

## The DIFC Prescribed Company: A Guide to Uses and Requirements

*The Prescribed Company Regulations offer a more flexible incorporation and permitted purposes regime than its predecessor, the Special Purpose Company Regulations.*

### Background

Prescribed Companies are a type of corporate vehicle available in the Dubai International Financial Centre (DIFC), the financial free zone of the Emirate of Dubai, United Arab Emirates (UAE). Prescribed Companies are categorised as Private Companies under the DIFC Companies Law No. 5 of 2018 (the Companies Law), but are exempted from certain requirements otherwise applied to Private Companies under the Companies Law and the accompanying DIFC Companies Regulations 2018 (the Companies Regulations), such as the requirement to audit or file its accounts with the DIFC Registrar of Companies. Prescribed Companies are subject to lower DIFC incorporation and licensing fees, and are permitted to use, as their registered office, the DIFC registered office of their associated Qualifying Applicant or Registered Person (both defined below), or to obtain a DIFC registered office through a corporate services provider.

These benefits make Prescribed Companies amenable for use as holding or interim holding entities within wider transaction, financing or asset holding structures, subject to requirements around the ownership and control of the Prescribed Company, and the permitted purposes of the Prescribed Company.

According to the DIFC Authority, more than 200 Prescribed Companies have been established since the Prescribed Company Regulations came into effect on 31 October 2019.

### DIFC Prescribed Companies Regime

Prescribed Companies must comply with the Companies Law and the Companies Regulations (amongst other DIFC laws and regulations), subject to certain exemptions and additional requirements set out in the DIFC Prescribed Company Regulations 2019 (the Prescribed Company Regulations).

The Prescribed Company Regulations came into force on 31 October 2019, repealing and replacing the DIFC Special Purpose Company Regulations 2008 (the SPC Regulations), which had established the corporate structure of the Special Purpose Company. As of 31 October 2019, all Special Purpose

Companies and Intermediate Special Purpose Vehicles established under the SPC Regulations were automatically converted by law into a Prescribed Company.

The Prescribed Company Regulations establish a more flexible regime in comparison to the SPC Regulations. For example:

- Special Purpose Companies were only permitted to conduct certain categories of “Exempt Activities”, which were more limited than the scope of permitted Qualifying Purposes under the Prescribed Companies regime.
- Special Purpose Companies were not available to Qualifying Applicants (as defined below) unless the company was conducting certain limited categories of “Exempt Activities”.
- Special Purpose Companies were required to have a maximum of three shareholders, whose identity was restricted to: (1) the entity for whose transaction the Special Purpose Company was established; (2) nominees holding the shares on trust for discretionary purposes; or (3) another Special Purpose Company. Prescribed Companies (like other Private Companies) have a maximum of 50 shareholders and are subject to more flexible ownership and control requirements.
- Special Purpose Companies were required to have a board of directors, the majority of whom were provided by a corporate services provider. There is no such requirement in the Prescribed Company Regulations.

## Qualifying Requirements for Prescribed Companies

### Alternative qualifying requirements

There are two alternative qualifying requirements for Prescribed Companies:

**1. Qualifying Applicant Prescribed Companies** must be Controlled by one or more Qualifying Applicants.

- A **Qualifying Applicant** as defined in the Prescribed Company Regulations is any of the following entities (most of which are entities with a required physical presence in the DIFC, and require licensing by the DIFC and/or the Dubai Financial Services Authority (DFSA)):
  - Authorised firm
  - Domestic fund
  - Foreign fund that is domiciled in a recognised jurisdiction
  - Family office
  - Fintech entity
  - Foundation
  - Government entity
  - Holding company
  - Private trust company
  - Proprietary investment company
  - Person wholly owned by one or more of the foregoing Qualifying Applicants

- **Control** means the power of a person to secure that the affairs of the Prescribed Company are conducted in accordance with such person's wishes in one of the following ways:
  - By means of the holding of shares or the possession of voting power, directly or indirectly
  - As a result of any powers conferred by the articles of association or other document regulating the Prescribed Company or any other body corporate
- The DIFC license of a Qualifying Applicant Prescribed Company may include any activities permitted by the DIFC Registrar of Companies in accordance with the categories of commercial licenses available in the DIFC.

**2. Qualifying Purpose Prescribed Companies** must be established and continued for a Qualifying Purpose.

- A **Qualifying Purpose** is any of the following (as defined in the Prescribed Company Regulations):
  - **Aviation Structure**, having the sole purpose of facilitating the owning, financing, securing, leasing, or operating of aircraft
  - **Crowdfunding Structure**, established for the purpose of holding the asset(s) invested through a crowdfunding platform operated by a DFSA-licensed crowdfunding operator
  - **Family Holding Structure**, established for the sole purpose of consolidating the holdings of a family member, their spouse, and/or bloodline descendants in a Family Office, Holding Company or Proprietary Investment Company (as defined in the Prescribed Company Regulations)
  - **Structured Financing**, having the sole purpose of holding assets to leverage and/or manage risk in one or more financial transactions, whether done in an Islamic or conventional financing manner, including:
    - Complex lending or security arrangements
    - Derivate transactions
    - Hybrid securities
    - Securitised and collateralised debt instruments
- The DIFC license of a Qualifying Purpose Prescribed Company will be restricted to activities specific to the Qualifying Purpose stated in its incorporation application.
- The articles of association of a Qualifying Purpose Prescribed Company must limit its objects and activities to the Qualifying Purpose and activities ancillary to such purpose.

