Dubai International Financial Centre

Information Pack

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Preface

Historically, finance has always been 'international' in character; capital has rarely been mobile. Money has moved freely across borders for all of civilization with gold and silver being global currencies for millennia. With passage of time, money has been reverting to its natural state with removal of capital controls and the gradual re-integration of national capital and banking markets but - now on a global scale.

Rapid advancements in field of technology, free movement of capital globally, and need to service an increasingly global clientele are creating opportunities that call for establishment of new world class financial centers.

Post economic downturn, financial institutions are now being more careful and selective in choosing the right financial center that will allow financial skills and innovation that serve client needs through market driven forces to thrive. Besides, sound infrastructure, banks and financial institutions wish to establish their presence in a financial center that offers stable and open political and economic regime, skilled workforce, low tax rates, world class infrastructure, low transport and communication costs and so on.

This information pack seeks to document Dubai's evolving role as an international financial center in the World, the importance of Dubai International Financial Center and its constant growth in worldwide financial center rankings, and subsequently evaluate the relative strengths and opportunities available to overseas banking, insurance and firms engaged in financial services to make an entry in to the DIFC.

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SUNIL THACKER
ASSOCIATES

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The Dubai International Financial Centre (the ***DIFC***) was established in 2004 by the Government of Dubai as an 'onshore' financial centre. It aims to position Dubai as a pre-eminent financial centre in Middle East and North Africa and act as a gateway for capital and investment between the financial markets of Europe, the Americas, Asia and the Far East.

The DIFC is empowered to self-legislate in civil and commercial areas and the legislative system of DIFC is based on English Common law. Legally, DIFC is exempt from the federal laws prevailing in the United Arab Emirates (with an exception for criminal and administrative laws). DIFC comprises of three central bodies, namely, the DIFC Authority, the Dubai Financial Services Authority and the DIFC Judicial Authority. The DIFC Authority is responsible for the operation and efficient administration of the DIFC in general and for development of laws and regulations other than laws relating to financial services. The DFSA on the other hand is responsible for developing the DIFC's regulatory and legal framework, carrying out licensing, registration and related activities. The DIFC Judicial Authority - DIFC Courts have exclusive jurisdiction of all civil and commercial disputes and are independent of the Dubai courts and the UAE Federal courts.

Acting as a wholesale financial centre, DIFC caters to institutional investors in the following financial services sectors:-

i. Banking services
ii. Capital Markets
iii. Insurance and Re-insurance
iv. Asset management companies including funds operating by way of collective investment scheme
v. Business process outsourcing and Knowledge process outsourcing
vi. Islamic Finance
vii. Ancillary financial services providers including exchange houses, broking firms, hedge funds, actuaries, management consultants, and service providers

DIFC Overview:

Over two thousand firms have registered in the DIFC in past few years and these numbers are increasing given the political unrest in Europe and in the Middle East.

Generally speaking, DIFC offers five categories of license and the capital requirement for each firm varies, and is determined depending on activities carried out as under:

Category	Base Capital
Category 1	$ 10 Million
Category 2	$ 2 Million
Category 3	$ 500,000
Category 4	$ 250,000
Category 5	$ 10 Million

The principal statute governing the formation and operation of DIFC based companies is the Companies Law, DIFC Law number 2 of 2009 and the Companies Regulations made pursuant thereto. Businesses engaged in financial services or related activities within the DIFC must obtain authorization and are subject to regulations administered by DFSA.

Besides world-class infrastructure that city of Dubai offers, financial institutions and banking firms operating within DIFC benefit from a range of advantages including:

i. One hundred percent foreign ownership
ii. zero income tax
iii. zero exchange controls
iv. unrestricted repatriation of profits
v. double tax avoidance treaties with several countries
vi. internationally accepted framework of laws /regulations
vii. low transportation, communication and technology costs
viii. a world-class, independent, regulatory agency working alongside other financial regulatory agencies located in major global jurisdictions
ix. excellent infrastructure, operational facilities including modern office environment, centrally situated, state of art technical support and data protection facilities, business continuity facilities
x. international stock exchange with primary and secondary listings of debts and equity instruments
xi. a variety of legal vehicles with capital restructuring flexibility.

