

SETTING UP A SYNDICATE SERVICE COMPANY IN DUBAI (DIFC)

2017

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This is a guide to assist Managing Agents/Syndicates with the intention of setting up a Service Company in Dubai.

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BACKGROUND TO LLOYD'S OPERATION IN DUBAI

The Lloyd's licence within the Dubai International Financial Centre (DIFC) allows Lloyd's underwriters to appoint coverholders in the DIFC to write insurance of DIFC risks and non-UAE risks (subject to any restrictions and in compliance with any requirements governing the insurance of the risk in the jurisdiction in which that risk is situated), and reinsurance of DIFC, UAE and non-UAE risks. Coverholders must be authorised by the [Dubai Financial Services Authority \(DFSA\)](#), and the Society of Lloyd's and the DFSA signed a Framework for Cooperation that ratifies Lloyd's activities in the DIFC marketplace. Outside of the DIFC Lloyd's underwriters may not appoint a coverholder domiciled in the UAE for either insurance or reinsurance business.

Please note that the DIFC is the only free zone in the UAE from which Lloyd's can write insurance business. Other free zones in the UAE are not zones in, or from which, Lloyd's underwriters are permitted to carry on insurance business.

According to UAE Federal Law No. 6 of 2007 a UAE risk is defined as monies, properties, possessions or liabilities located within the country.

Key considerations for becoming a coverholder in DUBAI

- Intermediary regulation
- Takaful/ Re-Takaful
- Insurance Products
- Tax
- Regulatory reporting
- Jurisdiction

Intermediary regulation

The [General module of the DFSA rulebook \('GEN'\)](#) lists the various Financial Services. Firms that wish to carry on any Financial Services must, therefore, be licensed and authorised to do so by the DFSA.

The Insurance activities prescribed as Financial Services by the DFSA and for which authorisation is therefore required, are as follows;

- Effecting contracts of Insurance
- Carrying out Contracts of Insurance
- Insurance Intermediation; and
- Insurance Management

Insurance Intermediation is broadly defined and includes the activities typically undertaken by brokers and managing agents alike.

- Insurance Intermediation means
 - Advising on insurance
 - Acting as agent for another person in relation to the buying or selling of insurance for that other Person or
 - Making arrangements with a view to another Person whether as principal or agent, buying insurance
- Advising means giving advice
 - Which is given to a person in his capacity as a policyholder or potential policyholder, or in his capacity as an agent for a policyholder or potential policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent; or
 - That constitutes generic advice

- Insurance Management
 - Providing management services or exercising managerial functions for an insurer;
 - In (1) management services and managerial functions include administration and underwriting ; or
 - In (1) an 'insurer' means a Person effecting or carrying our Contracts of Insurance

There are a number of important restrictions on Insurance Business that may be conducted in or from the DIFC. Notably, in relation to the UAE, a DIFC insurance entity may not enter into, or act as an insurance intermediation for any direct contract of insurance in respect of a risk based in the UAE. Therefore, the intention is that only (re) insurance Business in relation to UAE based risks is to be conducted from the DIFC. However, the DIFC does permit reinsurance of UAE cedants on a 100% basis.

However, with effect from 4th January 2009, DIFC insurers and intermediaries can now effect or carry out, or intermediate on, direct insurance policies in respect of risks situated within the DIFC district (but not the rest of the UAE)

Although DIFC is, at present, largely a wholesale insurance market, direct insurance of natural persons outside of the UAE is permitted (subject to complying with local requirements). Specific rules apply in respect of the classification of clients as either a Retail client or a Professional client. Client classification affects the requirements concerning the provision of information and marketing materials, specific disclosures for Long Term Insurance Business suitability assessments and recommendations.

DIFC imposes restrictions on insurers undertaking Insurance Business on a composite basis, i.e. both general and long-term life insurance operations. The [Conduct of Business module of the DFSA Rulebook](#) states that an insurer must not carry on, through an establishment maintained by it in the DIFC, both Long Term Insurance Business and general (Non-Life) Insurance Business, unless the general Insurance Business is restricted to accident or sickness cover.

