

The DFSA Sourcebook



Regulatory Policy and Process (RPP Sourcebook)

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1 INTRODUCTION

1-1 PURPOSE

1-1-1 The purpose of the Regulatory Policy and Process (RPP) Sourcebook is to provide readers with an understanding of how the Dubai Financial Services Authority (DFSA) functions and operates and what we expect from the regulated community.

1-1-2 The RPP contains:

- (a) statements of DFSA's regulatory policy;
- (b) descriptions of the regulatory processes that we follow when exercising our statutory powers;
- (c) information as to DFSA's risk based approach to authorisation, supervision and enforcement; and
- (d) information on matters which the DFSA may assess when considering to exercise specific discretionary powers. For example, this would include those matters which the DFSA may take into consideration when making an assessment of whether an Authorised Person or Authorised Individual is fit and proper.

1-1-3 RPP is therefore relevant to a Person who is:

- (a) seeking to be authorised or registered by the DFSA;
- (b) already subject to applicable Laws, Rules and policies administered by the DFSA such as Authorised Persons (i.e. Authorised Firms or Authorised Market Institutions), Ancillary Service Providers, Auditors, Authorised Individuals, Principal Representatives and any other Persons subject to the DFSA's regulatory oversight; and
- (c) otherwise subject to the jurisdiction of the DFSA such as by reason of the DFSA's authority under delegated powers.

1-1-4 RPP also concerns Persons who have made or intend to make:

- (a) an Offer of Securities; or
- (b) a Financial Promotion;

in or from the DIFC.

1-1-5 The types of Person mentioned above to whom RPP is relevant are not intended to be exhaustive.

1-2 STATUS

1-2-1 The information in RPP is issued under Article 116(2) of the Regulatory Law 2004. RPP is for information purposes only and forms one of the DFSA's Sourcebook modules. RPP contains policy and process information which is indicative and non-binding.

1-2-2 RPP is not an exhaustive source of the DFSA's policy on the exercise of its statutory powers and discretion. To the extent that it sets out how the DFSA may act in certain circumstances, the information in RPP does not bind the DFSA and nor does it necessarily create a legitimate expectation for Persons who might reasonably seek to rely upon it. RPP should not be relied upon as a safe harbour by any Person.

1-2-3 Anyone reading RPP should also refer to the:

- (a) DIFC Laws, including DFSA administered Laws ("Laws");
- (b) DFSA Rulebook ("Rules"); and
- (c) other parts of the DFSA Sourcebook ("Sourcebook");

that may impact on them.

1-2-4 The Laws and Rules set out the precise scope and effect of any particular provision referred to in RPP. If you have any doubt about a legal or other provision or your responsibilities under the Law, Rules or other relevant requirements, you should seek appropriate legal advice.

1-2-5 The Sourcebook comprises a number of modules such as the Prudential Returns (PRU) module and the Application, Forms and Notices (AFN) module.

1-3 UPDATING THE RPP

1-3-1 We shall take reasonable steps to review the RPP to ensure that it remains current. We shall also make amendments where there are changes in our policy or processes in light of our regulatory experience and to reflect legal and market developments in the DIFC or in the relevant standards and practices set by international regulatory bodies. This may result in new chapters being added or existing chapters being amended or merged or deleted, as is necessary.

1-4 DEFINED TERMS

1-4-1 In order to be consistent and accurate when referring to terms that have specific meaning elsewhere, defined terms are identified throughout RPP by the capitalisation of the initial letter of a word or each word of a phrase and are defined in the Glossary module (GLO) of the DFSA's Rulebook. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

1-5 DFSA'S REGULATORY MANDATE

1-5-1 The DFSA is the independent regulator of financial and ancillary services conducted in or from the Dubai International Financial Centre (DIFC), a purpose-built financial free-zone in Dubai.

1-5-2 The DFSA's regulatory oversight includes asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, an international equities and derivatives exchange and an international commodities derivatives exchange.

1-5-3 The DFSA's mandate is to ensure that the DIFC is one of the best regulated international financial centres in the world, a centre based on principles of integrity, transparency and efficiency.

1-5-4 The international standards adopted and applied by the DFSA in the DIFC are those set by leading international organisations such as IOSCO (International Organisation of Securities Commissions), BCBS (Basel Committee on Banking Supervision), IAIS (International Association of Insurance Supervisors) and FATF (Financial Action Task Force).

1-6 DFSA'S OBJECTIVES AND GUIDING PRINCIPLES

1-6-1 In discharging its regulatory mandate, the DFSA has a statutory obligation under Article 8(3) of the Regulatory Law 2004 to 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; and
- (g) to pursue any other objectives as the Ruler of Dubai may from time to time set under DIFC Law.

1-6-2 In exercising its powers and performing its functions, the DFSA has regard to the following guiding principles as set out in Article 8(4) of the Regulatory Law 2004, 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 United Arab Emirates 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.

1-7 DFSA'S REGULATORY STRUCTURE

1-7-1 The DFSA is structured into a number of divisions and departments. For the purpose of this Sourcebook, the most relevant are as follows:

Supervision

- (a) The Supervision Division authorises firms and individuals to conduct Financial Services in or from the DIFC. This Division also registers Ancillary Service Providers and Auditors (see Chapter 2).
- (b) This Division also conducts supervisory oversight on all Authorised Firms, Ancillary Service Providers and Auditors, including by conducting risk assessments. The scope and frequency of such assessments are dictated by the nature of the firm's activities and its perceived risks. From time to time, Supervision carries out thematic reviews inspired by topical events which have both local and international relevance (see Chapter 3).

Markets

- (c) The Markets Division licenses and supervises Authorised Market Institutions in the DIFC (see Chapters 2 and 3).
- (d) The Division also recognises those financial markets who operate an exchange or clearing house outside the DIFC without having a physical presence in the DIFC but make their services available to Persons in the DIFC. Trading and Clearing members of an Authorised Market Institution who operate in a jurisdiction other than the DIFC and do not have a physical presence in the DIFC are also recognised by the Division.

- (e) The Division is also responsible for regulating Offers of Securities in or from the DIFC, and supervises Reporting Entities by monitoring their on-going market disclosures and compliance with Rules.

Enforcement

- (f) The primary function of the Enforcement Division is 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. Consequently, the Enforcement Division is responsible for:
- (i) liaising and co-operating with international regulatory and enforcement agencies pursuant to a relevant multilateral memorandum of understanding or bi-lateral arrangement in relation to investigation and enforcement matters;
 - (ii) conducting investigations commenced pursuant to Article 78 of the Regulatory Law 2004 in respect of contraventions of DFSA administered Laws and Rules; and
 - (iii) the taking of enforcement action in circumstances where contraventions of DFSA administered Laws and Rules pose an unacceptable risk to the DIFC.
- (g) The DFSA has a range of remedies to enforce the legislation that we administer (see Chapters 4 and 5).

Policy and Legal

- (h) The Policy and Legal Services Division is responsible for developing DFSA administered Laws, Rules and policies, as approved by the DFSA Board of Directors. The Division also assists in the drafting of certain DIFC Laws. This Division is also responsible for providing regulatory legal advice and managing the business of the Regulatory Policy Committee and the Rules and Waivers Committee and advises on the disclosure of confidential regulatory information.

2 AUTHORISATION - BECOMING REGULATED

2-1 DFSA'S APPROACH TO AUTHORISATION

Introduction

2-1-1 This chapter outlines the DFSA's approach to assessing an applicant to become:

- (a) an Authorised Person, that is, an Authorised Market Institution or an Authorised Firm (an Authorised Firm includes a Representative Office);
- (b) an Authorised Individual;
- (c) a Principal Representative;
- (d) an Ancillary Service Provider; or
- (e) an Auditor.

2-1-2 Prior to submitting an application to the DFSA, the relevant applicant should contact the DFSA Enquiries Team on +971 (0)4 362 1500 or via e-mail info@dfsa.ae. In preparing an application, this chapter should be read in conjunction with the forms and notes in the AFN Sourcebook, and relevant Laws and Rules.

2-1-3 In assessing whether a relevant applicant is and remains fit and proper, the DFSA may also consider the degree to which an applicant is ready, willing and able to conduct the relevant activities in accordance with the Laws and Rules and other legislation applicable in the DIFC.

2-1-4 An applicant must not provide information to the DFSA which is false, misleading or deceptive, or conceal information where the concealment of such information is likely to mislead or deceive the DFSA (see Article 66 of the Regulatory Law 2004).

2-1-5 If an applicant becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application which is under consideration by the DFSA, then it must inform the DFSA of the change, in writing, without delay (see Article 46 of the Regulatory Law 2004).

2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS

Introduction

2-2-1 This section sets out matters which the DFSA takes into consideration when assessing the fitness and propriety of an Authorised Person (including applicants). There are some matters in this section which apply to all Authorised Persons and some which are specific to either an Authorised Firm or an Authorised Market Institution. Such matters should be read in conjunction with those requirements relating to Authorised Firms (see chapter 7 of the GEN module) and Authorised Market Institutions (see chapters 2 and 7 of the AMI module).

2-2-2 The DFSA may have regard to all relevant matters, whether arising in the DIFC or elsewhere. The DFSA may determine the materiality of any information for the purposes of considering whether an Authorised Person has demonstrated, or continues to demonstrate, that it is fit and proper.

2-2-3 The DFSA may request or require any information which it considers relevant to its consideration of an application by an Authorised Person.

2-2-4 In considering any specific matters, the DFSA may request reviews by an appropriately skilled third party on any aspect of the Authorised Person's proposed or actual activities or the environment in which the applicant predominantly operates. The DFSA will normally agree to the scope of any reviews performed. Such reviews will ordinarily be at the applicant's sole expense.

Background and history

2-2-5 In respect of the background and history of an Authorised Person, the DFSA may have regard to any matters including, but not limited to, the following:

- (a) any matter affecting the propriety of the Authorised Person's conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
- (b) whether an Authorised Person has ever been the subject of disciplinary procedures by a government body or agency or any self regulating organisation or other professional body;
- (c) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self regulatory organisation, Financial Services Regulator or regulated exchange or clearing house;
- (d) whether an Authorised Person has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
- (e) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by an Authorised Person in excess of \$10,000 or awards that total more than \$10,000;
- (f) whether an Authorised Person has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; and
- (g) whether an Authorised Person has been open and truthful in all its dealings with the DFSA.

Locations of offices

2-2-6 An Authorised Person should be able to satisfy the DFSA that it is in compliance with chapter 6 of the GEN module. In particular, section 6.5 of GEN module requires that if an Authorised Person is a Body Corporate constituted under the laws of the DIFC it should maintain its head office and registered office within the boundaries of the DIFC. In considering the location of an Authorised Person's head office, the DFSA may have regard to the location of its directors, partners, and senior management with respect to its strategic, operational and administrative arrangements. Where an Authorised Firm is a Partnership with its head office in the DIFC, it must carry on business in the DIFC.

Close Links

2-2-7 GEN section 6.6 concerns Close Links. The DFSA should be satisfied that the existence of Close Links do not prevent the effective supervision of the Authorised Person by the DFSA.

Legal status of Authorised Firms

2-2-8 The DFSA will only consider an application for authorisation where the legal status of the proposed entity meets the requirements set out in section 7.2 of the GEN module or chapter 7 of the AMI module. In the case of non-DIFC firms other than companies limited by shares, the DFSA will consider whether the legal form is appropriate for the activities proposed.

2-2-9 In respect of Effecting Contracts of Insurance, Carrying Out Contracts of Insurance, Acting as the Trustee of a Fund, or Operating a Collective Investment Fund, an Authorised Firm has to be a Body Corporate in accordance with GEN Rules 7.2.2(2) and 7.2.2(4) respectively.

2-2-10 In respect of Accepting Deposits or seeking to Accept Deposits, an Authorised Firm has to be a Body Corporate or Partnership in accordance with GEN Rule 7.2.2(3).

Ownership and Group

2-2-11 In respect of the ownership and Group structure of an Authorised Person, the DFSA may have regard to:

- (a) the Authorised Person's position within its Group, including any other relationships that may exist between the Authorised Person's affiliates, Controllers, Associates or other Persons that may be considered a Close Link (see paragraph 2-2-12 for considerations relating to Controllers and paragraph 2-2-7 for considerations relating to Close Links);
- (b) the financial strength of the Group and its implications for the Authorised Person;
- (c) whether the Group has a structure which makes it possible to:
 - (i) exercise effective supervision;
 - (ii) exchange information among regulators who supervise Group members;
and

- (iii) determine the allocation of responsibility among the relevant regulators;
- (d) any information provided by other regulators or third parties in relation to the Authorised Person or any entity within its Group; and
- (e) whether the Authorised Person or its Group is subject to any adverse effect or considerations arising from a country or countries of incorporation, establishment and operations of any member of its Group. In considering such matters, the DFSA may also have regard to the type and level of regulatory oversight in the relevant country or countries of the Group members, the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

Controllers

2-2-12 In respect of the Controllers of an Authorised Person, the DFSA may, taking into account the nature, scale and complexity of the firm's business and organisation, have regard to:

- (a) the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Authorised Person, and the degree of influence that they are, or may be, able to exert over the Authorised Person and/or its activities;
- (b) where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller;
- (c) the financial strength of a Controller and its implications for the Authorised Person's ability to ensure the sound and prudent management of its affairs, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Firm; and
- (d) whether the Authorised Person is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a Controller. In considering such matters, the DFSA may have regard to, among other things, the type and level of regulatory oversight which the Controller is subject to in the relevant country or countries and the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

2-2-13 Where the DFSA has any concerns relating to the fitness and propriety of an applicant for a licence stemming from a Controller of such a person, the DFSA may consider imposing licence conditions designed to address such concerns. For example, the DFSA may impose, in the case of a start-up, a licence condition that there should be shareholder agreement to resort to an effective shareholder dispute resolution mechanism.

Resources, Systems and Controls

2-2-14 The DFSA may have regard to whether the Authorised Person has sufficient resources, including the appropriate systems and controls (including those set out in chapter 5 of the GEN module), such as:

- (a) the Authorised Person's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Person appears in a position to be able to continue to comply with such Rules;
- (b) the extent to which the Authorised Person is or may be able to secure additional capital in a form acceptable to the DFSA where this appears likely to be necessary at any stage in the future;
- (c) the availability of sufficient competent human resources to conduct and manage the Authorised Person's affairs, in addition to the availability of sufficient Authorised Individuals to conduct and manage the Authorised Person's Financial Services;
- (d) whether the Authorised Person has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;
- (e) whether the Authorised Person has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering and counter terrorism legislation, and relevant UN Security Council sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;
- (f) the impact of other members of the Authorised Person's Group on the adequacy of the Authorised Person's resources and in particular, though not exclusively, the extent to which the Authorised Person is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator;
- (g) whether the Authorised Firm is able to provide sufficient evidence about the source of funds available to it, to the satisfaction of the DFSA. This is particularly relevant in the case of a start-up entity; and
- (h) the matters specified in paragraph 2-2-12(c).

Authorised Firms - Collective suitability of individuals or other persons connected to the Authorised Firm

2-2-15 Notwithstanding that individuals performing Licensed Functions are required to be Authorised Individuals and that an Authorised Firm is required to appoint certain Authorised Individuals to certain functions as stated in chapter 7 of the GEN module, the DFSA will also consider:

- (a) the collective suitability of all of the Authorised Firm's staff taken together, and whether there is a sufficient range of individuals with appropriate knowledge, skills and experience to understand, operate and manage the Authorised Firm's affairs in a sound and prudent manner;

- (b) the composition of the Governing Body of the Authorised Firm. The factors that would be taken into account by the DFSA in this context include, depending on the nature, scale and complexity of the firm's business and its organisational structure, whether:
- (i) the Governing Body has a sufficient number of members with relevant knowledge, skills and expertise among them to provide effective leadership, direction and oversight of the Authorised Firm's business. For this purpose, the members of the Governing Body should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the firm's business to be able to fulfil their roles;
 - (ii) the individual members of the Governing Body have the commitment necessary to fulfil their roles, demonstrated, for example, by a sufficient allocation of time to the affairs of the firm and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Firm and its customers and stakeholders; and
 - (iii) there is a sufficient number of independent members on the Governing Body. The DFSA will consider a member of the Governing Body to be "Independent" if he is found, on reasonable grounds by the Governing Body, to be independent in character and judgement and able to make decisions in a manner that is consistent with the best interests of the Authorised Firm;
- (c) the position of the Authorised Firm in any Group to which it belongs;
- (d) the individual or collective suitability of any Person or Persons connected with the Authorised Firm;
- (e) the extent to which the Authorised Firm has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities;
- (f) whether the Authorised Firm has appointed auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the Authorised Firm's activities; and
- (g) whether the remuneration structure and strategy adopted by the Authorised Firm is consistent with the requirements in GEN Rule 5.3.31(1).

Authorised Market Institutions – Other Considerations

2-2-16 In determining whether an Authorised Market Institution has satisfied its Licensing Requirements set out in AMI Rule 7.2.2, the DFSA will, in addition to the matters raised in this chapter, consider:

- (a) its arrangements, policies and resources for fulfilling its obligations under the Licensing Requirements;

- (b) its arrangements for managing conflicts and potential conflicts between its commercial interest and applicable regulatory requirements;
- (c) the extent to which its constitution and organisation provide for effective governance;
- (d) the arrangements made to ensure that the Governing Body has effective oversight of its Regulatory Functions;
- (e) the access the Key Individuals have to the Governing Body;
- (f) the size and composition of the Governing Body including:
 - (i) the number of independent members on the Governing Body;
 - (ii) the number of members of the Governing Body who represent Members of the Authorised Market Institution or other persons and the types of persons whom they represent; and
 - (iii) the number and responsibilities of any members of the Governing Body with executive roles within the Authorised Market Institution.
- (g) the structure and organisation of its Governing Body, including any distribution of responsibilities among its members and committees;
- (h) the integrity, relevant knowledge, skills and expertise of the members of the Governing Body to provide effective leadership, direction and oversight of the Authorised Market Institution's business. For this purpose, such individuals should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the Authorised Market Institution's business to be able to fulfil their roles;
- (i) the commitment necessary by the members of the Governing Body to fulfil their roles effectively, demonstrated, for example, by a sufficient allocation of time to the affairs of the Authorised Market Institution and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Market Institution and its stakeholders;
- (j) the integrity, qualifications and competence of its Key Individuals;
- (k) its arrangements for ensuring that it employs individuals who are honest and demonstrate integrity;
- (l) the independence of its regulatory and listings departments from its commercial departments; and
- (m) whether the remuneration structure and strategy adopted by the Authorised Market Institution is consistent with the requirements in GEN Rule 5.3.31(1).

2-2-17 The DFSA will consider a Director to be “independent” if the Director is found, on the reasonable determination by the Governing Body, to:

- (a) be independent in character and judgement; and
- (b) have no relationships or circumstances which are likely to affect or could appear to affect the Director’s judgement in a manner other than in the best interests of the Authorised Market Institution.

2-2-18 In forming a determination the Governing Body should consider the length of time the Director has served as a member of the Governing Body and whether the relevant Director:

- (a) has been an employee of the Authorised Market Institution or group within the last five years;
- (b) has or has had, within the last three years, a material business relationship with the Authorised Market Institution, either directly or as a Partner, shareholder, Director or senior employee of a body that has such a relationship with the Authorised Market Institution;
- (c) receives or has received, in the last three years, additional remuneration or payments from the Authorised Market Institution apart from a Director’s fee, participates in the Authorised Market Institution’s share option, or a performance-related pay scheme, or is a member of the Authorised Market Institution’s pension scheme;
- (d) is or has been a Director, Partner or Employee of a firm which is the Authorised Market Institution’s auditor;
- (e) has close family ties with any of the Authorised Market Institution’s advisors, Directors or senior employees;
- (f) holds cross directorships or has significant links with other Directors through involvement in other bodies; or
- (g) represents a significant shareholder.

2-3 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED INDIVIDUALS AND PRINCIPAL REPRESENTATIVES

Introduction

2-3-1 This section sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of an Authorised Individual or Principal Representative under section 7.6 of the GEN module and section 4.2 of the REP module, respectively.

2-3-2 In order to assess the fitness and propriety of a proposed Authorised Individual or Principal Representative, the DFSA may request an interview with the proposed individual.

2-3-3 In respect of Authorised Individuals, Article 53(2) of the Regulatory Law 2004 provides that applications for Authorised Individual status in respect of Licensed Function

roles must be made by both the individual seeking to be authorised and the Authorised Firm for which that individual is to perform services.

2-3-4 Under Articles 55 & 56 of the Regulatory Law 2004, the DFSA may reject an application for Authorised Individual status or extension to such status or grant Authorised Individual status or extension to such status with or without conditions and restrictions.

Integrity

2-3-5 In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:

- (a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
- (b) a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
- (c) whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self regulatory organisation or other professional body;
- (d) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
- (e) a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
- (f) a dismissal or a request to resign from any office or employment;
- (g) whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
- (h) an adverse finding in a civil proceeding by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
- (i) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against the individual in excess of \$10,000 or awards that total more than \$10,000;
- (j) an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
- (k) whether the individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that person was connected with that body corporate or within one year of such a connection;

- (l) whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that person was connected with that partnership or within a year of such a connection;
- (m) whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- (n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, the DFSA, or any officially appointed inquiry, or Financial Services Regulator; and
- (o) whether the individual has been candid and truthful in all his dealings with the DFSA.

