
REGULATORY LAW
DIFC LAW No.1 of 2004

Consolidated Version
(August 2014)

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LIST OF AMENDMENTS MADE TO THIS LAW SINCE ENACTMENT

(This list does not form part of the Law)

This Law was enacted and came into force on 16 September 2004 and was subsequently amended by:

- (a) DIFC Laws Amendment Law, DIFC Law No.2 of 2005, on 19 April 2005;
- (b) Regulatory Law Amendment Law, DIFC Law No.3 of 2005 on 19 April 2005;
- (c) Regulatory Law Amendment Law (Collective Investment), DIFC Law No.2 of 2006 on 18 April 2006;
- (d) Regulatory Law Amendment Law (Investment Trust), DIFC Law No.7 of 2006 on 1 August 2006;
- (e) Regulatory Law Amendment Law, DIFC Law No.8 of 2006 on 29 November 2006;
- (f) DIFC Laws Amendment Law, DIFC Law No.2 of 2007 on 15 February 2007
- (g) Regulatory Law Amendment Law, DIFC Law No.3 of 2007 on 27 May 2007;
- (h) DIFC Laws Amendment Law, DIFC Law No.2 of 2008 on 14 September 2008;
- (i) DIFC Laws Amendment Law, DIFC Law No.1 of 2010 on 2 May 2010;
- (j) DIFC Laws Amendment Law, DIFC Law No. 3 of 2010 on 11 July 2010;
- (k) Regulatory Law Amendment Law, DIFC Law No.1 of 2011 on 28 April 2011;
- (l) Regulatory Law Amendment Law, DIFC Law No.2 of 2011 on 27 December 2011
- (m) Regulatory Law Amendment Law, DIFC Law No.2 of 2012 on 5 July 2012;
- (n) DIFC Laws Amendment Law, DIFC Law No. 7 of 2012 on 23 December 2012;
- (o) DIFC Laws Amendment Law, DIFC Law No. 2 of 2013 on 5 January 2014; and.
- (p) DIFC Laws Amendment Law, DIFC Law No. 1 of 2014 on 21 August 2014.

PART 1: GENERAL

1. Title

This Law may be cited as the "Regulatory Law 2004".

2. Legislative Authority

This Law is made by the Ruler of Dubai.

3. Application of the Law

This Law applies in the jurisdiction of the Dubai International Financial Centre.

4. Date of Enactment

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

5. Commencement

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

6. Interpretation

Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in this Law.

PART 2: THE DFSA

CHAPTER 1 - THE STRUCTURE OF THE DFSA

7. The DFSA

- (1) The DFSA is a body established under Dubai Law.
- (2) The DFSA shall have its own constitutional provisions, which shall incorporate the provisions of Schedule 2, and which shall not be inconsistent with those provisions.
- (3) In exercising its powers and performing its functions the DFSA shall act in an independent manner, notwithstanding that it is an agency of the government of the Emirate of Dubai.

8. The Powers, Functions and Objectives of the DFSA

- (1) The DFSA has such functions and powers as are conferred, or expressed to be conferred, on it:
 - (a) by or under the Law; and
 - (b) by or under any other law made by the Ruler.
- (2) The DFSA has power to do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred in accordance with (1).
- (3) In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:
 - (a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
 - (b) to foster and maintain confidence in the financial services industry in the DIFC;
 - (c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
 - (d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;
 - (e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;

- (f) to promote public understanding of the regulation of the financial services industry in the DIFC;
 - (g) to foster and maintain the objectives of the DIFC under Dubai Law in relation to the exercise or performance of any powers or functions conferred upon the DFSA by Dubai Law or DIFC Law; and
 - (h) to pursue any other objectives as the Ruler may from time to time set under DIFC Law.
- (4) In exercising its powers and performing its functions, the DFSA shall take into consideration the following guiding principles, being the desirability of:
- (a) pursuing the objectives of the DIFC as set out under Dubai Law in so far as it is appropriate and proper for the DFSA to do so;
 - (b) fostering the development of the DIFC as an internationally respected financial centre;
 - (c) co-operating with and providing assistance to regulatory authorities in the State and other jurisdictions;
 - (d) minimising the adverse effects of the activities of the DFSA on competition in the financial services industry;
 - (e) using its resources in the most efficient way;
 - (f) ensuring the cost of regulation is proportionate to its benefit;
 - (g) exercising its powers and performing its functions in a transparent manner; and
 - (h) complying with relevant generally accepted principles of good governance.

9. Structure of the DFSA

The DFSA shall be made up of:

- (a) the Chairman of the DFSA;
- (b) the DFSA Board of Directors;
- (c) the Financial Markets Tribunal appointed by the DFSA Board of Directors;
- (d) the Chief Executive and members of his staff; and
- (e) any DFSA committees as may be duly appointed from time to time.

10. Independent Review of the DFSA

- (1) The President may appoint an independent person to review and report to the President on any aspect of the efficiency and effectiveness of the DFSA in the use of its resources.
- (2) The President shall meet the reasonable expenses incurred by such person in preparing the report.
- (3) A person appointed under Article 10(1) has a right of access at all reasonable times to all information which is reasonably required by him for the purposes of preparing the report and which is held or controlled by any officer, employee or agent of the DFSA.
- (4) Such person shall be entitled reasonably to require from the officers, employees and agents of the DFSA such information and explanations as he considers necessary for the purpose of preparing the report.
- (5) A person shall not, without reasonable excuse, intentionally engage in conduct that results in the obstruction of a person appointed under Article 10(1) in the exercise of his powers under Article 10.

11. Reporting by the DFSA to the President

- (1) The DFSA shall provide the President with a written report on the exercise of its powers, performance of its functions and financial activities.
- (2) Such report shall be prepared and provided as soon as reasonably practicable in each financial year of the DFSA and shall relate to its previous financial year.
- (3) Such report shall be published by the DFSA without undue delay, or within such time period as the President otherwise directs.

12. Liability

- (1) Subject to Article 12(2), the DFSA may be sued in its own name.
- (2) Neither the DFSA nor any officer, director, DFSA tribunal or committee members, employee, delegate or agent of the DFSA can be held liable for anything done or omitted to be done in the performance or purported performance of the functions or in the exercise or purported exercise of any power of the DFSA or any power or function delegated to the DFSA.
- (3) Article 12(2) does not apply if the act or omission is shown to have been in bad faith.

13. Financial Year

- (1) The financial year of the DFSA commences on 1 January in each calendar year or such other date as the President may specify.
- (2) The first financial year of the DFSA commences on commencement of this Article and ends at the date arrived at under Article 13(1) for the next financial year.

14. Taxation

The income of the DFSA shall not be subject to taxation.

15. Record Keeping

The DFSA shall make suitable arrangements for keeping appropriate records in relation to the exercise of its powers and the performance of its functions.

16. Funding and Fees

- (1) The DFSA may make Rules prescribing the fees payable to the DFSA, including those for applications for licensing, recognition, registration and authorisation, in connection with the performance of its functions and exercise of its powers.
- (2) In respect of each financial year of the DFSA, the President shall provide financial resources to the DFSA to the extent necessary to ensure that it is able adequately to perform its functions and exercise its powers.
- (3) The DFSA may invest its financial resources which are not immediately required in accordance with an investment policy approved in advance by the President.

17. The Annual Budget of the DFSA

- (1) The DFSA shall submit to the President for his approval estimates of the annual income and expenditure of the DFSA for the next financial year.
- (2) Such estimates shall include figures relating to levels of remuneration and entitlement to expenses of the officers, employees and agents of the DFSA.
- (3) The DFSA shall submit such estimates to the President for his approval not later than the end of the financial year.
- (4) The President may on reasonable grounds reject such estimates within 30 days of receiving them, such rejection to be addressed in writing with reasons to the DFSA.
- (5) Unless the estimates have been approved by the President under Article 17(3) or rejected under Article 17(4), they shall be deemed to have been approved on expiry of the 30 days.

18. Accounts

- (1) The DFSA shall keep proper accounts of its financial activities.
- (2) The DFSA shall, before the end of the first quarter of the financial year, prepare financial statements for the preceding financial year in accordance with the accounting standards specified by the DFSA in its Rules.
- (3) Such financial statements shall in any event give a true and fair view of the financial activities of the DFSA as at the end of the previous financial year and of the results of its operations and cash flows in the financial year.
- (4) Such statements shall be submitted to the DFSA Board of Directors and, where appropriate to do so, approved by the DFSA Board of Directors.
- (5) In this Article 'preceding year' does not include any financial year ending before the end of 2003.

19. Audit

- (1) The DFSA Board of Directors shall appoint auditors to conduct an audit in relation to each financial year of the DFSA.
- (2) The DFSA shall, as soon as reasonably practicable after the preparation of its financial statements, provide such statements to the relevant auditors for audit.
- (3) The auditors shall prepare a report on the financial statements and send the report to the DFSA Board of Directors.
- (4) Such report shall, where appropriate, include a statement by the auditors as to whether or not, in their opinion, the financial statements to which the report relates give a true and fair view of the state of the financial activities of the DFSA as at the end of the financial year to which the financial statements relate and of the results of its operations and cash flows in the financial year.
- (5) The auditors shall have a right of access at all reasonable times to all information which is reasonably required by them for the purposes of preparing the report and which is held or controlled by any officer, employee or agent of the DFSA.
- (6) The auditors shall be entitled reasonably to require from the officers, employees and agents of the DFSA such information and explanations they consider necessary for the performance of their duties as auditors.
- (7) A person shall not without reasonable excuse intentionally engage in conduct that results in the obstruction of a person appointed under Article 19(1) in the exercise of his powers under Article 19.

CHAPTER 2 - THE DFSA BOARD OF DIRECTORS

20. The Powers and Functions of the DFSA Board of Directors

- (1) The general powers and functions of the DFSA Board of Directors are to:
 - (a) ensure that the DFSA exercises its statutory powers and performs its statutory functions in accordance with its objectives;
 - (b) make policies relating to the regulation of financial services and related activities and any other matters over which the DFSA has exclusive jurisdiction;
 - (c) review the performance of the Chief Executive;
 - (d) give the Chief Executive written directions as to the furtherance of any of the DFSA's objectives or the performance of any of the Chief Executive's statutory functions. Such written directions shall not constitute Rules;
 - (e) arrange for the DFSA to enter into binding and non-binding arrangements, including memoranda of understanding and co-operation with similar bodies, provided they do not conflict with the treaties to which the State is a party; and
 - (f) accept a delegation of powers or functions from another person pursuant to Dubai Law.
- (2) The legislative powers and functions of the DFSA Board of Directors are, so far as is reasonably practicable, to:
 - (a) review and, where appropriate, submit draft laws to the President with a recommendation that they be approved and enacted;
 - (b) review and, where appropriate, approve and make Rules;
 - (c) review and, where appropriate, approve and issue standards and codes of practice of the DFSA; and
 - (d) make written submissions to the President in relation to legislative matters outside the scope of its own legislative powers.
- (3) Except in respect of the powers and functions set out in Article 20(1)(c) and (d) and Article 20(2), the DFSA Board of Directors may delegate to a committee of the DFSA Board of Directors or to the Chief Executive such of its powers or functions as may appropriately and more efficiently and effectively be exercised or performed by such committee or the Chief Executive.
- (4) The DFSA Board of Directors may act through the Chairman of the DFSA.

21. Chairman of the DFSA and Membership of the DFSA Board of Directors

- (1) The President shall appoint a person to be the Chairman of the DFSA for a fixed term.
- (2) The President may reappoint the Chairman for a further fixed term.
- (3) The Chairman may be dismissed only by the President for just cause in accordance with DIFC Law.
- (4) The President shall appoint persons to be members of the DFSA Board of Directors for fixed terms.
- (5) The President may reappoint a Board Member for a further fixed term.
- (6) A Board Member may be dismissed only by the President for just cause in accordance with DIFC Law and only after consulting the Chairman.
- (7) The Chairman of the DFSA shall be a Board Member and Chairman of the Board.
- (8) The Chief Executive shall be a Board Member but shall not be appointed as Chairman of the DFSA.
- (9) No member of the staff of the Chief Executive shall be appointed as a Board Member.
- (10) For the purposes of determining whether a person may be dismissed for just cause under this Article and Article 22, just cause means inability, incapacity or misbehaviour.

22. The Chief Executive

- (1) The DFSA Board of Directors, by a majority resolution of two thirds of all members of the DFSA Board of Directors, shall appoint a person to be the Chief Executive of the DFSA for a fixed term and may reappoint the Chief Executive of the DFSA for a further fixed term.
- (2) The DFSA Board of Directors, by a majority resolution of two thirds of all members of the DFSA Board of Directors may dismiss the Chief Executive for just cause in accordance with DIFC Law.
- (3) The DFSA Board of Directors shall consult the President prior to appointing, renewing the appointment of or dismissing the Chief Executive.

CHAPTER 3 – RULES

23. Power to Make Rules

- (1) The DFSA Board of Directors may make Rules in respect of any matters related to the objectives, powers or functions of the DFSA or which facilitate the administration of, or further the purpose of, any law administered by the DFSA. This power shall be exercised by the DFSA Board of Directors.
- (2) In particular, the DFSA Board of Directors when exercising the power in Article 23(1) may make Rules in respect of:
 - (a) procedures and requirements in relation to licensing, authorisation and registration;
 - (b) levels and types of financial resources to be maintained by particular persons in the DIFC;
 - (c) standards of practice and business conduct of persons in dealing with their customers and clients and prospective customers and clients;
 - (d) the resolution of disputes;
 - (e) the conduct of particular persons in the DIFC;
 - (f) the operation of an Authorised Market Institution in the DIFC, including but not limited to:
 - (i) notification to and approval by the DFSA of any rules or guidance issued by an Authorised Market Institution;
 - (ii) the prescribing of regulatory functions of an Authorised Market Institution; and
 - (iii) the conduct of and supervision of any such regulatory function; and
 - (g) the conduct of the DFSA and its officers, employees and agents in relation to the exercise of powers and performance of functions, including the exercise of discretionary powers and powers to conduct investigations and hearings.
- (3) Where the DFSA Board of Directors issues a standard or code of practice, the DFSA Board of Directors may incorporate such a standard or code into the Rules by reference and in such circumstances, except to the extent that the Rules otherwise provide, a person who is subject to the provisions of any such standard or code must comply with such provisions as if they were provisions of the Rules.

- (4) Where any legislation made under this Law purports to be made in exercise of a particular power or powers, it shall be taken also to be made in the exercise of all powers under which it may be made.

24. Publication of Draft Rules

- (1) The DFSA shall publish draft Rules by means of a notice under Article 24(2).
- (2) The notice of draft Rules must include the following:
 - (a) the draft text of the Rules;
 - (b) a statement of the substance and purpose of the material provisions of the draft Rules; and
 - (c) a summary of the draft Rules.
- (3) Upon publication of a notice under Article 24(2), the DFSA shall invite interested persons to make representations with respect to the draft Rules within a period of at least 30 days after the publication, or within such period as the DFSA Board of Directors may otherwise determine.
- (4) Articles 24(1), (2) and (3) shall not apply if the DFSA Board of Directors concludes that:
 - (a) any delay likely to arise under such Articles is prejudicial to the interests of the DIFC; or
 - (b) the draft Rules are amendments to correct anomalies or typographical errors in the legislation or are merely consequential in nature and in all cases do not alter the policy set forth in the relevant legislation.
- (5) Any period of time during which the DFSA invites interested persons to make representations with respect to draft Rules prior to Article 24 coming into effect shall be deemed to count as part or all of the period referred to in Article 24(3).

25. Waivers and Modification of Rules

- (1) The DFSA may:
 - (a) on the application of a person; or
 - (b) with the consent of a person;by means of a written notice provide that one or more provisions of the Rules either:
 - (c) shall not apply in relation to such person; or

- (d) shall apply to such person with such modifications as are set out in the written notice.
- (2) A written notice may be given subject to conditions.
- (3) A person to whom a condition specified in a written notice applies must comply with the condition. In the event of failure to comply with a condition, the DFSA may, without limiting any other powers that the DFSA may have, apply to the Court for an order, including an order that the person must comply with the condition in a specified way.
- (4) Unless the DFSA is satisfied that it is inappropriate or unnecessary to do so, it must publish a written notice in such a way as it considers appropriate for bringing the notice to the attention of:
 - (a) those likely to be affected by it; and
 - (b) others who may be likely to become subject to a similar notice.
- (5) The DFSA may:
 - (a) on its own initiative or on the application of the person to whom it applies, withdraw a written notice; or
 - (b) on the application of, or with the consent of, the person to whom it applies, vary a written notice.
- (6) The DFSA may make Rules in connection with the provision of a written notice under this Article, including Rules prescribing procedures for the making of applications and providing of consents.