Takaful/ Re-Takaful

In order to act as a Takaful operator in or from the DIFC, an entity must be authorised by the DFSA to undertake the financial Services of

- Effecting Contracts of Insurance
- Carrying out Contracts of Insurance

In addition to complying with the DFSA's Rules which apply to conventional DIFC insurers, Takaful operators must also comply with the [Islamic Finance Rules module of the DFSA Rulebook \(IFR\)](#).

Insurance Products

Insurance Products in DIFC

- The [DFSA Rulebook \(General Module\)](#) categorises all types of insurance products into 2 categories – life and non-life (or general). Special rules also apply in respect of contracts of Life Insurance that are categorised as 'Long Term Insurance'.
- As composite insurance arrangements are not permitted where Insurers wish to transact business which falls within these categories they will also not be authorised to carry out general (non-life) Insurance Business unless that general business is limited to accident and/ or sickness cover. There are 7 classes of Life Insurance and there are 8 classes of Non-Life (general) Insurance.

What is the DIFC Authority?

- The DIFC Authority is the body charged with overseeing the operation and administration of DIFC. Its responsibilities include developing overall strategy and providing direction. The DIFC

Authority is also responsible for the development of laws and regulations to cover all aspects of non-financial services activities which are not regulated by the DFSA. Such laws and regulations include employment law, contract law, company law and real estate law amongst others (<http://www.difc.ae/>).

What is the DFSA?

- The Dubai Financial Services Authority (DFSA) is the integrated regulator responsible for the authorisation, licensing and registration of institutions and individuals who wish to conduct financial and professional services within the DIFC (<http://www.dfsa.ae/>). The [DFSA Rulebook](#) is also available for your reference.

What are the DIFC Judicial Courts?

- An autonomous body, the DIFC Courts' statutory function is that of administering and enforcing the civil and commercial laws of DIFC. It has been established by laws, which set out the jurisdiction of the DIFC Courts, allowing for independent administration of justice in the DIFC. The jurisdiction of the DIFC Courts also extends to the ratification of judgements, orders, and awards handed down by other recognised courts or arbitral bodies – domestic or foreign. The jurisdiction of the DIFC Courts is limited to civil and commercial matters. Criminal matters cannot be heard by DIFC courts and must be referred to the appropriate authority in the UAE.

Tax

- Lloyd's tax department does not handle taxes in this jurisdiction and currently holds no more information on taxes. Any tax liability identified as a result of writing insurance or reinsurance business should be notified to Lloyd's tax department.
- Since the inception of the DIFC there is a 50 year Tax break for all companies registered within the DIFC. This extends to all income on profits from date of inception(2004).

Jurisdiction

- A contract should include a clause specifying the jurisdiction that will apply and an underwriter can agree with an insured the jurisdiction that will be specified. Nevertheless, this designation may not be effective in the event of a dispute.
- Additionally, following the expansion of the jurisdiction of the DIFC courts brought about by Dubai Law No. 16 of 2011, DIFC courts may hear any dispute between two non-DIFC parties, where the parties have agreed to opt in to the jurisdiction of the DIFC courts.
- Dubai Law No. 16 of 2011 amended Articles 5 and 7 of the DIFC Courts' Law, dealing with jurisdiction and enforcement of judgments.
- Article 5 allows parties not based in the DIFC, or those that do not conduct business within the DIFC, to choose the DIFC Courts as the forum for resolving their disputes. The choice of forum, however, must be explicitly agreed by the parties in writing.
- DIFC judgments are automatically enforceable in (i) the Dubai Courts, (ii) any Emirates in the UAE and (iii) other countries where the UAE has entered into enforcement treaties or protocols (for example, states of the Gulf Cooperation Council).
- It is, however, unclear whether parties' election to DIFC jurisdiction will be recognised by other regional courts. It remains to be seen whether mainstream courts will stay or dismiss any proceedings that are brought by a party in breach of an agreement to refer the dispute to the DIFC Courts.