Competence and capability

2-3-6 In determining the competence and capability of an individual, the DFSA may have regard to any factors, whether in the U.A.E. or elsewhere including, whether an individual is capable of performing functions which his Authorised Firm employs or intends to employ him to perform. A relevant factor may also include evidence of appropriate qualifications, including for example, the bespoke examination offered by the Chartered Institute for Securities and Investment in respect of DIFC Laws and Rules.

Financial soundness

2-3-7 In determining the financial soundness of an individual, the DFSA may have regard to any factors including, but not limited to, the following:

- (a) whether an individual is able to meet his debts as they fall due; and
- (b) whether an individual has been adjudged bankrupt, had a receiver or an administrator appointed, had a bankruptcy petition served on him, had his estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in the U.A.E. or elsewhere.

2-4 WAIVERS DURING AUTHORISATION

2-4-1 An applicant for authorisation may request a waiver whilst its application for authorisation is being processed. In some circumstances, the applicant may need to work with the DFSA in developing the waiver and may not be required to use the formal application process. However, the written consent to the waiver by the Authorised Person will then be required once the applicant is authorised.

2-5 START-UP ENTITIES IN THE DIFC

General

2-5-1 This section replaces DFSA Policy Statement 2/2005 on Start Up Entities in the DIFC — as amended on 16 February 2006.

What are "Start up Entities"?

2-5-2 Start up entities are, either:

- (a) new financial services businesses; or
- (b) existing financial services businesses which have never been subject to financial services regulation, for whatever reason.

2-5-3 This section is designed to serve as a guide to assist start up entities which are interested in applying for authorisation by the DFSA to conduct Financial Services in or from the DIFC. This section sets out the information required to support an application and indicates the criteria that the DFSA may apply in the authorisation process. Start ups, as with any other applicants, will be required to satisfy all relevant aspects of the DFSA's rules and authorisation process prior to being granted a licence.

2-5-4 Considering the restriction in Article 4(1) (a) of the Federal Law No 8 of 2004, the DFSA may not authorise a new entity proposing to form in the DIFC to carry out banking activities, unless it is a branch or a wholly owned subsidiary of an existing bank or a joint venture between parties, in which each party must be an existing bank. In formulating this policy the DFSA recognises that it is not practical to provide information on the application of the policy to every possible scenario. Therefore, interested parties are invited to contact the DFSA if they have questions about the application of the policy to their particular circumstances.

The DFSA's Risk Based Approach to Start Up Entities: Broad Risk Categories

2-5-5 Any consideration of an application for authorisation received by the DFSA is likely to involve an assessment of the risks posed to the objectives of the DFSA by the proposed activities of the applicant. Whilst the broad categories of risks for all applicants will be the same, the nature of those risks within start up entities will be unique, as start ups do not have a regulatory track record upon which the DFSA may place reliance. In the case of a new business, even where senior management has substantial experience and relevant competence in the business sector, this does not necessarily imply an ability to create and sustain an adequate management control environment and compliance culture, particularly when faced with all the other issues of establishing a new business.

2-5-6 In the case of an existing, but previously unregulated business, any existing control environment and compliance culture may not have been subject to external independent regulatory scrutiny and the additional regulatory reporting requirements which apply to an authorised firm.

2-5-7 The broad categories of risk and some of the unique elements of those risk categories that apply to start up entities include financial risk, governance risk, business/operational risk and compliance risk.

Financial Risk

2-5-8 All applicants are required to demonstrate a sound initial capital base and funding and to meet the relevant prudential requirements of the DFSA rulebook, on an on-going basis. This may include holding sufficient capital to cover expenses on a zero revenue

basis. Inevitably, start up entities face greater financial risks as they seek to establish and grow a new business.

2-5-9 In addition to the risks associated with the financial viability of the start up entity, particular attention may be focussed on the clarity and the verifiable source of the initial capital funding. Start up entities may be required to disclose the source of their funds and the history of those funds for at least the previous 12 months.

Governance Risk

2-5-10 All applicants are required to demonstrate robust governance arrangements together with the fitness and integrity of all controllers, directors and senior management. The DFSA is aware that management control, in smaller start ups especially, may lie with one or two dominant individuals who may also be amongst the owners of the firm. In such circumstances, the DFSA would expect the key business and control functions (i.e. risk management, compliance and internal audit) to be subject to appropriate oversight arrangements which reflect the size and complexity of the business. Applicants can assist the DFSA by describing in detail the ownership structure, high level controls and clear reporting lines which demonstrate an adequate segregation of duties.

2-5-11 The DFSA may request details of the background, history and ownership of the start up entity and, where applicable, its Group. Similar details relating to the background, history and other interests of the directors of the start up entity may also be required. Where it considers it necessary to do so, the DFSA may undertake independent background checks on such material. A higher degree of due diligence will apply to individuals involved in start up entities and there would be an expectation that the entity itself will have conducted detailed background checks, which may then be verified by the DFSA.

Business/Operational Risk

2-5-12 All applicants are required to establish appropriate systems and control environment to demonstrate that the affairs of the firm are managed and controlled effectively. The nature of the systems and controls may depend on the nature, size and complexity of the business. Start up entities may wish to consider which additional systems and controls may be appropriate in the initial period of operation following launch, such as increased risk or compliance monitoring. Due to the unproven track record of start up entities, the DFSA may impose restrictions on the business activities of the entity or a greater degree and intensity of supervision until such a track record is established.

Compliance Risk

2-5-13 The Senior Executive Officer within all Authorised Firms is expected to take full responsibility for ensuring compliance with the DFSA rules by establishing a strong compliance culture which is fully embedded within the organisation. To this end, a start up entity will be required to appoint a UAE resident Compliance Officer and Money Laundering Reporting Officer (MLRO) with the requisite skills and relevant experience in compliance and anti money laundering duties. The individuals fulfilling these roles within start up entities may be expected to demonstrate to the DFSA their competence to perform the proposed role and adequate knowledge of the relevant sections of the DFSA rulebook and, in the case of the MLRO, the wider anti-money laundering legislation and related provisions.

Main Information Requirements

2-5-14 The main information requirements are the same for all applicants, including start ups, and each application will be assessed on its own merits. It may help if start up applicants consider the risk categories set out above and how they will address the particular risks raised by their start up proposition.

2-5-15 A key document will be the regulatory business plan submitted in support of the application. It will facilitate the application process if applicants cover the following areas within this submission:

- (a) An Introduction and background;
- (b) Strategy and rationale for establishing in the DIFC;
- (c) Organisational structure;
- (d) Management structure;
- (e) Proposed resources;
- (f) High level controls;
- (g) Risk management;
- (h) Operational controls;
- (i) Systems overview; and
- (j) Financial projections.

2-5-16 Start up applicants may find it useful to include diagrams illustrating corporate structures, and, where applicable, group relationships, governance arrangements, organisational design, clear reporting lines, business process flows and systems environments.

2-5-17 Comprehensively addressing these areas and detailing how the key risks will be identified, monitored and controlled may significantly assist the DFSA in determining applications from start up entities.

2-6 APPLICATION FOR A RETAIL ENDORSEMENT

2-6-1 Section 7.3 of the GEN module provides that an applicant intending to carry on a Financial Service with a Retail Client requires an endorsement on its Licence.

2-6-2 When assessing an application for a Retail Endorsement, the DFSA may consider, among other things, the following:

- (a) the adequacy of an applicant's systems and controls for carrying on Financial Services with a Retail Client;

- (b) whether the applicant is able to demonstrate that its systems and controls (including policies and procedures) adequately provide for, among other things, compliance with the requirements specifically dealing with Retail Clients in the COB module, in particular:
- (i) marketing materials intended for Retail Clients;
 - (ii) the content requirements for Client Agreements for Retail Clients;
 - (iii) the suitability assessment for recommending a financial product for a Retail Client;
 - (iv) the disclosure of fees and commissions, and any inducements, to a Retail Client; and
 - (v) the segregation of Client Money and/or Client Investments, where relevant;
- (c) whether the applicant has adequate systems and controls to ensure, on an on-going basis, that its Employees remain competent and capable to perform the functions which are assigned to them, including any additional factors that may be relevant if their functions involve interfacing with Retail Clients; and
- (d) the adequacy of the applicant's Complaints handling policies and procedures. An applicant's policies and procedures must provide for fair, consistent and prompt handling of complaints. In addition to the matters set out in Chapter 9 of the GEN module, the policies and procedures should explicitly deal with how the applicant ensures that:
- (i) Employees dealing with Complaints have adequate training and competencies to handle Complaints, as well as impartiality and sufficient authority (see GEN Rules 5.3.19, 9.2.7 and 9.2.8);
 - (ii) a Retail Client is made aware of the firm's Complaints handling policies and procedures before obtaining its services (see COB Rule A2.1.2(1)(h)); and
 - (iii) the applicant's Complaints handling policies and procedures are freely available to any Retail Client upon request (see COB Rule 9.2.11).

2-7 APPLICATION FOR AN ISLAMIC ENDORSEMENT

2-7-1 Pursuant to Article 9 of the Law Regulating Islamic Financial Business 2004, in order to conduct Islamic Financial Business, an Authorised Person must have an endorsed Licence authorising it to conduct business either as an Islamic Financial Institution or as an Islamic Window. Conducting Islamic Financial Business means carrying on one or more Financial Services in accordance with Shari'a.

2-7-2 An Authorised Person who is granted an endorsement to operate an Islamic Window may conduct some of its Financial Service activities in a conventional manner while conducting its Islamic Financial Business through the Islamic Window.

2-7-3 The DFSA may grant an Islamic Endorsement only if it is satisfied that the applicant has demonstrated that it has the systems and controls in place to undertake Islamic

Financial Business. In deliberating over the granting of an Islamic Endorsement, the DFSA may consider, among other things, those matters set out in the IFR module of DFSA's Rulebook.

2-8 APPLICATION TO BE A REPRESENTATIVE OFFICE

2-8-1 An applicant seeking to become a Representative Office will need to comply with requirements including those set out in the REP module and take note of any applicable matters set out in section 2-2 of the RPP.

2-8-2 In assessing an application for a Representative Office, the DFSA is likely to assess matters including whether:

- (a) the proposed activities to be undertaken by the applicant are consistent with the Financial Service activity of Operating a Representative Office as described in section 2.26 of the GEN module; and
- (b) the applicant is incorporated and regulated by a Financial Services Regulator in a jurisdiction other than the DIFC.

2-8-3 Further general information in relation to the DFSA's Representative Office regime can be located in a Question and Answer document accessible on:

<http://www.dfsa.ae/Pages/DFSALibrary/DFSAPublications/Publications.aspx>

2-9 APPLICATION TO BE AN ANCILLARY SERVICE PROVIDER

2-9-1 An applicant seeking to become an Ancillary Service Provider will need to comply with requirements including those set out in the ASP module.

2-9-2 In respect of Ancillary Service Providers, Article 44(1) of the Regulatory Law 2004 prohibits a Person from carrying on an Ancillary Service in or from the DIFC unless the Person is registered as an Ancillary Service Provider.

2-9-3 Chapter 4 of the ASP module outlines some of the matters required to be addressed when making an application to carry on Ancillary Services. The activities which constitute Ancillary Services are defined in the ASP module as Providing Legal Services and Providing Accountancy Services.

2-9-4 ASP Rule 4.2.2 provides that applications for registration as an Ancillary Service Provider may be submitted only by a Body Corporate or Partnership.

2-9-5 The DFSA will have particular regard to whether the firm, or anyone in a position of influence in or over it, has criminal convictions or been the subject of adverse findings by courts or regulatory authorities in the UAE or elsewhere, or is known to have engaged in dishonest or improper business practices.

2-10 APPLICATION TO BE AN AUDITOR

2-10-1 An applicant seeking to become an Auditor will need to comply with requirements including those set out in chapter 8 of the GEN module and Part 8 of the Regulatory Law 2004.

2-10-2 Authorised Firms and Authorised Market Institutions that are Domestic Firms and Operators of Domestic Funds are required to appoint and retain Auditors who are registered for the duration of the audit. A Person intending to audit Authorised Firms or Authorised Market Institutions (that are Domestic Firms), or Domestic Funds, must apply to the DFSA for registration in accordance with the GEN module.

2-10-3 An applicant for registration should be able to demonstrate to the DFSA's satisfaction that:

- (a) it has professional indemnity insurance as required in section 8.17 of the GEN module;
- (b) it has adequate systems, procedures and controls to ensure due compliance with:
 - (i) the International Standards on Auditing;
 - (ii) the International Standards on Quality Control; and
 - (ii) the Code of Ethics for Professional Accountants;
- (c) where applicable, it has adequate systems, procedures and controls to ensure due compliance with:
 - (i) the Islamic Accounting and Auditing Standards; and
 - (ii) the Code of Ethics for Accountants and Audit Firms of Islamic Financial Institutions;
- (d) it is controlled by Persons each of whom holds a Recognised Professional Qualification from a Recognised Professional Body; and
- (e) it has complied with any other requirement as specified by the DFSA.

3 SUPERVISION - BEING REGULATED

3-1 DFSA'S APPROACH TO SUPERVISION

Introduction

3-1-1 Chapter 3 focuses on the DFSA's risk-based approach to supervision and the on-going relationship between the DFSA and an Authorised Person, Ancillary Service Provider or Auditor (collectively referred to as firms in this Chapter unless otherwise stated).

3-1-2 Whilst section 3-1 outlines the DFSA's general approach to risk based supervision, the remaining sections (3-2 to 3-6) provide additional information in relation to the DFSA's approach to the supervision of a particular type of firm.

3-1-3 The appropriate use of the DFSA's supervisory powers plays an important part in ensuring that the DFSA achieves its statutory objectives and has regard to its guiding principles which are set out in chapter 1.

Supervision philosophy

3-1-4 The DFSA has adopted a risk-based approach to the regulation and supervision of a firm in order to concentrate its resources on the mitigation of risks to its objectives. The DFSA will work with an entity to identify, assess, mitigate and control these risks where appropriate.

3-1-5 The DFSA's supervisory approach is based upon:

- (a) developing a strong relationship with a firm and its senior management, as set out in paragraphs 3-1-7 to 3-1-9;
- (b) where applicable, considering any lead or consolidated supervision which a firm or its Group may be subject to in other jurisdictions, taking into account the DFSA's relationship with other regulators, set out in paragraphs 3-1-10 to 3-1-11;
- (c) utilising its risk-based approach to supervision, including the risk assessment and classification of a firm, as part of the DFSA's continuous risk management cycle, set out in paragraphs 3-1-12 to 3-1-19; and
- (d) using appropriate supervisory tools, set out in sections 3-2 to 3-6.

3-1-6 The DFSA's risk-based approach to the supervision of a firm may vary depending upon the size, scale, nature and circumstances of each individual firm and the specific risks it poses to the DFSA's objectives.

DFSA's Relationship with firms

3-1-7 In order to meet its objectives, the DFSA requires an open, transparent and co-operative relationship between itself and a firm. The DFSA expects to establish and maintain an on-going dialogue with the firm's senior management in order to develop and sustain a thorough understanding of the firm's business, systems and controls and, through this relationship, to be aware of all areas of risk to its objectives.

3-1-8 The DFSA seeks to maintain an up-to-date knowledge of a firm's business. However, a firm is also required to keep the DFSA informed of significant events, or anything related to the firm of which the DFSA would reasonably expect to be notified.

3-1-9 The nature and intensity of the DFSA's relationship with a firm may depend on a number of factors. The DFSA's level of supervision will be proportionate to the risks which the firm poses to the DFSA's objectives and will emphasise the responsibilities of the firm's senior management in identifying, assessing, mitigating and controlling its risks. The greater the impact and probability of the firm's perceived risks, the more intensive the supervisory relationship may be.

Co-operation with other regulators

3-1-10 The DFSA views co-operation with other regulators as an important component of its supervisory activities. Effective co-operation arrangements with other regulators will provide for prompt exchange of information in relation to supervision, investigation and enforcement matters. Usually, co-operation arrangements will be in the form of memoranda of understanding or other arrangements. The information exchange may enhance, for example, the DFSA's understanding of the operations of an Authorised Firm's Group and the effect on the firm.

3-1-11 The DFSA may exercise its powers for the purposes of assisting other regulators or agencies (see Article 39 of the Regulatory Law 2004). The DFSA may also delegate functions and power to representatives of other regulators or agencies (see Article 40 of the Regulatory Law 2004).

Risk management cycle

3-1-12 The DFSA has adopted a continuous risk management cycle. This comprises the identification, assessment, prioritisation and mitigation of risks. This is determined by the use of a risk matrix which covers two factors: Impact and Probability.

Impact and Probability

3-1-13 The Impact Rating is an assessment of the potential adverse consequences that could follow from the failure of, or significant misconduct by, a firm. The potential adverse consequences of failure and misconduct encompass not only the direct financial impact on such firm's customers and stakeholders, but also the potential for damage to the reputation and objectives of the DFSA.

3-1-14 The Probability Rating covers four broad risk groups:

- (a) Corporate Governance, Strategy and Business Model Risks;
- (b) Financial and Operational Risks;
- (c) Conduct of Business Risks to Clients and Markets; and
- (d) AML/CTF and Financial Crime.

3-1-15 Within these risk groups are risk elements which the DFSA may review, according to the type of firm, to identify risks that could inhibit the achievement of its objectives.

Risk prioritisation and mitigation

3-1-16 A risk assessment enables the DFSA to allocate its resources in such a way that its supervisory tools are targeted towards those firms and activities which pose a higher risk to the DFSA's objectives.

3-1-17 Whenever appropriate, the DFSA may inform the firm of the steps the firm needs to take in relation to specific risks. Subsequently, the DFSA expects the firm to demonstrate that it has taken appropriate steps to mitigate the risks it poses to the DFSA's objectives.

3-1-18 Where necessary, risk mitigation programmes may be developed with a firm in order to mitigate or remove identified areas of risk.

3-1-19 Whilst the DFSA may discuss certain information with a firm, in particular the specific risks that lead it to assign an overall risk classification to the firm and any necessary remedial actions, it will not usually disclose the final risk classification.

Supervisory Tools

3-1-20 For the purpose of supervision, the DFSA will select those supervisory tools which are most suitable and effective to identify and address particular risks in a specific situation.

3-1-21 Some of the supervisory tools are discussed in varying detail in sections 3-2 to 3-6 and chapter 4.

Notifications to the DFSA

3-1-22 Section 11.10 of the GEN module sets out Rules on specified events, changes or circumstances that require notification to the DFSA by an Authorised Person (other than a Representative Office). The list of notifications outlined in section 11.10 is not exhaustive and other areas of the Rulebook may also specify additional notification requirements.

3-1-23 An Authorised Firm and Authorised Market Institution is required to comply with the high level principles in GEN Rule 4.2.10 and AMI Rule 10.2.1 respectively. These Rules require an Authorised Person to deal with the DFSA in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to such person of which the DFSA would reasonably expect to be notified.

3-2 SUPERVISION OF AUTHORISED FIRMS

Introduction

3-2-1 Section 3-2 provides additional information in relation to DFSA's approach to the supervision of an Authorised Firm. Where relevant, some of these requirements may apply to a Representative Office.

3-2-2 In supervising an Authorised Firm, the DFSA expects an Authorised Firm to comply with a number of high level principles in relation to its activities.

3-2-3 An Authorised Firm, other than a Representative Office, must comply with the twelve principles set out in section 4.2 of the GEN module. In brief, these are:

- (a) Principle 1 – Integrity;
- (b) Principle 2 – Due skill, care and diligence;
- (c) Principle 3 – Management, systems and controls;
- (d) Principle 4 – Resources;
- (e) Principle 5 – Market Conduct;
- (f) Principle 6 – Information and Interests;
- (g) Principle 7 – Conflicts of Interest;
- (h) Principle 8 – Suitability;
- (i) Principle 9 – Customer assets and money;
- (j) Principle 10 – Relations with regulators;
- (k) Principle 11 – Compliance with high standards of corporate governance; and
- (l) Principle 12 – Remuneration practices.

3-2-4 A Representative Office must comply with the four principles set out in section 3.2 of the REP module. In brief, these are:

- (a) Principle 1 – Integrity;
- (b) Principle 2 – Due skill, care and diligence;
- (c) Principle 3 – Resources; and
- (d) Principle 4 – Relations with regulators

Group supervision

3-2-5 When the DFSA licenses an Authorised Firm, it takes into consideration the relationship with any wider Group to which the firm may belong or with other Persons closely linked to it. The DFSA may also take into account lead or consolidated supervision to which an Authorised Firm or its Group may be subject in another jurisdiction.

3-2-6 An Authorised Firm is expected to provide information as required or reasonably requested under legislation applicable in the DIFC relating to the Authorised Firm and, where applicable, its consolidated or lead regulatory arrangements. This information may include prudential information, reports on systems and controls relating to an Authorised Firm's Group, internal and external audit reports, details of disciplinary proceedings or any matters which may have financial consequences, reputational impact or pose any significant risk to the DIFC or to the Authorised Firm and the group-wide corporate governance

practices and policies and the remuneration structure and strategies adopted. This information may initially be taken into account as part of DFSA's fit and proper test as set out in section 2-2 and may subsequently be utilised in the supervision of the Authorised Firm. Further Rules and Guidance with regard to obtaining information from an Authorised Firm's lead regulator are set out in GEN Rule 11.1.5.