CHAPTER 4 –THE FINANCIAL MARKETS TRIBUNAL

26. Constitution of the Financial Markets Tribunal

- (1) The DFSA shall maintain a tribunal of the DFSA called the Financial Markets Tribunal (referred to as the “FMT”).
- (2) The DFSA Board of Directors:
 - (a) shall appoint persons for fixed terms to serve as the president and other members of the FMT; and
 - (b) may reappoint the president or any of the members for further fixed terms.
- (3) None of the following persons shall be the president or a member of the FMT:
 - (a) the Chairman of the DFSA;

- (b) the Chief Executive of the DFSA; or
 - (c) any other Board Member, director, officer, employee or agent of the DFSA or of any other agency or body of the DIFC established under Dubai Law.
- (4) The president and members of the FMT shall have relevant qualifications, expertise and experience in the regulatory aspects of financial services and related activities.
- (5) The DFSA Board of Directors may dismiss the president or any of the members of the FMT for just cause. For the purpose of this Article, just cause means inability, incapacity or misbehaviour.

27. Powers and Functions of the FMT

- (1) The powers and functions of the FMT are to hear and determine references and other proceedings as specified in Chapter 5 of Part 2.
- (2) The FMT may do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred for the purposes of Article 27(1), including the giving of directions as to practice and procedure to be followed in the FMT in the hearing and determination of references or other proceedings.
- (3) The president of the FMT may establish one or more panels of the FMT to exercise the powers and perform the functions of the FMT.
- (4) The president of the FMT or the chairman of a panel appointed to hear and determine a reference or other proceeding may make any procedural order or order granting interim relief that the FMT has the power to make.
- (5) For the purpose of a reference or other proceeding, the president of the FMT or the chairman of a panel appointed to hear and determine the proceeding:
- (a) may appoint one or more persons, who shall be independent and an expert in their field, to assist the FMT in deciding any of the issues arising in the proceeding, including assistance in the examination of the parties' witnesses; and
 - (b) shall provide the parties with an opportunity to make submissions on the expert's assistance and shall record in its decision the issues on which, and the extent to which, such assistance was relied upon by the FMT.
- (6) Subject to the Law and Rules, the FMT may make rules of procedure governing the commencement, hearing and determination of references and other proceedings, including as to:
- (a) rules of evidence;

- (b) the manner in which powers may be exercised;
- (c) the manner in which conflicts of interest of members of the FMT may be prevented;
- (d) the manner in which an FMT appointed expert may provide assistance to the FMT;
- (e) notification to the Chief Executive of the commencement of a reference or other proceeding; and
- (f) the manner in which the Chief Executive may appear and be heard in the reference or other proceeding.

CHAPTER 5 – PROCEEDINGS IN THE FINANCIAL MARKETS TRIBUNAL

28. Definitions

In this Chapter, unless the context provides otherwise:

- (a) an “officer, employee or agent” of a person includes a person who proposes to become an officer, employee or agent of a person; and
- (b) a “proceeding” is:
 - (i) a reference;
 - (ii) a regulatory proceeding; or
 - (iii) an application by the DFSA to the FMT for the payment or reimbursement of costs and expenses of an investigation under Article 79;
- (c) a “reference” is a proceeding before the FMT to review a decision of the DFSA under this Article;
- (d) a “regulatory proceeding” is a proceeding before the FMT to hear and determine an issue of a regulatory nature as prescribed under the Law or the Rules or any other legislation administered by the DFSA.

29. References

- (1) The FMT has jurisdiction to hear and determine any reference where a provision of legislation administered by the DFSA or a provision in or made under a DIFC Law provides that a matter may be referred to the FMT for review.
- (2) A person may commence a reference to the FMT only in circumstances where the FMT has jurisdiction to hear and determine the reference under this Article.
- (3) A reference must be commenced:

- (a) within 30 days of the relevant decision of the DFSA; or
 - (b) within such further period not exceeding 30 days as may be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances.
- (4) At the conclusion of a reference, the FMT may do one or more of the following:
- (a) affirm the original decision of the DFSA which is the subject of the reference;
 - (b) vary that original decision;
 - (c) set aside all or part of that original decision and make a decision in substitution;
 - (d) decide what, if any, is the appropriate action for the DFSA to take and remit the matter to the Chief Executive;
 - (e) make such order in respect of any matter or any of the parties which it considers appropriate or necessary in the interests of the DFSA's regulatory objectives or otherwise in the interests of the DIFC; or
 - (f) issue directions for giving effect to its decision, save that such directions may not require the DFSA to take any step which it would not otherwise have the power to take.

30. Regulatory proceedings

- (1) The FMT has jurisdiction to hear and determine any regulatory proceeding where a provision of the Law, the Rules, or any other legislation administered by the DFSA provides that the FMT may hear and determine a regulatory proceeding relating to a matter.
- (2) The DFSA or any other person may commence a regulatory proceeding in the FMT only in circumstances where the FMT has jurisdiction pursuant to this Article to hear and determine the matter.
- (3) A regulatory proceeding may be brought either:
 - (a) by the DFSA; or
 - (b) by another person with:
 - (i) sufficient interest in the matter to which the regulatory proceeding relates; and

- (ii) the consent of the DFSA or, where such consent is denied, the consent of the FMT.
- (4) At the conclusion of a regulatory proceeding, the FMT may do one or more of the following:
 - (a) declare that a person has committed a contravention of a specified provision;
 - (b) impose a fine on a person in respect of a contravention, of such amount as it considers appropriate;
 - (c) censure the person by any means, including by way of publishing a notice of censure;
 - (d) make an order requiring the person to effect restitution or compensate any other person for such period and on such terms as the FMT may direct;
 - (e) make an order requiring the person to account, in such form and on such terms as the FMT may direct, for such amounts as the FMT determines to be profits arising from wrongdoing or any other form of unjust enrichment as determined by the FMT;
 - (f) make an order requiring the person to cease and desist from such activity as the FMT may stipulate;
 - (g) make an order requiring the person to do an act or thing;
 - (h) make an order prohibiting the person from holding office at any body corporate carrying on business in the DIFC; or
 - (i) make a finding, declaration or order of a type prescribed under the Law, Rules or any other legislation administered by the DFSA.

31. Conduct of proceedings

- (1) A person shall commence a proceeding by giving the FMT a written notice in the form provided for in the rules of procedure of the FMT.
- (2) Subject to Article 31(4), on the commencement of a proceeding, the president of the FMT shall, without undue delay:
 - (a) select and appoint a panel of one or more members of the FMT to exercise the powers and perform the functions of the FMT to hear and determine the matter; and
 - (b) appoint a panel member to be the panel chairman.

- (3) For the purpose of Article 31(2), the president of the FMT may appoint himself as the chairman or as a member of a panel in a proceeding.
- (4) (a) Where:
- (i) a proceeding is commenced before the FMT;
 - (ii) there are common parties or there is a common question of law or fact in any other proceeding commenced before the FMT; and
 - (iii) the president of the FMT is satisfied that it is in the interests of justice and efficiency and is in the interests of the DIFC to make a direction under this Article;
- the president of the FMT may direct that:
- (iv) the proceedings be consolidated, heard and determined by the FMT constituted as a single panel, on such terms as the president may direct;
 - (v) the proceedings are to be heard at the same time, or one following another; or
 - (vi) a proceeding is to be stayed until the determination of another proceeding.
- (b) Where two or more original proceedings are consolidated into a single proceeding under Article 31(4)(a), the FMT panel constituted for the consolidated proceeding shall, in hearing and determining issues relevant to each of the original proceedings, have the same powers in relation to those issues as the FMT panel would have had in the original proceedings.
- (5) In hearing and determining a proceeding, the FMT may:
- (a) receive and consider any evidence by way of oral evidence, written statements or documents, even if such evidence may not be admissible in civil or criminal proceedings in a court of law;
 - (b) determine the manner in which such evidence is received by the FMT;
 - (c) where the proceeding is a reference, consider any evidence relating to the subject-matter of the reference, whether or not such evidence was available to the DFSA at the time of the decision to which the reference relates;
 - (d) by notice in writing require a person to attend before it at any sitting and to give evidence and produce any item, record or document in his possession relating to the subject matter of the proceeding;

- (e) administer oaths;
 - (f) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the FMT considers appropriate for the purpose of the proceeding;
 - (g) order a witness to provide evidence by sworn statement for the purpose of the proceedings;
 - (h) order a person not to publish or otherwise disclose any material disclosed by any person to the FMT;
 - (i) where the proceeding is a reference, stay the decision of the DFSA to which the reference relates and any related steps proposed to be taken by the DFSA until the FMT has determined the reference; and
 - (j) exercise such other powers or make such other orders as the FMT considers necessary for or ancillary to the conduct of the proceeding or the performance of its function.
- (6) Proceedings and decisions of the FMT shall be heard and given in public unless the FMT orders otherwise, or its rules of procedure provide otherwise.
- (7) Any finding of fact in a proceeding shall be determined on the balance of probabilities.
- (8) A decision of the FMT may be taken by a majority.
- (9) At the conclusion of a proceeding, the FMT may also make an order requiring a party to the proceedings to pay a specified amount, being all or part of the costs of the proceedings, including those of any party.
- (10) Where the FMT makes an order requiring a party to the proceedings to pay costs under Article 31(9), such costs may be recovered from the recipient of the order in a court of competent jurisdiction as a debt due to the party which incurred the relevant costs.
- (11) Upon making its decision, the FMT must without undue delay inform each party to the proceeding in writing of:
- (a) such decision and the reasons for such decision, including its findings on material questions of fact and identifying the evidence or other material on which those findings were based;
 - (b) the date on which the decision is to take effect; and
 - (c) where applicable, the date by which payment of any fine, restitution or compensation must be made.

- (12) A certificate that purports to be signed by the president or proper officer of the FMT and which states that the FMT on a specified day made a specified decision, including a finding that a specified person has committed a contravention of a specified provision of the Law or of the Rules or of any other legislation administered by the DFSA or made a specified finding of fact, is, in any other proceedings before FMT, or proceedings before the Court, where relevant:
- (a) conclusive evidence of the decision of the FMT made on that day;
 - (b) prima facie evidence that the person contravened that provision; and
 - (c) prima facie evidence of the relevant finding of fact.

32. **Enforcement**

- (1) A person commits a contravention if that person, without reasonable excuse:
- (a) fails to comply with a lawful order, notice, prohibition or requirement of the FMT;
 - (b) having been lawfully required by the FMT to attend before it, does not attend or leaves the place where his attendance is so required without the permission of the FMT;
 - (c) hinders or deters any person from attending before the FMT, giving evidence or producing any item, record or document, for the purposes of any reference or other proceeding;
 - (d) threatens or causes any loss to be suffered by any person who has attended before the FMT, on account of such attendance;
 - (e) threatens or causes any loss to be suffered by any member of the FMT or any person assisting the FMT at any time; or
 - (f) engages in conduct, including without limitation the:
 - (i) destruction of documents; or
 - (ii) giving of information that is false or misleading;that is intended to obstruct the FMT in the exercise of any of its powers.
- (2) Without limiting the application of Article 32(3), where a person commits a contravention under Article 32(1), the FMT may make one or more orders imposing a fine on the person of such amount as it considers appropriate, censuring the person, requiring the person to effect restitution or compensation,

requiring the person to cease and desist from such activity as the FMT may stipulate, or requiring the person to do any other act or thing.

- (3) Where a person fails to comply with a decision, lawful order, notice, prohibition or requirement of the FMT, or fails to pay a fine lawfully imposed by the FMT, the Court may, on application of:

- (a) the FMT; or
- (b) any party to the reference or other proceeding, including the DFSA;

make any order as it thinks fit to enforce such decision, order, notice, prohibition, requirement or fine.

33. Appeal from a decision of the FMT

- (1) A party to a reference or other proceeding may, with the permission of the FMT or the Court, appeal a decision of the FMT to the Court only on a point of law.
- (2) In this Article:
 - (a) “permission” means, in the first instance, permission of the FMT and where this is denied, permission of the Court; and
 - (b) “a party” includes the DFSA.

34. Savings and Transitional

- (1) For the purposes of this Article:
 - (a) “previous Law” means the Regulatory Law 2004 as it was in force immediately prior to the commencement of the DIFC Laws Amendment Law No. 1 of 2014; and
 - (b) “current Law” means the provisions of this Law that came into force under the DIFC Laws Amendment Law No. 1 of 2014, as amended from time to time.
- (2) The Financial Markets Tribunal that was established under the previous Law continues as if it had been established under the current Law including, without limitation, any appointment made under the previous Law which if subsisting at the commencement of the current Law shall continue as if made under the current Law.
- (3) The Regulatory Appeals Committee that was established under the previous Law continues only for the purposes of Article 34(5).
- (4) Except as provided in Article 34(5) and (6):

- (a) anything done or omitted to be done under or for the purposes of the previous Law, including a contravention, is deemed to be done or omitted to be done under or for the purposes of the current Law; and
 - (b) nothing in the current Law affects:
 - (i) any right, privilege, remedy, obligation or liability accrued to or incurred by a person under the previous Law; or
 - (ii) any investigation or legal or administrative proceeding commenced or to be commenced in respect of such a right, privilege, remedy, obligation or liability.
- (5) Any proceeding instituted in the Financial Markets Tribunal or the Regulatory Appeals Committee under the previous Law shall continue under the previous Law, and for that purpose, the provisions in Chapters 4 and 5 of Part 2 of the previous Law shall continue in force and effect until such time as the proceedings, and any related appeals and proceedings, are complete.
- (6) Where there is a contravention under Article 30(1) or 35(1) of the previous Law, proceedings may be instituted in the Financial Markets Tribunal pursuant to Article 30(2) or 35(2) of the previous Law, and, for that purpose, the provisions in Chapters 4 and 5 of Part 2 of the previous Law shall continue in force and effect until such time as those proceedings, and any related appeals and proceedings, are complete.

35. **not in use**

CHAPTER 6 - THE CHIEF EXECUTIVE OF THE DFSA

36. The Powers and Functions of the Chief Executive

The powers and functions of the Chief Executive are, so far as is reasonably practicable, to:

- (a) exercise the executive power of the DFSA by taking such steps as are reasonable and which he considers appropriate to meet the objectives of the DFSA;
- (b) license, authorise, register, recognise, regulate and supervise the conduct of activities and persons required to be regulated by the DFSA by or under Dubai Law or DIFC Law;
- (c) prepare or cause to be prepared in a timely and efficient manner:
 - (i) draft Rules; and
 - (ii) draft standards or codes of practice;

reasonably required to enable the DFSA to perform its statutory functions, and submit such drafts to the DFSA Board of Directors;

- (d) make and issue Guidance which does not constitute a standard or code of practice, and which is reasonably required to enable the DFSA to perform its statutory functions, and advise the DFSA Board of Directors of such Guidance;
- (e) grant waivers and modifications to the application of Rules;
- (f) exercise any power to grant waivers or modifications to the application of other legislation applying in the DIFC where such a power is conferred on the DFSA by that legislation, and advise the DFSA Board of Directors of any such exercise of power;
- (g) investigate matters capable of investigation under any legislation administered by the DFSA, undertake remedial or enforcement actions and, where appropriate, commence proceedings before the FMT and any other tribunals or courts of appropriate jurisdiction;
- (h) where appropriate to do so, delegate such of his functions and powers as may more efficiently and effectively be performed by officers or employees of the DFSA or committees of such persons, and, with the approval of the DFSA Board of Directors either generally or in relation to any particular matter, by any other person; and
- (i) exercise and perform such other powers and functions as may be delegated to the Chief Executive by the DFSA Board of Directors from time to time.

