CLIFFORD CHANCE

Briefing note January 2014

Putting the records straight:

New information gathering powers and record keeping requirements apply to certain DIFC registered and recognised companies from 15 December 2013

Introduction

Shortly after the UAE hosted the OECD[1] Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) in relation to its peer review process, on 15 December 2013 a number of changes to the DIFC[2] Companies Law of 2009 (the Companies Law) came into force in order to ensure that the DIFC complies with the requirements set out in the relevant terms of reference of the Global Forum for transparency and exchange of information for tax purposes. While the changes are largely administrative, the DIFC Registrar of Companies (the Registrar) (and therefore the Dubai Financial Services Authority (the DFSA) as a result in respect of enforcement) has been granted broad powers to obtain information.

[1] Organisation for Economic Co-operation and Development.
[2] Dubai International Financial Centre.

New developments

Part 9 of the Companies Law (which does not apply to companies licensed by the DFSA) has been amended as follows:

Firstly, the time period required for the retention of accounting records by companies established in the DIFC (DIFC Companies) has been reduced from 10 years to six years, which is a move towards other international standards[3]. The time period has also been helpfully clarified as commencing from the date when the record is created, rather than the previously uncertain test of the date to which the record relates.

Secondly, the record keeping requirements in respect of accounting transactions have been extended from the maintenance of accounting records to the additional obligation to maintain the underlying documents which evidence the recorded transaction.

[3] For example, the UK companies law requires three years for private companies and six years for public companies.

Key changes

- Record keeping changes for non-DFSA regulated companies which may require changes to internal processes
- Foreign DIFC "Recognised Companies" are required to adhere to the record keeping requirements which may be different to home jurisdiction rules
- Broad information gathering powers are given to the DIFC Registrar to obtain information from all DIFC companies and Recognised Companies.

This is a response to the peer review process by the Global Forum of the UAE which noted no express requirement in the DIFC to maintain underlying documentation, such as invoices and contracts[4]. In some cases this will be a simple invoice but may extend in some instances to other documentation such as copies of forms and

[4] The terms of reference for the Global Forum peer review include the requirement that accounting records should include underlying documents.

contracts usually not kept once a register or record of the transaction itself is created. This could increase record keeping costs and companies should consider their internal processes to ensure compliance.

Amendments have also been made to the General Partnerships Law of 2009, the Limited Partnership Law of 2006 and the Limited Liability Partnership Law of 2004 to introduce similar accounting record keeping requirements for the types of entities governed by these rules.

Extension to foreign companies

These record keeping requirements now apply to foreign companies registered with the DIFC (Recognised Companies). In many cases Recognised Companies may already be compliant by virtue of the record keeping requirements in their home jurisdiction. However, the home jurisdiction rules and the record keeping rules now applicable in the DIFC are unlikely to be exactly the same and Recognised Companies need to consider carefully the implications of the increased DIFC requirements.

New powers and purpose of the Registrar

In line with the purpose of committing to global standards on exchange of information, the amendments introduce the power for the Registrar to obtain any information from a DIFC Company or a Recognised Company considered desirable in order to fulfil any of its purposes. It is now a statutory purpose of the Registrar to assist the UAE in complying with its obligations under any international treaty or other agreement to which the UAE is a party to through the exercise of its powers and functions; this sits alongside the power of the Registrar to do whatever it deems necessary, for or in connection with, or reasonably incidental to, the performance of its functions. This information would also be admissible in any proceedings[5]. Consequently, the Registrar now has broad powers to obtain any information from companies operating in the DIFC[6] with the express power to apply to court to enforce such power[7].

Comment

DIFC registered companies, especially Recognised Companies, should take note of the new record keeping requirements and the power of the Registrar to require the disclosure of any information to fulfil its purposes. For many companies operating in the DIFC, these changes are unlikely to affect the status quo, but companies should consider whether sufficient underlying documents are maintained in respect of accounting records and Recognised Companies should consider whether accounting requirements of their home jurisdiction are adequate to ensure the company's record keeping is compliant.

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[5] Provided that it complies with other admissibility requirements.
[6] Although companies regulated by the DFSA are already subject to the practices and powers of the DFSA to obtain information on its practices.
[7] Note this new power does not apply to information protected by legal privilege.

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