

# **NEW** RULES AND REGULATIONS 2021 (FREQUENTLY ASKED QUESTIONS)

# Introduction

On 14 March 2021, Dubai Airport Free Zone Authority (**DAFZA**) issued new DAFZA Implementing Regulations (the **New Regulations**). DAFZA has published this Circular containing Q&As to explain the key provisions contained in the New Regulations to existing Dubai Airport Free Zone (**DAFZA or the Free Zone**) entities and applicants wishing to incorporate a DAFZA entity.

The New Regulations were approved by Administrative Resolution No. (ADM 004 2021) Regarding Approving DAFZA Implementing Regulations 2021.

This is a summary only of some of the main provisions of the New Regulations and you should not rely on this summary in place of reading the New Regulations in their entirety. If you are unsure as to the contents of the New Regulations you should consult DAFZA using the contact details listed below or your professional adviser.

- Call Centre Team on 600-5-DAFZA (32392)
- WhatsApp Service on 056-9922290
- Raise any 'Inquiry' through our New Client Portal > 'Customer Support' tab

## 1. What are the New Regulations?

The New Regulations are the corporate rules and regulations that determine the different legal structures that can be incorporated in the Free Zone and how they legally operate once incorporated. Together with a DAFZA company's memorandum and articles of association (Regulation 21), the New Regulations provide the legal and contractual basis upon which a DAFZA company manages its affairs.

## 2. When do the New Regulations come into force?

The New Regulations come into force on 14 March 2021 and should be applied by existing and new DAFZA entities from that date onwards.

## 3. What about the old Implementing Regulations?

The old Implementing Regulations (**Old Regulations**) are repealed and replaced by the New Regulations in their entirety.

#### **4. Who do the New Regulations apply to?**

The New Regulations apply to existing branches and companies that were incorporated in the Free Zone under the Old Regulations. They will also apply to any new entity that wishes to establish itself in the DAFZA after 14 March 2021.

#### **5. What types of entity can I establish in DAFZA under the New Regulations?**

The New Regulations allow for the following types of entities to be incorporated in the Free Zone:

- Branch – a foreign company (being any company incorporated in a jurisdiction outside the Free Zone) may establish a branch in the Free Zone (Regulations 8 and 17)
- FZCO – a free zone company with limited liability (Regulations 8 and 16)
- PLC - a public limited company with limited liability (Regulations 8 and 16)

#### **6. Why have we created New Regulations now?**

DAFZA decided to completely update its implementing regulations for the following reasons:

- The New Regulations provide greater flexibility and clarity for DAFZA's existing and prospective customers in light of developments in the business environment. We wanted to reflect the ever-changing dynamic growth of business in the UAE in a worldwide context.
- The New Regulations reflect developments in international best practice for providing platforms for doing business.
- Following continued interaction and consultation with our customers, certain provisions of the Old Regulations could be improved by providing greater detail and clarity and also adding new provisions. It was time for an update to continue to improve our customer experience.
- More specifically, the UAE Securities and Commodities Authority in November 2020 allowed free zone companies in the UAE to list and offer shares on the Dubai Financial Market or the Abu Dhabi Securities Exchange. So as to facilitate DAFZA companies to be able to list and offer shares to the public on these securities exchanges, we needed to create a new type of entity being a “public limited company” (PLC) which crucially has no limit on the number of shareholders it can have. The New Regulations for PLCs provide for corporate governance and requirements that are expected of public companies to reflect international best practice.

## 7. Is there a transition period between the Old Regulations and the New Regulations?

No. The New Regulations come into force immediately on 14 March 2021. However, DAFZA understands that it will take time for entities already incorporated in DAFZA to familiarise themselves with the New Regulations and so it will not levy fines or sanctions for a period of 6 months (up to and including 14 September 2021) for any breaches of or non-compliance with the New Regulations to facilitate a smooth transition. Please note that this does not mean that you do not need to comply with the provisions of the New Regulations for six months, but if you are late in complying or fail to comply in the six month period then there will not be a levy or sanction for doing so.

## 8. What do existing DAFZA entities need to do?

Existing DAFZA entities should review this Q&A and the New Regulations to see how their business may be impacted going forward but, in essence, there should be little or no change. However, there are new features in the New Regulations that you might be able to benefit from, for example, different classes of shares or converting into a PLC so as to pursue an initial public offering (IPO). If you are not sure of what action you need to take then you should enquire of your usual contact at DAFZA or consult your professional adviser.

## 9. What are the most significant changes in the New Regulations from the Old Regulations?

**References to “Regulations” are to specific regulations in the New Regulations unless expressly stated to be a Regulation of the Old Regulations.**

**PLC** – the New Regulations provide for a new corporate entity, a public limited company. This type of entity is suited to a company that wishes to list and/or offer its shares (IPO) on a securities market. A PLC is subject to more stringent reporting and corporate governance requirements. Some of the key provisions for a PLC are as follows:

- If a PLC wishes to issue new shares it must first offer them to existing shareholders (pre-emption rights/anti-dilution – Regulation 28).
- PLCs have the facility for treasury shares (Regulation 34).
- A PLC must seek shareholder approval at its annual general meeting for the reappointment of new directors if they have been appointed by the Board between general meetings (Regulation 40).
- A PLC must have a secretary with the requisite experience to fulfil the role (Regulation 49).