CHAPTER 7 – CONFLICTS OF INTEREST AND USE OF INFORMATION

37. Conflicts of Interest

- (1) Officers, employees and agents of the DFSA shall disclose material conflicts of interest to which they are subject in performing their functions. Such disclosure shall be made without undue delay to the person to whom such officer, employee or agent reports.
- (2) Officers, employees and agents of the DFSA shall not participate in the making of decisions on matters in relation to which they are subject to a material conflict of interest, save that breach of Article 37(2) shall not result in such decision being invalid.

38. Confidential Information

- (1) Subject to Article 38(3), confidential information must not be disclosed by the DFSA or by any of its officers, employees or agents, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.

- (2) Information is confidential when:
- (a) it is received by the DFSA or any of its officers, employees or agents in the course of the performance by such person of a function under the Law or under any other legislation administered by the DFSA; and
 - (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under such Law or other legislation.
- (3) The DFSA may disclose confidential information where such disclosure:
- (a) is permitted or required under the Law or Rules or under other legislation administered by the DFSA;
 - (b) is permitted or required by any other law;
 - (c) is made to:
 - (i) the Companies Registrar;
 - (ii) a Financial Services Regulator;
 - (iii) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
 - (iv) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services;
 - (v) a civil or criminal law enforcement agency; or
 - (vi) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers;for the purpose of assisting the performance by any such person of its regulatory functions; or
 - (d) is made in good faith for the purposes of performance and exercise of the functions and powers of the DFSA.

CHAPTER 8 – OTHER REGULATORS

39. Exercise of Powers on Behalf of Other Regulators

At the request of:

- (a) the Companies Registrar;

- (b) a Financial Services Regulator;
- (c) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
- (d) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services;
- (e) a civil or criminal law enforcement agency; or
- (f) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers,

the DFSA may, where it considers appropriate, exercise its powers under the Law or under any other legislation administered by the DFSA for the purpose of assisting the performance by such persons of their regulatory functions.

40. **Delegation of Functions and Powers to Other Regulators**

- (1) Without limiting in any way the generality of any other provisions of the Law, the DFSA may delegate functions and powers to a representative of:
 - (a) a Financial Services Regulator;
 - (b) a governmental or regulatory authority in the State or elsewhere exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance; or
 - (c) a civil or criminal law enforcement agency of the State;

for the purpose of exercising the powers of the DFSA under Chapters 1 and 2 of Part 5.

- (2) The DFSA may delegate a function or power under this Article only if it considers that there are adequate arrangements in place to ensure that the delegated function or power will be exercised in a manner that is consistent with Chapters 1 and 2 of Part 5 and the objectives of the DFSA.

PART 3: LICENCES, AUTHORISATION AND REGISTRATION

CHAPTER 1 - THE FRAMEWORK OF REGULATION

41. The Financial Services Prohibition

- (1) Subject to Article 41(9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC.
- (2) The DFSA shall make Rules prescribing the activities which constitute a Financial Service.
- (3) The prohibition in Article 41(1) is referred to in the Law as the "Financial Services Prohibition".
- (4) The DFSA may make Rules adding to, removing activities from, or otherwise modifying the list of Financial Services made under Article 41(2).
- (5) A person shall, in engaging in activity constituting a Financial Service, or in engaging in any like activity that may constitute a Financial Service except for the form and manner in which the activity is carried out, comply with Federal Law to the extent that such law applies in the DIFC.
- (6) DELETED
- (7) DELETED
- (8) DELETED
- (9) A Fund is exempt from the Financial Services Prohibition with respect to any Financial Service which is carried on for the purposes of, or in connection with, the Fund if the Fund has a Fund Manager or External Fund Manager that falls within Article 42(3) (a) or (b). This exemption applies to a Fund even where it does not have legal personality.

41A. Financial Promotions Prohibition

- (1) A person shall not make a Financial Promotion in or from the DIFC except as prescribed by the Rules made pursuant to this Article.
- (2) The prohibition in Article 41A(1) is referred to as the "Financial Promotions Prohibition".
- (3) For the purposes of the Financial Promotions Prohibition, a Financial Promotion is any communication, however made, which invites or induces a Person to:
 - (a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or
 - (b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product.

- (4) For the purposes of the Financial Promotions Prohibition, the DFSA may make Rules as to:
 - (a) a person or class of persons who may make a Financial Promotion in or from the DIFC and any requirements which apply to such persons when doing so; and
 - (b) any other definition, requirement or matter which the DFSA considers necessary to give effect to the requirements or intent of the Financial Promotions Prohibition.

41B. General prohibition against misconduct

- (1) A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:
 - (a) misleading or deceptive or likely to mislead or deceive;
 - (b) fraudulent; or
 - (c) dishonest.
- (2) The DFSA shall make Rules prescribing what constitutes a Financial Product for the purposes of Article 41B(1).
- (3) Nothing in this Article limits the scope or application of any other provision in legislation administered by the DFSA.

42. Authorised Firms, Authorised Market Institutions and Financial Services

- (1) The DFSA shall make Rules prescribing which kinds of Financial Services, with such modifications or limitations as may be specified may be carried on by:
 - (a) an Authorised Firm; and
 - (b) an Authorised Market Institution.
- (2) The DFSA may make Rules adding to, removing activities from, or otherwise modifying the lists of Financial Services prescribed under Article 42(1).
- (3) A person may carry on one or more Financial Services in or from the DIFC if such person is:
 - (a) an Authorised Firm whose Licence authorises it to carry on the relevant Financial Services;
 - (b) an External Fund Manager as defined in Article 20(5) of the Collective Investment Law 2010, in so far as its activities relate to a particular Domestic Fund that falls within Article 41(9); or

- (c) an Authorised Market Institution whose Licence authorises it to carry on the relevant Financial Services.
- (4) An Authorised Firm or Authorised Market Institution shall:
 - (a) act within the scope of its authority under its Licence; and
 - (b) comply with any condition or restriction applicable to its Licence.
- (5) A person who is not an Authorised Firm or Authorised Market Institution shall not represent that he is such a person.

43. Licensed Functions of Authorised Persons

- (1) The DFSA shall make Rules prescribing functions (“Licensed Functions”) of an Authorised Person that shall be carried out by individuals who have been authorised by the DFSA to carry out those functions.
- (2) Licensed Functions prescribed under Article 43(1) may include the functions of senior officers or employees with material responsibility for both or either:
 - (a) managing an Authorised Person; or
 - (b) the carrying on by an Authorised Person of its Financial Services.
- (3) An individual who is authorised by the DFSA to carry out a Licensed Function:
 - (a) for an Authorised Firm, shall be referred to as an Authorised Individual; and
 - (b) for an Authorised Market Institution, shall be referred to as a Key Individual.
- (4) A person shall not carry out a Licensed Function for an Authorised Firm unless he is authorised by the DFSA as an Authorised Individual to carry out that Licensed Function for the Authorised Firm.
- (5) A person shall not carry out a Licensed Function for an Authorised Market Institution unless he is authorised by the DFSA as a Key Individual to carry out that Licensed Function for the Authorised Market Institution.
- (6) An Authorised Person shall take all reasonable steps to ensure that no officer, employee or agent performs a Licensed Function:
 - (a) without being authorised by the DFSA as an Authorised Individual or as a Key Individual in relation to the relevant Licensed Function;
 - (b) contrary to a restriction imposed by the DFSA under Article 58(1) or 59(1); or

- (c) where Authorised Individual or Key Individual status of that individual has been suspended or withdrawn under Article 58(1), (2), (3) or (5).
- (7) An Authorised Individual or Key Individual shall:
 - (a) act within the scope of his authority granted under his Authorised Individual or Key Individual status; and
 - (b) comply with any condition or restriction applicable to such status.
- (8) A person who is not:
 - (a) an Authorised Individual; or
 - (b) a Key Individual,shall not represent that he is such a person.

44. Prohibition relating to Endorsements

- (1) The DFSA may make Rules prescribing activities that may be carried on only by an Authorised Person that has an appropriate Licence Endorsement authorising it to carry on that activity.
- (2) A person must not carry on an activity prescribed under Article 44(1) unless the person has an appropriate Licence Endorsement authorising it to carry on that activity.

CHAPTER 2 – APPLICATIONS FOR A LICENCE

45. Application for a Licence, Extension to a Licence or an Endorsement

- (1) An application for a Licence authorising an Authorised Person to carry on one or more Financial Services or for a Licence Endorsement may be made to the DFSA by any:
 - (a) body corporate;
 - (b) partnership; or
 - (c) unincorporated association.
- (2) An Authorised Person may apply to the DFSA:
 - (a) to extend its Licence to Financial Services other than those in respect of which it already has a Licence; or
 - (b) to obtain an additional Licence Endorsement.

- (3) The DFSA may make Rules providing that certain persons or types of person may not be granted a Licence in relation to particular Financial Services or a particular Licence Endorsement.
- (4) The DFSA shall make Rules prescribing requirements which an applicant for a Licence, or for extension of a Licence to other Financial Services, or for a Licence Endorsement, must meet before a Licence or extension or Licence Endorsement will be granted by the DFSA. Such Rules may, without limiting the generality of that power, include requirements relating to an applicant's:
 - (a) fitness and propriety;
 - (b) resources (including financial resources);
 - (c) compliance arrangements;
 - (d) systems and controls;
 - (e) legal form; and
 - (f) name (including terms that shall not be used in the name).
- (5) The DFSA may make Rules providing for such requirements referred to in Article 45(4) to be varied in cases where an application is made by a person which is, at the time of application, regulated in a jurisdiction other than the DIFC.
- (6) The DFSA may make Rules:
 - (a) prescribing certain persons or categories of person to be exempted from the requirements referred to in Article 45(4); and
 - (b) providing for any such exemptions to be:
 - (i) limited to certain Financial Services or specified circumstances; or
 - (ii) subject to certain conditions and restrictions.
- (7) (a) If an Authorised Person is:
 - (i) a partnership; or
 - (ii) an unincorporated association;

it does not need to reapply for a Licence by reason only of a change to its membership.
- (b) Article 45 (7) (a) applies subject to the effect of Article 64.

46. Providing Information in relation to the Application

- (1) The DFSA may require the applicant to provide additional information reasonably required for the DFSA to be able to decide the application.
- (2) If at any time between the filing of an application and the grant of a Licence or the grant of an extension to a Licence the applicant becomes aware of a material change reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.

47. Rejection of an Application

- (1) The DFSA may refuse to grant an application for a Licence or for an extension to a Licence or for a Licence Endorsement if it is not satisfied that the requirements under Article 45 for the grant of the Licence, extension to the Licence or the Licence Endorsement have been met.
- (2) The procedures in Schedule 3 apply to a decision of the DFSA under Article 47(1).
- (3) If the DFSA decides to exercise its power under Article 47(1), the applicant may refer the matter to the FMT for review.

48. Grant of an application

- (1) The DFSA may grant an application for a Licence or for an extension to a Licence or for a Licence Endorsement if it is satisfied that the requirements under Article 45 for the grant of the Licence, extension to the Licence or the Licence Endorsement have been met.
- (2) The DFSA may impose conditions or restrictions on a Licence or in relation to a Licence Endorsement when it is granted or extended under Article 48(1).
- (3) Upon deciding to grant a Licence or an extension to a Licence or a Licence Endorsement, the DFSA shall without undue delay inform the relevant applicant in writing of:
 - (a) such decision;
 - (b) the date on which the Licence or extension or Licence Endorsement shall be deemed to take effect;
 - (c) the Financial Service or Financial Services or activity that the applicant is authorised to carry on; and
 - (d) any conditions and restrictions applicable to the Licence or the newly extended Licence or relating to the Licence Endorsement.

- (4) The procedures in Schedule 3 apply to a decision of the DFSA under Article 48(2) to impose conditions or restrictions.
- (5) If the DFSA decides to exercise its power under Article 48(2) to impose conditions or restrictions, the applicant may refer the matter to the FMT for review.

CHAPTER 3 – CONDITIONS AND RESTRICTIONS ON A LICENCE

49. Applying Conditions and Restrictions to a Licence

- (1) The DFSA may at any time by written notice to an Authorised Person:
 - (a) impose conditions and restrictions or additional conditions and restrictions on a Licence or in relation to a Licence Endorsement; or
 - (b) vary or withdraw conditions and restrictions imposed on a Licence or in relation to a Licence Endorsement.
- (2) The DFSA may act under Article 49(1) on its own initiative or at the request of an Authorised Person.
- (3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 49(1).
- (4) If the DFSA decides to exercise its power under Article 49(1), the Authorised Person may refer the matter to the FMT for review.

CHAPTER 4 – WITHDRAWAL OR SUSPENSION OF A LICENCE OR AN AUTHORISATION OR ENDORSEMENT UNDER A LICENCE

50. Withdrawing an Authorisation under, or Endorsement on, a Licence

- (1) The DFSA may withdraw authorisation in relation to one or more Financial Services for which an Authorised Person is authorised under a Licence or may withdraw a License Endorsement.
- (2) The DFSA may act under Article 50(1) on its own initiative or at the request of an Authorised Person.
- (3) The DFSA may exercise its power under Article 50(1) on its own initiative in the following circumstances:
 - (a) the Authorised Person is in breach of, or has been in breach of, one or more restrictions or conditions applicable to its Licence or relating to a Licence Endorsement;
 - (b) the Authorised Person is otherwise in breach of, or has otherwise been in breach of, the Law or Rules or other legislation administered by the DFSA;

- (c) the Authorised Person is no longer fit and proper to carry on a Financial Service for which it has an authorisation or an activity for which it has a Licence Endorsement;
 - (d) the Authorised Person has failed for a period of at least twelve consecutive months to carry on one or more Financial Services for which it is authorised under a Licence or an activity for which it has a Licence Endorsement; or
 - (e) the DFSA considers that the exercise of the power is necessary or desirable in the pursuit of its objectives.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
 - (5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

51. Withdrawing a Licence

- (1) The DFSA may withdraw a Licence of an Authorised Person where:
 - (a) as a consequence of withdrawal of authorisation in relation to one or more Financial Services under Article 50, the person is no longer authorised to carry on any Financial Service;
 - (b) the person is no longer fit and proper to hold a Licence;
 - (c) the person has failed either to remove a controller or to take such other action as required by the DFSA under Article 64; or
 - (d) the person asks the DFSA to withdraw the Licence.
- (2) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (3) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

52. Suspension of Authorisation, Endorsement or Licence

- (1) The DFSA may suspend for a period not exceeding 12 months:
 - (a) an authorisation in relation to one or more Financial Services for which an Authorised Person is authorised under its Licence;
 - (b) a Licence Endorsement; or
 - (c) a Licence of an Authorised Person.

- (2) The DFSA may act under this Article on its own initiative or at the request of an Authorised Person.
- (3) The DFSA may act under this Article on its own initiative if it has reasonable grounds to believe that:
 - (a) the Authorised Person is:
 - (i) in breach of, or has been in breach of, one or more restrictions or conditions applicable to its Licence or a Licence Endorsement;
 - (ii) in breach of, or has been in breach of, the Law or Rules or other legislation administered by the DFSA; or
 - (iii) no longer fit and proper to carry on a Financial Service for which it has Authorisation under its Licence or an activity for which it holds a Licence Endorsement; and
 - (b) the exercise of the power is necessary or desirable in the interests of the DIFC.
- (4) If the DFSA imposes a suspension under this Article it may provide that the Authorised Person may continue to carry on specified activities despite the suspension.
- (5) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (6) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

CHAPTER 5 - AUTHORISED INDIVIDUAL AND KEY INDIVIDUAL STATUS

53. Applications for Authorised Individual or Key Individual status

- (1) In this Chapter:
 - (a) "Authorised Person" includes a person whose application for a Licence or application for extension of a Licence is being considered by the DFSA; and
 - (b) "director, officer, employee or agent" of a person includes a person who proposes to become a director, officer, employee or agent of a person.
- (2) An application for Authorised Individual or Key Individual status of a director, officer, employee or agent of an Authorised Person shall be made by:

- (a) such director, officer, employee or agent; and
 - (b) the Authorised Person for which the Licensed Function is to be performed under the terms of office, employment or agency between such Authorised Person and such director, officer, employee or agent.
- (3) Where a person holds Authorised Individual or Key Individual status, that individual together with the relevant Authorised Person may apply to the DFSA to extend the scope of the Authorised Individual or Key Individual status to Licensed Functions other than those in respect of which the individual already holds such status.
- (4) The DFSA shall make Rules prescribing the requirements which an application for Authorised Individual or Key Individual status must meet before authorisation is granted by the DFSA. Such Rules shall, without limiting the generality of the power, include requirements relating to the fitness and propriety of applicants.
- (5) The DFSA may make Rules providing for such requirements to be varied in cases where:
- (a) an application is made to extend the scope of Authorised Individual or Key Individual status to Licensed Functions other than those in respect of which he already holds such status; or
 - (b) an application is made for the grant of Authorised Individual or Key Individual status by and for an officer, employee or agent who is, at the time of application, regulated in a jurisdiction other than the DIFC to perform a role which is substantially similar to the Licensed Function in relation to which the application is made.
- (6) The DFSA may make Rules:
- (a) prescribing certain persons or categories of persons to be exempted from the requirements referred to in Article 53(4); and
 - (b) providing for any such exemptions to be:
 - (i) limited to certain Licensed Functions or specified circumstances; or
 - (ii) subject to certain conditions and restrictions.

