administered by the Registrar; or
  - (b) has failed, whether within or outside the DIFC, to carry out or perform duties or functions adequately or properly; or
  - (c) is otherwise not a fit and proper person to remain registered as an auditor;
- make one or more of the following orders:
- (d) an order that the Registrar cancel, or suspend for a specified period, the registration of the auditor;



- (e) an order imposing conditions or restrictions on the future conduct of the auditor;
  - (f) an order requiring the auditor to do, or refrain from doing, any act or thing; or
  - (g) any other order as the Court sees fit.
- (2) Nothing in this Article affects the powers that any person or the Court may have apart from this Article.

## **PART 10: OTHER TYPES OF COMPANY**

### **114. 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 prescribed in this Part or 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 the company's articles 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 or of the Regulations or other legislation administered by the Registrar, with the exception of Parts 1 and 2 and Chapters 1 and 2 of Part 13 of this Law, where considered necessary or desirable to facilitate the incorporation of, conversion to, and management and functions of, such a company.
- (3) The Law will apply to a company to which this Article applies except where the provisions of or the context of the Law or Regulations or other legislation administered by the Registrar provide otherwise.

## **PART 11: RECOGNISED COMPANIES**

### **115. Foreign companies**

- (1) A Foreign Company shall not carry on business in the DIFC unless:
  - (a) it is registered as a Recognised Company under this Part; or
  - (b) it has submitted all necessary documents and information to be so registered in accordance with the requirements of the Registrar and the application has not been dealt within a reasonable time.
- (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) In the event that a Recognised Company becomes continued as a Company the Registrar shall strike off the registration of Recognised Company on registration of the Company.

### **116. Requirements of a Recognised Company**

- (1) A Recognised Company shall:
  - (a) appoint and retain at all times at least one 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) file with the Registrar 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) any change in the details of persons authorised to accept service and the address of its principal place of business in the DIFC;
    - (iv) any change in the Recognised Company's shareholders or members;
    - (v) any change in the Recognised Company's directors, managers or secretary, in the form and manner required in the Regulations;
  - (d) submit to the Registrar on annual basis a copy of its annual return filed in its jurisdiction of incorporation; and

- (e) comply with any other requirement as may be prescribed in the Regulations.
- (2) The Board of Directors of the DIFCA may make Regulations:
  - (a) prescribing procedures in relation to requirements under this Part; and
  - (b) waiving or modifying any requirements under this Part in relation to different cases or classes of case.

## **PART 12: TRANSFER OF INCORPORATION**

### **117. Transfer of incorporation to DIFC**

- (1) A Foreign Company may, if authorised by the laws of the jurisdiction in which it was 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 Article 12(1); 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.

### **118. 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
  - (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 he considers it appropriate to do so. This decision is final and not subject to appeal or review by the Court.
- (3) The Registrar is not required to provide reasons for refusing to issue a certificate of continuation.

### **119. 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 the Company ; and

- (c) the certificate of continuation is treated as the certificate of incorporation of the Company.

**120. Copy of certificate of continuation**

The Registrar shall 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.

**121. 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, disabilities 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.

**122. 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 Paragraph (1) unless the laws of the foreign jurisdiction provide that the Foreign Company:

- (a) will continue to have all the property, rights and privileges and is subject to all the liabilities, disabilities and debts that it had before the continuation; and
- (b) will 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 must strike the name of the company off the Register.

**123. Refusal to grant authorisation to transfer incorporation**

- (1) The Registrar may refuse to authorise a Company to apply to be continued under Article 122(1).

- (2) The Company may appeal to the Court from a decision of the Registrar under Paragraph (1).

## **PART 13: INSPECTION AND REMEDIES**

### **CHAPTER 1 – POWERS OF INSPECTION**

#### **124. Appointment of inspectors**

- (1) The Registrar may, should he consider it necessary or desirable in the pursuit of his objectives, appoint one or more Inspectors to investigate the affairs of a Company and to submit such written report as the Registrar may direct.
- (2) Inspectors appointed under Paragraph (1) may, with the consent of the Registrar, also investigate and report on the affairs of another company that is or was related to the Company in respect of which they were initially appointed.
- (3) The Registrar shall inform the DFSA prior to appointing Inspectors under Paragraph (1) to investigate the affairs of a Company licensed, registered or recognised by the DFSA.

#### **125. Production of books, records and assistance**

- (1) If Inspectors appointed under Article 124 suspect that any person may be in possession of books, records or information relevant to the investigation, they may require such person:
  - (a) to produce any books and records in his custody or power relating to the affairs of the company;
  - (b) to attend before them at reasonable times and on reasonable notice and answer all questions put to them relevant to the affairs of the company; and
  - (c) to give reasonable assistance to them in connection with the investigation.
- (2) If Inspectors appointed under Article 124 have reasonable grounds for suspecting that a Director or past Director of a company maintains or has maintained a bank account of any description, whether alone or jointly with another person, into or out of which has been paid money which is in any way related to the affairs of the company the subject of investigation, the Inspectors may require the Director to obtain and produce all books and records in his custody or power relating to the bank account.
- (3) A person in respect of whom a requirement is made by an Inspector pursuant to Paragraphs (1) or (2) shall comply with that requirement.

#### **126. Inspectors' reports**

- (1) The Inspectors shall make a written report to the Registrar at the conclusion of their investigation.
- (2) The Inspectors shall make such interim reports, if any, to the Registrar that the Registrar may require.
- (3) The Registrar may, upon receipt of a report by an Inspector, do any one or more of the following:



- (a) provide a copy to the Company to which the report relates with or without a direction that it be disclosed to the members;
- (b) provide a copy of the report to any person whose financial interests may have been affected by the matters dealt with in the report;
- (c) cause the report to be published;
- (d) in the case of a Company licensed, registered or recognised by the DFSA, provide a copy of the report to the DFSA.