Categories of DIFC License for Authorized Firms				
Category 1	Category 2	Category 3	Category 4	Category 5
Accepting Deposits	Dealing in investments as Principal, except where it does so as a Matched Principal	Dealing in investments as Agent where it does so only as a Matched Principal	Arranging Credit or deals in investments	An Islamic Financial Institution whose entire business generally is conducted in accordance with sharia'a and which manages a profit sharing investment account
Providing Credit			Advising on any Financial Products or credit	
		Operating a Collective Investment Fund	Arranging Custody	
		Managing Assets	Insurance Intermediation	
		Providing Custody	Insurance management	
		Providing Trust Services	Operating an Alternative Trading system	
		Acting as the Trustee of a Fund	Providing Fund Administration	
Managing a Profit sharing Investment Account	Managing a profit sharing Investment Account	Managing a Profit Sharing Investment Account	X	

Notes:

1. The Financial services described In top row are the categories. The activites set out below them are the Financial services. Services that a firm is authorized to carry are set out on its license.
2. If a firm carries out more than one activity, then in such event, the highest category shall be treated as that firm's category
3. One exception to the above information is an Islamic Financial Institution which manages Profit Sharing Investment Account. Such institution falls under Category 5.

Get in touch with us:

Dubai office
1904, Boulevard Plaza
Tower I Opp Burj Khalifa
Downtown Burj,
Dubai. United Arab Emirates
Tel: +971-4-3607311
Fax: +971- 4- 3695126

Contacts:

Sunil Thacker
sunil@sunilthacker.com

Surbhi Veer
surbhi@sunilthacker.com

Tahmina Kazimkizi
tahmina@sunilthacker.com

Nayyera Hashmi (London)
nayyera@sunilthacker.com

DFSA related Inquiries
dfsa@sunilthacker.com

Website
http://www.ama.ae

Real Estate Investment Trust (REIT):

The REIT legislation was introduced by DIFC to promote the development of REIT's in the UAE by passing The Investment Trust Law No.5 that went into effect of August 6, 2006.

Retail investors benefit from investing in REIT by allowing such investors to invest in a varied range of revenue generating property portfolio without loss of liquidity. For those owning real estate assets, it offers the possibility, through contribution of assets to the REIT to diversify their risk and mutualize their income stream.

Current regulations mandate that a REIT Fund may invest only in freehold in designated areas. REITs are regulated pursuant to the prevailing regulations of the Dubai Financial Services Authority (DFSA).

Firms interested in having a presence within the DIFC have to undergo minimal incorporation requirements. Prior to actual incorporation, a firm will need to submit an application to the DIFC and in cases where its activities fall within scope of DFSA, such application will need to be presented before DIFC and DFSA respectively. These requirements are fairly standard and by far similar to financial centers operating in Europe, America, Far East, etc. The firm is required to provide the following information:

i. a brief business plan setting out firm's existing business activities, proposed activities, nature and scope of services to be provided, size and scale of business projected and so on

ii. details pertaining to shareholding pattern, details of individual shareholders and brief information about each such individual, details of the managing director and confirmation of their fitness and propriety

iii. compliance with anti-money laundering procedures and disclaimers

iv. past projections and financial position of the firm including its regulatory compliance history

v. operating system and controls including compliance systems, internal audit monitoring, etc

vi. such additional information as DIFC or DFSA in their absolute discretion may seek from firm making an application.

DIFC Court's jurisdiction was established pursuant to Dubai Law number 12 of 2004 in respect of the Judicial Authority of the DIFC and the 2009 Protocol of Enforcement between DIFC and Dubai Courts allowing for enforcement of DIFC court's judgement.

The DIFC Court operates on a two tier – namely, the DIFC Court of First Instance (established pursuant to Article 12 of Law number 12 of 2004) and Court of Appeals. DIFC based firms may legally benefit from several aspects such as:

i. Official language of the DIFC courts is English: Therefore, hearings are now held in English as opposed to Arabic. In many cases, this reduces the cost and time of having the relevant documentation translated to Arabic as well as the need for a translator during the court proceedings.

ii. The DIFC courts are modeled on the English common law system: Parties can have their dispute resolved by a common law-based court system as opposed to the civil law system in place in the UAE. In addition to a court modeled on English civil procedure rules, the DIFC courts' system of case precedence will likely increase the predictability of the outcome of a dispute referred to the DIFC courts.

iii. Recovery of Legal Fees: The successful party is permitted to claim legal fees from the other party. While the UAE Civil Procedures Law permits a judge to award legal fees to the successful party, in practice this is rarely done. In many cases, this acts as a deterrent to initiate dispute resolution process through the UAE courts.

iv. Internationally recognized judges: The judges in the DIFC courts hail from a number of jurisdictions, including the UAE. These judges have significant experience in adjudicating UAE matters, but also experience resolving complex international commercial disputes.