54. Providing Information in relation to the Application

- (1) At any time after the filing of an application under Article 53, the DFSA may require the Authorised Person or the relevant director, officer, employee or agent to provide additional information reasonably required for the DFSA to be able to decide the application.

- (2) If at any time between the filing of an application and the grant of Authorised Individual or Key Individual status or of an extension to his status, the relevant director, officer, employee or agent becomes aware of a material change in his circumstances reasonably likely to be relevant to the application under consideration, he shall inform the Authorised Person in writing of such change without delay.
- (3) If at any time between the filing of an application and the grant of Authorised Individual or Key Individual status or of an extension to a status the Authorised Person becomes aware of a material change reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.

55. **Deleted**

56. **Grant or rejection of an application for authorised status**

- (1) The DFSA may grant Authorised Individual or Key Individual status, including an extension to status, if it is satisfied that the requirements under Article 53 for the grant of the application have been met.
- (2) The DFSA may refuse to grant Authorised Individual or Key Individual status or an extension to such status if it is not satisfied that the requirements under Article 53 have been met.
- (3) The DFSA may, if it considers it appropriate to do so:
 - (a) grant Authorised Individual or Key Individual status subject to conditions and restrictions;
 - (b) impose such conditions and restrictions at any time after the grant of Authorised Individual or Key Individual status; or
 - (c) vary or withdraw such conditions or restrictions.
- (4) Upon deciding to authorise a director, officer, employee or agent of an Authorised Person as an Authorised Individual or Key Individual, or to extend the scope of an Authorised Individual or Key Individual status to other Licensed Functions, the DFSA shall without undue delay inform the relevant director, officer, employee or agent and the Authorised Person in writing of:
 - (a) such decision;
 - (b) the date on which the authorisation or extension shall be deemed to take effect;
 - (c) the Licensed Functions to which the authorisation relates; and
 - (d) any conditions and restrictions applicable to the Authorised Individual or Key Individual status or extended status.

- (5) The procedures in Schedule 3 apply to a decision of the DFSA under this Article:
- (a) to refuse to grant Authorised Individual or Key Individual status to an individual or to extend such status; or
 - (b) to impose or vary conditions or restrictions on an Authorised Individual or Key Individual.

The DFSA shall give both the applicant, Authorised Individual or Key Individual (as the case may be) and the relevant Authorised Person or applicant to be an Authorised Person (as the case may be) an opportunity to make representations under the procedures in Schedule 3.

- (6) If the DFSA decides to exercise its power under this Article:
- (a) to refuse to grant Authorised Individual or Key Individual status to an individual or to extend such status; or
 - (b) to impose or vary conditions or restrictions on an Authorised Individual or Key Individual,

the applicant, Authorised Individual or Key Individual (as the case may be) or the relevant Authorised Person or applicant to be an Authorised Person (as the case may be) may refer the matter to the FMT for review.

CHAPTER 6 – DELETED

57. Deleted

CHAPTER 7 – RESTRICTION, SUSPENSION AND WITHDRAWAL OF AUTHORISED INDIVIDUAL OR KEY INDIVIDUAL STATUS

58. Suspending or Withdrawing Authorisations

- (1) If the DFSA reasonably concludes that:
- (a) an Authorised Individual or Key Individual is in breach of, or has been in breach of, an obligation that applies as a result of such individual's Authorised Individual or Key Individual status; or
 - (b) an individual is no longer fit and proper to perform a role in respect of which he is an Authorised Individual or Key Individual;

it may:

- (c) restrict the individual from performing one or more Licensed Functions; or

- (d) suspend or withdraw Authorised Individual or Key Individual status from such individual.
- (2) The DFSA may withdraw the Authorised Individual or Key Individual status of an individual if:
- (a) the individual becomes bankrupt;
 - (b) the individual is convicted of a serious criminal offence;
 - (c) the individual becomes incapable (through mental or physical incapacity) of managing his affairs;
 - (d) the individual or the relevant Authorised Person asks the DFSA to withdraw the relevant status; or
 - (e) the Licence of the relevant Authorised Person is withdrawn.
- (3) The DFSA may withdraw authorisation in relation to one or more Licensed Functions of an Authorised Individual or Key Individual if the individual or relevant Authorised Person asks the DFSA to withdraw such authorisation.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under Article 58(1) or (2).
- (5) Where the DFSA:
- (a) is conducting an investigation under Article 78; and
 - (b) in the course of such investigation believes on reasonable grounds that an individual has engaged in serious misconduct that may form grounds for the withdrawal of the individual's Authorised Individual or Key Individual status;
- it may suspend the Authorised Individual or Key Individual status of such individual for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the individual.
- (6) The procedures in Schedule 3 apply to a decision of the DFSA under Article 58(5).
- (7) An individual commits a contravention if the individual performs a Licensed Function:
- (a) in breach of a provision in legislation administered by the DFSA that applies to that individual;
 - (b) contrary to a restriction imposed under Article 58(1); or

- (c) where his Authorised Individual or Key Individual status has been suspended or withdrawn under Article 58(1), (2), (3) or (5).
- (8) The DFSA may vary or withdraw a restriction or suspension imposed under this Article where it is reasonable to do so.
- (9) The DFSA may act under Article 58(8) on its own initiative or at the request of the relevant individual or Authorised Person.
- (10) The DFSA shall give both the individual and the Authorised Person an opportunity to make representations under the procedures in Schedule 3 where the procedures in that Schedule apply under this Article.
- (11) If the DFSA decides to exercise a power under this Article, the individual or the Authorised Person may refer the matter to the FMT for review.

59. Restricting persons from performing functions in the DIFC

- (1) If the DFSA believes on reasonable grounds that a person is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC, it may restrict the person from performing all or any such functions.
- (2) A restriction under this Article may relate to a function whether or not it is a Licensed Function.
- (3) The DFSA may vary or withdraw a restriction imposed under this Article.
- (4) A person who performs a function in breach of a restriction under this Article commits a contravention.
- (5) The procedures in Schedule 3 apply to a decision of the DFSA under Article 59(1).
- (6) If the DFSA decides to exercise its power under Article 59(1), the person may refer the matter to the FMT for review.

CHAPTER 8 – REGISTRATION OF ANCILLARY SERVICE PROVIDERS AND DNFbps

60. Registration of DNFbps

- (1) The DFSA shall make Rules prescribing the person or class of persons which are designated to be a DNFBP.
- (2) A person who meets the definition of a DNFBP, as defined in the Rules made for the purposes of Article 60(1), must register with the DFSA.
- (3) The DFSA may make Rules prescribing the requirements for registration under Article 60 (2) and prescribing the circumstances under which the DFSA may de-register a person who is registered under Article 60(2).

CHAPTER 9 – DELETED

61. DELETED

CHAPTER 10 - OTHER MATTERS RELATING TO LICENSING

62. Public Registers

- (1) The DFSA shall publish and maintain a register of current and past grants, withdrawals and suspensions of Licences, Licence Endorsements and authorisations of all Authorised Persons, Authorised Individuals and Key Individuals in such manner as may be prescribed in the Rules.
- (2) The DFSA shall publish and maintain a register of current and past registrations of all DNFBPs in such manner as may be prescribed in the Rules.
- (3) The DFSA shall publish and maintain registers of:
 - (a) all persons in relation to whom action has been taken under Article 58(1); and
 - (b) all persons in relation to whom action has been taken under Article 59;indicating whether any such action is of past effect or current, in such manner as may be prescribed in the Rules.
- (4) The DFSA shall publish and maintain a register of current and past registrations, suspensions and withdrawals of registrations of Registered Auditors and Audit Principals in such manner as may be prescribed in the Rules.
- (4A) The DFSA may decide not to publish information about a suspension imposed under Article 58(5) or Article 98A(5).
- (5) The DFSA shall publish and maintain a register of all Domestic Funds.
- (6) The DFSA shall make a reasonably current version of any registers maintained under Article 62(1), (2), (3), (4) and (5) readily available for viewing by the public during the normal business hours of the DFSA.

63. Extended jurisdiction

- (1) Any power which the DFSA may exercise in relation to an Authorised Person, Registered Auditor, Authorised Individual, Key Individual, Audit Principal, Principal Representative, DNFBP or Domestic Fund or an officer, employee or agent of an Authorised Person, Registered Auditor, DNFBP or Domestic Fund under the Law or Rules or other legislation administered by the DFSA may, subject to Articles 63(2) and (3), continue to be exercised after the date on which:

- (a) the Licence of such Authorised Person;
- (b) the registration of a DNFBP, Registered Auditor or Audit Principal;
- (c) the Authorised Individual or Key Individual status of such individual;
- (d) the registration of the Principal Representative; or
- (e) the registration of a Domestic Fund;

is withdrawn by the DFSA under the Law or other legislation administered by the DFSA.

- (2) Except as provided in Article 63(3), the DFSA may only exercise a power under Article 63(1) in relation to a person within three years after the day on which the DFSA became aware of the act or omission that gave rise to the right to exercise the power in respect of that person.
- (3) If proceedings with respect to the act or omission are commenced by the DFSA within the period referred to in Article 63(2), then the provisions of Article 63(1) shall remain in force until such time as the proceedings and any review or appeal relating to the proceedings are completed.
- (4) For the purposes of this Article:
 - (a) the DFSA is aware of an act or omission if it has information from which the act or omission can reasonably be inferred; and
 - (b) a proceeding against a person is commenced when a notice is first provided to the person under Schedule 3, or a proceeding is commenced by the DFSA in the FMT or the Court, with respect to the act or omission.

PART 4: GENERAL REGULATION AND ANTI-MONEY LAUNDERING PROVISIONS

CHAPTER 1 – GENERAL PROVISIONS

64. Provisions Governing Controllers

- (1) The DFSA may make Rules in connection with the change of control of Authorised Persons, including Rules as to:
 - (a) when a person becomes or ceases to be a controller of an Authorised Person;
 - (b) when the acquisition or increase in the level of control of an Authorised Person requires either the prior approval of, or notification to, the DFSA;
 - (c) when the DFSA may object to an existing controller;
 - (d) the procedures relating to the approval, notification and objections referred to in Article 64(1)(b) and (c); and
 - (e) any other matter necessary or incidental to give effect to the provisions governing controllers.
- (2) Without limiting the generality of the DFSA powers, the DFSA may:
 - (a) approve or object to a person becoming a controller of an Authorised Person;
 - (b) approve or object to an increase in the level of control of an existing controller of an Authorised Person;
 - (c) object to an existing controller of an Authorised Person where it has reasonable grounds to believe that such a person is no longer an acceptable controller; and
 - (d) approve a person as a controller or approve an increase of control by an existing controller subject to such conditions as it considers appropriate.
- (3) Where the DFSA considers an existing controller of an Authorised Person to be an unacceptable controller:
 - (a) it must notify the controller and the Authorised Person in writing that the controller is no longer an acceptable controller; and
 - (b) it may require that the controller and the Authorised Person take such action as specified by the DFSA.
- (4) Without limiting the generality of the DFSA powers, the DFSA may, for the purposes of Article 64(3)(b):
 - (a) require an Authorised Person to take such action as specified by the DFSA in relation to an unacceptable controller;

- (b) where an Authorised Person has failed to comply with a requirement referred to in Article 64(4)(a) to the satisfaction of the DFSA, either withdraw, or impose conditions, on the Authorised Person's licence; or
- (c) require the unacceptable controller to take such action as specified by the DFSA.

65. Unenforceable Agreements - Breach by Party to the Agreement

- (1) Subject to Article 65(5), a person who makes an agreement in the course of carrying on a Financial Service in breach of the Financial Services Prohibition or the Collective Investment Prohibitions, or who makes an agreement as a result of the making by himself or another person of a Financial Promotion which is in breach of the Financial Promotions Prohibition shall not be entitled to enforce such agreement against any party (a "relevant party") to the agreement.
- (2) Subject to any agreement that may otherwise be reached between the parties, a relevant party may apply to the Court to recover:
 - (a) any money paid or property transferred by him under the agreement;
 - (b) compensation reflecting any loss sustained by the relevant party as a direct result of such payment or transfer; and
 - (c) compensation for an amount becoming due that is dependent upon a contingency occurring under the relevant agreement, provided that such contingency shall have occurred prior to the relevant party being notified by the other party or by the DFSA that the agreement has been entered into in breach of the Financial Services Prohibition, the Collective Investment Prohibitions or the Financial Promotions Prohibition.
- (3) If the relevant party chooses not to perform the agreement or, under Article 65(2), recovers money paid or property transferred by him under the agreement, he shall in turn repay any money or property he has received under the agreement.
- (4) The compensation recoverable under Article 65(2)(b) is the amount agreed between the parties to the agreement or, following an application to the Court, the amount determined by the Court.
- (5) If the Court is satisfied that the person:
 - (a) carrying on the Financial Service reasonably believed that he was not in breach of the Financial Services Prohibition or the Collective Investment Prohibitions by entering into such agreement; or
 - (b) who made the Financial Promotion reasonably believed that he was not in breach of the Financial Promotions Prohibition, or

- (c) who made an agreement as a result of the making by another person of a Financial Promotion which was in breach of the Financial Promotions Prohibition, did not know that the relevant Financial Promotion was in breach of the Financial Promotions Prohibition,

and that it is fair and just in the circumstances to make such an order, it may make one or more of the following orders:

- (d) an order that the agreement be enforced between the parties to such extent and under such terms and conditions as the Court sees fit; or
 - (e) an order that money paid or property transferred under the agreement be retained or dealt with in accordance with the agreement or in such manner as the Court deems fit.
- (6) Where property transferred under the agreement has been transferred to a third party, a reference in Article 65 to such property shall be interpreted as a reference to the value of the property at the time of the transfer under the agreement.
- (7) In Article 65, "agreement" means an agreement, the making or performance of which constitutes, or is part of, the carrying on of a Financial Service.

66. False or Misleading Information

A person shall not:

- (a) provide information which is false, misleading or deceptive to the DFSA; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

67. Obligations of Disclosure to the DFSA

- (1) (a) Subject to Article 67(2), any of the following persons:

- (i) an Authorised Person or DNFBP; or
- (ii) an auditor of any person in sub-paragraph (i);

shall disclose to the DFSA anything which reasonably tends to show a matter specified in paragraph (b):

- (b) The relevant matters for the purposes of (a) are:
 - (i) a breach, or likely breach of a provision of the Law or Rules or other legislation administered by the DFSA;
 - (ii) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or

(iii) any other matter as the DFSA may prescribe in Rules;

which may be attributable to the conduct of the person in (a)(i) or its directors, officers, employees or agents.

- (2) Article 67(1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (3) A person referred to in Article 67(1)(a) shall establish and implement appropriate systems and internal procedures to enable its compliance, and compliance by its auditor, with Article 67(1).
- (4) Any provision in an agreement between a person referred to in Article 67(1)(a) and a director, officer, employee, agent or auditor is void in so far as it purports to hinder compliance with an obligation under Article 67(1).
- (5) Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the DFSA:
 - (a) a notification as required under this Article; or
 - (b) any other information or opinion in relation to any such matter;if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.
- (6) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist a person referred to in Article 67(1)(a) or (b) to comply with an obligation under Article 67(1).
- (7) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 67(6).