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

### **127. Direction to Company to comply with the Law**

- (1) If a Company or any officer of it fails to comply with:
  - (a) a provision of this Law or of the Regulations or of any legislation administered by the Registrar; or
  - (b) a requirement made by the Registrar pursuant to any power under such Law, Regulations, or other legislation;

which requires either or both of them to deliver to or file with the Registrar any document, or to give notice to him of any matter, the Registrar may issue a direction that the Company or any officer of it or both of them make good the failure within a time specified in the direction.

- (2) If a Company or any officer of it fails to comply with a provision of this Law or of the Regulations or of any legislation administered by the Registrar which requires either or both of them to comply with a lawful requirement in relation to another person, including without limitation:
  - (a) a requisition of Shareholders or Members to call a General Meeting under Articles 63(1) or 98(3); or
  - (b) the provision of a copy of accounts and report to a Shareholder or Member pursuant to a request under Article 104(1);

the Registrar may issue a direction that the Company or any officer of it or both of them make good the failure within a time specified in the direction.

- (3) If the Registrar considers that the Company or any officer of it has failed to comply with the direction, he may apply to the Court for one or more of the following orders:
  - (a) an order directing the Company or officer to comply with the direction or with any provision of the Law or of the Regulations or of any legislation administered by the Registrar relevant to the issue of the direction;
  - (b) an order directing the Company or officer to pay any costs incurred by the Registrar or other person relating to the issue of the direction by the Registrar or

the contravention of such Law, Regulations or legislation relevant to the issue of the direction; or

- (c) any other order that the Court considers appropriate.
- (4) Nothing in this Article prejudices the operation of any Article imposing penalties on a Company or any officer of it in respect of a failure mentioned above, nor any powers that the Registrar or other person or the Court may have under any other provision of the Law.

## **128. Dissolution of Companies**

- (1) A Company's Shareholders or Members may agree through a Special Resolution to voluntarily wind up the Company, in accordance with the process set out in the DIFC Insolvency Law 3 of 2009 as may be amended from time to time.
- (2) If the Registrar has reason to believe that:
- (a) a Company is not carrying on business or is not in operation;
  - (b) a Company is acting in contravention of this Law; or
  - (c) it is prejudicial to the interests of the DIFC for a Company to remain on the register, he may give notice to the Company that at the conclusion of three months from the date of the notice, the Company shall be struck off the register unless reason is shown to the contrary.
- (3) If the Company to whom the notice under Paragraph (2) is to be given is licensed, registered or recognised by the DFSA, the Registrar shall first obtain the consent of the DFSA prior to giving such notice.
- (4) If by the end of the three month period the Registrar:
- (a) has received confirmation that the Company is no longer carrying on business or is not in operation; or
  - (b) has not received from the Company sufficient reasons as to why the Company should not be struck off the register; and
  - (c) if the Company is licensed, registered or recognised by the DFSA, has obtained the consent of the DFSA, the Registrar may strike the name of the Company off the register and the Company shall be dissolved.
- (5) If, where a Company is being wound up in a creditors' winding up, the Registrar has reason to believe either that no liquidator is acting, or that the affairs of the Company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar may give notice to the Company or the liquidator (if any) similar to that provided for in Paragraph (2).
- (6) At the end of the period mentioned in the notice the Registrar shall, unless reason to the contrary is shown by the Company, creditor or liquidator, strike the name of the Company off the register and the Company will be Dissolved.

- (7) Where a Company is struck off the register under this Article, the liability of every Director or Manager and Shareholder or Member of the Company continues and may be enforced as if the Company had not been Dissolved.
- (8) The Court may, on application of a person aggrieved by a decision of the Registrar under this Article, make an order or orders to stay, affirm, revoke or vary the decision of the Registrar and any other order as the Court considers appropriate, provided that such an order shall not be inconsistent with any provision in the Insolvency Law regarding the Dissolution of Companies.

**129. Enforceable undertakings**

- (1) The Registrar may accept a written undertaking given by a person where the Registrar considers the provision and acceptance of such an undertaking is necessary or desirable in the pursuit of his objectives.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Registrar.
- (3) If the Registrar considers that the person who gave the undertaking has been in breach of any of its terms, he may apply to the Court for an order under Paragraph (4).
- (4) If the Court is satisfied that the person has been in breach of a term of the undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to any person or to the Registrar an amount up to the amount of any profit, gain or benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

**CHAPTER 3 – GENERAL CONTRAVENTIONS**

**130. General contraventions provision**

- (1) A person who:
  - (a) does an act or thing that the person is prohibited from doing by or under an Article of this Law referred to in Schedule 2;
  - (b) does not do an act or thing that the person is required or directed to do under an Article of this Law referred to in Schedule 2; or
  - (c) otherwise contravenes an Article of this Law referred to in Schedule 2;commits a contravention of this Law.

- (2) Under this Article, ‘person’ does not include the DIFCA, Registrar, DFSA or President.