## Financial Services

A Prescribed Company:

- **Can be used** by a Fund Manager, Trustee or General Partner (as defined in the Prescribed Company Regulations) as a Special Purpose Vehicle (as defined in the DFSA Rulebook) to hold property on behalf of a Domestic Fund or a Foreign Fund that is domiciled in a Recognised Jurisdiction.
- **Cannot be used** to be the Fund Manager, the Trustee or the General Partner of a Domestic Fund or a Foreign Fund that is domiciled in a Recognised Jurisdiction, or as the fund itself.

- **Can be used** to hold assets invested through a Crowdfunding Platform as part of a Crowdfunding Structure.
- **Cannot be used** as the Crowdfunding Operator.
- **Cannot provide** any Financial Service (as defined in the Prescribed Company Regulations) unless it is authorised to do so by the DFSA.

### Required confirmations

Prescribed Companies (like other entities incorporated or registered in the DIFC) must file a Confirmation Statement with the DIFC Registrar of Companies each time it applies for a renewal of its DIFC licence. The Confirmation Statement submitted by Prescribed Companies must confirm that:

- In respect of Qualifying Applicant Prescribed Companies, the company continues to be Controlled by one or more Qualifying Applicants
- In respect of Qualifying Purpose Prescribed Companies, the company continues to serve its Qualifying Purpose

A Qualifying Purpose Prescribed Company whose Qualifying Purpose is a Structured Financing, and does not have an Authorised Firm involved as either an Initiator<sup>1</sup> or a Transaction Party<sup>2</sup>, is required to file additional confirmations with the DIFC Registrar of Companies. These additional confirmations must be made by each Initiator and director of the company, specifying that, after due and careful enquiry, the Initiator or director is satisfied that the Structured Financing of the company is not being used and will not be used, whether in the UAE or elsewhere, to:

- Circumvent foreign ownership restrictions
- Change the nationality of a shareholder or interest holder in an entity to avoid foreign investor registration requirements
- Avoid the imposition of any tax or duty as a consequence of the UAE nationality of the company

## Key Advantages of Prescribed Companies

### Exemptions from DIFC law requirements

Prescribed Companies are exempted from certain requirements under DIFC laws and regulations, including:

- The requirement to conduct its principal business activity in the DIFC
- The requirement to establish operations in the DIFC
- The requirement to audit its accounts or to file its accounts with the DIFC Registrar of Companies (though Prescribed Companies otherwise remain subject to accounting requirements as set out in DIFC law)

### Registered office requirements

Prescribed Companies are required to maintain a registered office in the DIFC, however the registered office can be:

- In respect of Qualifying Applicant Prescribed Companies, the registered office of (any of) its Qualifying Applicant(s)
- In respect of Qualifying Purpose Prescribed Companies, the registered office of (any of) the Registered Person(s)<sup>3</sup> establishing the Prescribed Company for the Qualifying Purpose
- In respect of either Qualifying Applicant Prescribed Companies or Qualifying Purpose Prescribed Companies, the registered office provided by a corporate services provider

### DIFC fees

The DIFC incorporation and licensing fees of a Prescribed Company are substantially lower than those for a regular Private Company:

DIFC Fee	Prescribed Company	Other DIFC Private Companies (non-retail)
Application for incorporation	US\$100	US\$8,000
Application for grant or annual renewal of DIFC licence	US\$1,000	US\$12,000

### No minimum share capital requirement

Like other Private Companies, Prescribed Companies are not subject to a minimum share capital requirement.

### Conversion of Special Purpose Companies into Prescribed Companies and interim requirements

As of 31 October 2019, all Special Purpose Companies and Intermediate Special Purpose Vehicles were automatically converted into a Prescribed Company with the same name.

Such converted Prescribed Companies must, before 31 October 2020, become compliant with the Prescribed Company Regulations, including:

- Filing a Confirmation Statement (see above) prior to the next anniversary of its incorporation and obtaining of a DIFC licence
- If converted into a Qualifying Purpose Prescribed Company (and if necessary), amending its articles of association in order to limit its objects and activities to its Qualifying Purpose, and activities ancillary to such purpose

## Conclusion

The Prescribed Company Regulations offer a more flexible incorporation and permitted purposes regime than its predecessor, the SPC Regulations. Prescribed Companies may be incorporated by a range of Qualifying Applicants, or for Qualifying Purposes including purposes other than Structured Financing. Prescribed Companies may therefore be considered for use as holding or interim holding entities by those with an existing DIFC presence (if falling within the definition of a Qualifying Applicant), and/or by those seeking to hold assets or to structure transactions through the DIFC.

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#### Endnotes

<sup>1</sup> The "Initiator" of a structured financing is the person for whose ultimate benefit the transaction or structure is established or maintained.

<sup>2</sup> The "Transaction Party" of a structured financing is any person other than the Initiator who is a party to any agreement comprising the structured financing.

<sup>3</sup> As defined in the DIFC Operating Law No. 7 of 2018, a "Registered Person" includes any legal body or structure incorporated, registered or continued under DIFC legislation administered by the DIFC Registrar of Companies.