68. **Disclosures to the DFSA**

A person is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of the giving of information or production of a document by the person to the DFSA:

- (a) in good faith; and
- (b) in reasonable belief that the information or document is relevant to any functions of the DFSA;

whether such information or document is given or produced pursuant to a requirement at law or otherwise.

69. Compliance with an order or requirement of the DFSA

Where the DFSA makes an order, issues a direction or prohibition, or makes any requirement in relation to a person pursuant to a provision of this Law or Rules or legislation administered by the DFSA, such person must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

CHAPTER 2 – ANTI-MONEY LAUNDERING COMPLIANCE

70. Jurisdiction

- (1) This chapter is made in recognition of the application in the DIFC of Federal Law No. 4 of 2002 ‘Criminalisation of Money Laundering’ and Decree by Federal Law No. 1 of 2004 ‘Combating Terrorism Offences’.
- (2) A reference in this chapter to money laundering is to be taken to include terrorist financing unless the context otherwise provides or implies.
- (3) The DFSA has, subject to (4), exclusive jurisdiction for regulation in relation to money laundering in the DIFC.
- (4) Nothing in the Law affects the operation of:
 - (a) Federal Law No. 4 of 2002;
 - (b) Federal Law No. 1 of 2004;
 - (c) the Penal Code of the United Arab Emirates; or
 - (d) any other Federal Law that is applicable in the DIFC in relation to money laundering.

71. Obligations

- (1) A person shall comply with any provision of Federal Law relating to money laundering as it applies to such person in the DIFC.
- (2) A person shall comply with any duty, requirement, prohibition, obligation or responsibility to which that person is subject under the Rules.
- (3) Where the DFSA detects conduct which it suspects may relate to money laundering, it shall advise the relevant authority exercising powers and performing functions under Federal Law No. 4 of 2002 without undue delay.
- (4) A person who is subject to Rules made pursuant to Article 72 shall conduct customer due diligence in the circumstances prescribed by the Rules.

72. Rules

The DFSA shall make Rules in connection with the creation and implementation of anti-money laundering measures, policies and procedures, including Rules as to:

- (a) the persons or classes of persons who shall be subject to any such measures, policies and procedures;
- (b) the nature and extent of any duty, requirement, prohibition, obligation or responsibility applicable to such persons; and
- (c) registration of any or all of such persons with the DFSA.

PART 5: POWERS OF SUPERVISION AND INVESTIGATION

CHAPTER 1 – POWERS OF SUPERVISION

73. Powers to Obtain Information

- (1) The DFSA may require an Authorised Person, DNFBP, Domestic Fund, Registered Auditor or any director, officer, employee or agent of such person by written notice to:
 - (a) give, or procure the giving of, such specified information; or
 - (b) produce, or procure the production of, such specified documents;to the DFSA as the DFSA considers necessary or desirable to meet the objectives of the DFSA.
- (2) The DFSA may require any Authorised Person, Domestic Fund, DNFBP or Registered Auditor to allow the DFSA to enter its premises during normal business hours or at any other time as may be agreed for the purpose of inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.
- (3) The DFSA may exercise its powers under this Article 73 in respect of any person specified in Article 73(1) or (2) within, or outside of, the DIFC.
- (4) Information given or a document produced as a result of the exercise by the DFSA of powers under this Article is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.

74. Requirement to Provide a Report

- (1) The DFSA may require, in such manner and in such form as it may prescribe in the Rules, an Authorised Person to provide the DFSA with a report on any matter about which the DFSA has required or could require the giving of information or production of documents under Article 73.
- (2) The DFSA may require, at such frequency and in such manner and in such form as it may prescribe in the Rules, an Authorised Market Institution to provide the DFSA with a report or reports relating to the conduct of or the performance of the regulatory functions of an Authorised Market Institution, including but not limited to a report or reports addressing:
 - (a) ongoing compliance of the Authorised Market Institution with the terms of its Licence;
 - (b) complaints received and dealt with and disciplinary matters arising and dealt with;
 - (c) adequacy and performance of systems and controls; or
 - (d) financial matters concerning the operation of the Authorised Market Institution.
- (3) The person appointed to make a report required by Article 74(1) or (2) must be a person nominated or approved by the DFSA.
- (4) Where a requirement has been made of an Authorised Person under this Article, it must take all reasonable steps to ensure that any person who is providing or has provided services to the Authorised Person shall provide all such assistance as the appointed person may reasonably require.
- (5) Subject to Article 74(6), information given or a document produced as a result of the exercise by the DFSA of powers under this Article is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (6) The DFSA shall not disclose a statement made by a person in a report made pursuant to a requirement made of the person under Article 74(1) or (2) to any law enforcement agency for the purpose of criminal proceedings against the person unless:
 - (a) the person consents to the disclosure; or
 - (b) the DFSA is required by law or court order to disclose the statement.
- (7) The procedures in Schedule 3 apply to a decision of the DFSA under Article 74 (1) or (2).

- (8) If the DFSA decides to exercise its power under Article 74 (1) or (2), the person may refer the matter to the FMT for review.

75. Imposing Prohibitions or Restrictions on Business

- (1) Subject to Article 77, the DFSA may impose any one or more of the following prohibitions or requirements:
- (a) a prohibition on an Authorised Person from:
 - (i) entering into certain specified transactions or types of transaction;
 - (ii) soliciting business from certain specified persons or types of person;
 - (iii) carrying on business in a specified manner or other than in a specified manner;
 - (iv) using a particular name or description in respect of the Authorised Person; or
 - (v) using a particular name for a Fund or a sub-fund of a Fund; or
 - (b) a requirement that an Authorised Person carry on business in, and only in, a specified manner.
- (2) The prohibitions or requirements in Article 75(1) may be imposed on the Fund Manager in relation to the management of a Fund or on the Fund itself, even where the Fund has no legal personality.
- (3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 75(1).
- (4) If the DFSA decides to exercise its power under Article 75(1), the Authorised Person may refer the matter to the FMT for review.

75A. Power to issue directions for prudential purposes

- (1) For prudential purposes, the DFSA may direct that a particular Authorised Firm or Authorised Firms within a specified class:
- (a) comply with any specified additional capital or liquidity requirements;
 - (b) apply a specific provisioning policy or treatment of specified assets;
 - (c) comply with specified limits on material risk exposures;
 - (d) comply with specified limits on exposures to related parties;

- (e) meet additional or more frequent reporting requirements; or
 - (f) take such other action as is specified in the direction.
- (2) The DFSA may direct an Affiliate of an Authorised Person to take specified steps or not to carry out specified activities if the DFSA:
- (a) is the consolidated supervisor of the Group to which the Authorised Person belongs; and
 - (b) is satisfied that the direction is necessary or desirable for the purposes of the effective prudential supervision of the Group on a consolidated basis.
- (3) A direction to an Affiliate under Article 75A(2) may include a requirement that the Affiliate:
- (a) limit any activities it undertakes or may undertake (including closing any office that is outside the jurisdiction in which it has its principal place of business and head office) if the activities are reasonably likely to expose the Authorised Person or its Group to excessive risks or risks that are not properly managed; or
 - (b) take such other measures as are necessary to remove any impediments to effective supervision of the group on a consolidated basis, including a direction to take steps to restructure the Group.
- (4) Nothing in this Article limits the scope or application of any other power that the DFSA may have in legislation administered by the DFSA.
- (5) A direction issued under this Article comes into force on the date specified in the notice and remains in force, subject to Article 75A(7), until it is revoked or varied in writing by the DFSA pursuant to Article 75A(6).
- (6) The DFSA may, by notice, revoke or vary, any direction given pursuant to this Article.
- (7) A direction issued to Authorised Firms within a specified class under Article 75A(1), including any variation made to such a direction pursuant to Article 75A(6), shall not remain in force for a period longer than 12 months from the date specified in the initial direction notice issued pursuant to Article 75A(1).
- (8) The procedures in Schedule 3 apply to a decision of the DFSA under this Article to issue a direction to a particular person or to vary such a direction.
- (9) If the DFSA decides to exercise its power under this Article to issue a direction to a particular person or to vary such a direction, the person may refer the matter to the FMT for review.

76. **Restriction on Dealing with Property**

- (1) In this Article:
 - (a) “dealing” in relation to property includes the maintaining, holding, disposing and transferring of property; and
 - (b) “relevant property”, in relation to an Authorised Person, means:
 - (i) any property held by the person on behalf of any of the clients of the person, or held by any other person on behalf of or to the order of the person; or
 - (ii) any other property which the DFSA reasonably believes to be owned or controlled by the person.
- (2) Subject to Article 77, the DFSA may:
 - (a) prohibit an Authorised Person from:
 - (i) dealing with any relevant property in a specified manner or other than in a specified manner; or
 - (ii) assisting, counselling or procuring another person to deal with any relevant property in a specified manner or other than in a specified manner;
 - (b) require an Authorised Person to deal with any relevant property in a specified manner.
 - (c) require an Authorised Person to deal with any relevant property such that:
 - (i) the property remains of the value and of the description that appear to the DFSA to be desirable with a view to ensuring that the person will be able to meet its liabilities in relation to the business which constitutes a Financial Service for which it holds a Licence; and
 - (ii) the person is able at any time readily to transfer or dispose or otherwise deal with of the property when instructed to do so by the DFSA.
 - (d) withdraw an existing prohibition or requirement imposed on an Authorised Person; or
 - (e) substitute or vary an existing prohibition or requirement imposed on an Authorised Person.

- (3) The DFSA may in any prohibition or requirement imposed under Article 76(2) direct that, for the purposes of such requirement, property of a specified description shall or shall not be taken into account.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

77. Imposition of a prohibition or requirement

- (1) The DFSA may impose a prohibition or requirement under Article 75 or 76 in the circumstances prescribed in the Rules.
- (2) Any prohibition or requirement including any variation or substitution of such prohibition or requirement, made under Articles 75 or 76, does not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published in relation to such imposition, withdrawal, substitution or variation.
- (3) The withdrawal of a Licence under Chapter 4 of Part 3 of the Law does not affect the validity of a current prohibition or requirement made under Articles 75 or 76.

CHAPTER 2 - THE CONDUCT OF INVESTIGATIONS

78. Power of the DFSA to conduct an investigation

- (1) The DFSA may conduct such investigation as it considers appropriate and expedient under Chapter 2 of Part 5:
 - (a) where it has reason to suspect that a contravention of the Law or of the Rules or of any other legislation administered by the DFSA is being or may have been committed; or
 - (b) further to a request made under Article 39.
- (2) A person is entitled to legal representation during the course of an investigation.

79. Costs of an Investigation

- (1) Subject to Article 79(2), the DFSA shall pay the costs and expenses of an investigation.
- (2) Where, as a result of an investigation under Chapter 2 of Part 5, a person is found by:

- (a) the DFSA;
- (b) the FMT; or
- (c) the Court,

to have contravened a provision of the Law or of the Rules or of any other legislation administered by the DFSA, the FMT or the Court may order, on application brought by the DFSA, that the person pay or reimburse the DFSA in respect of the whole, or a specified part of, the costs and expenses of the investigation, including the remuneration of any officer involved in the investigation.

- (3) The FMT may make an order under Article 79(2), on an application by the DFSA, whether or not the person has commenced, or intends to commence, a reference to the FMT in relation to a decision of the DFSA.
- (4) The DFSA may apply to the Court for an order under Article 79(2) only where there is a proceeding before the Court relating to the alleged contravention by the person.

80. Powers to Obtain Information and Documents for Investigation

- (1) Where the DFSA considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:
 - (a) enter the business premises of such person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
 - (b) require such person to give, or procure the giving of, specified information in such form as it may reasonably require;
 - (c) require such person to produce, or procure the production of, specified documents;
 - (d) require such person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) at a specified time and place to answer questions in private (compulsory interview); or
 - (e) require such person to give it any assistance in relation to the investigation which the person is able to give.
- (2) Where the DFSA exercises its power under Article 80(1)(a) to enter business premises, it may:
 - (a) require any appropriate person to make available any relevant information stored at those premises for inspection or copying;
 - (b) require any appropriate person to convert any relevant information into a form capable of being copied; and
 - (c) use the facilities of the occupier of the premises, free of charge, to make copies.

- (3) Where the DFSA exercises its power under Article 80(1)(d) to conduct a compulsory interview, it may give a direction:
 - (a) concerning who may be present;
 - (b) preventing any person present during any part of the compulsory interview from disclosing to any other person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
 - (c) concerning the conduct of any person present, including as to the manner in which they will participate in the interview;
 - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
 - (e) requiring the interviewee to answer any questions relevant to the investigation.
- (4) A requirement made under Article 80(1) (b),(c), (d), and (e) shall be stated in writing.
- (5) The DFSA may require the relevant person to give such information or produce such documents by the end of a reasonable period and at a place specified in the notice.
- (6) The DFSA may exercise its powers under Article 80(1) in respect of any person within, or outside of, the DIFC provided that, if the person is outside the DIFC and is not a Regulated Person, the DFSA shall either:
 - (a) use any arrangements it has with a regulatory authority in the jurisdiction in which the person is resident or domiciled, or the premises are located, to assist it to exercise the power; or
 - (b) apply to the Court for an order compelling the person to provide the information, produce or procure the production of the documents, or answer questions, or permitting the DFSA to enter the premises of that person.
- (7) In Article 80(6), a Regulated Person means an Authorised Person, DNFBP, Fund, Auditor, Reporting Entity or any director, officer, employee or agent of such person.

80A. Use and effect of Information and Documents obtained for an Investigation

- (1) Subject to Article 80A(2), information given or documents produced as a result of the exercise by the DFSA of powers under Article 80 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (2) The DFSA shall not disclose a statement made by a person in answer to any question asked pursuant to a requirement made of the person under Article 80(1)(d) to any law enforcement agency for the purpose of criminal proceedings against the person unless:
 - (a) the person consents to the disclosure; or

- (b) the DFSA is required by law or court order to disclose the statement.
- (3) The DFSA may retain possession of any information and documents given to it pursuant to a requirement made under Article 80(1) for so long as is necessary:
 - (a) for the purposes of the investigation to which the notice relates;
 - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
 - (c) for such a proceeding to be completed.
- (4) A person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under Article 80(1), but any lien is not otherwise prejudiced.
- (5) Where a person is unable to produce information or documents in compliance with a requirement made under Article 80(1), the DFSA may require the person to state, to the best of that person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (6) Where the DFSA considers that, if disclosed, the fact of the issuing of a notice requiring a person to:
 - (a) produce documents;
 - (b) give information;
 - (c) attend a compulsory interview; or
 - (d) give assistance;

may hinder the investigation to which it relates, the DFSA may direct a person who receives a notice under Article 80(1) not to disclose the receipt of a notice or any information relating to compliance therewith to any other person, other than his legal representative under a duty of confidentiality.

CHAPTER 3 – COMPLIANCE WITH REQUIREMENTS OF THE DFSA

81. Liabilities for Provision of Information or Documents to the DFSA

Without limiting the generality of any provision of Articles 67 and 68, a person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made, or purporting to have been made, under any provision of this Part for inspection of, copying of, giving of or production of, information or documents.

82. Self-Incrimination and Privileges

- (1) Subject to Article 82(2), it is not a reasonable excuse for a person to refuse or fail to:
 - (a) permit inspection and copying of any information or document;

(b) give or produce, or procure the giving or production of, any information or document; or

(c) answer questions;

pursuant to any requirement under Articles 73, 74 or 80 of this Law or Article 69 of the Collective Investment Law 2006 on the grounds that any such information or document or answer, as the case may be:

(d) might tend to incriminate the person or make the person liable to a penalty;

(e) is, or contains, or might reveal a Privileged Communication; or

(f) is, or contains, or might reveal a communication made in confidence.

(2) Where the DFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a Privileged Communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless:

(a) where the person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or

(b) otherwise, the person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.

(3) Where a lawyer so refuses to comply with a requirement, he shall, as soon as practicable, give to the DFSA a written notice setting out:

(a) where the lawyer knows the name and address of the person to whom, or by whom, or on behalf of whom, the communication was made, then that name and address; and

(b) where the requirement to give information or produce a document relates to a communication which was made in writing, then sufficient particulars to identify the document containing the communication.