**131. Involvement in contraventions**

- (1) If a person is knowingly concerned in a contravention of the Law or Regulations or other legislation administered by the Registrar committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (2) Without limiting the generality of Paragraph (1), if an officer of a body corporate is knowingly concerned in a contravention of the Law or Regulations or other legislation administered by the Registrar committed by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a body corporate are managed by its members, Paragraph (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a Director of the body corporate.
- (4) For the purposes of this Article, “officer” means a Director, member of a committee of management, chief executive, Manager, secretary or other similar officer of the body corporate or association, or a person purporting to act in such capacity, and an individual who is a controller of the body.
- (5) For the purposes of this Article, a person is ‘knowingly concerned’ in a contravention if, and only if, the person
- (a) has aided, abetted, counselled or procured the contravention;
  - (b) has induced, whether by threats or promises or otherwise, the contravention;
  - (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
  - (d) has conspired with another or others to effect the contravention.
  - (e) has, alone or in concert with others, directly or indirectly, done, attempted or planned any of the following:
    - (i) conceal the existence or extent or nature of a contravention; or
    - (ii) obstruct, impede or prevent competent authorities within the DIFC from detecting, investigating or prosecuting a contravention.
- (6) In this Article, ‘person’ does not include the DIFCA, Registrar, DFSA or President.

**132. Administrative imposition of fines**

- (1) The Board of Directors of the DIFCA shall prescribe in Regulations procedures in relation to the imposition and recovery of fines under this Article.

- (2) Where the Registrar considers that a person has contravened a provision of the Law referred to in Schedule 2 and in relation to which a fine is stipulated in that Schedule, it may impose by written notice given to the person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding the amount of the maximum fine specified in Schedule 2 in respect of each contravention.
- (3) If, within the period specified in the notice:
  - (a) the person pays the prescribed fine to the Registrar, then no proceedings may be commenced by the Registrar against the person in respect of the relevant contravention; or
  - (b) the person takes such action as is prescribed in the Regulations to object to the imposition of the fine or has not paid the prescribed fine to the Registrar, then the Registrar may apply to the Court for, and the Court may so order, the payment of the fine or so much of the fine as is not paid and make any further order as the Court sees fit for recovery of the fine.
- (4) A certificate that purports to be signed by the Registrar and states that a written notice was given to a person pursuant to Paragraph (2) imposing a fine on the basis of specific facts is:
  - (a) conclusive evidence of the giving of the notice to the person; and
  - (b) prima facie evidence of the facts contained in the notice;in any proceedings commenced under Paragraph (3).

## **CHAPTER 4 – APPLICATIONS TO COURT**

### **133. Orders for compensation**

- (1) Where a person intentionally, recklessly or negligently commits a breach of any requirement, duty, prohibition, responsibility or obligation which is imposed by or under the Law or Regulations or other legislation administered by the Registrar, the person is liable to compensate any other person for any loss or damage caused to that other person as a result of such conduct, and is otherwise liable to restore such other person to the position they were in prior to such conduct.
- (2) Where a person suffers loss or damage caused as a result of conduct described in Paragraph (1), the Court may, on application brought by the person, make orders for the recovery of damages or for compensation or for the recovery of property or any other order as the Court sees fit, except where such liability is excluded under the Law or Regulations or other legislation administered by the Registrar.
- (3) Nothing in this Article affects the powers that any person or the Court may have apart from this Article.

### **134. 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 or Members generally or of one or more Shareholder or Members; 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 or more Shareholders or Members of the Company, make one 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) authorise 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 members of the Company by other members 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 the articles, the Company shall not then without leave of the Court make any such alteration.
- (3) An alteration in the Company's articles 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 as so altered accordingly.
- (4) The order of the Court recording the making of an order under this Article altering, or giving leave to alter, a Company's articles shall, within 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 powers that any person or the Court may have apart from this Article.

### **135. Compulsory winding up**

- (1) The Registrar may apply to the Court for the winding up of a Company if:
- (a) either:
    - (i) a Company is acting or has acted in contravention of the Law or Regulations or other legislation administered by the Registrar; or
    - (ii) it is in the interests of the Shareholders or Members of the Company, or of the creditors, for a Company to be wound up, and
  - (b) it is just and equitable and in the interests of the DIFC for a Company to be wound up;

unless such Company is licensed, registered or recognised by the DFSA.

- (2) The Court may make any orders considered necessary or desirable for the winding up of the Company.
- (3) Nothing in this Article affects the powers that any person or the Court may have apart from this Article.

### **136. Appointment of a Receiver**

- (1) In this Article, “relevant requirement” means a requirement, duty, prohibition, responsibility or obligation which is imposed by or under the Law or Regulations or other legislation administered by the Registrar.
- (2) Where:
  - (a) the Registrar has appointed an Inspector or Inspectors to conduct an investigation into the affairs of a Company;
  - (b) a civil or regulatory proceeding has been instituted, by the Registrar or otherwise, against a person as a result of that person’s conduct in relation to the affairs of a Company; or
  - (c) a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention of a relevant requirement;

the Court may, on application of the Registrar or any other person, make an order appointing a receiver or receiver and Manager, having such powers as the Court may see fit, of the property or any of the property of the relevant Company.
- (3) Nothing in this Article affects the powers that any person or the Court may have apart from this Article.

### **137. Power of Court to grant relief in certain cases**

- (1) If in proceedings relating to breach of a requirement, duty, prohibition, responsibility or obligation imposed by or under the Law or Regulations or other legislation administered by the Registrar commenced against an officer of a Company or a person employed by a Company as auditor it appears to the Court that such officer or person is or may be liable in respect of his conduct but that he has acted honestly and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for his conduct, the Court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.
- (2) If an officer or person mentioned in Paragraph (1) has reason to apprehend that a claim will or might be made against him in respect of a breach of a requirement, duty, prohibition, responsibility or obligation imposed by or under the Law or Regulations or other legislation administered by the Registrar he may apply to the Court for relief; and the Court on the application has the same power to relieve him as it would have had if proceedings against that person for such breach had been brought.