ESTABLISH BUSINESS PLAN

A Managing Agent looking to establish a Service Company must make their Syndicate Underwriting Performance (SUP) Executive, and concurrently, the Lloyd's Dubai General Representative, aware of their intention. Discussions between the Managing Agent and Underwriting Performance will be held in respect of the entity's business strategy, the classes of business to be underwritten and the experience

of the underwriters.

Following discussions with the Managing Agent and general agreement by Lloyd's over the proposal, i.e. that it is realistic and achievable, the next step is for the Managing Agent to submit a business plan (SBF) via the core market return system to include the Dubai platform with the corresponding supporting narrative attached (Form 990). No underwriting or operational set up can occur without the Capital and Planning Group's (CPG) approval of the business plan, nor without the approval of the Service Company by Delegated Authority.

Outside of the annual business planning cycle, a Managing Agent can apply to join the Dubai platform for the current or prospective year of account. The steps outlined above remain applicable, and a SBF resubmission will be required.

Managing Agents are reminded that all Lloyd's Service Companies globally must adhere to the Best Practice of Minimum Standards, and the Underwriting Minimum Standards form part of the Underwriting Performance Annual Review.

If a Service Company intends to operate on the Dubai platform with 'Flexible Use' (i.e. an underwriter has the ability to underwrite on behalf of both the syndicate and company), the Managing Agent must also submit a completed flexible use form to Dubai for review, and to Underwriting Performance for approval, prior to any underwriting taking place. Underwriting Performance will monitor this annually against the SBF to ensure alignment, whilst Lloyd's Dubai will use this form to allocate applicable charges to the Managing Agent. *Note- a separate guide on Flexible Use outlining the costs, processes and guidelines for applying, is available separately.*

COVERHOLDER APPLICATION

The Managing Agent must meet with Delegated Authority (DA) to discuss the proposed Lloyd's Dubai Service Company application.

At the meeting with either the DUM (Delegated Underwriting Manager) or Compliance officer Lloyd's DAT will talk about the application process via ATLAS, our expectation regarding the Letter of Support and the steps that we go through at Lloyd's in order to approve the application. This meeting is able to be held prior to all details being confirmed by the prospective Service Company.

On preliminary approval by DA to proceed, the application will be completed on ATLAS. This is required to be started by Lloyd's DAT who will conduct this process after the closure of the introductory meeting. This is subject to a legal name being established and the main point of contact being identified for the Service Company.

Prospective Service Companies operating in Dubai must comply with Lloyd's requirements outlined with the [Service Company Code of Practice](#).

The undertaking must be provided by the Service Company under the terms of paragraph 15 (b) of the Intermediaries Byelaw. Words and terms in bold type in this document have the meanings given in the Definitions Byelaw (which includes the definition of a "Service Company coverholder"). Every application requires a [Service Company Coverholder Undertaking](#) to be reviewed, signed and uploaded onto the ATLAS application form.

All Service Companies must complete and submit with their application a [Service Company Self-Assessment](#) form describing their oversight on.

- a) Risk Management
- b) Underwriting
- c) Claims
- d) Regulation, Reputation and Branding

In addition to the ATLAS application, a [Service Company decision paper](#) needs to be submitted to Lloyd's for review. This document is to be completed in conjunction with the ATLAS application and in accordance with the information discussed at the preliminary meeting. Once the Service Company has been approved by Lloyd's London and Lloyd's Dubai, the coverholder will be able to enter into a Service Company Underwriting Agreement. This is a binding authority which authorises a Service Company coverholder to enter into a contract or contracts of insurance only to be underwritten by

members of a syndicate managed by the Service Company coverholder's associated Managing Agent (and, where applicable, by its associated insurance company).

Any further changes to the Service Company record once the entity has been approved will need to be submitted to Lloyd's through ATLAS e.g. if the Service Company is looking to write an additional line of business then the Managing Agent will need to submit a class of business extension and accompanying [checklist](#)).