3-2-7 The DFSA has an interest in the relationship of an Authorised Firm with other regulators, particularly in order to determine the level of reliance the DFSA may place on a regulator in another jurisdiction concerning any lead supervision arrangements. Depending on the legal structure of an Authorised Firm and the relationship of the DFSA with the regulator in question, the DFSA may place appropriate reliance on the supervision undertaken by this regulator.

Domestic firm's group with DIFC head office

3-2-8 The DFSA will usually be the lead and consolidated regulator of any Group headed by a Domestic Firm. Members of the Group, that is any of the Authorised Firm's Subsidiaries or branches, will be either subject to DFSA's exclusive supervision or, where members of the Group are located in a jurisdiction outside the DIFC, generally subject to lead or consolidated supervision by the DFSA in co-operation with another regulator.

Subsidiary of a non-DIFC firm

3-2-9 The DFSA will routinely be the lead regulator for the purpose of prudential supervision of an Authorised Firm which is a DIFC incorporated Subsidiary of a non-DIFC firm.

3-2-10 Where the Authorised Firm is a Subsidiary of a regulated non-DIFC parent company, the DFSA may have regard to any consolidated prudential supervision arrangements to which the Subsidiary is subject and will liaise with other regulators as necessary to ensure that these are adequately carried out, taking into account the Subsidiary's activities. The DFSA may place appropriate reliance on the Subsidiary's consolidated regulator in another jurisdiction if it is satisfied that it meets appropriate regulatory criteria and standards.

3-2-11 An Authorised Firm carrying on Financial Services as a Subsidiary of an unregulated non-DIFC parent company may be subject to DFSA's consolidated prudential supervision, taking into account the parent's activities.

Branch of a non-DIFC firm

3-2-12 An Authorised Firm carrying on Financial Services through a Branch will be subject to supervision by both the DFSA and the regulator in its head office jurisdiction.

3-2-13 The DFSA will have regard to any lead or consolidated prudential supervision arrangements to which a Branch is subject. The DFSA may place appropriate reliance on a Branch's lead regulator in another jurisdiction and, where appropriate, its consolidated prudential regulator if it is satisfied that it meets appropriate regulatory criteria and standards. Where an Authorised Firm is subject to lead regulation arrangements with a foreign regulator, the DFSA will usually not seek to impose consolidated prudential supervision on the Authorised Firm's Group.

3-2-14 During the authorisation process the DFSA will take into account the nature and scope of the regulation and supervision to which the applicant is subject in its head office jurisdiction. Notwithstanding that an Authorised Firm may be subject to lead or consolidated regulatory arrangements, the DFSA requires it to remain fit and proper in respect of its Group and Controllers. Certain changes or events will require notification to, or prior approval from, the DFSA.

3-2-15 The DFSA will determine the level of regulatory and supervisory oversight which is subsequently required for a specific Branch. As part of DFSA's risk assessment process, during the authorisation process the DFSA undertakes a two-tier approach to the risks to its objectives posed by the Branch, thereby taking into account the characteristics of the applicant and its head office. The first part of this assessment includes a judgement on the degree of home country supervision and considers the strength of support, both financial and managerial, which the head office is capable of providing to the Branch, taking into account the Branch's activities and the adequacy of, among other things, the corporate governance framework and practices and remuneration structure and strategies adopted at the head office. The second part of the assessment considers the risk and control mechanisms within the Branch itself.

3-2-16 As a result of the assessment, the DFSA may consider granting a waiver or modification notice in respect of specific prudential or other regulatory requirements relating to a Branch.

Prudential returns for Authorised Firms

3-2-17 An Authorised Firm is required to submit periodic prudential returns. In addition, an Authorised Firm may be required to submit copies of its Group's annual interim and audited accounts. The DFSA may also require an Authorised Firm to provide copies of Group returns which are sent to any other regulator.

On-going risk analysis

3-2-18 The DFSA conducts an on-going analysis of risks relating to each Authorised Firm, although the information required may vary from firm to firm. Authorised Firms with a higher risk classification may be subject to closer regulatory attention and would typically be subject to supervisory reviews specifically designed to address particular causes of risk.

3-2-19 All Authorised Firms will be subject to an individual on-site risk assessment, except where more than one Authorised Firm belongs to the same Group, in which case the DFSA may decide to carry out a Group risk assessment.

3-2-20 The risk assessment process is on-going and it is expected that the risks of each Authorised Firm may be reviewed on at least an annual basis. Notifications, reporting of information, an on-going dialogue with senior management and visits to the Authorised Firm will ensure that the DFSA has current information on key risk areas of the Authorised Firm.

3-2-21 There are also a number of trigger events which may affect the frequency of a risk assessment and the Authorised Firm's overall risk classification. Examples include:

- (a) a notification from a non-DIFC regulator or other authority of an issue concerning the Authorised Firm or its Group;

- (b) a material change in an Authorised Firm's business and new business activities;
- (c) a change in the Authorised Firm's Controllers;
- (d) an Authorised Firm's development of high risk products or business lines;
- (e) an Authorised Firm's development of business areas with characteristics such as unusual profitability;
- (f) an Authorised Firm's appointment of new personnel in key business areas;
- (g) an Authorised Firm's acquisition of new or revised information systems or new technology;
- (h) a rapid growth in specific areas of activity of an Authorised Firm;
- (i) an Authorised Firm's corporate restructuring, merger or acquisitions;
- (j) an Authorised Firm's expansion or acquisition of non-DIFC operations including the impact of changes in related economic and regulatory environments; or
- (k) the DFSA's response to industry-wide concerns or themes.

Review of risk management systems

3-2-22 Pursuant to GEN Rule 5.3.4, an Authorised Firm must ensure that its risk management systems provide the Authorised Firm with the means to identify, assess, mitigate and control its risks. In addition to undertaking its own assessment of the Authorised Firm, the DFSA may review the results of the Authorised Firm's internal risk assessment and determine the extent to which each of the Authorised Firm's risks impacts on DFSA's objectives, the likelihood of the risk occurring and then will consider the controls and mitigation programmes the firm has in place.

Desk based reviews

3-2-23 The DFSA may undertake desk based reviews in order to review compliance with legislation applicable in the DIFC. They assist the DFSA's understanding of an Authorised Firm's operations. For example, monitoring its financial position and detecting emerging problems or concerns to be explored in greater detail through prudential meetings, examinations, or otherwise. A desk based review may involve analysing information provided by the firm through supervisory returns, internal management information or published financial information.

3-2-24 The DFSA may, from time to time, issue a Controls questionnaire to Authorised Firms who will be asked to complete and return this to the DFSA. A Controls questionnaire focuses on key areas of risk identified by the DFSA at that time. An Authorised Firm must evaluate itself against each of the risk areas and score itself in terms of its own arrangements and the systems and controls it has in place for mitigating the particular risks.

On-site visits

3-2-25 On-site visits provide the DFSA with an overview of the Authorised Firm's operations and enable it to form a first hand view of the personnel, systems and controls and compliance culture within the Authorised Firm as well as identifying and evaluating the risks to the DFSA's objectives, taking into account any mitigation by the Authorised Firm. They enable the DFSA to test the soundness of the Authorised Firm's systems and controls and the extent to which the DFSA can continue to rely on them and the Authorised Firm's senior management to prevent or mitigate risks to the DFSA's objectives. On-site visits will also assist the DFSA to assess the extent of supervision and the use of other supervisory tools required to address certain key risk areas.

3-2-26 There are various types of on-site visits by the DFSA to an Authorised Firm which differ in their objective and frequency:

- (a) Periodic visits are undertaken at frequencies determined by the DFSA and focus on the main risk areas within an Authorised Firm as well as providing the DFSA with a thorough understanding of the Authorised Firm, its business and any major changes that have taken place within the Authorised Firm since a previous visit or risk assessment and their probable effects;
- (b) Theme visits are designed to address a current or topical risk or issue either within a particular type of Authorised Firm or the market place in general. They tend to be short in duration and are focused in their approach. Examples of theme visits are anti money laundering, client assets and conflict management;
- (c) Follow-up visits are often required to assess the implementation of any action that may have been agreed as part of a risk mitigation programme or to satisfy the DFSA that the Authorised Firm has taken appropriate action arising from a previous visit or communication;
- (d) Special visits are unique to a particular Authorised Firm and are generally scheduled following a particular event or notification from an Authorised Firm. They are generally short, focused visits usually targeted to a particular area of an Authorised Firm. These visits allow the DFSA to review certain high risk areas of an Authorised Firm's business in isolation. Occasionally, special visits may be unannounced. These assist in keeping firms alert to the need to maintain a continuously high quality of compliance; and
- (e) The DFSA may, from time to time, hold high level meetings with an Authorised Firm's senior management. Such meetings enable the DFSA to assess issues including any prudential concerns arising from desk based reviews or elsewhere.

Periodic Communications

3-2-27 The DFSA is committed to open and transparent communication with Authorised Firms. From time to time, the DFSA may issue letters to Senior Executive Officers or equivalent persons across the DIFC (commonly referred to as 'Dear SEO Letters'). Frequently, these letters will be issued as a means of communicating findings arising from completed thematic visits. However, they may also be issued in response to other major events or changes. For example, such a letter may include an update from relevant United

Nations Security Council Sanctions or Resolutions or the Financial Action Task Force, in relation to the prevention of money laundering and combating the financing of terrorism.

3-2-28 In addition to the Senior Executive Officer letters, the DFSA may issue alerts and warnings in response to particular matters of concern. An example of this could be in relation to matters concerning fraudulent activity that the DFSA has become aware of.

3-2-29 The DFSA holds outreach sessions from time to time, to interact with firms operating in the DIFC. These sessions are held to discuss regulatory matters in an open manner.

3-2-30 From time to time, the DFSA may consider a particular item of communication to an Authorised Firm to be of key regulatory importance. For this reason, the DFSA may consider it necessary to issue such communications directly to a senior member of staff at the Board level of the DIFC entity copied (where appropriate) to the group's home state regulator. For entities established as a Branch in the DIFC, these communications will likely be delivered to the Chairman of the Board at the DIFC Branch entity's head or Parent office. For DIFC incorporated entities, communications will likely be delivered directly to the Chairman of the firm's Board or head office. These communications may include, for example, the results of DFSA's risk assessment visits where a risk mitigation plan has been sent that contains significant matters of concern to DFSA's objectives.

External auditor reports, statements and tripartite meetings

3-2-31 The DFSA requires an Authorised Firm's registered external auditor to co-operate with the DFSA in a number of ways, including the submission of specific audit reports and statements. As part of an audit, the DFSA would expect an auditor to review any relevant correspondence between the DFSA and the Authorised Firm. Further, tripartite meetings between the Authorised Firm's senior management, the auditor, and the DFSA may be requested at the DFSA's initiative. Finally, an auditor is required to disclose to the DFSA those matters outlined in Article 104(3) of the Regulatory Law 2004.

Requiring information and documents

3-2-32 Apart from reports such as regular prudential returns, the DFSA may from time to time also request from an Authorised Firm additional supplementary information and documents, including non-financial information such as an Authorised Firm's internal policies on particular areas of risk or its organisational chart.

Requirements relating to Change in Control

3-2-33 Article 64 of the Regulatory Law 2004 and section 11.8 of the GEN module set out the DFSA's requirements governing Controllers of Authorised Firms.

DFSA approval

3-2-34 A Person who proposes to become a Controller of a Domestic Firm or an existing Controller who proposes to increase the level of control which that Person has in a Domestic Firm beyond the threshold of 30% or 50% is required to obtain the DFSA's prior approval before doing so. The DFSA's assessment of a proposed acquisition or increase in control of a Domestic Firm is a review of such a firm's continued fitness and propriety and ability to conduct business soundly and prudently. Accordingly, the DFSA takes into account the

considerations specified in paragraph 2-2-12 relating to Controllers when making such an assessment.

3-2-35 Pursuant to GEN Rule 11.8.5(1), a Person who proposes either to acquire or increase the level of control in a Domestic Firm must lodge with the DFSA an application for approval in the appropriate form in AFN. The DFSA may approve of, object to or impose conditions relating to the proposed acquisition or the proposed increase in the level of control of the Authorised Firm. If the information in the application form lodged with the DFSA is incomplete or unclear, the DFSA may in writing request further clarification or information. The DFSA may do so at any time during the processing of such an application. The period of 90 days within which the DFSA will make a decision will not commence until such clarification or additional information is provided to the satisfaction of the DFSA. The DFSA may, in its absolute discretion, agree to a shorter period for processing an application where an applicant requests for such a period, provided all the information required is available to the DFSA.

3-2-36 Where the DFSA proposes to object to or impose conditions relating to a proposed acquisition of or increase in the level of control in a Domestic Firm, the DFSA will first notify the applicant in writing of its proposal to do so and its reasons. The DFSA will take into account any representations made by an applicant before making its final decision.

3-2-37 The DFSA may consider whether a Person has become an unacceptable Controller as a result of any notification given by an Authorised Firm pursuant to Rule 11.8.11(2) or as a result of its own supervisory work. The considerations which the DFSA will take into account in assessing whether a Person is an acceptable Controller are those set out in paragraph 3-2-34 above.

Application for a Change of Scope of Licence

3-2-38 Where an Authorised Firm applies to change the scope of its Licence, it should provide the following information:

- (a) a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;
- (b) details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the Authorised Firm will be able to comply with any additional regulatory requirements; and
- (c) descriptions of the Authorised Firm's senior management responsibilities (see GEN chapter 5) where these have changed from those previously disclosed, including any up-dated staff organisation charts and internal and external reporting lines.
- (d) details of any transitional arrangements where the Authorised Firm is reducing its activities and where it has existing customers who may be affected by the cessation of a Financial Service;
- (e) the appropriate financial reporting statement where the variation may result in a change to the Authorised Firm's prudential category or the application of additional or different financial rules. If a capital increase is required in order to demonstrate

compliance with additional financial rules but such capital is not paid up or available at the time of application, proposed or forecast figures may be used;

- (f) details of the effect of the proposed variation on the Authorised Individuals including, where applicable, submitting any application forms for individuals to perform additional or new Licensed Functions, or to remove existing Licensed Functions; and
- (g) revised pro forma financial statements.

3-2-39 An Insurer which wishes to vary its Licence to remove the Financial Service of Effecting Contracts of Insurance or to reduce the classes of insurance should refer to the run-off provisions in PIN chapter 9.

3-2-40 In considering whether an Authorised Firm is fit and proper with respect to a change in the scope of its Licence, the DFSA may take into account those matters in Chapter 2 of the RPP Sourcebook, which provides Guidance on fitness and propriety for Authorised Firms.

3-2-41 When considering a change to the scope of a Licence, the DFSA may also consider one or more of the matters outlined in paragraphs 3-2-42 to 3-2-47 below relating to the withdrawal of a Licence.

Application for a Withdrawal of Licence

3-2-42 In considering requests under GEN Rule 11.4.1, an Authorised Firm will need to satisfy the DFSA that it has made appropriate arrangements with respect to its existing customers, including the receipt of any customers' consent where required and, in particular:

- (a) whether there may be a long period in which the business will be run-off or transferred;
- (b) whether deposits must be returned to customers;
- (c) whether money and other assets belonging to customers must be returned to them; and
- (d) whether there is any other matter which the DFSA would reasonably expect to be resolved before granting a request for the withdrawal of a Licence.

3-2-43 In determining a request for the withdrawal of a Licence, the DFSA may require additional procedures or information as appropriate including evidence that the Authorised Firm has ceased to carry on Financial Services.

3-2-44 An Authorised Firm should submit detailed plans where there may be an extensive period of wind-down. It may not be appropriate for an Authorised Firm to immediately request a withdrawal of its Licence in all circumstances, although it may wish to consider reducing the scope of its Licence during this period. Authorised Firms should discuss these arrangements with the DFSA.

3-2-45 The DFSA may refuse a request for the withdrawal of a Licence where it appears that customers may be exposed to adverse effect.

3-2-46 The DFSA may also refuse a request for the withdrawal of a Licence where:

- (a) the Authorised Firm has failed to settle its debts to the DFSA; or
- (b) it is in the interests of a current or pending investigation by the DFSA, or by another regulatory body or Financial Services Regulator.

3-2-47 Some other matters which an Authorised Firm should be mindful of in relation to the withdrawal of its Licence include:

- (a) Under Article 63 of the Regulatory Law 2004 where the DFSA grants a request for the withdrawal of a Licence, the DFSA may continue to exercise any power under the Regulatory Law 2004 or Rules in relation to an Authorised Firm or Authorised Individual for two years from the date on which the Licence was withdrawn;
- (b) Article 43(2) of the Regulatory Law 2004 states that Licensed Functions of an Authorised Firm shall be carried out by its Authorised Individuals. Accordingly, where an Authorised Firm's Licence is withdrawn, the authorised status of its Authorised Individuals will also be withdrawn from the same date. However, this does not remove the obligation on an Authorised Firm to provide a statement under GEN Rule 11.7.3 where an Authorised Individual has been dismissed or requested to resign; and
- (c) Where a Fund Manager or the Trustee makes a request under GEN Rule 11.4.1, the Fund Manager or the Trustee will need to satisfy the DFSA that it has made appropriate arrangements in accordance with the requirements under the Collective Investment Law 2010 and the CIR module with respect to the continuing management of the Fund for which it is the Fund Manager or the Trustee, as the case may be.

Notification to the DFSA relating to a Major Acquisition

3-2-48 GEN Rule 11.10.8 provides that an Authorised Firm which makes or proposes to make a Major Acquisition as defined must comply with either GEN Rule 11.10.9 or 11.10.10, depending on whether it is a Domestic Firm.

3-2-49 An Authorised Firm should provide to the DFSA information that would enable the DFSA to consider factors noted in GEN Rule 11.10.9(3). Although the DFSA does not prescribe the form in which such information is to be provided to the DFSA, Authorised Firms should consider any relevant industry and international practices when providing information to the DFSA for similar purposes.

3-2-50 The 45 day notice period referred to in GEN Rule 11.10.9(1) commences to run from the first business day after the date on which the DFSA receives the notification. However, if any critical information that the DFSA requires in order to assess the notification has not been provided to the DFSA at the time of the notification, the relevant notice period for considering that notification will only commence to run after the Authorised Firm has provided to the DFSA that information upon a request made by the DFSA under its powers in GEN Rule 11.10.11(1).

3-2-51 Upon the request of an Authorised Firm, the DFSA may, at its sole discretion, agree to consider a notification within a shorter period than the 45 days referred to above. The

onus is on an Authorised Firm which wishes to obtain a DFSA decision under this Rule within a shorter period to make a request to that effect to the DFSA and provide all the information that the DFSA requires to enable the DFSA to process the notification within a shorter timeframe.

3-2-52 Where the DFSA exercises its powers under this provision to object to a proposed Major Acquisition or impose any conditions relating to such a Major Acquisition, a Person affected by such a decision may make an appeal relating to that decision to the DFSA's Regulatory Appeals Committee. Appeal provisions are in GEN Rule 11.10.12.

3-2-53 Where the DFSA receives a notification under GEN Rule 11.10.10(1)(b), it will to the extent necessary, liaise with the home regulator in taking any appropriate action relating to the proposed Major Acquisition.

Outsourcing

3-2-54 An Authorised Firm must comply with those requirements in GEN Rules 5.3.21 and 5.3.22 when outsourcing functions or activities. In relation to Funds, there are additional outsourcing and delegation requirements applicable for Fund Managers and Trustees in section 8.12 of the CIR module.

3-2-55 The DFSA requires an Authorised Firm to notify it of any material outsourcing arrangements. An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of the service would cast serious doubt on the Authorised Firm's continuing ability to remain fit and proper or comply with applicable Laws and Rules.

3-2-56 The outsourcing of functions or activities does not absolve management or Governing Body of responsibility and accountability for ensuring proper administration and execution of these functions or activities.

3-3 SUPERVISION OF REPRESENTATIVE OFFICES

3-3-1 The DFSA expects to undertake periodic visits to Representative Offices as part of its risk based approach to supervising firms. The DFSA may also include Representative Offices in thematic visits.

3-3-2 Onsite visits to Representative Offices are likely to focus on issues including:

- (a) confirming that activities undertaken by the Representative office are allowed under its licence;
- (b) reviewing the adequacy of its systems and controls to comply with its AML responsibilities;
- (c) any solvency concerns with the head office or Group; and
- (d) the firm's disclosure of its regulated status.

3-3-3 The onsite visit is likely to include interviews with the Principal Representative and a review of relevant records.

3-4 SUPERVISION OF ANCILLARY SERVICE PROVIDERS

3-4-1 The DFSA expects to undertake periodic visits of Ancillary Service Providers as part of its risk based approach to supervising firms. The DFSA may also include Ancillary Service Providers in thematic visits.

3-4-2 Onsite visits to Ancillary Service Providers are likely to focus on their compliance with relevant AML/CTF Laws and Rules. This may include the DFSA testing the firm's systems and controls for conducting a money laundering risk assessment, customer due diligence and complying with relevant United Nations Security Council Sanctions and Resolutions.

3-4-3 The onsite visit is likely to include interviews with senior management and a review of relevant records. Depending on the outcome of the visit, the DFSA may provide a letter to the firm to discuss its findings.

3-4-4 The DFSA also expects to receive a copy of the annual Anti Money Laundering Officer ("AMLO") report from Ancillary Service Providers (see ASP Rule 6.4.5(2)).