Note: Until recently only companies operating within the DIFC were subject to the jurisdiction of DIFC courts. Companies operating outside the DIFC were subject to the jurisdiction of the traditional Dubai courts. However on 31 October 2011 DIFC Court's jurisdiction was widened and opened to all. Click here to read more.

Get in touch with us:

Hamriyah (Sharjah)
48-1 F Lease Building 1
Near HFZA, Hamriyah
Tel: +971-6-526 4110
Email:hfza@sunilthacker.com
www.ama.ae

Luxembourg
3.7 rue Schiller
Grand Duche de,
Luxembourg
Email: lx@sunilthacker.com

London
Address to be updated
London,UK
nayyera@sunilthacker.com
www.ama.ae

Pakistan (Associated with Yousaf Amanat Associates)
164-A, Street 36, F-10/1,
Islamabad, Pakistan
Tel: 0092-51-2290109
Email: pk@sunilthacker.com

Moscow
Mr. Maxim Tafinstev
Building 3, Arkoninvest
Email: russia@sunilthacker.com
www.ama.ae

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Federal Law Number 4 of 2002 (the "**Law**"), which came in to effect on 22 January 2002 criminalizes money laundering in the United Arab Emirates. The Federal Law has universal application and extends to both financial free zones as well as commercial free zones throughout the United Arab Emirates. The United Arab Emirates has included Anti-money laundering provisions in the Federal Law Number 3 of 1987 concerning the promulgation of the Penal Code, which was in line with the then discussions, to prepare for the 1988 Vienna Convention, which the United Arab Emirates signed and ratified. Speaking of financial free zones, the Dubai International Financial Centre (the "***DIFC***") is the only financial free zone and there are several other commercial free zones where non-financial business and commercial enterprises operate. The UAE Insurance authority has vide its Board of Directors' Resolution 1 of 2009 issued Directives on Procedures for Anti-Money Laundering and Combating Terrorism Financing through Insurance Activities (the "**Directive**"). The Law as well as the Directive has been summarized here.

The Dubai International Financial Centre is empowered to create its own specific legal and regulatory framework for all civil and commercial matters.

The DFSA guidance notes provide extensive information on due diligence, identification, beneficial ownership, risks, accounts monitoring, and so on. The DFSA policies further requires that suspicious transaction reports are filed with the AMLSCU and the DFSA supervision division.

The Table below gives an indication of fees payable to DIFC. The fees are updated from time to and available on DIFC website. Please contact us if you would like to subscribe to our newsletters and be updated on revisions in fees or fee structure.

Registrar of Companies Table of Fees

DIFC Dubai International Financial Centre

DIFC Companies Regulations Table of fees (NON-RETAIL OUTLETS)	
Upon receipt by the Registrar of:	**Fees**
Application for reserving a name	$800
Application for reserving a name (for Captive Insurers, Protected Cell Company and Open/Closed Ended Investment Companies	$200
Application for incorporation of a Company	$8,000
Application for incorporation of a Protected Cell Company or for conversion to a Protected Cell Company, Open/Close Ended Investment Company or Captive Insurer	$1,000
Application for registration of a Representative Office	$2,000
Application for registration of a Recognised Company	$8,000
Application for registering a change of name	$800
Application for registering a change of name for a Captive Insurer, Protected Cell Company or Open/Closed Ended Investment Companies	$200
Application to transfer incorporation to the DIFC	$20,000
Application to transfer incorporation from the DIFC	$20,000
Notice of change of director or secretary	Nil
Notice of change of director or secretary of a Captive Insurer, Protected Cell Company or Open/Closed Ended Investment Companies	Nil
Notice of change of director or secretary of Protected Cell Company, Open/Close Ended Investment Company, Captive Insurer	Nil
Notice of change in details of director or secretary	Nil
Notice of change in details of director or secretary of a Captive Insurer, Protected Cell Company or Fund	Nil
Notice of allotment of core shares of a Protected Cell Company	Nil
Notice of allotment of shares	Nil
Notice of appointment of auditor of Protected Cell Company, Open/Close Ended Investment Company, Captive Insurer	Nil
Notice of appointment of auditor	Nil
Notice of cessation of auditor	Nil
Application for registration of auditor	$500
Notice of change in details of person authorised to accept service of any document or notice	Nil
Notice of change of principal place of business	Nil
Fee for filing annual return for Captive Insurer, Protected Cell Company, Open/Close Ended Investment Company	$800
Fee for filing annual return	$800

Insurance and Reinsurance Companies

With the growing presence of regional and international players, the insurance penetration in the DIFC has grown, outpacing that of industrialized countries. In view of increased number of Takaful transactions, Islamic insurance and reinsurance, firms are eager to establish a presence in the DIFC to meet the needs and requirements of the Islamic market.