**138. Effect of provisions**

For the avoidance of doubt, nothing in any Article in this Part limits the generality of any other Article in this Part, or the generality of any other provision in the Law or Regulations or other legislation administered by the Registrar, which may provide for administrative remedies or the commencement of proceedings in the Court.



## **PART 14: GENERAL PROVISIONS**

### **CHAPTER 1 – THE BOARD OF DIRECTORS OF THE DIFCA**

#### **139. The powers and functions of the Board of Directors of the DIFCA**

- (1) Without in any way limiting the powers and functions conferred elsewhere under the Law or under any other law made by the Ruler, the Board of Directors of the DIFCA has powers and functions to:
  - (a) ensure that the Registrar exercises his statutory powers and performs his statutory functions in accordance with his objectives;
  - (b) review the performance of the Registrar and the use of his resources; and
  - (c) after consultation with the President, give the Registrar written directions as to the furtherance of any of his regulatory objectives or the performance of any of his statutory functions. Such written directions shall not constitute Regulations.
- (2) Except in respect of the powers and functions set out in Paragraph (1), the Board of Directors of the DIFCA may delegate to the Registrar such of its powers or functions as may appropriately and more efficiently and effectively be exercised or performed by such person.

#### **140. Power to make Regulations**

- (1) The Board of Directors of the DIFCA may make Regulations in respect of any matters related to the objectives, powers or functions of the Registrar or which facilitate the administration of, or further the purpose of, any law administered by the Registrar.
- (2) In particular, the Board of Directors of the DIFCA when exercising the power in Paragraph (1) may make Regulations in respect of:
  - (a) forms, procedures and requirements under the Law;
  - (b) the keeping of public registers and databases; and
  - (c) the conduct of the Registrar and his officers, employees and agents in relation to the exercise of powers and performance of functions, including the exercise of discretionary powers and powers to conduct investigations and hearings.
- (3) Where the Board of Directors of the DIFCA issues a standard or code of practice, the Board of Directors of the DIFCA may incorporate such a standard or code into the Regulations by reference and in such circumstances, except to the extent that the Regulations otherwise provide, a person who is subject to the provisions of any such standard or code must comply with such provisions as if they were provisions of the Regulations.
- (4) Where any legislation made under this Law purports to be made in exercise of a particular power or powers, it shall be taken also to be made in the exercise of all powers under which it may be made.

- (5) For the avoidance of doubt, any regulations made under Article 116 of the Companies Law 2004 or Article 140 of the Companies Law 2006 shall have effect as if they were Regulations made under this Article.
- (6) Regulations under this Article may:
  - (a) make different provision for different cases or circumstances;
  - (b) include supplementary, incidental and consequential provision; and
  - (c) make transitional provision and savings.
- (7) Article 140(6) shall apply not only in relation to Regulations made on or after the date on which this Law comes into force , but also in relation to Regulations made before that date.

#### **141. Publication of draft Regulations**

- (1) The Board of Directors of the DIFCA shall publish draft Regulations by means of a notice.
- (2) The notice of draft Regulations must include the following:
  - (a) the draft text of the Regulations;
  - (b) a statement of the substance and purpose of the material provisions of the draft Regulations; and
  - (c) a summary of the draft Regulations.
- (3) Upon publication of a notice under Paragraph (2), the Board of Directors of the DIFCA shall invite interested persons to make representations with respect to the draft Regulations within a period of at least 30 days after the publication, or within such period as the Board of Directors of the DIFCA may otherwise determine.
- (4) Paragraphs (1), (2) and (3) shall not apply if the Board of Directors of the DIFCA concludes that any delay likely to arise under such Articles is prejudicial to the interests of the DIFC.
- (5) Any period of time during which the Board of Directors of the DIFCA invites interested persons to make representations with respect to draft Regulations prior to this Article coming into effect shall be deemed to count as part or all of the period referred to in Paragraph (3).

### **CHAPTER 2 – THE REGISTRAR**

#### **142. Reporting by the Registrar**

- (1) The Registrar shall report to the Board of Directors of the DIFCA in such manner as the Board of Directors of the DIFCA may direct.

- (2) The Board of Directors of the DIFCA shall provide the President with a written report on the exercise of the powers and performance of the functions of the Registrar and of his financial activities.
- (3) Such report shall be prepared and provided before the end of the first quarter of the financial year of the Registrar or within such other period as the President may require and shall relate to the previous financial year.
- (4) Such report shall be published by the Board of Directors of the DIFCA without undue delay, or within such time period as the President otherwise directs.

**143. Record keeping**

The Registrar shall make suitable arrangements for keeping appropriate records in relation to the exercise of his powers and the performance of his functions.

**144. Conflicts of interest**

- (1) Officers, employees and agents of the Registrar shall disclose material conflicts of interest to which they are subject in performing their functions. Such disclosure shall be made without undue delay to the person to whom such officer, employee or agent reports.
- (2) Officers, employees and agents of the Registrar shall not participate in the making of decisions on matters in relation to which they are subject to a material conflict of interest, save that breach hereof shall not result in such decision being invalid.

**145. Confidential information**

- (1) Subject to Paragraph (3), confidential information must not be disclosed by the Registrar or by any of its officers, employees or agents, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.
- (2) Information is confidential when:
  - (a) it is received by the Registrar or any of its officers, employees or agents in the course of the performance by such person of a function under the Law or under any other legislation administered by the Registrar; and
  - (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under such Law or other legislation.
- (3) The Registrar may, and shall where directed by the Board of Directors of the DIFCA, disclose confidential information where such disclosure:
  - (a) is permitted or required under the Law or Regulations or under other legislation administered by the Registrar;
  - (b) is permitted or required by any other law;

- (c) is made to the DFSA for the purpose of assisting the DFSA in performing its regulatory functions: or
- (d) is made in good faith for the purposes of performance and exercise of the functions and powers of the Registrar.