3-5 SUPERVISION OF AUDITORS

3-5-1 The DFSA expects to undertake periodic visits of Auditors as part of its risk based approach to supervising firms. The DFSA may include Auditors in some thematic visits.

3-5-2 The DFSA is likely to request an annual information report from all Auditors. The information report will request details such as:

- (a) outcome of a fit and proper assessment undertaken by the Auditor;
- (b) any professional indemnity insurance obtained by the Auditor;
- (c) names of the Authorised Firms audited;
- (d) continuing professional development undertaken by relevant employees of the Auditor;
- (e) any other activities undertaken by the Auditor; and
- (f) complaints received by the Auditor.

3-5-3 The DFSA is likely to undertake a desk based review of the content of the annual information report it receives from an Auditor. Prior to scheduling an onsite visit, the DFSA is likely to make a request for further information from the Auditor.

3-5-4 The onsite visit is likely to include interviews with senior management and a review of files/documentation.

3-6 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

Introduction

3-6-1 The Regulatory Law 2004 establishes a principles-based framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions. This framework is supplemented by supervisory powers and other requirements in the Markets Law 2012.

3-6-2 The Markets Law 2012 establishes a framework in relation to how an Authorised Market Institution may administer and operate an Official List of Securities and stipulates some specific Rule requirements in respect of this.

Official list of securities

3-6-3 Where an Exchange administers and operates an Official List of Securities, the risk-based approach to supervision also applies to the carrying on of this activity.

Group supervision

3-6-4 When the DFSA licenses an Authorised Market Institution, it takes into consideration the relationship with any wider Group to which the Authorised Market Institution may belong or with other Persons closely linked to it. The DFSA will also take into account lead or consolidated supervision to which an Authorised Market Institution or its Group may be subject in another jurisdiction. This may lead to the DFSA placing some reliance on the supervisory arrangements in another jurisdiction or creating and participating in special arrangements for the supervision of the Authorised Market Institution and its Group. The Authorised Market Institution is expected to provide information required or reasonably requested in relation to these consolidated or lead supervisory arrangements before final supervisory arrangements are established.

3-6-5 Each relationship will be considered on a case by case basis and according to the risks posed by the Authorised Market Institution's activities identified during supervisory arrangements. Such supervisory arrangements may include a process to be agreed by the DFSA, the Authorised Market Institution itself and other relevant regulators.

3-6-6 Effective co-operation with regulators will provide for prompt exchange of information and co-operation in relation to supervision and enforcement between jurisdictions. This may include exchanges of information and co-operation in respect of activity conducted by an Authorised Market Institution. Usually co-operation arrangements will be in the form of memoranda of understanding. The information exchange will enhance the DFSA's understanding of the operations of the Group and the effect on the Authorised Market Institution.

Application for a Change in Control

3-6-7 The AMI module sets out requirements relating to a change in control. These requirements are similar to those for an Authorised Firm which are set out at paragraphs 3-2-33 to 3-2-37.

Directions Power

3-6-8 Article 26 of the Markets Law 2012 empowers the DFSA to give an Authorised Market Institution certain directions in relation to the Authorised Market Institution's duties under DFSA-administered laws. It also gives the DFSA a power to direct an Authorised Market Institution to do specified things including closing the market, suspending transactions and prohibiting trading in Investments. Article 26 also empowers the DFSA to exercise the powers contained in the Authorised Market Institution's Rules for participants as though it was the Authorised Market Institution where it considers that the Authorised Market Institution has not exercised the powers under those Rules.

3-6-9 In considering whether to exercise such powers, the DFSA may take into account factors including:

- (a) what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;
- (b) the impact on the DFSA's objectives if a direction were not issued; or
- (c) whether it is in the interests of the DIFC.

3-6-10 The written notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers. Though the DFSA is not required to do so under the Markets Law 2012, in most cases the DFSA will contact the Authorised Market Institution prior to issuing such a direction.

3-6-11 Article 35 of the Markets Law 2012 allows the DFSA to direct an Authorised Market Institution to suspend or delist Securities from its Official List of Securities. Such directions may take effect immediately or from a date and time as may be specified in the direction. Chapter 9 of the MKT contains details in this regard.

4 SUPERVISORY AND ENFORCEMENT POWERS

4-1 INTRODUCTION

4-1-1 This chapter provides information on how the DFSA will generally exercise its powers when conducting supervisory or enforcement activities. These powers can be exercised in respect of any Persons, including an Authorised Person, Ancillary Service Provider or Auditor (collectively referred to as “firms” in this chapter unless otherwise stated), an Authorised Individual or Principal Representative.

4-1-2 Chapter 5 of the RPP describes how the DFSA will exercise additional powers when conducting enforcement activities.

4-1-3 A reference to:

- (a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and
- (b) the Law in this chapter is a reference to any legislation administered by the DFSA.

4-1-4 The range of powers available to the DFSA is primarily set out in the Regulatory Law 2004. Some of the key powers in this chapter include the power to:

- (a) request information and documents and access premises (see Article 73);
- (b) require an Authorised Person to provide a report from an independent expert (see Article 74);
- (c) impose restrictions on an Authorised Person’s business (see Article 75) or dealings with relevant property (see Article 76);
- (d) impose conditions and restrictions on an Authorised Person’s Licence (see Article 49);
- (e) impose conditions and restrictions on an Authorised Individual’s status (see Article 57);
- (f) withdraw an authorisation or Licence of an Authorised Person (see Articles 50 and 51);
- (g) restrict a person from performing any functions in connection with provision of Financial Services or Ancillary Services (see Article 58(1)), or restrict, suspend or withdraw an Authorised Individual’s status (see Article 58(2); and
- (h) suspend, vary or withdraw the registration of an Ancillary Service Provider (see Article 60) or Auditor (see Articles 98 and 105).

4-1-5 When the DFSA exercises a power specified in this chapter, it will generally follow the decision making procedures set out in chapter 6 of this Sourcebook (except for sections 4-2 and 4-3). Chapter 6 also sets out, among other matters, whether a Person will:

- (a) receive prior written notice and have a suitable opportunity to make representations prior to the DFSA's exercising a power;
- (b) receive reasons of any decision to exercise such power; and
- (c) have a right of appeal to the Regulatory Appeals Committee.

4-2 POWER TO REQUEST INFORMATION AND DOCUMENTS

4-2-1 In order to supervise the conduct and activities of an Authorised Person, Ancillary Service Provider, Fund, Auditor or any director, officer, employee or agent of such person, the DFSA requires access to a broad range of information relating to a Person's business. Such information is usually provided to the DFSA on a voluntary basis. In particular, an Authorised Person and Authorised Individual is expected to deal with the DFSA in an open and cooperative manner and disclose to the DFSA any information of which the DFSA would reasonably expect to be notified.

4-2-2 Pursuant to Article 73 of the Regulatory Law 2004, the DFSA may require a relevant Person to give information and produce documents about its business, transactions or employees to the DFSA. When the DFSA requires the giving of information or production of documents, it will give the Person a written notice specifying what is required to be given or produced.

4-2-3 The DFSA may also apply to the Court to make an order for information and documents under Article 73 from specified Persons located outside the jurisdiction of the DIFC.¹

4-3 POWER TO ACCESS PREMISES

4-3-1 The DFSA may enter the premises of an Authorised Person, Ancillary Service Provider, Fund or Auditor during normal business hours or at any other time as may be agreed, for the purpose of inspecting and copying information or documents (at the relevant Person's expense) stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.²

4-3-2 The DFSA will provide reasonable notice to an Authorised Person, Ancillary Service Provider, Fund or Auditor when it seeks information, documents or access to premises. In exceptional circumstances, such as where any delay may be prejudicial to the interests of the DIFC, the DFSA may seek access to premises without notice.

4-4 POWER TO REQUIRE A REPORT

4-4-1 The DFSA may require an Authorised Person to provide it with a report from an independent expert on specified matters under Article 74 of the Regulatory Law 2004.

¹ Article 73(3) of the Regulatory Law 2004

² Article 73(2) of the Regulatory Law 2004, GEN Rule 11.1.2.(d)

4-4-2 There are a variety of circumstances where the DFSA may consider it appropriate to require the production of a report. These circumstances include, but are not limited to:

- (a) where the DFSA has concerns as to the adequacy of systems and controls (such as compliance, internal audit, anti money laundering, risk management and record keeping);
- (b) where the DFSA seeks verification of information submitted to it; or
- (c) where remedial action is required to ensure the Authorised Person complies with DFSA Laws and Rules.

4-4-3 GEN section 11.12 sets out various requirements relating to the appointment of an independent expert. In particular, it is noted that:

- (a) the DFSA will give written notification to the Authorised Person concerning the purpose of the proposed report, the scope, the timetable for completion and any other relevant matters;
- (b) the independent expert is required to be appointed by the Authorised Person and be nominated or approved by the DFSA;
- (c) an Authorised Person is required to include specific requirements in a contract with an independent expert;
- (d) an Authorised Person is required to ensure it provides all assistance that the independent expert may reasonably require and ensure that the independent expert co-operates with the DFSA; and
- (e) an Authorised Person is required to pay for the services of the independent expert.

4-4-4 The DFSA notes that any information given or documents produced under Article 74 are admissible in evidence in administrative and civil proceedings, provided that any such information or documents also comply with any requirements relating to the admissibility of evidence in such proceedings.

4-5 POWER TO RESTRICT AN AUTHORISED PERSON'S BUSINESS OR PROPERTY

4-5-1 The DFSA has a power under Article 75 to impose restrictions on an Authorised Person's business. This includes prohibiting an Authorised Person from entering into specific types of transactions, from soliciting business from specific types of persons or from carrying on business in a specific manner. The DFSA may also require an Authorised Person to carry on business in, and only in, a specified manner.

4-5-2 Pursuant to Article 76, the DFSA is also empowered to prohibit or require an Authorised Person to deal with any relevant property in a certain manner.³ The terms "dealing" and "relevant property" are defined in Article 76 as follows:

³ Article 76 of the Regulatory Law 2004

- (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, acting within the capacity for which it holds a Licence, 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 acting within such capacity; or
 - (ii) any other property which the DFSA reasonably believes to be owned or controlled by the person.

4-5-3 In determining whether to exercise its Article 75 and 76 powers, the DFSA will take into account the circumstances set out in GEN Rule 11.13.1 (a) to (m).

4-6 POWER TO IMPOSE CONDITIONS AND RESTRICTIONS ON AN AUTHORISED PERSON'S LICENCE

4-6-1 Pursuant to Article 49 of the Regulatory Law 2004, the DFSA may at any time by written notice to an Authorised Person on its own initiative, or at the request of an Authorised Person:

- (a) impose conditions and restrictions or additional conditions and restrictions on a Licence; and
- (b) vary or withdraw conditions and restrictions imposed on a Licence.⁴

4-6-2 In determining whether to exercise its Article 49 power, the DFSA will take into account the circumstances including, but not limited to, the following:

- (a) where the Authorised Person's resources (including financial resources as well as human resources) are inadequate for the scale or type of activity which the firm is licensed to undertake;
- (b) where the Authorised Person has not conducted its business in compliance with the Laws and Rules;
- (c) where the Authorised Person has conducted its business in such a way that it has not ensured full compliance with applicable money laundering and counter terrorism legislation; or
- (d) where the DFSA has some concern about the fitness and propriety of the Authorised Person, but not such as to warrant the withdrawal of its Licence.

⁴ Article 49(1) of the Regulatory Law 2004

4-7 POWER TO WITHDRAW AN AUTHORISATION IN RESPECT OF ONE OR MORE FINANCIAL SERVICES OR A LICENCE

4-7-1 The DFSA may exercise its powers under Article 50(1) to withdraw the authorisation under a Licence to carry on one or more Financial Services where:

- (a) the Authorised Person is or has been in breach of one or more restrictions or conditions applicable to its Licence;
- (b) the Authorised Person is in breach of the Regulatory Law 2004, Rules or other legislation administered by the DFSA;
- (c) the Authorised Person is no longer fit and proper to carry on a Financial Service;
- (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;
- (e) the Authorised Person requests the withdrawal; or
- (f) the DFSA considers that the exercise of the power is necessary or desirable in the pursuit of its objectives.

4-7-2 The DFSA may exercise its powers under Article 51 to withdraw a Licence where:

- (a) as a consequence of withdrawal of authorisation in relation to one or more Financial Services under Article 50, the Authorised Person is no longer authorised to carry on a Financial Service;
- (b) the Authorised Person is no longer fit and proper to hold a Licence;
- (c) the Authorised Person has failed to remove a Controller or take such other action as required by the DFSA under Article 64; or
- (d) the Authorised Person requests the withdrawal.

4-7-3 In determining whether to exercise its Article 50 and 51 powers, the DFSA will have regard to all relevant matters. These include, but are not limited to, the following:

- (a) when the DFSA has serious concerns about the manner in which the business of the Authorised Person has been or is being conducted;
- (b) when the DFSA considers it necessary to protect regulated entities and customers in the DIFC;
- (c) whether any alleged contraventions affect or have the potential to affect DFSA objectives;
- (d) the nature, seriousness and impact of any alleged contravention and whether the alleged contravention is on-going;

- (e) when the Authorised Person no longer satisfies the relevant criteria set out in chapter 7 of the GEN module, chapters 2 and 7 of the AMI module and section 2-2 of this module in respect of the fitness and propriety to carry on a Financial Service or hold a Licence;
- (f) when the activities of the Authorised Person have ceased; and
- (g) when the Authorised Person's resources seem to the DFSA inadequate for the scale or type of activity which the firm is authorised to undertake.

4-7-4 Where an Authorised Person requests the DFSA to withdraw its Licence, then such a Person should complete and submit the relevant form to the DFSA (see SUP 6 Form - AFN Sourcebook). This form sets out a number of matters which the DFSA will consider before processing such an application to withdraw a Licence.

4-8 POWER TO IMPOSE CONDITIONS AND RESTRICTIONS ON THE STATUS OF AN AUTHORISED INDIVIDUAL

4-8-1 Pursuant to Article 57 of the Regulatory Law 2004, the DFSA may at any time by a written notice to an Authorised Individual and the Authorised Firm in relation to which the Authorised Individual is an officer, employee or agent:

- (a) impose conditions and restrictions or additional conditions and restrictions on the grant of Authorised Individual status; and
- (b) vary or withdraw conditions and restrictions imposed on the grant of such status.⁵

4-8-2 The DFSA may exercise this power in circumstances including, but not limited to, the following:

- (a) where the Authorised Individual has not acted effectively and responsibly or has not exercised the expected level of skill, care and diligence in carrying out the Licensed Function;
- (b) where the conduct of the Authorised Individual falls below the standards expected; or
- (c) where the DFSA has some concern about the fitness and propriety of the Authorised Individual, but not such as to warrant the suspension or withdrawal of an Authorised Individual's status.

4-9 POWER TO RESTRICT, SUSPEND AND WITHDRAW THE STATUS OF AN AUTHORISED INDIVIDUAL

4-9-1 Pursuant to Article 58(2) of the Regulatory Law 2004, the DFSA has the power to restrict a Person from performing Licensed Functions, or to suspend or withdraw a Person's Authorised Individual status, if it reasonably concludes that:

⁵ Article 57 of the Regulatory Law 2004

- (a) the Person is in breach or has been in breach of an obligation that applies as a result of such Person's Authorised Individual status; or
- (b) a Person is no longer fit and proper to perform the Licensed Function role for which he requires status as an Authorised Individual.⁶

4-9-2 In determining whether to exercise its Article 58(2) power, the DFSA will have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of an Authorised Individual as set out in chapter 7 of GEN and section 2-3 of this Sourcebook.

4-9-3 The DFSA may also withdraw the Authorised Individual status of a Person pursuant to Article 58(3) if:

- (a) the Person becomes bankrupt;
- (b) the Person is convicted of a serious criminal offence;
- (c) the Person becomes incapable, through mental or physical incapacity, of managing his affairs;
- (d) the Person or the relevant Authorised Firm asks the DFSA to withdraw the status; or
- (e) the Licence of the relevant Authorised Firm is withdrawn.

4-9-4 In determining whether to exercise its power under Article 58(3)(b), the DFSA will give particular consideration to offences involving dishonesty, fraud or a financial crime.

4-10 POWER TO RESTRICT INDIVIDUALS

4-10-1 If the DFSA reasonably concludes that a natural person is not fit and proper to perform any functions in connection with the provision of Financial Services or Ancillary Services (whether or not they are Licensed Functions), it may restrict that Person from performing any or all such functions.⁷

4-10-2 Article 58(1) of the Regulatory Law 2004 enables the DFSA to impose a restriction in respect of all functions or in respect of specific functions. Whether a general restriction or a more specific restriction is imposed by the DFSA may depend on the facts of the matter, including:

- (a) the concerns upon which the DFSA determines that a natural person is not fit and proper to perform any functions; and
- (b) the need to protect the integrity of the DIFC and ensure the confidence of participants in the market.

⁶ Article 58(2) of the Regulatory Law 2004

⁷ Article 58(1) of the Regulatory Law 2004

4-10-3 In determining whether to exercise its power under Article 58(1), the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN and section 2-3 of this Sourcebook.

4-11 POWER TO VARY OR WITHDRAW THE REGISTRATION OF AN ANCILLARY SERVICE PROVIDER

4-11-1 The DFSA has the power to vary or withdraw the registration of an Ancillary Service Provider pursuant to sections 4.5 and 4.6 of the ASP module and Article 60(4) of the Regulatory Law 2004. The DFSA may exercise this power where it is satisfied that:

- (a) the Ancillary Service Provider has failed to carry on an Ancillary Service in the DIFC for a continuous period of 12 months or more; or
- (b) the Ancillary Service Provider has breached, or is breaching, the Laws or Rules of the DIFC.⁸

4-11-2 In determining whether to exercise its powers to withdraw the registration of an Ancillary Service Provider, the DFSA may have regard to all relevant matters including, but not limited to, the circumstances specified in paragraph 4-7-3 as relevant to an Ancillary Service Provider.

4-12 POWER TO VARY, SUSPEND OR WITHDRAW THE REGISTRATION OF AN AUDITOR

4-12-1 The DFSA has the power in respect of an Auditor to:

- (a) withdraw its registration;⁹ or
- (b) suspend its registration.¹⁰

4-12-2 The DFSA may exercise such powers where it has reasonable grounds to believe that:

- (a) the Auditor is no longer fit and proper; or
- (b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

4-12-3 In determining whether to exercise such powers, the DFSA will have regard to all relevant matters including, but not limited to, the circumstances as relevant to an Auditor specified in paragraph 4-7-3.

⁸ ASP Sections 4.5 and 4.6.

⁹ Article 98(3) of the Regulatory Law 2004

¹⁰ Article 105 of the Regulatory Law 2004

4-13 MISCELLANEOUS POWERS

Endorsements

4-13-1 The DFSA has the power to:

- (a) impose conditions and restrictions or additional conditions and restrictions;¹¹ or
- (b) withdraw or vary conditions and restrictions,¹²

on an endorsement to conduct Islamic Financial Business.

4-13-2 In respect of an endorsement on a Licence to conduct business with Retail Clients, the DFSA has the power to impose conditions and restrictions, or withdraw or vary conditions and restrictions pursuant to Article 49 (see section 4-6 of this chapter).

4-13-3 In determining whether to exercise such powers, the DFSA will have regard to all relevant matters including, but not limited to, one or more of those circumstances specified in 4-6-2 in respect of imposing, varying or withdrawing conditions and restrictions.

Funds

4-13-4 The DFSA has the power to withdraw the registration of a Public Fund in one or more of the circumstances set out in Article 32 of the Collective Investment Law.¹³ In determining whether to exercise this power, the DFSA can withdraw the registration of a Public Fund only if it considers that:

- (a) the withdrawal is in the interests of the Unitholders of the Fund; or
- (b) appropriate steps have been taken or may reasonably be taken to protect the interests of the Unitholders.

Auditors

4-13-5 The DFSA may direct¹⁴ an Authorised Person or Public Listed Company to appoint an auditor, where an auditor has not been appointed by such person.

4-13-6 Where an auditor appointed by an Authorised Person and Public Listed Company is not suitable in the opinion of the DFSA, the DFSA may direct¹⁵ the auditor to remove itself as auditor from such person.

Directions Powers for Prudential Purposes

4-13-7 Pursuant to Article 75A of the Regulatory Law 2004, the DFSA may for, prudential purposes, issue a direction to a particular Authorised Firm, or Authorised Firms within a specified class, to:

¹¹ Article 12 of the Law Regulating Islamic Financial Business 2004

¹² Article 12 of the Law Regulating Islamic Financial Business 2004

¹³ Article 32 of the Collective Investment Law 2010

¹⁴ GEN Rule 8.4.6 and MKT Rule 5.2.6

¹⁵ GEN Rule 8.4.7 and MKT Rule 5.2.7

- (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.

4-13-8 Where the DFSA proposes to issue a direction under Article 75A to Authorised Firms within a specified class, the direction will remain in force for a period of no more than 12 months in the first instance, unless the DFSA specifies a shorter period of time in the notice. The DFSA considers that such a direction should remain in force for a limited period as it has a Rule making power under the Regulatory Law 2004 at its disposal, which the DFSA would ordinarily use where it was proposing to change its Rules relating to Authorised Firms within a specified class.