83. **Obstruction of the DFSA**

A person shall not without reasonable excuse engage in conduct, including without limitation the:

(a) destruction of documents;

- (b) failure to give or produce information or documents specified by the DFSA;
- (c) failure to attend before the DFSA at a specified time and place to answer questions;
- (d) giving of information that is false or misleading; and
- (e) failure to give any assistance in relation to an investigation which the person is able to give;

that is intended to obstruct the DFSA in the exercise of any powers under Chapters 1 and 2 of Part 5 or under any Law administered by the DFSA.

84. Enforcement of Compliance by Injunction or Search Warrant

- (1) A requirement imposed on a person as a result of the exercise by the DFSA of powers under Articles 73, 74 or 80 may be enforceable by injunction on the application of the DFSA to the Court.
- (2) Where the DFSA has reasonable grounds to suspect that there are, or may be within the next 3 business days, on particular premises, information or documents which were required to be given or produced to the DFSA as a result of the exercise of powers under Article 73 or Article 80 and that have not been given or produced in compliance with any such requirement, the DFSA may, in addition to or as an alternative to seeking an injunction under Article 84(1), lay before the Court an information on oath setting out those grounds and apply for the issue of a warrant to search the premises for that information or those documents.
- (3) On considering such application and information on oath referred to in Article 84(2), the Court may issue a warrant authorising a named Dubai Police Officer, together with any other person so named in the warrant whether of the DFSA or otherwise, with such assistance and by such force as is necessary and reasonable, to enter into the premises, to search the premises, to break open and search anything (whether a fixture or not) in or on the premises, and to take possession of or secure information or documents that appear to be any or all of the information or documents not given or produced pursuant to the requirement of the DFSA.
- (4) A warrant issued under Article 84(3) must specify the premises and information or documents referred to in Article 84(2), and state whether entry is authorised to be made at any time of the day or night or only during specified hours, and state that the warrant ceases to have effect on a specified day that is not more than 7 days after the date of the issue of the warrant.

PART 6: CONTRAVENTIONS AND FINES

85. General Contravention Provision

- (1) A person who:
 - (a) does an act or thing that the person is prohibited from doing by or under the Law, Rules or other legislation administered by the DFSA;
 - (b) does not do an act or thing that the person is required or directed to do by or under the Law, Rules or other legislation administered by the DFSA; or
 - (c) otherwise contravenes a provision of the Law, Rules or other legislation administered by the DFSA;

commits a contravention of the Law, Rules or other legislation, as the case may be, by virtue of Article 85 unless another provision of the Law, Rules or other legislation administered by the DFSA provides that the person commits, or does not commit, a contravention.

- (2) In Article 85, 'person' does not include the DFSA or the President.

86. Involvement in contraventions

- (1) If a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (2) If an officer of a body corporate is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a body corporate are managed by its members, Article 86(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If a partner (or a person purporting to act as a partner) is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a partnership or by all or some of its constituent partners, he as well as the partnership or its constituent partners as the case may be commits a contravention and is liable to be proceeded against and dealt with accordingly.

- (5) If an officer of an unincorporated association (other than a partnership) or a member of its governing body is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by the association, that officer or member as well as the association commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (6) For the purposes of Article 86, "officer" means a director, member of a committee of management, chief executive, manager, secretary or other similar officer of the body corporate or association, or a person purporting to act in such capacity, and an individual who is a controller of the body.
- (7) For the purposes of Article 86, a person is 'knowingly concerned' in a contravention if, and only if, the person
- (a) has aided, abetted, counselled or procured the contravention;
 - (b) has induced, whether by threats or promises or otherwise, the contravention;
 - (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
 - (d) has conspired with another or others to effect the contravention.
- (8) In Article 86, 'person' does not include the DFSA or President.

87. **DELETED**

PART 7: ENFORCEMENT

88. Appointment of Managers

- (1) The DFSA may require an Authorised Person to appoint one or more individuals to act as managers of the business of the person on such terms as the DFSA may specify. Such terms may be varied from time to time by notice in writing given by the DFSA to the person.
- (2) The individual or individuals appointed to act as managers of the business under Article 88(1) must be nominated or approved by the DFSA.
- (3) The DFSA may impose a requirement under Article 88(1) where it considers it necessary or desirable to appoint a manager:
 - (a) to determine or address concerns as to the solvency or the level of compliance with prudential requirements of the Authorised Person;
 - (b) for the orderly transition of the Authorised Person from one set of owners or controllers to a new set of owners or controllers;
 - (c) to wind down the operations of the Authorised Person for the protection of customers of the Authorised Person; or
 - (d) where it has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Person and to ensure that customers or regulated entities are not adversely affected or to maintain the integrity of the DIFC.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

89. Enforceable Undertakings

- (1) The DFSA may accept a written undertaking given by a person which the DFSA considers necessary or desirable in the pursuit of its objectives.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the DFSA.
- (3) If the DFSA considers that the person who gave the undertaking has been in breach of any of its terms, it may apply to the Court for an order under Article 89(4).
- (4) If the Court is satisfied that the person has been in breach of a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;

- (b) an order directing the person to pay to any person or to the DFSA an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
- (d) any other order that the Court considers appropriate.

90. **Sanctions and directions**

- (1) Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.
- (2) For the purposes of Article 90(1) the DFSA may:
 - (a) fine the person such amount as it considers appropriate in respect of the contravention;
 - (b) censure the person in respect of the contravention;
 - (c) make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct;
 - (d) make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;
 - (e) make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;
 - (f) make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or
 - (g) make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.
- (3) Nothing in this Article prevents the DFSA from exercising any other power that it may exercise under this Law or any other legislation administered by the DFSA.

- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article in relation to a person, the person may refer the matter to the FMT for review.
- (6) The DFSA shall prepare, publish and maintain a statement of:
 - (a) its policy in relation to the factors to be considered by the DFSA in exercising a power in respect of a person under Article 90(2)(a) and (b); and
 - (b) the procedure which the DFSA has adopted, which is designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based.
- (7) The DFSA may at any time modify or replace a statement published by it under this Article and where it does so it shall publish any modified or replacement statement.
- (8) A statement required to be published under this Article shall be published in a way appearing to the DFSA to be best calculated to bring it to the attention of the public.
- (9) In exercising, or deciding whether to exercise, its power under Article 90(2)(a) or (b), the DFSA shall have regard to any statement published by it under this Article and in force at the time when the contravention in question occurred.
- (10) If the person who is subject to a fine under Article 90(2)(a) has not paid to the DFSA the full amount of the fine within the period specified in the notice, the Court may order, on application of the DFSA, the recovery as a debt due so much of the fine as remains outstanding, together with costs.

91. Saving and Transitional

- (1) For the purposes of this Article:
 - (a) “previous Law” means the Regulatory Law 2004 as it was in force immediately prior to the DIFC Laws Amendment Law No. 1 of 2014 coming into force; and
 - (b) “current Law” means the provisions of this Law that came into force under the DIFC Laws Amendment Law No. 1 of 2014.
- (2) The saving and transitional provisions in this Article apply where the DFSA has issued a notice under Article 90 or 91 of the previous Law. Where such a notice has been issued Article 90 of the current Law shall not affect:
 - (a) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or

- (b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,

in relation to the relevant notice, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under the current Law subject to Article 90(3).

- (3) Where such a notice has been issued by the DFSA, Articles 90 and 91 as prescribed in the previous Law are deemed to continue in force until such time as necessary for the purposes of any investigation or proceeding specified in this Article to be concluded.

92. **Injunctions and Orders**

- (1) In this Article, "relevant requirement" in relation to an application by the DFSA, means a requirement, duty, prohibition, responsibility or obligation which is imposed by or under the Law or Rules or other legislation administered by the DFSA.
- (2) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention of a relevant requirement, the Court may, on application of the DFSA or any aggrieved person, make one or more of the following orders:
 - (a) an order restraining the person from engaging in the conduct including, but not limited to, engaging in conduct that may constitute a contravention of a DIFC Law or of a Federal Law to the extent that such law may apply to such person in the DIFC;
 - (b) an order requiring that person to do any act or thing including, but not limited to, acts or things to remedy the contravention or to minimise loss or damage; or
 - (c) any other order as the Court sees fit.
- (3) Where:
 - (a) the DFSA is conducting or has conducted an investigation into the acts or omissions of a person (the 'relevant person') which may contravene or which may have contravened a relevant requirement; or
 - (b) a civil or regulatory proceeding has been instituted, by the DFSA or otherwise, against a relevant person in relation to an alleged contravention of a relevant requirement,

the Court may, on application of the DFSA or any aggrieved person, make one or more of the following orders:

- (c) an order restraining the relevant person from paying, transferring, disposing of, or otherwise dealing with, any assets of his which he is reasonably likely to dispose of or otherwise deal with;
 - (d) an order restraining any other person holding assets on behalf of the relevant person from paying, transferring, disposing of, or otherwise dealing with, any assets of the relevant person which are reasonably likely to be disposed of or otherwise dealt with;
 - (e) an order prohibiting the relevant person or any other person from taking or sending out of the jurisdiction of the Court or out of the State any assets of the relevant person or held on his behalf;
 - (f) in the event that the relevant person is a natural person, an order appointing a receiver or trustee, having such powers as the Court may see fit, of the property or any of the property of the relevant person;
 - (g) in the event that the relevant person is a body corporate, an order appointing a receiver or receiver and manager, having such powers as the Court may see fit, of the property or any of the property of the relevant person;
 - (h) in the event that the relevant person is a natural person, an order requiring him to deliver up to the Court his passport and such other documents as the Court sees fit; or
 - (i) in the event that the relevant person is a natural person, an order prohibiting him from leaving the jurisdiction of the Court or of the State without the consent of the Court.
- (4) Nothing in Article 92 affects the powers that any person or the Court may have apart from this Article.

93. **Compulsory Winding up**

Where it appears to the DFSA that it is just and equitable and in the interests of the DIFC that a company which is or has been:

- (a) an Authorised Person; or
- (b) carrying on Financial Services in breach of the Financial Services Prohibition;

should be wound up, it may apply to the Court for, and the Court may make orders considered necessary and desirable for, the winding up of such company.

94. **Civil Proceedings**

- (1) Where a person:

- (a) intentionally, recklessly or negligently commits a breach of duty, requirement, prohibition, obligation or responsibility imposed under the Law or Rules or other legislation administered by the DFSA; or
- (b) commits fraud or other dishonest conduct in connection with a matter arising under such Law, Rules or legislation;

the person is liable to compensate any other person for any loss or damage caused to that other person as a result of such conduct, and otherwise is liable to restore such other person to the position they were in prior to such conduct.

- (2) The Court may, on application of the DFSA or of a person who has suffered loss or damage caused as a result of conduct described in Article 94(1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the Court sees fit, except where such liability is excluded under the Law or Rules or other legislation administered by the DFSA.
- (4) Nothing in Article 94 affects the powers that any person or the Court may have apart from this Article.

95. Power of DFSA to Intervene in any Proceedings

- (1) The DFSA may intervene as a party in any proceedings in the Court where it considers such intervention appropriate to meet the objectives of the DFSA.
- (2) Where the DFSA so intervenes, it shall, subject to any other law, have all the rights, duties and liabilities of such a party.

96. Effect of Provisions

For the avoidance of doubt, nothing in any Article in Part 7 limits the generality of any other Article in Part 7, or the generality of any other provision in the Law or Rules or other legislation administered by the DFSA, which may provide for administrative remedies or the commencement of proceedings in the Court.

PART 8: ACCOUNTING AND AUDITING

CHAPTER 1 – GENERAL PROVISIONS AND AUDITING PROHIBITIONS

97. Definitions

In this Part, unless expressed otherwise:

- (a) an Auditor means:
 - (i) in relation to a Domestic Firm, Public Listed Company or Domestic Fund, a Registered Auditor; or
 - (ii) in relation to an Authorised Person which is not a Domestic Firm, an auditor of that Authorised Person;
- (b) a Registered Auditor means a person registered by the DFSA under Article 98;
- (c) an Audit Principal means an individual appointed by a Registered Auditor who is responsible for:
 - (i) managing the conduct of audit work undertaken by the Registered Auditor; or
 - (ii) signing audit reports, or any other reports as may be required under the Rules, on behalf of the Registered Auditor; and
- (d) an Audit Service means:
 - (i) an audit of the financial statements of an Authorised Person, Public Listed Company or Domestic Fund;
 - (ii) an audit of whether an Authorised Person, Public Listed Company or the Fund Manager or Trustee of a Domestic Fund has complied with applicable requirements in legislation administered by the DFSA; or
 - (iii) the preparation of an opinion or report relating to an audit referred to in (i) or (ii),

but does not include the performance of any internal audit function by or for a person referred to in (i) or (ii).

97A. Adoption of financial reporting and auditing standards

- (1) A Rule made by the DFSA for the purposes of this Part may require compliance with or be expressed by reference to requirements in a specified financial reporting or auditing standard or code of ethics issued by a professional body (including such a standard or code as amended or re-enacted from time to time).
- (2) In this Article, “specified” means specified in the Rules.

97B. Rules about financial statements and records

The DFSA may make Rules applying to Authorised Persons, Reporting Entities and Domestic Funds relating to:

- (a) the preparation and maintenance of financial statements;
- (b) the keeping of accounting records;
- (c) the preparation of regulatory returns relating to financial statements;
- (d) the determination of a financial year; and
- (e) the giving of a direction by the DFSA to a particular person or class of persons requiring the use of a particular financial reporting standard.

97C. Auditing Prohibitions (Domestic Entities)

- (1) A person shall not provide any Audit Service to a Domestic Firm, Public Listed Company or Domestic Fund, unless that person is a Registered Auditor.
- (2) A Registered Auditor shall not permit any person to undertake any of the responsibilities of an Audit Principal unless that person is registered by the DFSA as an Audit Principal for that Registered Auditor.

CHAPTER 2 – REGISTRATION OF AUDITORS AND AUDIT PRINCIPALS

98. Registration and conditions and restrictions

- (1) The DFSA shall make Rules setting out the criteria a person must meet to become and remain registered by the DFSA as a Registered Auditor or as an Audit Principal.
- (2) An application to be registered as an Audit Principal shall be made jointly by the Registered Auditor and the person who will be the Audit Principal if registration is granted.
- (3) The DFSA may:
 - (a) grant or refuse to grant an application for registration as a Registered Auditor or Audit Principal; and
 - (b) impose restrictions and conditions upon the registration.
- (4) Upon granting registration as a Registered Auditor or as an Audit Principal, the DFSA shall inform the applicant of that fact and whether there are any restrictions or conditions imposed upon the registration.

- (5) A Registered Auditor and an Audit Principal shall act within the scope of the relevant registration and comply with any restrictions and conditions imposed upon such registration.
- (6) The DFSA may at any time by notice to a Registered Auditor or Audit Principal, as appropriate:
 - (a) impose restrictions or conditions on the registration of that Registered Auditor or that Audit Principal; and
 - (b) vary or withdraw restrictions or conditions imposed on such registration.
- (7) The DFSA may act under Article 98(6) on its own initiative or at the request of the Registered Auditor or Audit Principal.
- (8) The procedures in Schedule 3 apply to a decision of the DFSA under this Article to refuse to grant an application for registration or to impose or vary conditions and restrictions on any registration. If a power is being exercised in relation to an Audit Principal, the DFSA shall give both the Audit Principal and its Registered Auditor an opportunity to make representations under those procedures.
- (9) If the DFSA decides to exercise its power under this Article to refuse to grant an application for registration or to impose or vary conditions or restrictions on any registration, the applicant or Registered Auditor or Audit Principal may refer the matter to the FMT for review.

