Company & Commercial - United Arab Emirates

Company Migration to and from the Dubai International Financial Centre

July 14 2008

Author

Pier Terblanche

The Dubai International Financial Centre (DIFC) is one of the fastest-growing financial centres in the world. A unique aspect of company incorporation in the DIFC is that it is possible for foreign companies to migrate to the DIFC and for existing DIFC entities to migrate from the DIFC to another jurisdiction. This is unique in the sense that migration of companies is not permitted under the laws of any of the other free zones of the United Arab Emirates nor under the UAE federal laws which are applicable to onshore companies in the United Arab Emirates.

The process of migrating a company to the DIFC so that it is governed by the DIFC's laws and regulations requires submission to the DIFC's Register of Companies (ROC) of evidence that the foreign company is permitted by the laws and governing authorities of the jurisdiction in which it is incorporated to continue operating in that jurisdiction. The ROC will also require the submission of evidence that the relevant authorities in that jurisdiction consent to the incorporation and that the company is meeting all of its requirements under that jurisdiction's laws and regulations.

Once all ROC requirements are met, the DIFC will issue a certificate of continuation as conclusive evidence that the company is a duly registered entity within the confines of the DIFC from the date of the certificate.

Under Section 121 of the DIFC Companies Law (3/2006), a foreign company will, following issue of the certificate, continue to have all the property, rights and privileges and be subject to all liabilities and debts that it had before continuation. It will also remain a party to any legal proceedings commenced in any jurisdiction to which it was a party before the continuation.

It is also possible for a company to migrate from the DIFC to another jurisdiction. Here, the company must provide sufficient evidence that the laws of the foreign jurisdiction allow it to transfer its incorporation and continue with it under the laws of that jurisdiction. The board of directors of the company is also required to pass a special resolution approving the transfer of the company's incorporation and its continuation in a foreign jurisdiction.

The directors are also required to certify that the company is solvent and that there are no outstanding applications to have the company wound up.

A company will cease to be a DIFC-incorporated entity only when the company files a copy of the appropriate instrument of continuation of the foreign jurisdiction with the ROC. This instrument or document must be certified by an appropriate official of the foreign jurisdiction prior to lodgement.

For further information on this topic please contact Pier Terblanche at Taylor Wessing (Middle East) LLP by telephone (+97 14 332 3324) or by fax (+97 14 332 3325) or by email (p.terblanche@taylorwessing.com).