5 ENFORCEMENT

5-1 THE DFSA'S APPROACH TO ENFORCEMENT

Introduction

5-1-1 This chapter sets out the DFSA's approach to enforcement and how it commences and conducts investigations, and exercises its powers to address any misconduct or contravention of the Law or Rules.

5-1-2 A reference to:

- (a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and
- (b) the Law in this chapter is a reference to any legislation administered by the DFSA.

Enforcement philosophy

5-1-3 The DFSA's enforcement philosophy is guided by the following principles which govern the DFSA's approach to fulfilling its objectives as set out in Article 8:

- (a) the DFSA adopts a risk based approach to regulation. This means that the DFSA will focus its efforts on those activities that it perceives as posing the greatest risk to the fulfilment of its objectives;
- (b) the DFSA will act swiftly and decisively to stop conduct which threatens the integrity of the DIFC or the stability of the financial services industry in the DIFC, minimise its effects, and prevent such conduct re-occurring;
- (c) the DFSA works closely with home regulators of international firms to ensure that there is a co-ordinated approach to regulation;
- (d) the DFSA will act fairly, openly, accountably and proportionally in the exercise of its enforcement powers; and
- (e) the DFSA will not publicise details of the commencement or conduct of investigations, unless it is in the furtherance of the DFSA's objectives or the public interest to do so. The DFSA will generally publish details of the outcome of an enforcement action in keeping with its fair and transparent approach and to maintain the integrity of the DIFC by deterring contraventions of Laws or Rules or other misconduct.

5-2 ENFORCEMENT FRAMEWORK

Introduction

5-2-1 The DFSA will take an enforcement action in line with its objectives and enforcement philosophy, and may conduct investigations where there is a suspected contravention of a Law or Rule.

General contravention provisions

5-2-2 A Person contravenes the Law or the Rules when that Person:

- (a) does an act or thing that the Person is prohibited from doing by or under the Law or Rules;
- (b) does not do an act or thing that the Person is required or directed to do by or under the Law or Rules; or
- (c) otherwise contravenes a provision of the Law or Rules.¹⁶

Involvement in contravention

5-2-3 If a Person is knowingly concerned in a contravention by another Person of the Law or Rules, then both Persons may be held liable for committing a contravention pursuant to Article 86.

5-2-4 A Person is “knowingly concerned” in a contravention¹⁷ 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.

Enforcement process

5-2-5 When taking enforcement action, the DFSA will adopt the enforcement process described in this chapter. The DFSA’s enforcement process is comprised of the following elements:

- (a) Assessment of complaints and referrals (see section 5-3);

¹⁶ Article 85 of the Regulatory Law 2004

¹⁷ Article 86 (7) of the Regulatory Law 2004

- (b) Commencement of an investigation (see section 5-4);
- (c) Information gathering (see section 5-5);
- (d) Consideration of investigative findings (see section 5-6);
- (e) Remedies (see section 5-6); and
- (f) Conclusion of the Investigation (see section 5-21).

5-3 ASSESSMENT OF COMPLAINTS AND REFERRALS

5-3-1 The assessment of complaints and referrals concerning potential misconduct or suspected contravention of the Law or Rules is a key function of the DFSA's regulatory remit and Enforcement framework. Every complaint and referral, regardless of source, is assessed to determine whether an investigation or other action ought to take place.

Sources of complaints and referrals

5-3-2 The DFSA may become aware of potential misconduct or suspected contraventions of Laws or Rules from a variety of sources including:

- (a) members of the public;
- (b) its supervisory activities; and
- (c) other external regulatory authorities or law enforcement agencies.

Complaints

5-3-3 The DFSA receives and assesses two types of complaints:

- (a) regulatory complaints; and
- (b) complaints against the DFSA and its employees.

5-3-4 A Person wishing to lodge a complaint with the DFSA should do so in writing. A complaint can be lodged:

- (a) electronically via the complaints portal on the DFSA website (see <http://www.dfsa.ae>);
- (b) by facsimile to 04 362 0801; or
- (c) by sending the complaint to PO Box 75850 Dubai, UAE or delivering the complaint to the DFSA at Level 13, The Gate Building, DIFC.

5-3-5 When a complaint is received, the DFSA will send an acknowledgement letter to the complainant which will include details of the DFSA officer assigned to assess the complaint.

Regulatory Complaints

5-3-6 Complaints received by the DFSA from members of the public which relate to:

- (a) any conduct or dissatisfaction with any Person regulated by the DFSA;
- (b) a contravention of a Law or Rule; or
- (c) any conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC;

are classified as regulatory complaints and are assessed through the DFSA's complaints management function.

5-3-7 If, during the assessment of a regulatory complaint, the DFSA identifies a potential contravention of a Law or Rule, it will refer the complaint to the relevant DFSA division for further consideration. Thereafter, the relevant division assumes responsibility for the complaint.

5-3-8 All complaints lodged with the DFSA are held in confidence in accordance with the Regulatory Law 2004. However, in order to assess a complaint properly, the DFSA may need to speak to third parties including any Person who is the subject of the complaint.

Referrals

5-3-9 There are two types of referrals, internal and external. Internal referrals originate from the DFSA's supervisory activities conducted by the Supervision or Markets Division. The DFSA's supervisory framework is designed to detect and mitigate risks to the DIFC and the financial services industry in the DIFC. An internal referral occurs when a DFSA supervisory division refers conduct to the Enforcement Division, where the supervisory division has identified possible contraventions of Laws and Rules.

5-3-10 When Enforcement receives an internal referral, the referring division may continue to be responsible for the on-going supervision of the Person who is the subject of the referral.

5-3-11 The DFSA may also receive allegations of misconduct through an external referral from other regulatory authorities and law enforcement agencies. Such allegations are generally received pursuant to the IOSCO or IAIS Multilateral Memorandum of Understanding (MMoU), or bi-lateral arrangements for the exchange of information between the DFSA and other regulatory and enforcement agencies.

Complaints against the DFSA and its employees

5-3-12 Complaints received by the DFSA about the conduct and activities of the DFSA and its employees are administered and assessed separately by the DFSA's Office of General Counsel.

5-3-13 Information on how the DFSA's Office of General Counsel assesses complaints against the DFSA and its employees can be found on the DFSA's website (see <http://www.dfsa.ae>).

5-4 COMMENCEMENT OF INVESTIGATIONS

Introduction

5-4-1 Upon receipt of an internal or external referral, the allegation will be assessed to determine if there is a suspicion of a contravention of the Law or Rules. If a suspicion arises, then the Enforcement Division may make a recommendation to the Enforcement Committee to commence an investigation. The Enforcement Committee is a management committee of the DFSA whose primary function is to consider enforcement matters and to make recommendations to the Chief Executive in relation to such enforcement matters.

5-4-2 In determining whether to recommend the commencement of an investigation, the Enforcement Committee will consider a number of factors including, but not limited to:

- (a) the nature, seriousness and impact of the suspected contravention and whether the suspected contravention is on-going;
- (b) whether the suspected contravention affects, or has the potential to affect, the DFSA objectives;
- (c) whether those involved in the suspected contravention are likely to co-operate;
- (d) whether it is likely that the suspected contravention may be proven;
- (e) the disciplinary record and compliance history of the Person or Persons involved in the suspected contravention;
- (f) whether, if proven, a suitable remedy is available;
- (g) the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude toward the matter;
- (h) the nature of any request for assistance made by another regulator or body pursuant to Article 39; and
- (i) whether any party who may have suffered some detriment as a result of the suspected contravention is able to take his own remedial action.

5-4-3 The Chief Executive of the DFSA, or his delegate, is the only individual authorised to commence an investigation. The Chief Executive or his delegate can exercise his discretion unilaterally but will generally consider the recommendations of the Enforcement Committee.

Investigation determination

5-4-4 Article 78 empowers the DFSA to conduct such investigations as the Chief Executive or his delegate consider expedient:

- (a) where he has reason to suspect that there is being or may have been committed a contravention of the Laws or Rules; or
- (b) further to a request for assistance.¹⁸

5-4-5 Whether a matter is expedient is determined by reference to factors such as those set out in paragraph 5-4-2.

5-4-6 Whether the Chief Executive or his delegate has “reason to suspect” a contravention of the Law or Rules, is a question which the Chief Executive will determine on the facts and circumstances, available at the time, of each particular matter.

5-4-7 The DFSA is not bound to disclose, to any party, that an investigation is on-going or the basis upon which an investigation is commenced. However, the DFSA may notify a Person who is the subject of an investigation that an investigation has commenced, and the general nature of the investigation.

5-4-8 However, the DFSA will not make such a notification if it is likely to compromise or prejudice the investigation. The DFSA will not advise a Person at the conclusion of an investigation unless the Person has earlier been notified of its commencement.

5-4-9 The decision to commence an investigation is not a decision which is appealable to the Regulatory Appeals Committee.

5-5 INFORMATION GATHERING

Introduction

5-5-1 Once an investigation is commenced, the DFSA may exercise its powers to gather information to advance its objectives.

5-5-2 Those powers may only be exercised by delegates of the Chief Executive. The delegation need not be limited to DFSA employees. The Chief Executive may delegate DFSA powers to non-DFSA staff who are able to assist with a DFSA investigation.

¹⁸ Article 39 of the Regulatory Law 2004

5-5-3 Similarly, where the DFSA is exercising its powers on behalf of another regulator, it may also delegate powers to a representative of that regulator¹⁹.

Article 80 Powers

5-5-4 Article 80(1) is a key component of the DFSA's investigative powers. Without the compulsory powers in Article 80(1), the DFSA would not be able to conduct effective and thorough investigations into potential misconduct or suspected contraventions of the Law or Rules, and consequently would not be able to meet its objectives.

5-5-5 During an investigation, the DFSA may obtain relevant information and documents on a compulsory basis, principally through the exercise of its powers under Article 80(1), and on a voluntary basis.

5-5-6 The powers under Article 80(1) are different from the non-investigation powers under Article 73(1). The key distinctions are that the Article 80 powers may be used:

- (a) only for the purposes of an investigation; and
- (b) in circumstances 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.

5-5-7 In comparison, the Article 73(1) power permits the DFSA to request information and documents from an Authorised Firm, Authorised Market Institution, Ancillary Service Provider, auditor and any director, officer, employees or agent of such person, which the DFSA considers is necessary or desirable to meet the objectives of the DFSA.

5-5-8 When it exercises its powers under Article 80(1) (b), (c), (d) or (e), the DFSA will provide a written notice to the Person on whom the requirement is being imposed.

Inspection

5-5-9 Article 80(1)(a) empowers the DFSA to enter business premises of a Person during the course of an investigation for the purpose of inspecting and copying information or documents. This power will be exercised when the DFSA considers that such Person is or may be able to provide information or documents that are or may be relevant to an investigation.

5-5-10 The DFSA will generally not provide prior notice of an inspection in circumstances where the provision of prior notice may prejudice the investigation.

5-5-11 When exercising its power to enter business premises pursuant to Article 80(1)(a), the DFSA may²⁰:

- (a) require any appropriate Person to:

¹⁹ Article 40 of the Regulatory Law 2004

²⁰ Article 80 (2) of the Regulatory Law 2004

- (i) make available any relevant information stored at the business premises for inspection or copying; or
 - (ii) convert any relevant information into a physical form capable of being copied; and
- (b) use the facilities of the occupier of the business premises, free of charge, to make copies.

Production of information

5-5-12 Article 80(1)(b) empowers the DFSA to require a Person to give or procure the giving of information. The DFSA considers that the term “information” should be interpreted broadly, in accordance with its ordinary meaning.

5-5-13 Information may include, for example, the following:

- (a) knowledge communicated or received concerning a particular matter, fact or circumstance;
- (b) knowledge gained through work, commerce, study, communication, research or instruction;
- (c) data obtained as output from a computer by means of processing input data with a program or any data at any stage of processing including input, output, storage or transmission data;
- (d) an explanation or statement about a matter;
- (e) the identification of a Person, matter or thing; and
- (f) the provision of a response to a question.

5-5-14 The DFSA will allow a reasonable period for compliance with the requirement to give information. The reasonableness of the requirement will depend upon the circumstances of each case. The DFSA may, in some circumstances, require the giving of information forthwith where the giving of prior notice may prejudice the investigation.

Production of documents

5-5-15 Article 80(1)(c) empowers the DFSA to require a Person to produce or procure the production of specified documents. The DFSA considers that the term “document” should be interpreted broadly, in accordance with its ordinary meaning. Specified documents may include, for example, any record of information, including:

- (a) anything on which there is writing;

- (b) anything on which there are marks, figures, symbols or perforations having a meaning for Persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

5-5-16 This power can only be used when an investigation has commenced and the DFSA considers that the Person to whom the notice is addressed is, or may be, able to produce documents which are relevant to the investigation pursuant to Article 80(1)(e).

5-5-17 Article 80(1)(c) empowers the DFSA to require production of original documents or copies. Whether original or copy documents are required by the DFSA will be determined taking into account the facts and circumstances of the investigation.

5-5-18 When exercising its Article 80(1)(c) power, the DFSA may retain possession of any document for so long as is necessary for the investigation to which the notice relates. When a Person is unable to produce documents in compliance with a requirement made by the DFSA, the DFSA may require the Person to state, to the best of that Person's knowledge or belief, where the documents may be found and who last had possession, custody or control of those documents.

5-5-19 The DFSA will allow a reasonable period of time for compliance with the requirement to produce documents. The reasonableness of the requirement will depend upon the circumstances of each case. The DFSA may, in some circumstances, require the production of documents forthwith, where the giving of prior notice may prejudice the investigation.

Compulsory interview

5-5-20 Article 80(1) (d) empowers the DFSA to require a Person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) a compulsory interview and provide oral evidence relevant to an investigation it is conducting.

5-5-21 During the course of an investigation, not all interviews will be conducted under compulsion. The DFSA may, where appropriate, conduct voluntary interviews. The decision as to whether a compulsory or voluntary interview will be conducted will depend upon the circumstances of the particular case.

5-5-22 Persons attending a compulsory interview must first be served with a written notice requiring his attendance. An interviewee is not entitled to refuse or fail to answer a question on the basis that his answers may incriminate him or make him liable for a penalty.²¹

5-5-23 A compulsory interview will be conducted in private and the interviewer may give directions²² to the interviewee regarding:

²¹ Article 82 of the Regulatory Law 2004

²² Article 80 (3) of the Regulatory Law 2004

- (a) who may be present during the interview;
- (b) swearing an oath or giving an affirmation that the answers provided will be true;
- (c) what, if any, information may be disclosed by the interviewee or any other Person present at the interview to any third party;
- (d) the conduct of any Person and the manner in which they will participate during the interview; and
- (e) answering any question which is relevant to the investigation.

5-5-24 An interviewee is entitled to legal representation during the course of a compulsory or voluntary interview. At the conclusion of the interview, the lawyer will be permitted to address any issues with the interviewer or interviewee relevant to the investigation. However, the lawyer is not permitted to answer questions on behalf of the interviewee or obstruct the investigation.

5-5-25 All compulsory interviews will be recorded. The DFSA will, upon a written request from the interviewee at the conclusion of the interview, provide the interviewee or his lawyer with a copy of the recording or an accurate transcript of the interview. The provision of a recording or transcript may be subject to any reasonable conditions imposed by the DFSA.

Assistance

5-5-26 Article 80(1)(e) empowers the DFSA to require a Person to give it any assistance in relation to an investigation which the Person is able to give.

5-5-27 The DFSA considers that providing assistance may include requiring a Person to do a physical act or provide information to advance an investigation. For example, this may include the situation where the DFSA requires a Person to provide assistance by commenting on the accuracy of a document or compiling information that had been stored in a different manner.

5-5-28 The power under Article 80(1)(e) can be used independently, or in conjunction with the exercise of other Article 80(1) powers. For example, the DFSA can exercise its powers under Article 80(1)(d), to require a Person to attend a compulsory interview and Article 80(1)(e), to require the interviewee to provide reasonable assistance during the interview. The interviewee may be required, during the interview to draw a diagram or locate and produce a document referred to in an answer to a question.

Confidentiality

5-5-29 When carrying out its regulatory functions, the DFSA must maintain confidentiality of information, unless disclosure is expressly sanctioned by Article 38. The DFSA's Policy Statement with respect to Confidential Regulatory Information outlines its policy in respect of the treatment of information and documents.

5-5-30 The DFSA may also impose obligations of confidentiality in respect of information and documents provided during the exercise of its powers under Article 80(1).

5-5-31 The DFSA can make directions²³ to protect the confidentiality of information and documents which are part of a compulsory interview.

5-5-32 The DFSA can direct the recipient of an Article 80(1) (b), (c), (d) or (e) notice not to disclose the receipt of the notice, or any information relating to compliance therewith, to any other Person, other than his legal representative, if it considers that such disclosure may hinder an investigation²⁴.

5-5-33 Confidentiality directions are made to ensure that an investigation is not prejudiced by the disclosure of the nature of the information sought or the questions asked during an investigation. In each case, the DFSA needs to consider whether or not such directions are appropriate in the circumstances of that matter.

Protections

5-5-34 Parties who are required to comply with a requirement made by the DFSA during the course of an investigation, and Persons who are the subject of an investigation, benefit from certain protections in the Regulatory Law 2004, including:

- (a) Article 81 which ensures that a Person who is required to comply with a requirement made during the course of an investigation cannot be subject to any liability or liable in any proceeding because of that Person's compliance with the requirement;
- (b) Article 80(9) which provides that where a Person takes part in a compulsory interview, any statements made during the interview cannot be disclosed to a law enforcement agency for the purpose of criminal proceedings unless the Person consents to the disclosure or the DFSA is required by law or court order to disclose the statement; and
- (c) Article 38 which provides that confidential information provided to the DFSA must not be disclosed except in certain limited circumstances.

²³ Article 80 (3)(b) of the Regulatory Law 2004

²⁴ Article 80 (13) of the Regulatory Law 2004

Claims of privilege and other protections

5-5-35 A claim by a Person that information is a Privileged Communication is not of itself an excuse for failing to comply with a requirement made by the DFSA during the course of an investigation²⁵.

5-5-36 A lawyer may refuse to comply with a requirement to provide information where, to comply, would require the lawyer to disclose a Privileged Communication made by, to or on behalf of the lawyer in his capacity as a lawyer.

5-5-37 Should a lawyer refuse to disclose a Privileged Communication, the lawyer must disclose sufficient information to identify the Person entitled to claim the privilege and the document which contains the privileged information. In such a case, the DFSA considers it appropriate for a lawyer to secure those documents, pending the resolution of any claim for privilege.

Enforcement of the DFSA's investigative powers

5-5-38 The DFSA will enforce compliance with its requirements under Articles 73, 74 or 80, whenever there is less than full compliance by seeking orders in the DIFC Court²⁶.

5-5-39 Article 84(2) empowers the DFSA to make application to the Court for the issue of a search warrant in circumstances where:

- (a) information or documents were required to be given or produced by the exercise of a compulsory power;
- (b) the documents or information required to be produced have not been given or produced; and
- (c) the DFSA has reasonable grounds to suspect that within the next 3 business days, the information or those documents are or may be on particular premises.

5-5-40 Should the Court exercise its discretion to issue a search warrant, it must be addressed to a named Dubai Police Officer together with any other individual, including a DFSA officer or third party, named in the warrant.

5-5-41 The DFSA may exercise its right to make application for a search warrant rather than seeking compliance of its requirement through some other process only where it is satisfied that:

- (a) the preconditions in Article 84(2) for the issue of a warrant are met;
- (b) there is no legitimate basis for non-compliance; and

²⁵ Article 82 of the Regulatory Law 2004

²⁶ Article 84 (1) of the Regulatory Law 2004

- (c) in the absence of the execution of a search warrant, the information or documents sought may be removed or destroyed or otherwise not made available.

5-5-42 Any material seized by officers of the DFSA pursuant to a search warrant issued under Article 84 may be dealt with by the DFSA as if such material had been produced to it pursuant to a notice to produce documents.

Obstruction of the DFSA

5-5-43 A Person must not, without reasonable excuse, engage in conduct that is intended to obstruct the DFSA in the exercise of its investigative powers by any means including the following:

- (a) the destruction of documents;
- (b) the failure to give or produce information or documents specified by the DFSA;
- (c) the failure to attend before the DFSA at a specified time and place to answer questions;
- (d) the giving of information that is false or misleading; or
- (e) the failure to give any assistance in relation to an investigation which the Person is able to give²⁷.

5-5-44 Any breach of Article 83 will be regarded seriously by the DFSA and appropriate action will be taken.

Return of information and documents

5-5-45 Where the DFSA²⁸ has obtained original copies of information and documents during the course of an investigation, the DFSA will usually return such information and documents to the Person from whom the information and documents were received, as soon as practicable, after the conclusion of the investigation or related proceedings.

5-5-46 Where information and documents have been produced to the DFSA in the course of an investigation to assist another regulator or agency, the DFSA may²⁹ release the information and documents to that other regulator or agency. The information and documents will usually be returned to the Person from whom the information and documents were received, as soon as practicable, after receiving them back from the other regulator or agency.

²⁷ Article 83 of the Regulatory Law 2004

²⁸ Article 80 (10) of the Regulatory Law 2004

²⁹ Article 38 of the Regulatory Law 2004

5-6 REMEDIES

5-6-1 At the conclusion of an investigation, the Enforcement Committee considers the findings of the investigation and may resolve to recommend to the Chief Executive to:

- (a) appoint a Decision Maker;
- (b) refer a matter to the Financial Markets Tribunal (“FMT”)³⁰;
- (c) accept an Enforceable Undertaking³¹;
- (d) accept a settlement;
- (e) commence Court proceedings³²;
- (f) exercise a power on behalf of another regulator³³; and
- (g) delegate power to another regulator³⁴.