CHAPTER 3 - SUSPENSION AND WITHDRAWAL OF REGISTRATION OF REGISTERED AUDITORS AND AUDIT PRINCIPALS

98A. Suspension and withdrawal of registration

- (1) The DFSA may suspend or withdraw the registration of a Registered Auditor or an Audit Principal:
 - (a) in the case of the registration of a Registered Auditor, at the request of the Registered Auditor;
 - (b) in the case of the registration of an Audit Principal, at the request of the Audit Principal or the Registered Auditor who appointed the Audit Principal; or
 - (c) on its own initiative.
- (2) The DFSA may exercise its powers under Article 98A(1)(c) in the following circumstances:

- (a) the Registered Auditor or Audit Principal is in breach of, or has been in breach of, one or more restrictions or conditions applicable to its registration;
 - (b) the Registered Auditor or Audit Principal is in breach of, or has been in breach of, this Law or the Rules;
 - (c) the Registered Auditor is no longer fit and proper to provide the Audit Services permitted under its registration or the Audit Principal is no longer fit and proper to perform the role of Audit Principal;
 - (d) the Registered Auditor has failed for a period of at least twenty-four consecutive months to provide Audit Services permitted under its registration;
 - (e) in the case of an Audit Principal, if the Audit Principal:
 - (i) becomes bankrupt;
 - (ii) is convicted of a serious criminal offence;
 - (iii) becomes incapable (through mental or physical incapacity) of managing his affairs; or
 - (iv) is no longer employed by the Registered Auditor who appointed the Audit Principal; or
 - (f) in the case of an Audit Principal, if the registration of its Registered Auditor is suspended or withdrawn.
- (3) The DFSA may make Rules setting out requirements that a Registered Auditor and an Audit Principal must meet before it will grant a request to suspend or withdraw registration.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under Article 98A(1)(c) to suspend or withdraw registration on its own initiative. If a power is being exercised in relation to an Audit Principal, the DFSA shall give both the Audit Principal and its Registered Auditor an opportunity to make representations under those procedures.
- (5) Where:
- (a) either or both of the following occur:
 - (i) the DFSA conducts an investigation under Article 78 that relates to a Registered Auditor or Audit Principal; or
 - (ii) a recognised professional body conducts an investigation relating to a member who is an Audit Principal; and

- (b) arising out of such an investigation, the DFSA believes on reasonable grounds that the Registered Auditor or Audit Principal has engaged in serious misconduct that may form grounds for the withdrawal of the registration of the Registered Auditor or Audit Principal,

the DFSA may suspend the relevant registration for the duration of the investigation or any related proceedings insofar as the investigation or proceedings relate to that Audit Principal or Registered Auditor.

- (6) The procedures in Schedule 3 apply to a decision of the DFSA under Article 98A(5). If a power is being exercised in relation to an Audit Principal, the DFSA shall give both the Audit Principal and its Registered Auditor an opportunity to make representations under the procedures in Schedule 3.
- (7) If the DFSA decides to exercise its power under this Article to suspend or withdraw the registration of a Registered Auditor or Audit Principal, the Registered Auditor or Audit Principal may refer the matter to the FMT for review.

CHAPTER 4 – APPOINTMENT AND REMOVAL OF AUDITORS

99. Appointment and removal of auditors

- (1) In this Article, a Relevant Person means an Authorised Person, a Public Listed Company and, in relation to a Domestic Fund, the Fund Manager of that Fund.
- (2) A Relevant Person, subject to Article 99(5), shall:
 - (a) at each annual general meeting appoint a person to act as Auditor from the conclusion of that meeting to the conclusion of the next annual general meeting; or
 - (b) at the beginning of each financial year appoint a person to act as Auditor until the beginning of the next financial year.
- (3) A person who becomes an a Relevant Person after the beginning of a financial year must, subject to Article 99(5), appoint a person who shall act as Auditor until the conclusion of that financial year.
- (4) A Relevant Person shall as soon as practicable fill any vacancy that arises in the appointment of an Auditor.
- (5) The DFSA may, by Rules, exempt a specified class of Relevant Person from the requirements in this Article. If a Relevant Person is exempted from the requirements in this Article, then the other requirements in this chapter and in chapters 5 and 6 of this Part do not apply to, or in relation to, the Relevant Person.
- (6) In the case of a Domestic Fund which is an Investment Trust:

- (a) the Trustee of that Fund shall ensure that at all times the Domestic Fund has an Auditor; and
 - (b) the Fund Manager of that Fund shall obtain the prior approval of the Trustee before carrying out any activities under this Article relating to the appointment or removal of an Auditor for that Domestic Fund.
- (7) A Relevant Person shall not appoint an Auditor under this Article unless:
- (a) the Auditor has, prior to the appointment, consented in writing to the Relevant Person acting as Auditor; and
 - (b) the Relevant Person, and the Trustee of a Domestic Fund which is an Investment Trust, are not, on reasonable inquiry, aware of any matter which should preclude the Auditor from giving his consent under Article 99A(2).
- (8) A Relevant Person may at any time remove an Auditor notwithstanding anything in any agreement between it and the Auditor.
- (9) The DFSA may direct, or the Court on an application made by the DFSA may order, a Relevant Person to:
- (a) appoint an Auditor, where an Auditor has not been appointed by the Relevant Person; or
 - (b) remove an Auditor and appoint a new Auditor, where in the opinion of the DFSA or the Court (as the case may be) the Auditor appointed by the Relevant Person is not suitable to provide Audit Services to the Relevant Person.
- (10) The procedures in Schedule 3 apply to a decision of the DFSA under Article 99(9) to give a direction.
- (11) If the DFSA decides to exercise its power under Article 99(9) to give a direction, the person may refer the matter to the FMT for review.
- (12) The appointment of a firm as an Auditor of an Authorised Person, a Public Listed Company or a Domestic Fund is taken to be an appointment of all persons who are partners of the firm.
- (13) Nothing in this Article is to be taken as depriving an Auditor removed under it of compensation or damages payable to the Auditor in respect of the termination of appointment as Auditor.

99A. Auditor not to act in certain circumstances

- (1) In this Article, a Relevant Person means an Authorised Person, Public Listed Company and, in relation to a Domestic Fund, the Domestic Fund, the Fund

Manager, the Trustee and any member of the Governing Body of the Domestic Fund.

- (2) A person must not consent to an appointment, or if appointed continue to act, as the Auditor of an Authorised Person, Public Listed Company or Domestic Fund if:
 - (a) the person has, or may on reasonable grounds be perceived to have, a conflict of interest with respect to the Relevant Person;
 - (b) the person does not have, or may on reasonable grounds be perceived not to have, a requisite degree of independence from the Relevant Person;
 - (c) the person provides prescribed non-audit services to the Relevant Person; or
 - (d) the person or any associate of the person or an Audit Principal appointed by the person has provided Audit Services to the Relevant Person within such earlier period or such frequency as may be prescribed in the Rules.
- (3) The DFSA may make Rules for the purposes of Article 99A(2), including prescribing what constitutes a conflict of interest, a requisite degree of independence and a prescribed non-audit service.

CHAPTER 5 – AUDITORS REPORTS AND DUTIES

100. Auditors' reports

- (1) In this Article, a Relevant Person means an Authorised Person, Public Listed Company or Domestic Fund.
- (2) The DFSA may make Rules in relation to:
 - (a) the functions to be carried out by an Auditor when auditing a Relevant Person;
 - (b) the scope of the Auditors' report;
 - (c) the scope of ad-hoc reports of the Auditor;
 - (d) the submission of Auditor's reports to the DFSA; and
 - (e) the naming in the Auditor's report of persons responsible for the audit work and their liability as a result of being named.

101. **Auditors' duties**

- (1) In this Article, a Relevant Person means an Authorised Person, Public Listed Company or Domestic Fund.
- (2) An Auditor shall, in preparing the report in relation to a Relevant Person carry out such investigations as will enable the Auditor to form an opinion as to the following matters:
 - (a) whether proper accounting records have been kept by the Relevant Person and proper returns adequate for the audit have been received from branches not visited by the Auditor;
 - (b) whether the financial statements of the Relevant Person are in agreement with the accounting records and regulatory returns;
 - (c) whether the financial statements of the Relevant Person have been prepared in compliance with the applicable financial reporting standards; and
 - (d) whether the financial statements of the Relevant Person represent a true and fair view of the financial condition and the state of affairs of the Relevant Person.
- (3) If the Auditor is of the opinion that proper accounting records have not been kept, or that proper returns adequate for the audit have not been received from branches not visited by the Auditor, or that the financial statements are not in agreement with the accounting records and regulatory returns, or that the financial statements do not comply with accounting standards or they do not represent a true and fair view, the Auditor shall state that fact in the report.
- (4) If the Auditor fails to obtain all the information and explanations which, to the best of the Auditor's knowledge and belief are necessary for the purposes of the audit, the Auditor shall state that fact in the report.
- (5) An Auditor of a Domestic Fund shall disclose to the Trustee of the Domestic Fund, if appointed, and to the person providing the oversight function of a Domestic Fund which is a Public Fund, any information relevant to that person's role.

102. **Resignation of an auditor**

- (1) In this Article, a Relevant Person means an Authorised Person, Public Listed Company or Domestic Fund.
- (2) An Auditor of a Relevant Person may resign as Auditor by depositing a notice in writing to that effect together with a statement referred to in Articles 102(3) and (4), at the registered office of the Relevant Person and any such notice

operates to bring its term as Auditor to an end on the date on which the notice is deposited, or on such later date as may be specified in it.

- (3) When an Auditor ceases for any reason to act as the Auditor of a Relevant Person, it shall deposit at the registered office of:
- (a) the Authorised Person;
 - (b) the Public Listed Company; or
 - (c) in the case of a Domestic Fund;
 - (i) the Domestic Fund; and
 - (ii) if appointed, the Trustee of that Fund,

a notice setting out the matters specified in Article 102(4).

- (4) The notice must contain either:
- (a) a statement to the effect that there are no circumstances connected with its ceasing to act as Auditor which the Auditor considers should be brought to the notice of the relevant members or Unitholders, or creditors of the Relevant Person; or
 - (b) if there are any circumstances referred to in (a), a statement of the nature of those circumstances.

- (5) Where a notice contains information referred to in Article 102(4)(b):
- (a) the Authorised Person;
 - (b) the Public Listed Company; or
 - (c) in the case of a Domestic Fund, the Fund Manager of the fund, or failing which, the other members of the Governing Body of the Fund, or if appointed the Trustee of the Fund,

shall provide to the DFSA a copy of the statement and any response by that person.

CHAPTER 6 – CO-OPERATION WITH AUDITORS AND AUDITORS OBLIGATIONS OF DISCLOSURE TO THE DFSA

103. Co-operation with auditors

- (1) In this Article, a Relevant Person means:
- (a) an Authorised Person;

- (b) a Public Listed Company;
 - (c) in relation to a Domestic Fund, the Fund Manager and, where appointed, the Trustee of the Fund, any person providing oversight of the Fund and any member of the Governing Body of the Fund; and
 - (d) an officer, employee or agent of a person referred to in (a), (b) or (c).
- (2) A Relevant Person shall co-operate with its Auditor and, without limiting the generality of that obligation, shall comply with such measures relating to co-operation with its Auditor as may be prescribed in the Rules.
- (3) A Relevant Person shall not knowingly or recklessly:
- (a) provide information to its Auditor that is materially false, misleading or deceptive; or
 - (b) omit to provide information to its Auditor, that its Auditor reasonably requires, or is entitled to require, where the omission of such information is likely to mislead or deceive its Auditor.
- (4) A Relevant Person or any person acting under the direction or authority of such Relevant Person shall not without reasonable excuse engage in any of the following conduct:
- (a) destruction or concealment of documents;
 - (b) coercion, manipulation, misleading, or influencing of the Auditor;
 - (c) failure to provide access to information or documents specified by the Auditor; or
 - (d) failure to give any information or explanation which the person is able to give;

where that person knows or ought to know that such conduct could:

- (e) obstruct the Auditor in the performance of his duties under this Part or Rules made for the purposes of this Part; or
- (f) result in the rendering of the financial statements of the Authorised Person, Public Listed Company or Domestic Fund, or the Auditor's report materially misleading.

104. Obligation of Disclosure to the DFSA

- (1) An Auditor is subject to the obligations of disclosure under Article 104(3).

- (2) Without limiting the application of any other provision of this Law, an Auditor does not contravene any duty to which the Auditor is subject merely because the Auditor gives to the DFSA:
- (a) a notification as required under this Article; or
 - (b) any other information or opinion in relation to any such matter;
- if the Auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.
- (3) Subject to Article 104(4), an Auditor shall disclose to the DFSA any matter which reasonably tends to show one of the following:
- (a) a breach, or likely breach of a provision of the Law or other legislation administered by the DFSA;
 - (b) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or
 - (c) any other matter as the DFSA may prescribe in Rules;
- which may be attributable to the conduct of the relevant:
- (d) Authorised Person;
 - (e) Public Listed Company;
 - (f) Domestic Fund, Fund Manager, Trustee or the Governing Body of a Domestic Fund; or
 - (g) officer, employee or agent of a person referred to in (d), (e) or (f).
- (4) Article 104(3) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (5) An Authorised Person, Public Listed Company or the Fund Manager of a Domestic Fund shall establish and implement appropriate systems and internal procedures to enable its Auditor to comply with Article 104(3).
- (6) Any provision in an agreement between an Authorised Person, Public Listed Company or a Domestic Fund, and a director, officer, employee, agent or Auditor is void in so far as it purports to hinder any person from causing or assisting the Auditor to comply with an obligation under Article 104(3).
- (7) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an Auditor to comply with an obligation under Article 104(3).

- (8) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 104(7).

105. **Deleted**

PART 9: CONTROL OF FINANCIAL SERVICES TRANSFERS

106. **Financial services business transfer schemes**

No financial services business transfer scheme (“transfer scheme”) is to have effect unless an order has been made in relation to it under Article 108.

107. **Definition**

A scheme is a transfer scheme if:

- (a) the whole or part of the business carried on through an establishment in the DIFC by an Authorised Firm (“the firm concerned”) is to be transferred to another body (“the transferee”) and the business to be transferred consists in whole or in part of financial services business; or
- (b) the Fund Property of a Fund, or of a sub-fund of an Umbrella Fund (“the Fund concerned”), is to be transferred to another Fund (“the transferee”).

108. **Application for an order sanctioning a scheme**

- (1) An application in relation to a firm may be made to the Court for an order sanctioning a transfer scheme. An application may be made by:
- (a) the firm concerned;
- (b) the transferee; or
- (c) both.
- (2) An application in relation to a Fund may be made to the Court for an order sanctioning a transfer scheme. An application may be made by:
- (a) the Fund concerned;
- (b) the Fund Manager, Trustee or auditor of the Fund concerned; or
- (c) the transferee.
- (3) The Court may grant such orders if it considers that, in all the circumstances of the case, it is appropriate to sanction the transfer scheme.

109. Rights to be heard

On an application under Article 108, the following are entitled to be heard:

- (a) any person who alleges that he would be adversely affected by the carrying out of the scheme; and
- (b) the DFSA.

110. Powers of the Court in relation to a transfer scheme

(1) If the Court makes an order sanctioning a transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit:

- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the firm concerned;
- (b) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the firm concerned;
- (c) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out;
- (d) for dealing with the interests of any person who, within such time and in such manner as the Court may direct, objects to the scheme;
- (e) for the dissolution, without winding up, of any firm concerned; or
- (f) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under:
 - (i) any insurance policy, or
 - (ii) insurance policies generally, entered into by the firm concerned and transferred as a result of the transfer scheme.

(2) An order may:

- (a) transfer property or liabilities whether or not the firm concerned otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to property which was held by the firm concerned as trustee; or
- (c) make provision as to future or contingent rights or liabilities of the firm concerned, including provision as to the construction of instruments under which such rights or liabilities may arise.

- (3) If an order makes provision for the transfer of property or liabilities:
 - (a) the property is transferred to and vests in, and
 - (b) the liabilities are transferred to and become liabilities of,

the transferee as a result of the order.
- (4) If any property or liability included in the order is governed by the law of any jurisdiction other than the DIFC, the order may require the firm concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (5) Property transferred as the result of an order under this Article may, if the Court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.
- (6) An order under this Article which provides for the transfer of property is to be treated as an instrument of transfer for the purposes of any DIFC Law requiring the delivery of an instrument of transfer to register property.