**146. Financial year**

- (1) The financial year of the Registrar commences on 1 January in each calendar year or such other date as the President may specify.
- (2) The first financial year of the Registrar commences on commencement of this Article and ends at the date arrived at under Paragraph (1) for the next financial year.

**147. The annual budget of the Registrar**

- (1) The Board of Directors of the DIFCA shall submit to the President for his approval estimates of the annual income and expenditure of the Registrar for the next financial year.
- (2) Such estimates shall include figures relating to levels of remuneration and entitlement to expenses of the officers, employees and agents of the Registrar.
- (3) The Board of Directors of the DIFCA shall submit such estimates to the President for his approval not later than the end of the financial year.
- (4) The President may on reasonable grounds reject such estimates within 30 days of receiving them, such rejection to be addressed in writing with reasons to the Board of Directors of the DIFCA.
- (5) Unless the estimates have been approved by the President under Paragraph (3) or rejected under Paragraph (4), they shall be deemed to have been approved on expiry of the 30 days.

**148. Funding and Fees**

- (1) In respect of each financial year of the Registrar, the office of the President shall provide financial resources to the Registrar to the extent necessary to ensure that he is able adequately to perform his functions and exercise his powers.
- (2) The Registrar may invest his financial resources which are not immediately required in accordance with an investment policy approved in advance by the President and the Board of Directors of the DIFCA.
- (3) The Board of Directors of the DIFCA may make Regulations requiring the payment to the Registrar of such fees as may be prescribed in respect of:
  - (a) the performance by the Registrar of such functions under this Law as may be specified in the Regulations, including the receipt by him of any document under this Law which is required to be delivered to him; and
  - (b) the inspection of documents or other material held by him under this Law.

- (4) The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by this Law.
- (5) Where a fee is provided for or charged under this Article for the performance of an act or duty by the Registrar, no action need be taken by him until the fee is paid, and where the fee is payable on the receipt by him of a document required to be delivered to him he shall be deemed not to have received it until the fee is paid.

**149. Accounts**

- (1) The Registrar shall keep proper accounts of his financial activities.
- (2) The Registrar shall, before the end of the first quarter of the financial year, prepare financial statements for the preceding financial year in accordance with the accounting standards specified in Regulations made by the Board of Directors of the DIFCA.
- (3) Such financial statements shall in any event give a true and fair view of the financial activities of the Registrar as at the end of the previous financial year and of the results of his operations and cash flows in the financial year.
- (4) On completion of their preparation, such statements shall be, where appropriate to do so, approved by the Board of Directors of the DIFCA.
- (5) In this Article 'preceding year' does not include any financial year ending before the end of 2003.

**150. Audit**

- (1) The Board of Directors of the DIFCA shall appoint auditors to conduct an audit in relation to each financial year of the Registrar.
- (2) The Board of Directors of the DIFCA shall, as soon as reasonably practicable after the preparation and approval of the financial statements of the Registrar, provide such statements to the relevant auditors for audit.
- (3) The auditors shall prepare a report on the financial statements and send the report to the Board of Directors of the DIFCA.
- (4) Such report shall, where appropriate, include a statement by the auditors as to whether or not, in their opinion, the financial statements to which the report relates give a true and fair view of the state of the financial activities of the Registrar as at the end of the financial year to which the financial statements relate and of the results of his operations and cash flows in the financial year.
- (5) The auditors shall have a right of access at all reasonable times to all information which is reasonably required by them for the purposes of preparing the report and which is held or controlled by any officer, employee or agent of the Registrar.
- (6) The auditors shall be entitled reasonably to require from the officers, employees and agents of the Registrar such information and explanations they consider necessary for the performance of their duties as auditors.

- (7) A person shall not without reasonable excuse intentionally engage in conduct that results in the obstruction of a person appointed under Paragraph (1) in the exercise of his powers under this Article.
- (8) The Board of Directors of the DIFCA shall, before the end of the first quarter of the financial year of the Registrar or within such other period as the President may require, submit to the President copies of:
  - (a) the approved financial statements of the Registrar for the previous financial year; and
  - (b) the report of the auditors on the financial statements.

**151. Taxation**

The income of the Registrar shall not be subject to taxation.

**152. Liability**

- (1) Subject to Paragraph (2), the Registrar may be sued in his corporate capacity.
- (2) Neither the Registrar nor the DIFCA nor any officer, employee or agent of them can be held liable for anything done or omitted to be done in the performance or purported performance of the functions or in the exercise or purported exercise of any power of the Registrar or of the Board of Directors of the DIFCA.
- (3) Paragraph (2) does not apply if the act or omission is shown to have been in bad faith.

**153. Independent review of the Registrar**

- (1) The President may appoint an independent person to review and report to the President on any aspect of the efficiency and effectiveness of the Registrar in the use of his resources.
- (2) The office of the President shall meet the reasonable expenses incurred by such person in preparing the report.
- (3) A person appointed under Paragraph (1) has a right of access at all reasonable times to all information which is reasonably required by him for the purposes of preparing the report and which is held or controlled by any officer, employee or agent of the Registrar.
- (4) Such person shall be entitled reasonably to require from the officers, employees and agents of the Registrar such information and explanations as he considers necessary for the purpose of preparing the report.
- (5) A person shall not, without reasonable excuse, intentionally engage in conduct that results in the obstruction of a person appointed under Paragraph (1) in the exercise of his powers under this Article.