5-6-2 A Decision Maker is an individual delegated by the Chief Executive to exercise a power on behalf of the DFSA. A Decision Maker will be appointed by the Chief Executive, generally upon receiving a recommendation from the Enforcement Committee.

5-6-3 Whilst not an exhaustive list, the Enforcement Committee may recommend to the Chief Executive that a matter be referred to a Decision Maker for the:

- (a) imposition of a fine³⁵;
- (b) imposition of a censure³⁶;
- (c) imposition of conditions or restrictions on a Licence³⁷;
- (d) withdrawal of an authorisation under a Licence³⁸;
- (e) withdrawal of a Licence³⁹;
- (f) imposition of conditions or restrictions on an Authorised Individual⁴⁰;

³⁰ Article 33 of the Regulatory Law 2004

³¹ Article 89 of the Regulatory Law 2004

³² Articles 84, 92, 93, 94 and 95 of the Regulatory Law 2004

³³ Article 39 of the Regulatory Law 2004

³⁴ Article 40 of the Regulatory Law 2004

³⁵ Article 90 of the Regulatory Law 2004

³⁶ Article 91 of the Regulatory Law 2004

³⁷ Article 49 of the Regulatory Law 2004

³⁸ Article 50 of the Regulatory Law 2004

³⁹ Article 51 of the Regulatory Law 2004

⁴⁰ Article 57 of the Regulatory Law 2004

- (g) restriction or suspension of an Authorised Individual, or the withdrawal of his or her authorisation⁴¹;
- (h) withdrawal of the registration of an Ancillary Service Provider;
- (i) revocation of recognition⁴²;
- (j) appointment of a manager⁴³;
- (k) withdrawal of the registration of an Auditor⁴⁴; and
- (l) suspension of the registration of an Auditor⁴⁵.

5-6-4 There is a range of remedies which the DFSA may pursue to achieve its objectives and the DFSA may pursue more than one remedy. The types of remedies, along with an indication of the DFSA's approach to the use of such remedies, are set out in sections 5-7 to 5-18 of this chapter and in chapter 4.

5-6-5 When the DFSA exercises a power specified in sections 5-7 to 5-9 in this chapter, it will follow the decision making procedures set out in chapter 6 of this Sourcebook. Chapter 6 sets out whether a Person will:

- (a) receive prior written notice and have a suitable opportunity to make representations prior to the DFSA exercising a power;
- (b) receive reasons for any decision to exercise such power; and
- (c) have a right of appeal to the Regulatory Appeals Committee.

5-6-6 When the DFSA exercises a power specified in sections 5-10 to 5-18 in this chapter, it will follow the procedures set out in the relevant section.

5-6-7 The DFSA does not exercise criminal jurisdiction. Should criminal conduct be identified, then it will be referred to the appropriate law enforcement agency.

5-7 APPOINTMENT OF MANAGERS

5-7-1 Pursuant to Article 88, the DFSA may require an Authorised Person to appoint one or more individuals to act as a manager of the business of the Person on such terms as the DFSA may stipulate. Such individuals must be nominated or approved by the DFSA.

⁴¹ Article 58 of the Regulatory Law 2004

⁴² Article 60 of the Regulatory Law 2004

⁴³ Article 61 of the Regulatory Law 2004

⁴⁴ Article 88 of the Regulatory Law 2004

⁴⁵ Article 98 of the Regulatory Law 2004

5-7-2 The types of circumstances in which the DFSA may exercise this power are set out in Article 88(3). For example, the DFSA may require an Authorised Person to appoint a manager where it has concerns about the solvency or the level of compliance with prudential requirements of an Authorised Person.

5-7-3 An Authorised Person may receive an opportunity to make representations prior to being required to appoint a manager in accordance with the procedures set out in chapter 6. However, in circumstances of urgency, the DFSA may not give advance notice of the proposed requirement and may not provide the relevant Authorised Person with the opportunity to make representations prior to the imposition of the requirement.

5-7-4 When the DFSA does require an Authorised Person to appoint a manager, it will do so in writing, setting out:

- (a) that the Authorised Person is required to appoint a manager;
- (b) the time by which such manager must be appointed;
- (c) the reasons for the Authorised Person being required to appoint a manager;
- (d) the individual nominated by the DFSA to be the manager or the process by which approval may be given by the DFSA; and
- (e) the fact that the Authorised Person may appeal to the Regulatory Appeals Committee in respect of the decision.

5-7-5 The DFSA recognises that the use of its Article 88 power to appoint a manager is likely to have a significant impact on an Authorised Person. Accordingly, the DFSA is likely to exercise such power only in exceptional circumstances.

5-7-6 In considering whether a manager should be appointed, the DFSA may take into consideration all relevant circumstances, including but not limited to, the following matters:

- (a) the nature and extent of the business of the Authorised Person;
- (b) the nature of the DFSA's concerns in relation to the Authorised Person and whether they affect, or have the potential to affect, the DFSA's objectives;
- (c) whether the DFSA's concerns in relation to the Authorised Person may be addressed by the appointment of a manager;
- (d) where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;
- (e) whether an appropriately qualified manager may be available and willing to undertake the appointment;
- (f) the likely duration of the appointment; and

- (g) the likely impact of costs associated with the appointment of a manager.

5-8 FINES

5-8-1 The DFSA may seek to impose a fine upon a Person whom it considers has contravened a provision of the Law or Rules. The DFSA may seek to impose such a fine⁴⁶ through:

- (a) exercising its power pursuant to Article 90; or
- (b) commencing proceedings before the FMT⁴⁷ (see section 5-10 of this chapter).

5-8-2 A fine imposed by the DFSA pursuant to Article 90 is referred to as an administrative fine. In some circumstances, the DFSA may seek to impose a fine by commencing proceedings before the FMT or the Court.

5-8-3 In determining whether to impose a fine and the quantum of the fine, the DFSA may take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in section 5-16 of this chapter.

5-8-4 Generally, the DFSA will not seek to impose more than one fine on a Person in respect of:

- (a) multiple contraventions which are closely connected to the same set of facts and circumstances; or
- (b) the same contravention.

5-8-5 Where the DFSA decides to commence proceedings in the FMT or the Court for the imposition of a fine or any other remedy, it will follow the procedures set out in section 5-10 of this chapter. The FMT and the Court may impose a fine in any amount considered appropriate.

Administrative fine

5-8-6 The DFSA will generally seek to impose an Article 90 fine in respect of less serious conduct. The DFSA considers that the seriousness of the conduct can vary, depending on the particular facts and circumstances. Isolated, one-off, or unintended breaches would generally be considered as being less serious, whilst repeated, systemic and intentional breaches would be considered as being more severe and aggravated in nature. When determining whether to impose an administrative fine and the quantum of such a fine, the DFSA will take into account a number of circumstances and factors, including, but not limited

⁴⁶ Article 105 of the Regulatory Law 2004

⁴⁷ Article 87 (1) of the Regulatory Law 2004

to, whether the conduct was deliberate or reckless, and whether the contravention is continuing.

5-8-7 Where the circumstances and factors in a matter are of a more serious nature, the DFSA would not consider proceeding by way of administrative fine. Instead, the DFSA would consider commencing proceedings in either the FMT or the Court, unless the matter is settled by way of an Enforceable Undertaking.

5-8-8 The Enforcement Committee will generally make a recommendation to the Chief Executive to appoint a Decision Maker to consider whether a fine should be imposed against a Person.

5-8-9 A Decision Maker is an individual delegated by the Chief Executive to exercise a power on behalf of the DFSA. Prior to making a decision, the Decision Maker will follow the process set out in Article 90(3) and Chapter 6 of the RPP Sourcebook.

5-8-10 The Decision Maker may impose a fine, in any amount, up to the maximum prescribed in Article 90(2) (i.e. \$20,000 in respect of a natural person and \$100,000 in respect of a body corporate).

5-8-11 If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

5-9 ADMINISTRATIVE CENSURE

5-9-1 The DFSA may seek to impose a censure upon a Person whom it considers has contravened a provision of the Law and Rules it administers. The DFSA may seek to impose such a censure through:

- (a) exercising its power pursuant to Article 91; or
- (b) commencing proceedings before the FMT⁴⁸ or Court (see section 5-10 of this chapter).

5-9-2 The Enforcement Committee will generally make a recommendation to the Chief Executive to appoint a Decision Maker to consider whether a censure should be imposed against a Person. Prior to making a decision, the Decision Maker will follow the process prescribed in Article 91 and Chapter 6 of the RPP Sourcebook.

5-9-3 In determining whether to impose a censure, the DFSA may take into consideration the circumstances of the conduct and will be guided by the Penalty guidance set out in section 5-16 of this chapter.

⁴⁸ Articles 33 and 34 of the Regulatory Law 2004

5-10 THE INSTITUTION OF PROCEEDINGS BEFORE THE FINANCIAL MARKETS TRIBUNAL OR COURT

5-10-1 The Chief Executive or his delegate is the only individual authorised to institute proceedings before the FMT. He may institute proceedings where it appears reasonably likely to him that there has been a breach of the Law or Rules (see Article 33).

5-10-2 The Chief Executive will consider the facts and circumstances of each case, and where appropriate, any recommendation of the Enforcement Committee, in determining whether to commence proceedings before the FMT.

5-10-3 In considering whether to commence proceedings before the FMT or Court, the Chief Executive may take into consideration all relevant circumstances, including but not limited to, the following matters:

- (a) the nature, seriousness and impact of the suspected contravention and whether the suspected contravention is on-going;
- (b) the remedies available to the FMT, should the contravention be proven;
- (c) the conduct of the Person after the contravention, including action taken by the Person to minimise the effect of the contravention and to bring the issue to the attention of the DFSA;
- (d) the previous disciplinary record and compliance history of the Person;
- (e) action taken by the DFSA in previous similar cases; and
- (f) action taken by a Financial Services Regulator in respect of the conduct of the Person giving rise to the breach or any related conduct.

5-10-4 The DFSA may, prior to the commencement of proceedings before the FMT or Court, send a preliminary findings letter to the Person or Persons who are the subject of the proposed proceedings. Such a letter would generally:

- (a) set out the DFSA's preliminary view that proceedings should be commenced, the remedies the DFSA is minded to seek and the general facts upon which the DFSA has relied upon in forming its preliminary view;
- (b) provide an opportunity to make submissions on the accuracy of the general facts upon which the DFSA has relied and any proposal to commence proceedings; and
- (c) where appropriate, invite the commencement of settlement discussions (in accordance with the settlement guidance in section 5-17 of this chapter).

5-10-5 The DFSA will take into account any submissions received in response to a preliminary findings letter before making a recommendation to the Enforcement Committee

and, ultimately, the Chief Executive about whether to commence proceedings before the FMT or Court.

5-10-6 If satisfied that the alleged contravention is proven the FMT may make any order including those set out in Article 34. The orders include fines, censures, compensation, disgorgement and cease and desist orders.

5-11 INJUNCTIONS AND ORDERS

5-11-1 The DFSA has a broad power to make application to the Court for injunctive relief and other orders (see Article 92). The DFSA may seek orders including, but not limited to:

- (a) an order restraining a Person that is engaging in conduct that would constitute a contravention of the Law or Rules;
- (b) an order requiring a Person to do an act or thing to remedy a contravention or to minimise loss or damage; or
- (c) any other order as the Court sees fit, including an order restraining the transfer of assets or the movement of individuals.

5-11-2 In deciding whether an application for an injunction or other order is appropriate in any given case, the DFSA will consider all relevant circumstances including, but not limited to, the following matters:

- (a) the nature, seriousness and impact of the contravention and whether the contravention is on-going;
- (b) whether the contravention affects, or has the potential to affect, the DFSA's objectives;
- (c) whether any party who may have suffered some detriment as a result of the contravention is able to take their own remedial action;
- (d) where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;
- (e) whether there is a danger of assets being dissipated or removed from the jurisdiction of the Court;
- (f) whether there is a danger that the Person or Persons may leave the jurisdiction, and if so, the effect that the Person's or Persons' absence may have on the effectiveness of the Court's orders;
- (g) the costs the DFSA would incur in applying for and enforcing an injunction or other orders and the likely effectiveness of such an injunction or other order;

- (h) the disciplinary record and compliance history of the Person;
- (i) whether, if proven, a suitable remedy is available;
- (j) the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter; and
- (k) whether there is information to suggest that the Person who is the subject of the possible application is or has been involved in money laundering, terrorist financing or other form of financial crime or criminal conduct.

5-12 CIVIL PROCEEDINGS

5-12-1 Article 94 provides that where a Person has:

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

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.

5-12-2 Article 94(2) provides that the Court may, on application of the DFSA, or of a Person who has suffered the loss or damage, make orders for the recovery of damages or for compensation or for the recovery of property or other order as the Court sees fit, except where such liability is excluded under the Law and Rules administered by the DFSA.

5-12-3 Article 94 gives the DFSA, and any aggrieved Persons, broad powers to make application for recovery of damages and other orders where there has been an identified contravention of the Laws and Rules administered by the DFSA. An aggrieved Person may exercise rights provided under Article 94 independently or contemporaneously with, and exclusively of, the DFSA.

5-12-4 The DFSA may not commence proceedings in every case where there may have been a relevant contravention. This does not prevent, however, any aggrieved Person from commencing his own proceedings.

5-12-5 In determining whether to commence proceedings, the DFSA may take into account all relevant circumstances. It is not possible to provide an exhaustive list of the circumstances that may be taken into account, as they may depend on the facts of the particular matter. However, the following list indicates some of those matters that may be considered:

- (a) the nature, seriousness and impact of the suspected contravention and whether the alleged contravention is on-going;

- (b) whether the conduct and contravention affects, or has the potential to affect, the DFSA objectives;
- (c) whether any party who may have suffered some detriment as a result of the alleged contravention is able to take his own remedial action;
- (d) in circumstances where more than one Person has suffered loss or damage:
 - (i) the number of those that have suffered loss or damage and the amount of loss or damage involved; and
 - (ii) whether it is convenient or possible for a class of aggrieved Persons to run a proceeding;
- (e) the cost that the DFSA would incur in applying for or enforcing any order that it is successful in obtaining;
- (f) whether the conduct in question can be adequately addressed by the use of other regulatory powers;
- (g) whether there is information to suggest that the Person is or has been, involved in money laundering, terrorist financing or other form of financial crime or criminal conduct; and
- (h) whether the DFSA has a reasonable chance of success in the relevant proceedings.

5-13 THE COMPULSORY WINDING UP OF A REGULATED ENTITY

5-13-1 The DFSA may apply to the Court for the winding up of a company which is or has been an Authorised Firm, an Authorised Market Institution or operating in breach of the Financial Services prohibition where it considers it is just and equitable and in the interests of the DIFC⁴⁹.

5-13-2 In deciding whether such an application is just and equitable and in the interests of the DIFC, the DFSA will consider all relevant circumstances, including but not limited to, the following matters:

- (a) the need to protect the company's Clients, particularly in cases where an Authorised Firm holds or controls Client Assets,
- (b) whether the company has operated in accordance with the laws of the DIFC;
- (c) where the company has contravened the Law or Rules, the nature, seriousness and impact of the contravention and whether the contravention is on-going;

⁴⁹ Article 93 of the Regulatory Law

- (d) where the company has contravened the Law or Rules, whether any alleged contravention affects, or has the potential to affect, the DFSA objectives;
- (e) where the company has contravened the Law or Rules, whether there are any other steps a Person could take or other orders a Court could make to remedy any contravention;
- (f) whether the needs of those operating in the DIFC and the interests of the DIFC are best served by the company ceasing to operate;
- (g) in the case of an Authorised Firm, where the DFSA considers that its Licence should be withdrawn or where it has been withdrawn, the extent to which there is other business that the firm carries on without authorisation;
- (h) whether there is information to suggest that the company is or has been involved in money laundering, terrorist financing or other form of financial crime or other criminal conduct;
- (i) where there is a significant cross border or international element to the business being carried on by the company, the impact on the business in other jurisdictions and whether another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter;
- (j) the extent to which the company has cooperated, and is likely to continue to cooperate, with the DFSA; and
- (k) the nature of the involvement of the officers of a company in the foregoing and whether this suggests a systemic failure within the company.

5-14 MARKETS LAW - ORDERS IN THE INTERESTS OF THE DIFC

5-14-1 Article 68 of the Markets Law 2012 provides that the Court or FMT, on application by the DFSA, may make one of a range of orders in relation to a Person, irrespective of whether a contravention has occurred, if it is in the interests of the DIFC for such an order to be made.

5-14-2 The DFSA may seek orders from the Court or FMT, including, but not limited to:

- (a) an order that trading in any Investments cease permanently or for such period as is specified in the order;
- (b) an order that a disclosure be made to the market;
- (c) an order that a person is prohibited from making offers of Securities in or from the DIFC; or

- (d) an order that a person is prohibited from being involved in Reporting Entities, Listed Funds or Securities within the DIFC.

5-14-3 Before the DFSA can make an application for an order (whether interim, ex parte or final), the DFSA must be satisfied that such an order would be in the interests of the DIFC and will take into account all relevant circumstances, including, but not limited to, the following:

- (a) the nature and extent of the conduct or any other matters in question;
- (b) the effect of the conduct or any other matters on the market and the DFSA's objectives;
- (c) whether the market is currently informed of all material information;
- (d) what steps the relevant Person has taken in respect of the conduct or any other matters being considered;
- (e) whether any other form of relief is available to the DFSA or appropriate in the circumstances;
- (f) whether the relevant conduct or any other matters could have a significant impact on the integrity of the DIFC market or the confidence in that market; and
- (g) the effect of the conduct or any other matters on the interests of participants in the DIFC.

5-15 INTERVENTION POWER

5-15-1 Article 95 empowers the DFSA to intervene as a party in any proceeding in the Court where it considers such intervention appropriate to meet the objectives of the DFSA. Where the DFSA so intervenes it shall be subject to any other law, and have all the rights, duties and liabilities of such a party.

5-15-2 This provision does not affect the ability of the DFSA to seek leave to appear in proceedings, as *amicus curiae* (i.e. someone not a party to a case, who volunteers to offer information to assist a court in deciding a matter before it), to make submissions on an issue of significance to the DIFC or to place material before the Court that may otherwise not be available.

5-15-3 The DFSA will generally only exercise this right of intervention where it forms the view that it will not be able to meet its objectives by simply appearing as *amicus curiae* and that to fully serve the interests of the DIFC, it is necessary to join the proceeding as a party and stay involved in the matter throughout.

5-16 PENALTY GUIDANCE

5-16-1 This section sets out the DFSA's policy for the determination of a financial penalty ("penalty"). Such a penalty may be an administrative fine or the submission of a proposed penalty to the FMT (or other competent tribunal or Court).

5-16-2 The DFSA may also refer to this section when determining an appropriate penalty in settlement agreements, including an Enforceable Undertaking.

5-16-3 When determining a penalty the DFSA will consider all relevant facts and circumstances including, but not limited to, the following:

- (a) the DFSA's objectives;
- (b) the deterrent effect of the penalty on:
 - (i) Persons that have committed the contraventions; and
 - (ii) other Persons that have committed similar contraventions;
- (c) the nature, seriousness and impact of the contravention the subject of the penalty including, but not limited to, consideration of the following factors:
 - (i) the duration and frequency of the contravention;
 - (ii) whether the contravention revealed serious or systemic weakness in the Person's management, systems and controls relating to all or part of the Person's business;
 - (iii) in market misconduct cases, the DFSA should consider whether the contravention had an adverse effect on markets and, if it did, how serious that effect was and may consider the risk to the reputation of the DIFC markets;
 - (iv) the loss or risk of loss caused to consumers, investors or other market users; and
 - (v) the nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention.
- (d) the extent to which the contravention was committed deliberately or recklessly including, but not limited to, consideration of the following factors:
 - (i) in relation to an individual:
 - (A) whether the contravention was intentional (in that the individual intended or foresaw the potential or actual consequences of his actions);

- (B) whether the individual has given no consideration to the consequences of the behaviour that constitutes the contravention.
 - (C) where the individual has not followed a firm's internal procedures and/or the relevant DFSA Laws and Rules, the reasons for not doing so; and
 - (D) where the individual has taken decisions beyond his field of skill, competence and experience, the reasons for the decisions and for their being taken by that individual;
- (ii) in relation to a firm:
- (A) whether the contravention was intentional or reckless; for example, where a firm deliberately takes a course of action when it knew the actual or potential consequences of its actions;
 - (B) where the firm's internal procedures were intentionally designed to produce the contravention or were drafted in such a way that the contravention was probable; and
 - (C) where the firm has acted beyond its field of competence; for example, by entering into a business line with which it has no previous experience;
- (e) if the contravention involved a number of Persons, the degree of involvement and specific role of each Person;
- (f) the benefit gained (whether direct or indirect, pecuniary or non-pecuniary) or loss avoided as a result of the contravention which is the subject of the penalty;
- (g) the conduct of the Person on whom the penalty is imposed following the contravention including, but not limited to, consideration of the following factors:
- (i) whether or not the Person brought the contravention to the DFSA's attention (or to the attention of other regulatory authorities, where relevant);
 - (ii) the degree of cooperation the Person showed during the DFSA's enquiries and investigation of the contravention; and
 - (iii) any remedial steps taken by the Person since the contravention was identified (and whether those steps were taken at the Person's own initiative or that of the DFSA);
- (h) the difficulty in detecting and investigating the contravention the subject of the penalty;
- (i) whether the Person committed the contravention the subject of the penalty in such a way as to avoid or reduce the risk that the contravention would be discovered. A Person's incentive to commit a contravention may be greater where the contravention

which is, by its nature, harder to detect. The DFSA may therefore impose a more significant penalty where it considers that a Person committed a contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;

- (j) the disciplinary record and compliance history of the Person on whom the penalty is imposed including, but not limited to, consideration of the following factors:
 - (i) whether the DFSA or any other law enforcement agency or Financial Services Regulator has taken any previous enforcement action against the Person;
 - (ii) whether the Person has previously undertaken not to do a particular act or engage in particular behaviour (for example in an Enforceable Undertaking to the DFSA); and
 - (iii) whether the DFSA or any other law enforcement agency or Financial Services Regulator has previously taken supervisory action against the Person (for example by restricting the business of the Person) or has previously requested the Person to take remedial action and the extent to which that action has been taken; and
- (k) the financial circumstances of the Person, particularly in the case where the DFSA is considering an administrative fine, including, but not limited to a consideration of whether there is verifiable evidence of serious financial hardship or financial difficulties if the Person were to pay the level of a financial penalty appropriate for the particular contravention.