APPLICATION FOR AN INSURANCE AGENCY

Any application for a MGA would fall under the Category 4 Insurance Management and/or Insurance Intermediation. The process for completing an application is set out in the [DFSA guide](#).

There are no restrictions on how many markets, agents, coverholders and Service Companies Lloyd's can represent.

Positions

There are 4 authorised positions for any financial firm in the DIFC – Senior Executive Officer, Finance Officer, Compliance Officer and Anti-Money Laundering Reporting Officer. Typically, the DFSA will require at least 2 authorised Individuals to be based in the UAE to fulfil the licensed functions for a DIFC based entity. The requirements can be waived by the DFSA and is decided on a case by case basis. It is necessary to apply for a formal waiver to the DFSA in respect of any authorised individual undertaking a mandatory appointment (other than that of a Finance Officer) intended to be resident outside of the UAE.

Please note the prospective Principle Officer/Senior Executive Officer of any Service Company in Dubai is subject to an interview by the Head of Delegated Authorities in London.

Qualifications

There are no minimum qualifications for authorised individuals but an important part of the authorisation process will require the applicant to identify the team of individuals who will staff the operation. The DFSA will review the Authorised Individuals intended to fulfil the required roles within the firm. Authorisation is unlikely to be granted until such time as the Authorised Individuals have been identified and their credentials provided to the DFSA. The DFSA will take 3 key areas into account when considering an application for each Authorised Individual:

- Integrity
- Competence and capability
- Financial soundness

Registration Fee

The costs* for setting up a Category 4 Insurance Manager and/or Insurance Intermediator are as follows;

- One off Application fee of \$15,000
- Annual DFSA Prudential Fee \$15,000 (Pro-rated for first year depending on licence date)
- DIFCA Data One Off Protection Fee \$1,000 (Renewal \$500)
- Employment Fees (e.g. Visas for staff, Medical, Emirates ID Card)
- A full list of the Government Service Fees can be found at:

<https://www.difc.ae/operating/government-services>

**Note these DIFC and DFSA costs can be subject to change at any time*

DFSA Rulebooks

Rulebooks that apply to insurance managers and/or insurance intermediaries

- [PIB Module](#) (Prudential Insurance Intermediation & Banking).

- For Insurance Intermediaries and Insurance Managers, the PIB module sets out their detailed obligations covering the following areas;
 - Financial resources
 - Financial reporting and submission of returns
 - Reporting to the DFSA
- Capital requirements
 - Basic capital requirements
 - Initial and ongoing requirements
 - Expenditure based capital minimum
 - Calculation and component of capital
- [COB Rules](#) (Conduct of Business)
 - Client Classification
 - Commission and fee disclosure
 - Ensuring that communications to clients are clear, fair and not misleading
 - Duties of disclosure on firms and clients
 - Identifying an individual client's circumstances and objectives
 - Ensuring the suitability of the recommendations for customers' demands and needs
 - Managing conflicts of interest
 - Providing key features information about insurance products
 - Restrictions on insurance business and insurance intermediaries from or within the DIFC
- [Islamic Financial Business Module](#) (if relevant)
 - Disclosure requirements
 - Constitutional documents
 - System and controls
 - The appointment of, and review by, a Sharia Supervisory Body

Submission of Forms

All forms are submitted to the DFSA for approval.

Code of Practice for the Administration of Insurance Agents

Once a firm is authorised, it will be subject to on-going supervision by the DFSA. The various DFSA Rulebooks highlight the primary focus of the supervisory approach of the DFSA and the ongoing relationship between an Authorised Firm and the DFSA. An Authorised Firm is required to keep the DFSA informed of significant events, or anything related to the Firm of which the DFSA would reasonably expect to be notified. The DFSA's level of supervision will be proportionate to the risk which the Authorised Firm poses to the DFSA's objectives and will emphasise the responsibilities of the Authorised Firm's senior management in identifying, assessing, mitigating and controlling its risks. The greater the impact and probability of the Authorised Firm's perceived risks, the more intensive the supervisory relationship will be.