## CHAPTER 3 – MISCELLANEOUS

### 154. Waivers and modification of Law or Regulations

- (1) In this Article, a reference to a “relevant provision” is a reference to:
  - (a) any provision of the Law which is expressed to be subject to this Article; or
  - (b) any provision of the Regulations.
- (2) The Registrar may:
  - (a) on the application of a person; or
  - (b) with the consent of a person;by means of a written notice provide that one or more relevant provision either:
  - (c) shall not apply in relation to such person; or
  - (d) shall apply to such person with such modifications as are set out in the written notice.
- (3) A written notice may be given subject to conditions.
- (4) A person to whom a condition specified in a written notice applies must comply with the condition. In the event of failure to comply with a condition, the Registrar may, without limiting any other powers that he may have, apply to the Court for an order, including an order that the person must comply with the condition in a specified way.
- (5) Unless the Registrar is satisfied that it is inappropriate or unnecessary to do so, he must publish a written notice in such a way as he considers appropriate for bringing the notice to the attention of:
  - (a) those likely to be affected by it; and
  - (b) others who may be likely to become subject to a similar notice.
- (6) The Registrar may:
  - (a) on his own initiative or on the application of the person to whom it applies, withdraw a written notice; or
  - (b) on the application of, or with the consent of, the person to whom it applies, vary a written notice.
- (7) The Board of Directors of the DIFCA may make Regulations in connection with the provision of a written notice under this Article, including Regulations prescribing procedures for the making of applications and providing of consents.

**155. Obligation of disclosure to the Registrar**

- (1) Subject to Paragraph (2), a Company or an auditor of a Company shall disclose to the Registrar any matter which reasonably tends to show one of the following:
  - (a) a contravention, or likely contravention of a provision of the Law or Regulations or other legislation administered by the Registrar;
  - (b) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or
  - (c) any other matter as the Board of Directors of the DIFCA may prescribe in Regulations;

which may be attributable to the conduct of the relevant Company or of its officers, employees or agents.

- (2) Paragraph (1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (3) A Company shall establish and implement appropriate systems and internal procedures to enable its compliance with Paragraph (1).
- (4) Any provision in an agreement between a Company and an officer, employee, agent or auditor is void in so far as it purports to hinder any person from causing or assisting a Company to comply with an obligation under Paragraph (1).
- (5) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist a Company to comply with an obligation under Paragraph (1).
- (6) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Paragraph (5).

**156. Disclosures to the Registrar**

A person is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of the giving of information or production of a document by the person to the Registrar:

- (a) in good faith; and
- (b) in reasonable belief that the information or document is relevant to any functions of the Registrar;

whether such information or document is given or produced pursuant to a requirement at law or otherwise.

**157. Irregularities**

- (1) In this Article:



- (a) “procedure” is a reference to any procedure including but not limited to the making of a decision, the conduct of a hearing, the giving of a notice, and any proceeding whether a legal proceeding or not; and
  - (b) “procedural irregularity” includes a reference to a defect, irregularity or deficiency of notice or time.
- (2) A procedure under the Law or the Regulations or any other legislation administered by the Registrar is not invalidated because of any procedural irregularity unless the Court declares the procedure to be invalid.
- (3) A person may apply to the Court for an order:
- (a) declaring that:
    - (i) any act or thing purporting to have been done; or
    - (ii) any procedure purporting to have been commenced or undertaken;

under the Law or the Regulations or any other legislation administered by the Registrar is not invalid by reason of any contravention of a provision of such Law, Regulations or other legislation; or
  - (b) extending or abridging the period for doing any act, matter or thing or commencing or undertaking any procedure under the Law or the Regulations or any other legislation administered by the Registrar;

where any such act or thing, or procedure, is essentially of a procedural nature.

**158. False or misleading information**

A person shall not:

- (a) provide information which is false, misleading or deceptive to the Registrar; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the Registrar.

**159. Compliance with an order or direction of the Registrar**

Where the Registrar makes an order, issues a direction or makes a requirement in relation to a person pursuant to a provision of this Law or Regulations or legislation administered by the Registrar, such person must comply with such order, direction or requirement.

**160. Forms and filing of material with the Registrar**

The Board of Directors of the DIFCA may by means of Regulations:

- (a) require the filing or delivery of certain material with the Registrar, including without limitation in relation to applications for registration of a Company;

- (b) provide for the manner in which any document to be filed with the Registrar is to be, or to be deemed, signed (including authentication by electronic means), and by whom;
- (c) prescribe the manner in which such material shall be filed;
- (d) prescribe which material, or parts of the material, shall be made available for viewing by the public during the normal business hours of the Registrar;
- (e) permit or require the use of an electronic or computer-based system for the filing, delivery or depositing of, documents or information required under or governed by the Law or Regulations or other legislation administered by the Registrar, and any ancillary documents; and
- (f) prescribe the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose under the Law.

**161. Publication by the Registrar**

- (1) The Registrar shall make available to the public without undue delay after their making or issuing:
  - (a) Regulations made by the Board of Directors of the DIFCA; and
  - (b) Guidance in the form of:
    - (i) guidance made and issued by the Registrar under the Law; and
    - (ii) a standard or code of practice issued by the Board of Directors of the DIFCA which has not been incorporated into the Regulations.
- (2) The Registrar may publish in such form and manner as it regards appropriate information and statements relating to the practices and procedures of the Registrar, decisions of the Court, and any other matters which the Registrar considers relevant to the conduct of affairs in the DIFC.
- (3) Publications made under this Article may be provided with or without charge as the Board of Directors of the DIFCA may determine.

