INTERNATIONAL BONNARD LAWSON LAW FIRM

A New Type of Special Purpose Vehicles in the DIFC

In September 2016, the Dubai International Financial Centre (DIFC) Authority introduced a regulation for the creation of so-called ‘intermediate special purpose vehicles’ (**Intermediate SPVs**) in the DIFC. A special purpose vehicle (SPV) is a subsidiary of a company that serves to isolate risk from the parent company by maintaining its assets and liabilities on a completely separate balance sheet. It can be used as a counterparty in swap transactions. Also, the parent company can finance a project through an SPV that would put the parent company in danger of bankruptcy if the project does not perform well. The new type of SPV has been devised to respond to the need of market participants to structure their downstream investments from the DIFC in a more time- and cost-efficient manner compared to what the existing rules allow for.The new regime lowers some of the requirements pertaining to the establishment and operation of DIFC limited companies and limited liability companies. Notably, Intermediate SPVs benefit from a less complex application process, including shorter and simpler application forms. In addition, they involve markedly reduced fees. The registration fee amounts to USD 1,000 (instead of US$ 20,000), while the annual licensing fee is set at USD 3,000 (as opposed to USD 12,000). Most significantly in terms of cost savings, the new regulation allows applicants to use their existing presence in the DIFC as the registered office of the Intermediate SPV, thereby dispensing them from the need to lease or acquire additional office space in relation with the establishment and operation of such entity.What is more, like other organisations incorporated in the DIFC, an Intermediate SPV offers a range of advantages, including:

- *Tax neutrality.* DIFC law provides neither for corporate, transfer, withholding, capital gains, inheritance or other taxes nor a stamp duty on the transfer of shares in a DIFC entity.
- *No foreign ownership restrictions.* Exempt from the foreign ownership restrictions imposed by UAE law, companies incorporated in the DIFC can be 100% owned by non-UAE shareholders.
- *UAE status.* Since a company incorporated in the DIFC and wholly-owned by UAE nationals (or by an entity that is 100% owned by UAE nationals) is treated as a ‘national company’ for onshore purposes within the UAE, Intermediate SPVs could probably be used for the structuring of complex transactions involving onshore UAE assets.
- *Limited liability of shareholders.* The liability of shareholders in a DIFC company is generally limited to the amount of their commitment to the company’s share capital. Hence, Intermediate SPVs should be an effective means for market participants to ring-fence their exposure to specific investments in a cost-efficient manner.
- *Application of DIFC Law.* The DIFC offers a robust regulatory and legal system, where English is the primary language. In particular, its corporate law largely draws on English common law principles, while the jurisdiction’s courts operate a system of binding precedent based on common law. Moreover, investors using Intermediate SPVs will be able to benefit from the DIFC’s advanced regime for the registration, perfection, and enforcement of security interests.

Yet, at this stage, it is unclear whether Intermediate SPVs will satisfy the necessary minimum substance requirements that would allow them to apply for a Tax Residency Certificate from the UAE Ministry of Finance and thus to benefit from the UAE’s double tax treaty network. If they did, the new type of SPVs would have a noteworthy advantage over the already available special purpose corporations, which are currently not eligible for tax treaty benefits in the UAE.The Intermediate SPV regime is available only to applicants who (a) have an established presence in the DIFC and (b) fall in one of the following categories of Qualifying Applicants:

- collective investment schemes established in the DIFC and regulated by the Dubai Financial Services Authority (“DFSA”);

- collective investment schemes established outside the DIFC but managed by a fund or asset manager licenced by the DFSA; and
- holding companies or other holding entities, proprietary investment vehicles (incorporated or not) and single family offices.

A Qualifying Applicant must be able to demonstrate that it either owns or controls the Intermediate SPV.The new regime was given immediate force by the DIFC Authority through a waiver and amendment of certain provisions in the existing regulations. Ultimately, it may become part of the DIFC Companies Law and DIFC Companies Regulations, which are currently undergoing revision.In spite of being only available to those entities that are already established in the DIFC, the Intermediate SPV is expected to constitute an attractive alternative to established SPV domiciles, including offshore venues, particularly for transactions focused on the Middle East and on Saudi Arabia in particular.