Article 60 (2) of DIFC Law number 5 of 2005 regulates contracts of insurance. Insurance and Reinsurance firms operating within the DIFC have to obtain DFSA's approval before they can carry out any insurance business in the DIFC. However, insurance firms that write DIFC risk on a wholly cross-border basis need not be DFSA authorized. DFSA Rule book provides guidance and regulations for insurance and re - insurance companies. The current Rule book does not seek to define what is a contract of insurance and accordingly the same is a matter of interpretation.

Although there is no general rule or market practice as to the content or form of reinsurance contracts issued by DFSA- authorized reinsurers, the terms of such insurance contract will generally dictate commercial arrangements agreed by and between the insurer and the insured including commercial terms, nature and terms of policy, conditions precedent and special conditions if any. The contract will also dictate the terms of dispute resolution method and jurisdiction before court or arbitration. The parties may agree to resolution of dispute before the DIFC court or DIFC arbitration centre (the DIFC arbitration centre has a joint venture with the London Court of International Arbitration (LCIA).

Our team advises on:

- Asset Finance
- Asset Management and Investment Funds
- Banking
- Commodity and Energy Trading
- Corporate Recovery and Restructuring
- Derivatives
- Financial Markets Litigation
- Insurance and Reinsurance
- Islamic Finance
- Listing and continuing obligations
- Private Funds
- Structuring of portfolio investments
- Taxation

UAE Federal Data Protection Law

United Arab Emirates does not have a specific legislation governing data protection. However, privacy and data protection provisions do appear in several federal laws. For instance, the UAE′ s constitution provides for an express provision setting out: "*Freedom of communication by postage, telegraphic or other means of communication and the secrecy thereof shall be guaranteed under the law*".

The Government of Dubai has issued law number 2 of 2002 concerning Electronic Transactions and Commerce Law. The law seeks to protect electronic records and communication, secure electronic transactions and e-signatures, use of electronic transactions by government authorities in terms of e-contracts, and further to minimize risk of fraudulent transactions.

DIFC Data Protection Law

The DIFC Data Protection Law 2007 (DIFC Law 1 of 2007) (the “**Law**”) applies to and within the jurisdiction of DIFC and is applicable to both – entities regulated and non-regulated by the DFSA. DIFC subsequently issued DIFC Data Protection Regulations which repeal the module on data protection issued by DFSA.

Personal data is defined under the law as any information relating to an identifiable natural person. An identifiable natural person is a natural person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his biological, physical, biometric, physiological, mental, economic, cultural or social identity.

The Law provides a legal and procedural framework to ensure that all personal data (any information relating to an identifiable natural person) and sensitive data (personal information about a person including his financial information, credit-rating, criminal background or any sensitive information) in the DIFC is treated fairly, lawfully and securely when it is stored, processed, used, or disclosed.

The Law sets out general requirements on processing of personal data as set out below:-

a. In cases where data processing is important, such data must be processed lawfully and securely;
b. If the data is processed for specified, explicit and legitimate purpose in accordance with subject rights and is not further processed;
c. Personal data which is processed must be adequate, relevant and not excessive in relation to purpose for which the same is collected;
d. The data to be processed should be accurate and where necessary, kept up to date
e. Kept in a form which permits identification of data subjects for no longer than is necessary.


www.ama.ae

STA

1904, Level 19, Boulevard Plaza, Tower I
Opposite - Burj Khalifa, Downtown Burj
P O Box 18 4125, Dubai
United Arab Emirates
Tel: +971 4 360 7311
E: info@sunilthacker.com

✔ Dubai ✔ Hamriyah ✔ Luxembourg ✔ Mumbai ✔ Moscow

This DIFC Information Pack is not intended to offer legal advice and you should not act upon the matters referred to within it without taking specific advice.