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DIFC PRESCRIBED COMPANY REGULATIONS

The Prescribed Company Regulations 2019 ("**PCR**") came in to force on 31 October 2019 in the Dubai International Financial Centre ("**DIFC**"). The PCR repealed and replaced the DIFC's Special Purpose Company Regulations (SPCoR).

A Prescribed Company is described in the PCR as a prescribed company incorporated or continued in the DIFC pursuant to the provisions of Article 132 of the DIFC Companies Law (i.e. the Companies Law, DIFC Law No.5 of 2018). This paper considers certain key features pertaining to the incorporation or continuation of a Prescribed Company under the PCR.

An applicant wishing to incorporate or continue a Prescribed Company is required to satisfy either of the following qualifying requirements: (a) the Prescribed Company will be "Controlled" by one or more "Qualifying Applicants" <u>or</u> (b) the proposed Prescribed Company is to be established or continued in the DIFC for a "Qualifying Purpose". Whether to establish or continue under the qualifying requirements of a Qualifying Applicant <u>or</u> for a Qualifying Purpose will depend on the objectives and structuring requirements for the Prescribed Company.

In terms of the PCR, a "Qualifying Applicant" is any of the following: (a) an Authorised Firm; (b) a Fund; (c) a Family Office; (d) a Fintech Entity; (e) a Foundation; (f) a Government Entity; (g) a Holding Company; (h) a Private Trust Company; (i) a Proprietary Investment Company; or (j) a person wholly owned by one or more of the foregoing Qualifying Applicants. In order to incorporate a Prescribed Company under the Qualifying Applicant requirement, the Prescribed Company is required to be "Controlled" by one or more "Qualifying Applicants". In relation to a Prescribed Company, the term "Control"/ "Controlled" is defined in the PCR as the power of a person to secure: (a) by means of holding of shares or the possession of voting power, in either case directly or indirectly; or (b) as a result of any powers conferred by the Article of Association or other document regulating the Prescribed Company or any other body corporate, that the affairs of the Prescribed Company are conducted in accordance with such person's wishes.

On the other hand, a "Qualifying Purpose" is any of the following: (a) an Aviation Structure; (b) a Crowdfunding Structure; (c) a Family Holding Structure; or (d) a Structured Financing.

In the context of financial services, a Prescribed Company: (a) may be used by a Fund Manager, a Trustee or a General Partner as a Special Purpose Vehicle to hold property on behalf of a Fund; (b) shall not be used to be the Fund Manager, the Trustee or the General Partner of a Fund or as the Fund itself; (c) may be used to hold assets invested through a Crowdfunding Platform as part of a Crowdfunding Structure but shall not be used to be the Crowdfunding Operator; and (d) shall not provide any Financial Service unless it is authorised by the Dubai Financial Services Authority to do so.

The License of a Prescribed Company established by a Qualifying Applicant may include any activities permitted in accordance with the categories of commercial licenses available in the DIFC. The License of a Prescribed Company established for a Qualifying Purpose is restricted to the activities specific to the Qualifying Purpose stated in its application to incorporate or continue the Prescribed Company in the DIFC.

The requirements for a Prescribed Company's registered office is flexible and for the purposes of Article 13 of the Operating Law is required to be either: (a) the registered office in the DIFC of its Qualifying Applicant or, where applicable, any one of them; (b) the registered office in the DIFC of the Registered Person (i.e. one of the types of DIFC entity set forth in the Operating Law) establishing the Prescribed Company for a Qualifying Purpose or, where applicable, any one of them; or (c) the registered office of a Corporate Service Provider appointed for this purpose by: (i) the applicant(s) for its incorporation; or (ii) the Prescribed Company.

In terms of the PCR, the requirement under Article 13(3) of the DIFC's Operating Law for conducting principal business activity in the DIFC and the requirement under Regulation 2.1.4 of the Companies Regulations for establishment of operations in the DIFC, do not apply to a Prescribed Company.

In addition to the above, the PCR contains further requirements with respect to Prescribed Companies, including requirements to be met by every "Special Purpose Company" and "Intermediate Special Purpose Vehicle" within timelines specified in the PCR.

Please note that unless otherwise defined in this paper, any of the above defined terms identified by the capitalization of the initial letter of a word or a phrase, are defined in the PCR and which are important to consider with respect to the applicability of the provisions of the PCR to each particular structure or situation. For further information regarding a DIFC Prescribed Company and the PCR, please contact us at: aly@alyiantconsultancy.com

Apart from being structures which can be established for diverse purposes (within limits prescribed by the PCR), the incorporation fees for a DIFC Prescribed Company structure are economically priced and thus the Prescribed Company structure provides businesses with the potential opportunity of an operationally flexible legal structure.

We at Alyiant Consultancy Limited provide a broad range of corporate services, including compliance, risk management, corporate governance, structuring and restructuring services. We assist entrepreneurs, multinational businesses and family offices with putting structures, processes and systems in place, enabling alignment not only with the requirements of today, but also with creating a value based vision and map, aligned with requirements for the future.

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