5-16-4 The DFSA may take into account that natural persons may not always have the financial resources of a body corporate and that enforcement action may have a greater impact on a natural person than a body corporate.

5-16-5 The DFSA may consider the potential impact on a firm's financial position which may result from a proposed penalty, particularly in relation to the implications for a firm's clients and, where relevant, the firm's ability to pay restitution.

5-17 SETTLEMENT GUIDANCE

5-17-1 A settlement is a resolution, between the DFSA and a third party, to agree an outcome resulting from an investigation. A Person who is or may be the subject of any form of enforcement action arising out of or during the course of an investigation may enter into settlement discussions with the DFSA.

5-17-2 Settlement discussions are possible at any stage of the enforcement processes, either before or after enforcement action has commenced. When considering whether or not to enter into negotiations for settlement, or a settlement agreement, the DFSA will consider its objectives.

5-17-3 The DFSA generally considers that the early settlement of an investigation advances its objectives in that it may result in, for example, consumers obtaining compensation sooner, the saving of DFSA and industry resources, and the promotion of good business and regulatory practices.

5-17-4 The DFSA's general view is that settlement discussions should take place as early as possible. However, the DFSA will only be able to settle when it is confident it has sufficient understanding of the nature and gravity of the suspected misconduct to make a reasonable assessment of the appropriate outcome.

5-17-5 The DFSA expects settlement discussions to take place on a "without prejudice" basis; namely, that no party to the discussions may subsequently rely upon any admissions or statements made during the course of the settlement discussion or on any document created recording those discussions.

5-17-6 The DFSA will only settle when the agreed terms result in what the DFSA considers to be an effective regulatory outcome.

5-17-7 The DFSA will set clear and reasonable timetables for settlement discussions to ensure they do not unreasonably delay settlement or a regulatory or enforcement outcome.

5-17-8 Settlement in particular circumstances should not be regarded as binding precedent for future settlement discussions.

Factors the DFSA Will Consider When Contemplating Settlement

5-17-9 In deciding whether a proposed settlement is acceptable and in accordance with meeting its objectives, the DFSA will consider a number of factors, including but not limited to:

- (a) the nature, seriousness and impact of the conduct or suspected contravention the subject of the proposed settlement, and whether the suspected contravention is continuing;
- (b) whether the Person is prepared to acknowledge publicly the DFSA's concerns about the conduct or suspected contravention which is the subject of the proposed settlement, and the necessity for protective or corrective action;
- (c) whether the conduct or suspected contravention which is the subject of the proposed settlement was inadvertent;
- (d) whether the suspected contravention which is the subject of the proposed settlement was the result of the conduct of one or more individual officers or employees of the Person;
- (e) the seniority and level of experience of the individuals involved in the conduct and/or suspected contravention which is the subject of the proposed settlement;

- (f) whether the Person co-operated with the DFSA, including providing complete information about the conduct or suspected contravention which is the subject of the proposed settlement, and any remedial action taken by the Person;
- (g) whether the settlement will achieve an effective outcome for those (such as consumers or investors) who have been adversely affected by the conduct and/or suspected contravention which is the subject of the proposed settlement;
- (h) whether the Person is likely to comply with the terms of the settlement;
- (i) whether the Person's compliance with the Law and Rules generally will be improved;
- (j) the disciplinary record and compliance history of the Person;
- (k) the prospects for a swift resolution of the matter; and
- (l) whether the settlement promotes general deterrence in making regulated entities in the DIFC aware of the conduct or suspected contravention which is the subject of the proposed settlement, and the consequences arising from engaging in similar conduct or contraventions.

Form of Settlement

5-17-10 Any settlement entered into by the DFSA will be documented in the form of a legally enforceable agreement executed by all parties. Generally, a settlement accepted by the DFSA will be in the form of an Enforceable Undertaking.

Enforceable Undertakings

5-17-11 An Enforceable Undertaking (EU) is a written promise, made under Article 89, to do or refrain from doing a specified act or acts. It is an alternative mechanism for regulating contraventions of the Law or Rules.

Acceptance of an Enforceable Undertaking

5-17-12 An EU may be given by a Person at any time, either before, during or after an investigation or before the commencement of litigation or proceedings in the Court or FMT and accepted by the DFSA. The DFSA does not have the power to require a Person to enter into an EU, nor can a Person compel the DFSA to accept an EU. This does not mean, however, that the DFSA cannot propose an EU to a Person, during the course of settlement negotiations, or provide a Person with a draft EU to provide guidance as to the terms of an EU that the DFSA would be willing to accept in the circumstances of the matter.

5-17-13 The DFSA may accept an EU that it considers necessary or desirable in pursuit of its objectives. Article 89 does not prescribe a particular structure or format to an EU. However, in the context of an enforcement matter, the DFSA will generally only accept an EU that:

- (a) contains an admission or acknowledgement of any contraventions of the Law or Rules or the DFSA concerns;
- (b) contains undertakings that address the DFSA's concerns; and
- (c) contains an agreement to make the EU public, and an agreement not to make public statements that conflict with the spirit of the EU.

5-17-14 A Person offering an EU to the DFSA may also undertake in the EU to pay the DFSA's costs, including any costs associated with compliance with the EU.

5-17-15 An EU will not take effect until it is formally accepted by the Chief Executive of the DFSA or his delegate.

Variation or Withdrawal

5-17-16 Once accepted by the DFSA, an EU can only be withdrawn or varied with the consent of the DFSA in writing. The DFSA will only consider a request to vary an undertaking if:

- (a) the variation will not alter the spirit of the original undertaking;
- (b) compliance with any one or more terms of the undertaking is subsequently found to be impractical or impossible; or
- (c) there has been a material change in the circumstances which led to the undertaking being given.

Compliance with an EU

5-17-17 If the DFSA considers that a Person has not complied with a term of the EU, the DFSA may apply to the Court for appropriate orders. The DFSA may publicise the fact of the application to the Court and any subsequent orders of the Court. The DFSA will also seek the costs of the application.

5-18 COSTS

5-18-1 The DFSA will generally seek litigation costs orders from the Court and the FMT where it has commenced a proceeding and been successful in achieving the outcome sought.

5-18-2 The DFSA may also make an application claiming the costs of an investigation where the FMT or any court of law, as a result of that investigation, has found a contravention of the Law or Rules⁵⁰. Such applications are described in section 5-10 of this chapter.

⁵⁰ Article 79(2) of the Regulatory Law

Undertakings as to Damages

5-18-3 Pursuant to Article 47(1) of the Court Law, the Court shall not require the DFSA to give an undertaking as to damages as a condition for granting an injunction or any order made under DIFC Law. In making any order the Court shall not take into account in determining the merits of an application for the injunction that the DFSA has not given an undertaking as to damages.

Enforcement of orders

5-18-4 The DFSA will do all things necessary and where appropriate, commence relevant actions to ensure full compliance with any orders of the FMT or of the Court which arise out of an investigation.

5-18-5 In particular, Article 87(5) provides that the DFSA may apply to the Court for recovery, as a debt due, of so much of a fine as is not paid by a party together with costs. Further, in appropriate circumstances, the DFSA may apply to the Court for the winding up of a body corporate.

5-19 Publicity

5-19-1 This Policy Statement describes how the DFSA Executive may comment publicly on investigations, enforcement actions and other formal regulatory decisions⁵¹, subject to any independent determinations by the Regulatory Appeals Committee (RAC), Financial Markets Tribunal (FMT) and courts, unless otherwise ordered by any of these bodies, including:

- (a) General policy on publicity of enforcement actions;
- (b) Commencement and conclusion of investigations;
- (c) Commencement of proceedings;
- (d) Disclosure of Decisions;
- (e) Disclosure of Settlement Agreements and Enforceable Undertakings;
- (f) Content of Publication; and
- (g) Mode of Publication.

General policy on publicity of enforcement actions

5-19-2 The DFSA expects to publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions, including censures and any

⁵¹In the remainder of the section we refer to 'enforcement actions', for brevity. Formal regulatory decisions are those that are made by a Decision Maker and are reviewable by the RAC.

other matters which the DFSA considers relevant to the conduct of affairs in the DIFC. The publication of enforcement outcomes is consistent with the DFSA's commitment to open and transparent processes and with the pursuit of its objectives.

5-19-3 In all cases the DFSA retains the discretion to take a different course of action, where it furthers the DFSA's achievement of its objectives or is otherwise in the public interest to do so. For example, the DFSA may decide to publish at an earlier stage than suggested by the general policy, where circumstances justify this.

Commencement and conclusion of investigations

5-19-4 The DFSA expects not to publicise the commencement, conduct or conclusion of investigations.

5-19-5 Where the DFSA has publicised that it is conducting an investigation and no enforcement action results, the DFSA would issue a press release confirming the conclusion of the investigation and that no action is to be taken.

5-19-6 The DFSA expects not to publicise information about referrals to a Decision Maker.

Commencement of proceedings

Decision Maker

5-19-7 Reasons for this information not normally being published include:

- (a) oral and written submissions in regard to a matter before a Decision Maker are confidential and made in private;
- (b) hearings are held in private; and
- (c) the release of information by the Decision Maker prior to a full and complete consideration of all submissions and facts may be contrary to the DFSA's objectives or not in the public interest.

RAC, FMT or a court

5-19-8 The DFSA expects to publicise information about the commencement and the hearing of proceedings before the RAC, FMT or courts, unless otherwise ordered by any of the bodies the proceedings are heard by.

Disclosure of Decisions

Decision Maker Decisions

5-19-9 The DFSA expects to make public any decision made by a Decision Maker, and to do so in a timely manner after any relevant appeal period has expired or appeal process has come to an end.

5-19-10 In circumstances where the DFSA considers it necessary to publish at an earlier stage, the publication will refer to the right of appeal which the affected party has and the time limit for that appeal. The DFSA would consider it necessary to publish at this early stage, where to do so enables it to achieve its objectives or it is in the public interest to do so. Before making a decision public the DFSA will endeavour to give affected parties notice of its intent to publish within an appropriate timescale.

5-19-11 If the affected party exercises its right of appeal, then the DFSA will publicise that fact unless otherwise ordered. When the appeal has been heard and determined, the DFSA expects to publicise the result of the appeal (subject only to the RAC or FMT – see 5-19-12).

RAC, FMT or a court decision

5-19-12 The Regulatory Law 2004 requires all RAC and FMT hearings to be heard in public unless otherwise ordered by the RAC or FMT. The RAC and FMT may exercise their discretion not to make public any decisions they may make. Where they do determine to publish their decisions including interim decisions the RAC and FMT will publish these on their respective websites which are maintained on the DFSA website. Following hearings and decisions by these bodies, the DFSA expects to make timely public disclosure of their decisions, including any interim decisions, unless otherwise ordered.

5-19-13 Decisions made by the courts will be publicised by the DFSA in a timely manner, unless ordered otherwise.

5-19-14 This approach is adopted on the basis that any delay in disclosure may hinder and unfairly prejudice the DFSA in achieving some of its primary objectives, namely transparency, fairness, financial stability, fostering confidence, and consumer protection. For example, non-disclosure may potentially prejudice users and prospective users of financial services in the DIFC if they are acting unaware of facts known in the enforcement action.

Disclosure of Enforceable Undertakings or other settlements

5-19-15 The DFSA expects to publicly disclose all settlements of enforcement matters, including Enforceable Undertakings, to ensure all market participants are clearly informed. This will also be part of the negotiations that lead to the agreement.

5-19-16 The DFSA may be otherwise ordered or required by law not to publish. For example, disclosure may not occur if a third party has commenced proceedings in the courts in respect of the same conduct and the publication of the undertaking or settlement may prejudice that party's case in the court. However, simply because a third party has commenced proceedings does not preclude the DFSA from publishing its settlements, including Enforceable Undertakings.

Content of Publication

5-19-17 The DFSA expects to make appropriate disclosures when publishing Enforceable Undertakings, settlement agreements, proceedings before, and decisions of, RAC, FMT or a

court. Appropriate disclosures should provide sufficient meaningful information to achieve the regulatory objectives of the DFSA.

5-19-18 The DFSA expects to take into consideration any privileged or sensitive information when considering the content of its publications. In doing so, it will also consider the possibility that any publication may also potentially affect the rights of a third party and, if so, will endeavour to give that third party an opportunity to make representations on the publication.

Mode of Publication

5-19-19 Publication may take any one or more forms including, for example, a media release, the DFSA website, and any other suitable forums as determined by the DFSA.

5-20 MAINTENANCE OF REGISTERS

5-20-1 The DFSA is also required to publish and maintain a register⁵² in respect of:

- (a) withdrawals and suspensions of Licences and authorisations of Authorised Firms, Authorised Market Institutions and Authorised Individuals;
- (a) withdrawals of registration of Ancillary Service Providers; and
- (b) withdrawals and suspensions of Auditors.

⁵² Article 62 of the Regulatory Law 2004

5-21 CONCLUSION OF AN INVESTIGATION

5-21-1 The DFSA will conclude an investigation when:

- (a) it determines to take no further action in response to the suspected contraventions of the Law and Rules subject of the investigation; and
- (b) all remedies and obligations resulting from an investigation are concluded and fulfilled.

5-21-2 The DFSA may determine to take no further action in respect of the suspected contraventions that are the subject of an investigation due to insufficiency of evidence or in circumstances where pursuing an enforcement action in respect of the suspected contraventions would not accord with the DFSA's objectives.

Costs of investigation

5-21-3 Where a Person is found by the FMT or Court to have contravened a provision of the Law or Rules, the FMT or Court may order⁵³ that Person to reimburse the DFSA in respect of the whole or a specified part of the costs and expenses of the investigation, including the remuneration of an officer involved in the investigation.

⁵³ Article 79 (2) of the Regulatory Law 2004

6 DECISION MAKING

6-1 INTRODUCTION

6-1-1 This chapter sets out the DFSA's general approach to making decisions in the exercise of its discretionary powers, including those set out in chapters 4 and 5 of this Sourcebook.

6-1-2 A reference to:

- (a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and
- (b) the Law in this chapter is a reference to any legislation administered by the DFSA.

6-1-3 The DFSA is aware that when it makes a decision to take certain action or pursue a remedy, such decisions are likely to affect the rights, interests and legitimate expectations of Persons. Therefore, the DFSA has put in place a fair and transparent decision making process.

6-2 WHO CAN EXERCISE A DFSA POWER?

6-2-1 The DFSA's powers can be exercised by the Chief Executive and any DFSA officer with an appropriate delegation.

6-2-2 Some DFSA powers can be exercised only by the Chief Executive, or an individual acting in the capacity of the Chief Executive. An example of such a decision is the power to commence an investigation under Article 78 of the Regulatory Law 2004.

6-2-3 The decisions which are made by the DFSA generally fall into two main categories:

- (a) the first category is those decisions made by the DFSA in response to an application or notification made by a Person to the DFSA to obtain a right, status or other privilege which the Person would not have, unless the DFSA grants such a right, status or other privilege. These decisions mainly involve "entry control" or "gate-keeper" type decisions. An example of such a decision is when the DFSA considers an application for a Licence or extension to an existing Licence. Such decisions are referred to as "**Executive Decisions**" in this chapter; and
- (b) the second category is those decisions which result from action initiated by the DFSA and which can have a significant adverse impact on the existing rights, interests and legitimate expectations of Persons. An example of such a decision is when the DFSA seeks to withdraw an Authorised Person's Licence. Such decisions are referred to as "**Decision Maker Decisions**" in this chapter.

6-3 WHAT ARE THE DFSA'S DECISION MAKING PROCEDURES?

6-3-1 Subject to the considerations of procedural fairness, the decision making procedures of the DFSA will generally take into account matters including:

- (a) the requirements set out in the relevant Law and Rules;
- (b) the nature of the decision, including its complexity, importance and urgency; and
- (c) the extent and manner in which the rights, interests and legitimate expectations of Persons may be affected by the decision.

6-3-2 In regard to 6.3.1(b), the DFSA has appropriate procedures for making Executive Decisions (see section 6-4) and Decision Maker Decisions (see section 6-5).

6-3-3 Generally, decisions of the DFSA which affect the rights of a Person are appealable to the DFSA's Regulatory Appeals Committee. The Regulatory Appeals Committee is a committee of the DFSA Board which will conduct a full merits review of certain decisions made by the DFSA. In doing so, it looks at the facts afresh, and can make a new decision ensuring procedural fairness, objectivity and transparency in arriving at its decision. A decision of the Regulatory Appeals Committee may be reviewed by the DIFC Court by way of judicial review on a point of law. For more information on the Regulatory Appeals Committee, including its rules and procedures, please see the DFSA's website (www.dfsa.ae).

6-3-4 Based on the above considerations, the DFSA has prepared a list containing the most common types of decisions it may take and the types of procedures followed in making such decisions (see Appendix 1 to this chapter). This list also sets out whether a Person has a right of appeal to the Regulatory Appeals Committee in respect of a particular decision. However, it is not an exhaustive list.

6-4 EXECUTIVE DECISION PROCEDURES

6-4-1 The Executive Decisions of the DFSA are generally operational decisions which involve the DFSA being called upon to make a decision in response to an application or notification made by a Person. Some examples of these decisions include where the DFSA proposes to:

- (a) grant an application for a Licence or an extension to such a Licence of an Authorised Person;
- (b) grant an application for an Authorised Individual's status;
- (c) register an Ancillary Service Provider or Auditor;
- (d) register a Public Fund;
- (e) approve an application for a change in control by an Authorised Person; or

- (f) approve a Prospectus filed with the DFSA.

6-4-2 The decisions of the kind referred to above are generally decisions which would confer on a Person a right or authority to undertake specified activities or enjoy a particular privilege or status only if the DFSA decides to grant the relevant licence, registration, approval, or privilege sought. Although a Person does not have any vested rights relating to the subject matter of the application or notification, that Person has:

- (a) a right to be treated fairly and properly by the DFSA when considering the relevant application or notification; and
- (b) a right to have the DFSA's decision reviewed by the Regulatory Appeals Committee.

Procedural fairness principles

6-4-3 Because a Person has a right to be treated fairly and properly during the course of processing the application or notification made by that Person, a DFSA officer making an Executive Decision is expected to:

- (a) act without bias or conflict of interest;
- (b) give the Person a fair right to present his case; and
- (c) take into account only those considerations which are relevant to the matter to be decided upon.

Acting without bias or conflict of interest

6-4-4 A DFSA officer is expected to act impartially. If an officer has a vested financial or personal interest in the subject matter of the decision, a conflict of interest may arise that prevents a decision being made by that officer.

6-4-5 A DFSA officer who has a financial or other personal interest in the subject matter of the decision, is required to disclose the fact to the DFSA, and where such interest is material, not act in relation to such decision.

Right to present his case

6-4-6 A Person who will be affected by a decision of the DFSA has the right to present his case. This right arises at the point of submission of an application or notification, and continues during the process until a decision is made. Generally, the application or notification form which is required to be submitted by the Person who is asking for such a decision to be made will contain all the information relevant to the DFSA decision sought. The DFSA officer may require further information if the information provided is not complete.

6-4-7 In some cases, the DFSA officer will obtain information relevant to the matter in relation to which the decision is to be made from sources other than the Person

making the application or notification (external sources) in response to which the decision has to be made. As a matter of fair procedure, where information is obtained from an external source, particularly if that information has an adverse bearing (for example, information that does not support the grant of a Licence, authorisation or approval sought from the DFSA), the DFSA officer should, before acting on such information (subject to any confidentiality obligations), give to the Person making the application or notification a right to comment upon the adverse information before making his decision.

Relevant considerations

6-4-8 The DFSA officer is expected to take into account only those considerations which are relevant to the matter to be decided upon. Taking into account only those considerations which are relevant to the matter to be decided upon necessarily requires disregarding any irrelevant information. This also requires the DFSA officer to ensure that he has all the material information that is necessary to be able to make the relevant decision. For this purpose, the DFSA officer may ask for further information.