The investigations and enforcement powers granted to the DFSA under the Regulatory Law are expanded upon in detail in the Enforcement module of the DFSA Rulebook ('ENF'). The investigation and enforcement processes are detailed and complex, and at each stage there are a range of options available to the DFSA.

Regulatory reporting

The reporting requirements for Lloyd's are specified in section 50C of the Insurance Companies (Amendment) Ordinance (ICO) 1999.

Lloyd's prepares the General business return, which is audited, in addition to an actuarial review on the Employees' Compensation and Motor classes.

Lloyd's is required to report figures on a quarterly basis to the FCA. These are derived from data provided directly from coverholders (or the associated managing agent) on a monthly basis to the Lloyd's Core Market Return system. After the Dubai coverholder is established, Lloyd's will provide the relevant reporting templates and guidance on the requirements for regulatory reporting.

Lloyd's is also required to provide the regulator, on a quarterly basis and within one month after the close of the quarter to which it relates, with a list of its coverholders in Dubai. The list must include details of the classes of business underwritten by each of them. The Lloyd's representative office obtains this information from the coverholders each quarter.

Regulatory compliance

Anti-Money Laundering (AML), Counter-Terrorist Financing (CTF) and Sanctions compliance

The DFSA operates a supervisory regime for AML, CTF and sanctions, which service companies must comply with. The requirements are set out in the "AML Module" of the DFSA Rulebook. They include;

- Senior Management Responsibility;
- The Money Laundering Reporting Officer function;
- Risk assessments and Customer Due Diligence,
- Suspicious Activity Reporting and AML training and awareness;
- Annual reporting requirements to the DFSA.

Service companies must ensure compliance with these requirements and should refer to the following link for further details:

<https://www.dfsa.ae/What-We-Do/Supervision/AML-CTF-Sanctions-Compliance>

Lloyd's regional approval for coverholders (including service companies)

A standard Lloyd's coverholder approval permits a coverholder to accept risks and issue documentation on behalf of Lloyd's underwriters in the territory in which the coverholder is located only, subject to Lloyd's regulatory and licensing permissions. It does not allow the coverholder to carry on business in other countries on behalf of Lloyd's underwriters (*Lloyd's Code of Practice - Delegated Underwriting, 30 March 2015, para.11.5*).

If a Lloyd's underwriter wants a coverholder to arrange insurance contracts with insured persons or firms domiciled, resident or located in countries other than that in which the coverholder itself is located, i.e. outside of the DIFC, the underwriter should ensure that the binding authority schedule is properly completed to record this and that the coverholder adds the appropriate regional extension(s) to its Lloyd's approval, to cover the country(ies) concerned. This control is imposed to help ensure that coverholders carrying on business on behalf of Lloyd's underwriters do so in accordance with local regulatory requirements.

Note that coverholder regional extensions are separate from Lloyd's licensing in different territories and also separate from coverholder's regulatory authorisation to carry on insurance mediation activities in a territory.

Regional extension(s) are only required where business is being transacted on an insurance basis. Where business is being written on a reinsurance basis no regional extension(s) are required to be approved as reinsurance is considered to be a non-territory specific class of business. For reinsurance, only approval for the class(es) of business (covered both in the reinsurance and the underlying direct insurance contract) is required.

Regional extension applications and any related enquiries should be submitted to Lloyd's Delegated Authorities team.

Delegated Authorities

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Risk Location and regulatory considerations

Lloyd's coverholders and service companies must adhere to Lloyd's trading rights in all territories where the risks they underwrite are located, and must do so in accordance with local legal and regulatory requirements. Information about Lloyd's global trading rights and related regulatory requirements are available on Crystal:

www.lloyds.com/crystal

For any further information on Lloyd's global trading rights or Crystal, Lloyd's coverholders and service companies should contact LITA.

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