111. Requirements of a scheme

- (1) Subject to Article 111(4), an application under Article 108 in respect of a scheme shall be accompanied by a report on the terms of the transfer scheme ("a scheme report").
- (2) A scheme report may be made only by a person:
 - (a) appearing to the DFSA to have the skills necessary to enable him to make a proper report; and
 - (b) nominated or approved for the purpose by the DFSA.
- (3) A scheme report must be made in a form approved by the DFSA.
- (4) The DFSA may, by written notice to the firm concerned, direct that a scheme report need not be provided, if it appears to the DFSA that, by reason of urgency, it is in the interests of the DIFC so to do.
- (5) The firm concerned must give written notice of the proposed transfer to all interested parties, such parties to be determined by the DFSA, to their last known mailing address.
- (6) The firm concerned must advise of the proposed transfer by way of a notice published in an appointed newspaper. An appointed newspaper is a publication best suited to bring the proposed transfer of business to the attention of any persons who may be affected by the transfer.

- (7) The DFSA may, by written notice to the firm concerned, direct that notice as prescribed in Articles 111(5) and (6) need not be provided, if it appears to the DFSA that, by reason of urgency, it is in the interests of the DIFC so to do.
- (8) The Court may not determine an application under Article 108 if the applicant or the firm concerned have failed to comply with the requirements in Article 111.

112. **Conditions for sanctioning a transfer scheme**

Before the Court may make an order for a transfer scheme, it must be satisfied that, before the transfer scheme takes effect, the transferee:

- (a) will have the authorisation required (if any) to enable the business which is to be transferred to be carried on in the place to which it is to be transferred; and
- (b) will possess adequate financial resources to carry on the business concerned in accordance with the legislation applicable in the place to which it is to be transferred.

113. **Modifications**

The DFSA Board of Directors may make Rules providing for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed.

PART 10: MISCELLANEOUS

114. **Irregularities**

- (1) In this Article:
 - (a) “procedure” is a reference to any procedure including but not limited to the making of a decision, the conduct of a hearing, the giving of a notice, and any proceeding whether a legal proceeding or not; and
 - (b) “procedural irregularity” includes a reference to a defect, irregularity or deficiency of notice or time.
- (2) A procedure under the Law or the Rules or any other legislation administered by the DFSA is not invalidated because of any procedural irregularity unless the Court declares the procedure to be invalid.
- (3) A person may apply to the Court for an order:
 - (a) declaring that:
 - (i) any act or thing purporting to have been done; or

- (ii) any procedure purporting to have been commenced or undertaken,

under the Law or the Rules or any other legislation administered by the DFSA is not invalid by reason of any contravention of a provision of such Law, Rules or other legislation; or

- (b) extending or abridging the period for doing any act, matter or thing or commencing or undertaking any procedure under the Law or the Rules or any other legislation administered by the DFSA;

where any such act or thing, or procedure, is essentially of a procedural nature.

115. **Filing of Material with the DFSA**

The DFSA may by means of Rules:

- (a) require the filing of certain material with the DFSA, including without limitation in relation to applications for Licences, authorisations and registration;
- (b) prescribe the manner in which such material shall be filed;
- (c) prescribe which material, or parts of the material, shall be made available for viewing by the public during the normal business hours of the DFSA;
- (d) permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of, documents or information required under or governed by the Law and Rules or other legislation administered by the DFSA, and any ancillary documents; and
- (e) prescribe the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose under the Law.

116. **Publication by the DFSA**

- (1) The DFSA shall make available to the public without undue delay after their making or issuing:
 - (a) Rules made by the DFSA Board of Directors;
 - (b) Guidance in the form of:
 - (i) guidance made and issued by the Chief Executive under the Law; and
 - (ii) a standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules.

- (2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.
- (3) Publications made under this Article may be provided with or without charge as the DFSA Board of Directors may determine.

117. Language

The DFSA may require communication to which it is a party to be conducted in English.

118. General Saving and Transitional

- (1) For the purposes of this Article:
 - (a) “previous law” means the Regulatory Law 2004 , the Markets Law 2012, the Collective Investment Law 2010, the Law Regulating Islamic Finance Business Law 2004 and the Investment Trust Law 2006 as in force immediately before the commencement of the DIFC Laws Amendment Law No. 1 of 2014;
 - (b) “current law” means the provisions of the laws referred to in paragraph (a) as in force after the commencement of the DIFC Laws Amendment Law No. 1 of 2014.
- (2) The DFSA may, by Rules, prescribe any transitional or saving provisions as appear to the DFSA necessary so as to give effect to, or facilitate, the transition from the previous law to the current law.

SCHEDULE 1
INTERPRETATION

1. Rules of interpretation

- (1) In the Law, unless the contrary intention appears, a reference to:
 - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
 - (d) unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official State holiday in the DIFC, the obligation shall take place on the next calendar day which is a business day;
 - (e) a calendar year shall mean a year of the Gregorian calendar;
 - (f) a reference to the masculine gender includes the feminine; and
 - (g) any reference to ‘dollars’ or ‘\$’ is a reference to United States Dollars.
- (2) The headings in the Law shall not affect its interpretation.

2. Legislation in the DIFC

References to legislation and Guidance in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the State;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Law is the Regulatory Law, DIFC Law No.1 of 2004 made by the Ruler;
- (e) the Rules are legislation made by the DFSA under the Law and are binding in nature;

- (f) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the Chief Executive as notations to the Rules; and (ii) any standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules; and
- (g) references to "legislation administered by the DFSA" are references to DIFC Law and Rules conferring functions and powers on the DFSA.

3. **Defined Terms**

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Term	Definition
Audit Service	has the meaning given to that term in Article 97(d) of this Law.
Auditor	has the meaning given to that term in Article 97(a) of this Law.
Audit Principal	has the meaning given to that term in Article 97(c) of this Law.
Affiliate	in relation to an Authorised Person, means any other entity in the Group to which the Authorised Person belongs.
Authorised Firm	a person who holds a Licence to carry on one or more Financial Services prescribed pursuant to Article 42(1)(a).
Authorised Individual	an individual who has been authorised by the DFSA to perform one or more Licensed Functions for an Authorised Firm.
Authorised Market Institution	a person who is licensed by the DFSA in relation to the carrying on of one or more Financial Services prescribed pursuant to Article 42(1)(b).
Authorised Person	an Authorised Firm or an Authorised Market Institution.
Chairman of the DFSA	the person appointed to the office of chairman of the DFSA, a Board Member and chairman of the DFSA Board of Directors, by the President.
Chief Executive	the person appointed to the office of Chief Executive by the DFSA Board of Directors.
Companies Law	DIFC law relating to the incorporation of Companies.
Companies Registrar	the person appointed to the office of Registrar under the DIFC Companies Law 2004.

Term	Definition
Board Member	a person appointed to the office of member of the DFSA Board of Directors.
Collective Investment Prohibitions	the general and marketing prohibitions prescribed under Articles 20, 21 and 50 of the Collective Investment Law 2010.
Court	the DIFC Court as established under Dubai Law.
director	a director or equivalent member of an entity's governing body.
Decision Notice	a written notice given by the DFSA to a person pursuant to paragraph 5 of Schedule 3.
DFSA	the Dubai Financial Services Authority.
DIFC	the Dubai International Financial Centre.
DIFC Authority	the executive body of the DIFC, established under Dubai Law.
Dubai Law	has the meaning given in Article 2 of Schedule 1 to the Law.
DNFBP	has the meaning prescribed in the Rules made pursuant to Article 60(6) of the Law.
Domestic Firm	an Authorised Person which: (a) has its registered and head office in the DIFC; or (b) if it is a subsidiary of a legal entity whose principal place of business and head office is in a jurisdiction other than the DIFC, has its registered office in the DIFC.
Domestic Fund	has the meaning given in Article 3 of Schedule 1 to the Collective Investment Law 2010.
Financial Markets Tribunal	the Financial Markets Tribunal referred to in Article 26 of the Law.
Financial Promotion	has the meaning given in Article 41A(3) of this Law.
Financial Promotions Prohibition	the prohibition prescribed under Article 41A(1) of this Law.
Financial Service	has the meaning given in Article 41 of this Law.
Financial Services Prohibition	the prohibition prescribed under Article 41 of this Law.

Term	Definition
Financial Services Regulator	a regulator of financial services activities established in a jurisdiction other than the DIFC.
FMT	the Financial Markets Tribunal.
Fund	has the meaning given in Article 3 of Schedule 1 to the Collective Investment Law 2010.
Fund Manager	has the meaning given in Article 20(4) of the Collective Investment Law 2010.
Governing Body	has the meaning given to that term in Article 3 of Schedule 1 to the Collective Investment Law 2010.
Group	means a group of entities which includes an entity (the 'first entity') and: <ul style="list-style-type: none"> (a) any Parent of the first entity; and (b) any Subsidiaries (direct or indirect) of the Parent or Parents in (a) of the first entity.
Guidance	has the meaning given in Article 2 of Schedule 1 to the Law.
Investment Trust	has the meaning given to that term in Article 3 of the Schedule to the Investment Trust Law 2006.
Key Individual	an individual who has been authorised by the DFSA to perform one or more Licensed Functions for an Authorised Market Institution.
Law	the Regulatory Law 2004.
legislation	includes rules or regulations made under legislation.
Licence	a licence granted by the DFSA under Chapter 2 of Part 3 .
Licence Endorsement	an endorsement made by the DFSA on a Licence that permits an Authorised Person to carry on an activity prescribed under Article 44.
Licensed Function	a function prescribed pursuant to Article 43(1).
officer	in relation to an entity, means an officer of that entity including a director.

Term	Definition
Parent	a holding company as defined in Schedule 1 to the DIFC Companies Law.
person	has the meaning given in Article 1 of Schedule 1 to the Law.
Preliminary Notice	a written notice given by the DFSA to a person under paragraph 4(1) of Schedule 3.
President	the president of the DIFC, appointed by a decree of the Ruler pursuant to Dubai Law.
Principal Representative	has the meaning prescribed in the Rules.
Privileged Communication	a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law, but does not include a general duty of confidentiality.
Public Fund	has the meaning given to that term in Article 3 of Schedule 1 to the Collective Investment Law 2010.
Public Listed Company	a person incorporated or formed in the DIFC and who is admitted to an official list of securities in the DIFC or an equivalent list of securities in another jurisdiction.
Recognised Person	has the meaning given in Article 37(3) of the Markets Law 2012.
Registered Auditor	has the meaning given to that term in Article 97(b) of this Law.
Reporting Entity	has the meaning given to that term in Article 3 of the Schedule to the Markets Law 2012.
Ruler	the ruler of the Emirate of Dubai.
Rules	has the meaning given in Article 2 of Schedule 1 to the Law.
Schedule	a schedule to the Law.
Special Resolution	has the meaning given in Article 3 of Schedule 1 to the Collective Investment Law 2010.
State	United Arab Emirates.
Subsidiary	a subsidiary as defined in Schedule 1 to the DIFC Companies Law.
Trustee	a Trustee within the meaning of the

Term	Definition
	Investment Trust Law 2006 and the Collective Investment Law 2010.
Unitholder	has the meaning given in Article 3 of Schedule 1 to the Collective Investment Law 2010.

SCHEDULE 2
THE DFSA

The constitutional terms of the DFSA

The DFSA is a body corporate established under Dubai Law.

The DFSA shall have its own constitutional provisions, which shall incorporate the following provisions of Schedule 2, and which shall not be inconsistent with these provisions:

- (a) the full legal title of the DFSA shall be "The Dubai Financial Services Authority";
- (b) the full legal title of the DFSA may be abbreviated in common usage to "DFSA";
- (c) the registered office of the DFSA is to be situated in the Emirate of Dubai;
- (d) the DFSA may acquire, hold and dispose of property of any description;
- (e) the DFSA may make contracts and other agreements;
- (f) the DFSA may receive and spend monies;
- (g) the DFSA may, with the prior written consent of the President, borrow monies and provide security for such borrowings;
- (h) the DFSA may agree in writing with the President an amount of unsecured borrowing below which the prior written consent of the President is not required;
- (i) the DFSA may employ persons on such terms as it considers appropriate;
- (j) the DFSA shall appoint and employ such persons as it shall deem necessary for it to be able to exercise its powers and perform its functions; and
- (k) the DFSA may sue and be sued in its own name.

SCHEDULE 3
DECISION-MAKING PROCEDURES

1. Interpretation

For the purposes of this Schedule:

“Relevant Person” means a person in relation to whom a power is exercised or proposed to be exercised.

2. Application of Schedule

This Schedule applies to the DFSA, subject to paragraph 3, where a provision in legislation administered by the DFSA requires the DFSA to make a decision in accordance with the procedures in this Schedule.

3. Decisions to which procedures do not apply

- (1) The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the DFSA:
 - (a) to withdraw a direction, requirement, restriction or prohibition;
 - (b) to withdraw a condition or restriction imposed in relation to a Licence, Licence Endorsement, registration, authorisation or approval; or
 - (c) in relation to a person, if the person has requested, or consented in writing to, the making of the decision.
- (2) In the cases referred to in sub-paragraph (1), the DFSA must notify the person in writing of the decision and the date on which it is to take effect.
- (3) If the DFSA makes a decision in relation to a person after a determination of the FMT or a decision of the Court relating to the conduct of the person, the requirement to give the person an opportunity to make representations under paragraph 4 or 6 (as applicable) does not apply in relation to findings of fact of the FMT or the Court.

4. Opportunity to make representations before a decision

- (1) If the DFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:
 - (a) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (2); and
 - (b) an opportunity to make representations to the DFSA in person and in writing concerning the decision the DFSA proposes to take.
- (2) The Preliminary Notice must:
 - (a) specify the proposed decision;

- (b) specify the reasons for that proposed decision, including any proposed findings of fact;
 - (c) include a copy of the relevant materials which were considered in making the proposed decision;
 - (d) inform the person that they may make representations to the DFSA concerning the proposed decision; and
 - (e) specify how and by when any representations may be made.
- (3) For the purposes of sub-paragraph (2)(c), the DFSA:
- (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
 - (b) is not required to provide material that is the subject of legal professional privilege.
- (4) If the DFSA does not receive any representations within the period specified in the Preliminary Notice, it may proceed to make the proposed decision and give the person a Decision Notice in accordance with paragraph 5.
- (5) If the DFSA receives representations within the period specified in the Preliminary Notice, it must consider the representations in making the decision.
- (6) If, after considering the representations, the DFSA decides:
- (a) to make the proposed decision (either as proposed or with variations), then it must give the person a Decision Notice under paragraph 5; or
 - (b) not to make the proposed decision, then it must as soon as practicable notify the person in writing that it has decided not to make the decision.
- (7) If the DFSA concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of direct or indirect users of financial services in the DIFC or otherwise prejudicial to the interests of the DIFC:
- (a) the requirements in sub-paragraphs (1) to (6) do not apply; and
 - (b) instead the DFSA must provide the person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.

5. Decision Notice

- (1) If the DFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a “Decision Notice”) specifying:
 - (a) the decision;
 - (b) the reasons for the decision, including its findings of fact;
 - (c) the date on which the decision is to take effect;
 - (d) if applicable, the date by which any relevant action must be taken by the person; and
 - (e) the person’s right to seek review of the decision by the FMT (where applicable).
- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of sub-paragraph (2), the DFSA:
 - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
 - (b) is not required to provide material that is the subject of legal professional privilege.

6. Opportunity to make representations after a decision

- (1) If this paragraph applies under paragraph 4(7), the DFSA must:
 - (a) provide the Relevant Person with an opportunity to make representations to the DFSA in person and in writing within a period of 14 days, or such further period as may be agreed, from the date on which the Decision Notice is given to the person under paragraph 5; and
 - (b) inform the Relevant Person in the Decision Notice that they may make representations concerning the decision and specify how and by when any representations may be made.
- (2) If the DFSA does not receive any representations within the period specified in the Decision Notice, it must inform the person in writing that the decision is to stand (subject to any right of the person to refer the matter to the FMT for review).

- (3) If the DFSA receives representations within the period specified in the Decision Notice, it must consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (4) If after considering representations received the DFSA decides:
 - (a) to confirm the decision, it must as soon as practicable notify the person in writing that the decision is to stand (subject to any right of the person to refer the matter to the FMT for review);
 - (b) to withdraw the decision, it must as soon as practicable notify the person in writing that the decision has been withdrawn; or
 - (c) to vary the decision, it must as soon as practicable give the person an amended Decision Notice under paragraph 5.
- (5) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
 - (a) if the person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made; or
 - (b) in respect of an amended Decision Notice given under sub-paragraph (4)(c).