- A PLC must prepare a Directors' report (including a corporate governance report (Regulation 63)) for each financial year which must include the names of the directors, a fair view of the PLC's business and the risks associated to it and analysis of the development, performance and position of the PLC's business (Regulation 61).
- The New Regulations also require publication of the PLC's annual report and accounts on the PLC's website (Regulation 62).
- PLCs will either have to comply with the corporate governance code which applies to the securities market on which it is listed (for example, the SCA Corporate Governance Code 2020 if the PLC is listed on the DFM or the ADX) or have the discretion to adopt another corporate governance code. Either way, a PLC must comply with a corporate governance code and must state which one in its annual report (Regulation 63).
- A PLC must appoint its auditors annually (Regulation 65).
- In the event of a takeover of a PLC, there are squeeze-out provisions and also tag-along provisions for minority shareholders (Regulations 74 to 81 inclusive).
- There are also statutory merger provisions that ensure shareholder and creditor rights (Regulations 82 to 93 inclusive) and the facility for schemes of arrangement (Regulations 94 to 96 inclusive).

FZCOs may not offer their shares to the public (stated expressly in Regulation 3 of the Old Regulations) but PLCs are expressly permitted to make a public offer of shares (Regulation 16).

**Different classes of shares** – the New Regulations allow FZCOs and PLCs to have different classes of shares (Regulations 21 and 30).

**Authorised share capital** – the New Regulations make it clear that a FZCO and PLC can have an authorised and issued share capital. This means that if a FZCO or PLC wishes to issue new shares it may have sufficient authorised share capital to issue such new shares without seeking shareholder approval to increase the share capital of the company (Regulation 21).

**Share currency denomination and par value** – FZCOs and PLCs may denominate their share capital in any currency (usually US dollars or UAE dirhams) and with any par value (Regulation 24). Regulation 4 of the Old Regulations restricted FZCOs to have UAE dirham denomination and a par value of AED 1,000.

**Share certificates** – there is no longer a requirement to issue physical share certificates (Regulation 9 of the Old Regulations).

**Appointment and Removal of Directors, the General Manager and Auditors** – the directors, the general manager and the auditors of FZCOs and PLCs may be appointed or approved by an ordinary resolution at a shareholder meeting (Regulations 40, 48 and 65).

**Annual General Meetings** - must take place on at least 21 days' notice in writing.

**Dormancy** – a FZCO or PLC can apply to the Registrar to suspend its licence for up to 12 months or such period as determined by the Registrar. This allows companies that wish to suspend, in the short term, but not terminate in the long term, trading in the Free Zone.

**Conversion** – there are provisions allowing for FZCOs to convert to a PLC (Regulation 102), from a PLC to a FZCO and from a branch to a FZCO or a PLC. This makes it easy to convert into a PLC in the event that you wish to IPO.

**Unfair prejudice** – a shareholder of a FZCO or a PLC has the right to apply to the courts in relation to an act or omission by the company which would be prejudicial to the shareholder.

## 10. What is the role of the Registrar?

The role of the Registrar remains broadly the same in that it will administer, supervise and enforce the New Regulations, but its role has been further clarified (Regulations 9 to 12 inclusive). For example, there is greater flexibility for the use of electronic means in relation to information and documentation required under the New Regulations.

## 11. Are there standard form documents that will assist in establishing a FZCO or PLC

DAFZA has prepared the following standard form documents to make the establishment process for a FZCO or a PLC quicker and easier:

- FZCO standard form memorandum and articles of association
- FZCO standard form resolution
- PLC standard form memorandum and articles of association
- PLC standard form resolution

You do not have to use the standard form memorandum articles of association but they must comply with the particular contents requirements of Regulation 21. Deviations from the standard forms are permissible.

## 12. Where can I find the New Regulations and other useful documents?

The below documents can be accessed on the following weblinks:

- The New Regulations - <https://www.dafz.ae/en/download/#rulesregulations>
- This Q&A - <https://www.dafz.ae/en/download/#rulesregulations>

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### Disclaimer

This Circular is only intended as guidance to the key provisions of the New Regulations. It is not intended as legal advice on any facts or circumstances and you should seek legal advice in relation to your specific circumstances. Neither DAFZA nor Al Tamimi & Co (who have assisted in preparing this Circular) assumes any responsibility, duty or liability whatsoever to any entity established or to be established in the Free Zone or to any other person and has no responsibility to update any of the information set out in this Circular or to notify anybody in the event of any change in the relevant legislation or other official or unofficial guidance or practice.

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