**162. Public Registers**

- (1) The Registrar shall publish and maintain a register of current and past registrations of Companies in such manner as may be prescribed in the Regulations.
- (2) The Registrar shall make a reasonably current version of any register maintained under this Article freely available for viewing by the public during the normal business hours of the Registrar.

**163. Language**

The Registrar may require communication to which it is a party to be conducted in the English language.

## **SCHEDULE 1**

### **1. Rules of interpretation**

- (1) In the Law, 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 the Law, include publishing or causing to be published in printed or electronic form;
  - (d) a day shall refer to a business day, being a normal working day in the DIFC;
  - (e) a calendar year shall mean a year of the Gregorian calendar;
  - (f) a reference to the masculine gender includes the feminine and vice versa; and
  - (g) where relevant the singular shall include the plural and vice versa.
- (2) The headings in the Law shall not affect its interpretation.
- (3) References in this Law to a body corporate include a company incorporated outside DIFC.
- (4) A reference in this Law to a Part, Article or Schedule by number only, and without further identification, is a reference to the Part, Article or Schedule of that number in this Law.
- (5) A reference in an Article or other division of this Law to a Paragraph, Sub-Paragraph or Article by number or letter only, and without further identification, is a reference to the Paragraph, Sub-Paragraph or 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.

### **2. Legislation in the DIFC**

References to legislation and Guidance in the 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, the Law), as applicable in the DIFC;
- (d) the Law is the Companies Law, DIFC Law No. 2 of 2009 made by the Ruler;
- (e) the Regulations are legislation made by the Board of Directors of the DIFCA under the Law and are binding in nature;
- (f) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the Registrar under the Law; 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
- (g) references to “legislation administered by the Registrar” are references to DIFC Law and Regulations conferring functions and powers on the Registrar.

### 3. **Defined Terms**

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

<b>Terms</b>	<b>Definitions</b>
acquisition value	has the meaning set out in Article 75(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 or Members of a Company as an annual General Meeting in each year.
appointed newspapers	a newspaper 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, as determined by the board of Directors.
articles	in relation to a Company, its articles of association as originally framed or as altered.
Board of Directors of the DIFCA	the governing body of the DIFCA.
body corporate	has the meaning given in Article 1 of Schedule 1 to the Law.
Company	a Company Limited by Shares or a Limited Liability Company, in each case, incorporated or continued under this Law.

<b>Terms</b>	<b>Definitions</b>
Company Limited by Shares	a body corporate of the type defined in Article 31 of this Law.
capitalisation issue	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.
Court	the DIFC Court as established under Dubai Law.
creditors	includes present, future and contingent creditors and, in relation to a Protected Cell Company which if it is an authorised collective investment scheme, also includes any investor.
DFSA	the Dubai Financial Services Authority.
DIFC	the Dubai International Financial Centre.
DIFCA	the DIFC Authority established under Dubai law.
Director	a person occupying the position of Director of a Company Limited by Shares, by whatever name called.
Dissolved	in relation to a Company, means dissolved under this Law or DIFC Law relating to insolvency of companies.
distribution	has the meaning given in Article 49(3).
document	includes summons, notice, statement, return, account, order and other legal process, and registers.
financial year	has the meaning given in Article 146
Foreign Company	a company incorporated in any jurisdiction other than the DIFC.
General Meeting	a meeting of Shareholders or Members of a Company.
Guidance	has the meaning given in Article 2 of Schedule 1 to the Law.
holding company	has the meaning given in Article 4 of Schedule 1 of this Law.
incorporator	a person to whom issued Shares are allotted in a Company Limited by Shares upon its incorporation or a person which subscribes for a Membership Interest upon the incorporation of a Limited Liability Company.
Insolvency Law	DIFC law relating to the insolvency of Companies.

<b>Terms</b>	<b>Definitions</b>
Law	the DIFC Companies Law.
Legislation	includes regulations or rules made under legislation.
Liability	includes any debt or obligation.
Limited Liability Company	a body corporate of the type defined in Article 83 of this Law.
Manager	a person occupying the position of Manager of a Limited Liability Company by whatever name called.
market value	for the purposes of Article 47(3), the value at which Shares were last traded on a stock exchange as at close of trading on the relevant date.
Member	the person entered in the register of Members as the holder of a Membership Interest in a Limited Liability Company.
Membership Interest	the interest held by a Member in the share capital of a Limited Liability Company.
officer	in relation to a body corporate, means: (i) a Director or secretary of a Company Limited by Shares; (ii) a Manager of a Limited Liability Company; (iii) receiver or a receiver and Manager; (iv) an administrator of a deed of company arrangement executed by the body corporate; (v) an official manager; or (vi) a liquidator or a provisional liquidator.
paid up	includes credited as paid up.
person	has the meaning given in Article 1 of Schedule 1 to the Law.
personal representative	the executor or administrator for the time being of a deceased person.
Prescribed	prescribed by Regulation made by the Registrar.
President	the president of the DIFC appointed by a decree of the Ruler pursuant to Dubai Law.
printed	includes typewritten and a photocopying of a printed or typewritten document.
Privileged Communication	a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality.

<b>Terms</b>	<b>Definitions</b>
Recognised Company	a Foreign Company registered pursuant to Article 115.
records	documents and other records however stored.
Registrar	the Registrar of Companies appointed pursuant to Article 7.
Regulations	has the meaning given in Article 2 of Schedule 1 to the Law.
Resolution	<p>with respect to Companies Limited by Shares, 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.</p> <p>with respect to Limited Liability Companies, a resolution passed by the votes of Members holding Membership Interests representing more than 50% (fifty percent) of the share capital of the Company held by Members entitled to vote and voting 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.</p>
Ruler	the ruler of the Emirate of Dubai.
Schedule	a schedule to the Law.
Share	a share in the share capital of a Company Limited by Shares.
share capital	the total amount of capital paid to a Company by Shareholders or Members through the subscription and corresponding payment for all Shares or Membership Interests.
Share value	with respect to a Share, the value of that Share derived from dividing the share capital by the number of Shares allotted.
Shareholder	a person entered in the Shareholders' registry as the holder of a Share in a Company Limited by Shares.
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	with respect to Companies Limited by Shares, a resolution passed by at least 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

Terms	Definitions
	duly given.  With respect to Limited Liability Companies, a resolution passed by the votes of Members holding Membership Interests representing more than 75% (seventy five) of the share capital of the Company held by Members entitled to vote and voting 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 prescribed by the Registrar under Article 12.
Year	a calendar year having the meaning given in Article 1 of Schedule 1 to the Law.
Year End Dividend or Distribution	a dividend which is paid or a distribution which is made on the basis of accounts approved by Shareholders or Members under Article 103(4)(c).

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

- (1) A body corporate is a subsidiary of another body corporate if the second body corporate:
- (a) holds a majority of the voting rights in the first body corporate;
  - (b) is a shareholder or member 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 or member of the first body corporate and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first body corporate,
- or if the first body corporate is a subsidiary of a body corporate which is itself a subsidiary of the second body corporate.
- (2) A body corporate is a wholly-owned subsidiary of another body corporate if the first body corporate has no shareholders or members 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 body corporate of another body corporate if the second body corporate is a subsidiary of the first body corporate.
- (4) A holding company is a holding body corporate which is a company.



- (5) In Paragraphs 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 or members in respect of their shares or membership interests, 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 Paragraph 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 him.
- (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; and nothing in Paragraph 4(1) or (11) of this Schedule 1 shall be construed as requiring rights held by a body corporate to be treated as held by any of its subsidiaries.

- (12) For the purposes of Paragraph 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.
- (13) The voting rights in a body corporate shall be reduced by any rights held by the body corporate itself.
- (14) Reference in any of Paragraphs 4(9) to (14) of this Schedule 1 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those Paragraphs.

**SCHEDULE 2**  
**CONTRAVENTIONS WITH FINES STIPULATED**

<i>Article of Law creating contravention</i>	<i>General nature of contravention</i>	<i>Maximum Fine</i>
13(4)	Conducting business in the DIFC without proper registration	\$ 25000
19(2)	Company failing to change name on direction of Registrar	\$2,000
20(1)	Company failing to have a registered office	\$2,000
21(1)	Company failing to have name on certain documents	\$1,000
22(1)	Company failing to lodge annual return	\$2,000
27(1)	Company being a member of its holding company	\$5,000
37	Company Limited by Shares failing to keep a register of Shareholder	\$2,000
38	Company Limited by Shares issues bearer Shares	\$5,000
40(1)	Non-compliant registration of transfer of Shares	\$2,000
43(1)	Non-compliance with requirements in relation to certificates of Shares	\$2,000
59(1)	Failure to keep register of Directors and secretaries	\$2,000
64(2)	Company Limited by Shares default in complying with Registrar's direction to hold company meeting	\$15,000
75(5)	Failure to sign declaration	\$5,000
77(3)	Offeror failing to give minority Shareholder notice of rights	\$10,000
86	Limited Liability Company raising capital through public subscription or listing Securities on an exchange	\$50,000
88(2)	Limited Liability Company representing Membership Interests by negotiable instruments	\$50,000
95	Limited Liability Company failing to keep a register of Members	\$2,000
98(6)	Limited Liability Company default in complying with Registrar's direction to hold Members' meeting	\$15,000
101(1)	Failure to keep accounting records	\$15,000
101(2)(a) or (b)	Non-compliant maintenance of accounting records	\$2,000
101(2)(c)	Failure to keep accounting records open to inspection	\$1,000
102(3)	Failure of Directors to approve and sign accounts	\$10,000
102(4)	Failure to comply with requirements within 6 months	\$5,000
107	Company failing to appoint auditors	\$10,000
107(1)	Acting as auditor when not registered	\$20,000
107(7)	Company appointing auditor without consent	\$10,000
108	Failure of auditor to make a report as required	\$10,000
109(1)	Auditor failing to fulfil duties	\$10,000
110(1)	Failure of auditor to comply with resignation requirements	\$5,000
111(1)	Company not co-operating with auditor	\$5,000
111(2)	Company obstructing auditor	\$10,000
155(1)	Company or auditor failing to disclose	\$10,000
158	Provision of false or misleading information to the Registrar	\$50,000

**CONTRAVENTIONS WITH FINES STIPULATED**

<i>Article of Law creating contravention</i>	<i>General nature of contravention</i>	<i>Maximum Fine</i>
159	Failure to comply with a direction or order of the Registrar	\$15,000

## CONTRAVENTIONS WITH FINES STIPULATED

<i>Article of Law</i>	<i>General nature of contravention</i>
<i>creating</i>	
<i>contravention</i>	
61(2)	Company making unlawful reduction in its share capital
65(2)	Acting as a Director while prohibited
67	Failure of Director to comply with duties
68(2)	Failure of Director to disclose interest
69(3)	Non-compliant financial assistance provided by Company to Director
75(4)	Offeror failing to send to Company whose Shares are the subject of the offer a notice and declaration
75(4)	Making a false declaration
102(1)	Failure to cause accounts to be prepared
102(2)	Failure to prepare true and fair accounts
107(8)	Auditor acting with conflict or lack of independence