Right of review

6-4-9 Generally, a Person affected by an Executive Decision has a right of review of that decision (see paragraph 6-3-3 above). To enable the Person affected by the DFSA decision to exercise that right effectively, the DFSA Officer will inform the relevant Person without undue delay of:

- (a) the decision and the reasons for making that decision;
- (b) any information required to be provided by the relevant Law or Rule empowering the action; and
- (c) if applicable, the fact that the Person has the right to appeal the decision to the Regulatory Appeals Committee, the process for making the appeal and the period within which the appeal can be lodged.

6-5 DECISION MAKER PROCEDURES

6-5-1 Decision Maker Decisions result from action initiated by the DFSA which can have a significant adverse impact on the existing rights, interests or legitimate expectations of a Person.

6-5-2 The procedures that must be followed when making such decisions are often prescribed in the Laws and Rules administered by the DFSA. These decisions attract prescribed procedures because they can have a significant adverse impact on the existing rights, interests or legitimate expectations of Persons. Therefore, a Decision Maker is bound by procedural fairness principles such as those set out in paragraphs 6-4-3 to 6-4-8, in addition to the considerations noted below.

6-5-3 Decision Maker Decisions are made by a DFSA officer known as a Decision Maker. The Decision Maker will be a person with no previous direct involvement in

the matter to which the decision relates. Examples of these decisions include where the DFSA, on its own initiative, proposes to:

- (a) impose an administrative fine or censure,
- (b) withdraw a Licence of an Authorised Person;
- (c) withdraw the status of an Authorised Individual;
- (d) withdraw the registration of an Ancillary Service Provider or Auditor; or
- (e) withdraw the registration of a Public Fund.

6-5-4 Decision Maker Decisions are often, but not always, made by the DFSA at the conclusion of an investigation.

Prior Representation Procedures

6-5-5 Decision Maker Decisions generally involve prescribed procedures, which require the Decision Maker to give to the Person who will be affected by his decision (“the Affected Person”) a right of representation prior to making his decision. Prior representation procedures involve the Decision Maker giving to the Affected Person:

- (a) a written notice setting out the basis on which he proposes to exercise the relevant DFSA power; and
- (b) a suitable opportunity to make representations prior to the Decision Maker’s exercising the relevant DFSA power, unless the Law or Rules provide for making a decision without giving a prior right of representation. In the latter case, generally, a right of representation is given immediately after the decision is made (see paragraphs 6-5-12 to 6-5-16).

6-5-6 If the Decision Maker receives no response or representations from the Affected Person within the period specified in the notice, the Decision Maker may regard the allegations or matters in the notice as undisputed and proceed to make his decision.

6-5-7 If, however, the Affected Person makes representations, then the Decision Maker will take into account those representations in making his decision on the basis of the material then available, subject to seeking further clarification of any issues that might arise from such representations.

6-5-8 Should the Affected Person wish to make oral representations in addition to, or in lieu of, written submissions, he should notify the Decision Maker as soon as practicable and within the timeframe provided for making representations. The notification should specify the matters on which the Person wishes to make oral representations, how long the Person expects the representations will take and the names of any representatives appointed to attend the hearing at which the representations will be made.

6-5-9 The Affected Person may appoint one or more representatives of that Person's choice (who may be legally qualified) to attend the meeting at which representations will be made. Such representatives may make, or assist in making, the representations.

6-5-10 As soon as is reasonably practicable after receiving the notification for the meeting to take place, the Decision Maker will specify the time and place at which the meeting will take place. Before making his decision, the Decision Maker may also seek further comments or clarification from DFSA officers on matters that were represented to him by the Affected Person.

6-5-11 Upon making the relevant decision, a written notice setting out the DFSA decision, the reasons for making such decision and any right of appeal to the Regulatory Appeals Committee must be given to the Affected Person.

Post Representations Procedures

6-5-12 In certain circumstances a Decision Maker is not required to follow the procedures relating to prior representations when exercising specific DFSA powers. These circumstances are set out in the relevant Law and Rules. For example, the DFSA is not obliged to provide an Affected Person with a prior opportunity to make representations where any delay likely to arise from giving such a right is prejudicial to the interests of the DIFC. These circumstances can sometimes apply in the decision to:

- (a) withdraw an authorisation in relation to one or more Financial Services for which an Authorised Person is authorised under a Licence (see Article 50);
- (b) withdraw a Licence of an Authorised Person (see Article 51);
- (c) impose conditions and restrictions, impose additional conditions and restrictions, or vary or withdraw existing conditions and restrictions on a Licence of an Authorised Person (see Article 49);
- (d) restrict a Person from performing one or more Licensed Functions or suspend or withdraw Authorised Individual status from such a Person (see Article 58(2));
- (e) impose conditions and restrictions, impose additional conditions and restrictions, or vary or withdraw existing conditions and restrictions on Authorised Individual status (see Article 57);
- (f) restrict Persons from performing functions (see Article 58(1)); and
- (g) remove a Recognised Person from the list of Recognised Persons (see Article 37(7) of the Markets Law and REC Rule 4.4.4).

6-5-13 In deciding whether any delay is prejudicial to the interests of the DIFC, the Decision Maker will take into account factors including, but not limited to:

- (a) the extent of any loss, or risk of loss, or other adverse effect on DIFC regulated entities or customers;
- (b) the extent to which assets appear to be at risk;
- (c) the nature and extent of any false or inaccurate information provided by the Person to the DFSA;
- (d) the seriousness of any suspected breach of the requirements of the Law or Rules and the steps that need to be taken to correct that breach;
- (e) the risk that the Person or the Person's business may be used or has been used to facilitate money laundering or other financial crime;
- (f) the Person's conduct in identifying the conduct and taking action in respect thereto; and
- (g) the impact that use of the DFSA's powers will have on the Person's business or on its customers.

6-5-14 In some cases, the relevant provisions expressly require Affected Persons to be given a right of representation following the making of a decision without being given prior representation rights. The right arises when the decision involves:

- (a) imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions imposed on a Licence of an Authorised Person (see Article 49); or
- (b) imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions on Authorised Individual status (see Article 57),

and the DFSA concluded that any delay would be prejudicial to the interests of the DIFC. The Decision Maker will allow the Person the opportunity to make representations within fourteen days (or such longer period as may be agreed) from the date of the decision.⁵⁴

6-5-15 Where the relevant Law or Rules do not expressly confer on an Affected Person a right to make representation, where the DFSA makes a decision without giving a prior right of representation due to any delay being prejudicial to the interests of the DIFC, the DFSA will generally provide such a person a post decision right of representation.

6-5-16 Where a post decision representation right is given, the Decision Maker will confirm, withdraw or vary his decision taking into account the representations made. The procedures for considering representations are the same as noted in paragraphs 6-5-5 to 6-5-11 for prior representations.

⁵⁴ Articles 49(5) and 57(5) of the Regulatory Law 2004.

Article 75, 75A and 76 powers

6-5-17 Pursuant to Articles 75, 75A and 76 of the Regulatory Law 2004, the DFSA has the power by which:

- (a) prohibitions or requirements can be imposed on an Authorised Person's business such as those relating to certain specified business transactions, soliciting business from specified persons or carrying on business in a specified manner (see Article 75);
- (b) for prudential purposes, directions can be imposed on an Authorised Firm or Authorised Firms within a specified class (see Article 75A); and
- (c) prohibitions or requirements can be imposed on an Authorised Person's dealings in property such as prohibitions against dealing in property other than in a specified manner (see Article 76).

6-5-18 The Article 75 and 76 powers do not require the DFSA to give an Affected Person the opportunity to make representations, prior to the DFSA exercising such powers. This is because such powers are designed to enable the DFSA to act swiftly in the circumstances set out in GEN Rule 11.13.1. These circumstances include where the DFSA considers that any prohibition or requirement is necessary to ensure that customers, Authorised Persons or the financial system are not adversely affected by the activities of the Affected Person.

6-5-19 Before issuing a direction under Article 75A, the DFSA will provide an Affected Person with an opportunity to make written and oral representations. Where the DFSA needs to exercise its powers swiftly under Article 75A, it will not be possible to provide an Affected Person with an opportunity to make representations to the DFSA prior to the issue of the relevant direction. However, an opportunity to make representations immediately after the issue of such direction will be afforded to the Affected Person.

6-5-20 Given that the DFSA may be required to act swiftly when it exercises its Article 75, 75A and 76 powers, the Decision Maker may be a DFSA officer who might have had supervisory or other regulatory responsibilities, including enforcement responsibilities, in relation to the Affected Person.

APPENDIX 1 DFSA'S REGULATORY POWERS

A reference to executive* refers to the Chief Executive or a DFSA Officer that has been delegated the authority to act as Chief Executive.

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 33	when the DFSA is proposing to commence proceedings before the Financial Markets Tribunal	executive*	No
Article 46	when the DFSA is proposing to require an applicant to provide additional information reasonably required to decide an application for a Licence	executive	No
Article 47	when the DFSA is proposing to refuse to grant an application for a Licence, or, an extension to a Licence	executive	Yes
Article 48	when the DFSA is proposing to grant an application for a Licence, or, an extension to a Licence, with or without conditions and restrictions	executive	No
Article 49(1)	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions on a Licence, or, vary or withdraw conditions and restrictions on such Licence	executive	Yes
Article 49(1)	when the DFSA, on its own initiative, is proposing to impose conditions and restrictions or additional conditions and restrictions on a Licence, or, vary or withdraw conditions and restrictions on such Licence	decision maker	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 50(1)	when the DFSA, at the request of an Authorised Person, is proposing to withdraw an authorisation in relation to one or more Financial Services under a Licence	executive	Yes
Article 50(1)	when the DFSA, on its own initiative, is proposing to withdraw an authorisation in relation to one or more Financial Services under a Licence	decision maker	Yes
Article 51	when the DFSA, at the request of an Authorised Person, is proposing to withdraw a Licence	executive	Yes
Article 51	when the DFSA, on its own initiative, is proposing to withdraw a Licence	decision maker	Yes
Article 54	when the DFSA is proposing to require an applicant to provide additional information reasonably required to decide an application for an Authorised Individual status	executive	No
Article 55	when the DFSA is proposing to refuse to grant an application for an Authorised Individual status, or, an extension to such status	executive	Yes
Article 56	when the DFSA is proposing to grant an application for an Authorised Individual status, or, an extension to such status, with or without conditions and restrictions	executive	No
Article 57	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions on the grant of an	executive	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
	Authorised Individual's status, or, vary or withdraw conditions and restrictions on such status		
Article 57	when the DFSA, is proposing on its own initiative, to impose conditions and restrictions or additional conditions and restrictions on the grant of an Authorised Individual's status, or, vary or withdraw conditions and restrictions to such status	decision maker	Yes
Article 58(1)	when the DFSA, on its own initiative, is proposing to restrict an individual from performing one or more functions in connection with the provision of Financial Services or Ancillary Services	decision maker	Yes
Article 58(2)	when the DFSA, at the request of a relevant person or Authorised Person, is proposing to either restrict, suspend or withdraw the status of an Authorised Individual	executive	Yes
Article 58(2)	when the DFSA, on its own initiative, is proposing to either restrict, suspend or withdraw the status of an Authorised Individual	decision maker	Yes
Article 60(3)	when the DFSA is proposing to grant an application for registration as an Ancillary Service Provider	executive	No
Article 60(3)	when the DFSA is proposing to refuse to grant an application for registration as an Ancillary Service Provider	executive	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 73	when the DFSA is proposing to either obtain information or documents, or to enter the premises of any Authorised Firm, Authorised Market Institution, Ancillary Services Provider or Fund for the purpose of inspecting and copying information within the premises	executive	No
Article 74	when the DFSA is proposing to require an Authorised Firm or Authorised Market Institution to provide a report on any matter or information about which the DFSA could have or has required under Article 73	executive	Yes
Article 75	when the DFSA is proposing to impose a prohibition or requirement on the business of an Authorised Firm, Authorised Market Institution, Fund Manager or Fund	decision maker	Yes
Article 75A	when the DFSA for prudential purposes is proposing to require an Authorised Firm or Authorised Firms within a specified class to comply with a direction	decision maker	Yes
Article 76	when the DFSA is proposing to impose on an Authorised Firm or Authorised Market Institution a prohibition, from or requirement to dealing with relevant property	decision maker	Yes
Article 77(2)	when the DFSA is proposing to substitute or vary a prohibition or requirement made under Articles 75 and 76	decision maker	No
Article 77(2)	when the DFSA is proposing to withdraw a prohibition or requirement made under Article 75 and 76	decision maker	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 78	when the DFSA is proposing to conduct an investigation under Chapter 2 of Part 5	executive*	No
Article 79(2)	when the DFSA is proposing to apply to the Court to recover part or all of the costs of an investigation	executive	No
Article 80	when the DFSA is proposing to exercise powers of compulsion to obtain information, documents and testimony from any person that may be relevant to an investigation	executive	No
Article 84	when the DFSA is proposing to apply to the Court for an injunction or warrant to search premises in order to enforce compliance with a requirement made pursuant to the exercise of any power under Articles 73, 74 or 80	executive	No
Article 87(5)	when the DFSA is proposing to apply to the Court to recover outstanding fines	executive	No
Article 88(1)	when the DFSA is proposing to require an Authorised Firm or Authorised Market Institution to appoint one or more individuals to act as managers of the business of such person	decision maker	Yes
Articles 89(1) & (2)	when the DFSA is proposing to accept a written enforceable undertaking given by a person, or, withdraw or vary such undertaking	executive	No
Article 89 (3)	when the DFSA is proposing to apply to the Court to enforce compliance with a	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
	written enforceable undertaking accepted by the DFSA under Articles 89 (1) and (2)		
Article 90	when the DFSA is proposing to issue an administrative fine	decision maker	Yes
Article 91	when the DFSA is proposing to issue an administrative censure	decision maker	Yes
Article 92 (2)	when the DFSA is proposing to apply to the Court for an injunction or other judicial relief, where a person has engaged, is engaging or is proposing to engage in conduct which contravenes a relevant requirement under Article 92(1)	executive	No
Article 92 (3)	when the DFSA is proposing to apply to the Court, where the DFSA is conducting, or has conducted, an investigation or has instituted civil or regulatory proceedings, for orders under Articles 92(3) (c) (d) (e) (f) (g) (h) or (i)	executive	No
Article 93	when the DFSA is proposing to apply to the Court to wind up an Authorised Firm, Authorised Market Institution, or, to wind up a company that is in breach of the Financial Services Prohibition	executive	No
Article 94(2)	when the DFSA is proposing to apply to the Court for an order for damages, compensation, or recovery of property or any other order the Court sees fit, where there has been a breach of a requirement as described in Article 94(1)	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 95	when the DFSA is proposing to apply to the Court to intervene in any Court proceedings where the DFSA considers it necessary to meet its objectives	executive	No
Article 98(1)	when the DFSA is proposing to grant an application for the registration of an Auditor	executive	No
Article 98(1)	when the DFSA is proposing to refuse an application for the registration of an Auditor	executive	Yes
Article 99(7)	when the DFSA is proposing to order the remove of an Auditor	executive	No
Article 111	when the DFSA is proposing to nominate or approve a person to make a scheme report relating to a sanctioned transfer scheme under Article 108	executive	No

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 7.3.1(1)	when the DFSA is proposing to grant an application for an endorsement on a Licence permitting an Authorised Firm to conduct business with Retail Clients	executive	No

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 7.3.1(2)	when the DFSA is proposing to refuse to grant an endorsement on a Licence permitting an Authorised Firm to conduct business with Retail Clients, or, vary such endorsement	executive	Yes
Rule 8.4.6	when the DFSA is proposing to direct an Authorised Person to appoint an auditor, where an auditor has not been appointed by such Authorised Person	executive	No
Rule 8.4.7	when the DFSA is proposing to direct an auditor to remove itself as auditor of an Authorised Person, where the DFSA is of the opinion that the existing auditor is unsuitable	decision maker	Yes
Rules 8.12 and 8.13	when the DFSA, on its own initiative, is proposing under Article 98(3) of the Regulatory Law to withdraw the registration of an Auditor	decision maker	Yes
Section 8.14	when the DFSA, on its own initiative, is proposing under Article 105 of the Regulatory Law to suspend the registration of an Auditor	decision maker	Yes
Rule 11.8.5(2)	when the DFSA is proposing under Article 64(2) of the Regulatory Law to approve an application for a change in control without conditions in relation to a Domestic Firm	executive	No

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 11.8.5(2)	when the DFSA is proposing under Article 64(2) of the Regulatory Law to approve an application for a change in control with conditions, or, object to an application for a change in control, in relation to a Domestic Firm	decision maker	Yes
Rule 11.8.13(1)	when the DFSA is proposing under Article 64(3) and (4) of the Regulatory Law to object to a Person as a Controller.	decision maker	Yes
Rule 11.9.4(a)	when the DFSA is proposing to grant an application for the creation of a new Cell by an Insurer that is a Protected Cell Company	executive	No
Rule 11.9.4(b)	when the DFSA is proposing to impose conditions and restrictions in relation to granting an application for the creation of a new Cell by an Insurer that is a Protected Cell Company	executive	Yes
Rule 11.9.4 (c)	when the DFSA is proposing to refuse to approve the application for the creation of a new Cell by an Insurer that is a Protected Cell Company	executive	Yes
Rule 11.10.5	when the DFSA is proposing to object to the establishment of a branch by a Domestic Firm	executive	Yes

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 11.10.9	when the DFSA is proposing to object to a proposed Major Acquisition by an Authorised Firm or impose conditions in relation to any proposed Major Acquisition by a Domestic Firm	executive	Yes
Rule 11.10.10(1)(b)	when the DFSA is proposing to object to a proposed Major Acquisition by an Authorised Firm or impose conditions in relation to any proposed Major Acquisition by a An Authorised Firm which is not a Domestic Firm	executive	Yes
Rule 11.10.11(2)	when the DFSA is proposing to withdraw its no objection position, or, modify or vary any condition or any remedial action	executive	Yes

Ancillary Service Providers (ASP) Module

ASP Module	Description	Type of Decision	Right of appeal to RAC
Rule 4.5.1(a)	when the DFSA, at the request of an Ancillary Service Provider, is proposing to withdraw its registration	executive	Yes
Rule 4.5.1(a)	when the DFSA, on its own initiative, is proposing to withdraw the registration of an	decision maker	Yes

Ancillary Service Providers (ASP) Module

ASP Module	Description	Type of Decision	Right of appeal to RAC
	Ancillary Service Provider		
Rule 4.5.1(b)	when the DFSA, at the request of an Ancillary Service Provider, is proposing to change the scope of authority under its registration	executive	Yes
Rule 4.5.1(b)	when the DFSA, on its own initiative, is proposing to change the scope of authority under the registration of an Ancillary Service Provider	decision maker	Yes

Collective Investments Law 2010

Article	Description	Type of Decision	Right of appeal to RAC
Article 25(2)	when the DFSA is proposing to apply to the Court to make an application to remove a Fund Manager	executive	No
Articles 28 and 31	when the DFSA is proposing to register a Domestic Fund which is a Public Fund	executive	No

Collective Investments Law 2010

Article	Description	Type of Decision	Right of appeal to RAC
Article 29	when the DFSA is proposing to request the Fund Manager or Trustee to provide additional information in relation to an application for registration of a Public Fund	executive	No
Article 30	when the DFSA is proposing to reject an application for registration of a Public Fund	executive	Yes
Article 32(1)	when the DFSA, at the request of a Fund Manager or Trustee, is proposing to withdraw the registration of a Public Fund	executive	Yes
Article 32(1)	when the DFSA, on its own initiative, is proposing to withdraw the registration of a Public Fund	decision maker	Yes
Articles 35(6) and 36(1)	when the DFSA is proposing to refuse to grant approval of a proposed alteration of a Domestic Fund's Constitution or Prospectus, or, replacement of the Fund Manager, Trustee, member of the Governing Body or the auditor of a Fund as described in Article 35(1)	executive	Yes
Article 39(4)	when the DFSA is proposing to object to a particular oversight arrangement for a Public Fund	executive	Yes
Article 43(8)	when the DFSA is proposing to apply to the Court for the removal of an Auditor of a Domestic Fund	executive	No

Collective Investments Law 2010

Article	Description	Type of Decision	Right of appeal to RAC
Article 69	when the DFSA is proposing to issue a stop order directing that no Offers, issues, redemptions, sales or transfers of the Units of the Fund be made for an appropriate period	executive	Yes

Islamic Financial Business Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Articles 11(2) and 12(1)	when the DFSA is proposing to grant an application for an endorsement on a Licence permitting an Authorised Person to conduct Islamic Financial Business, or to vary such an endorsement	executive	No
Article 11(5)	when the DFSA is proposing to refuse an application for an endorsement on a Licence permitting an Authorised Person to conduct Islamic Financial Business, or a variation to an endorsement	executive	Yes
Article 12(2)	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions in relation to an endorsement on a Licence, or, vary or withdraw conditions and restrictions to such endorsement	executive	Yes

Islamic Financial Business Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 12(2)	when the DFSA, on its own initiative, is proposing to impose conditions and restrictions or additional conditions and restrictions in relation to an endorsement on a Licence, or, vary or withdraw conditions and restrictions to such endorsement	decision maker	Yes

Investment Trust Law 2006

Article	Description	Type of Decision	Right of appeal to RAC
Article 26(5)	when the DFSA is proposing to apply to the Court for an order for the removal of the Trustee and any other appropriate orders	executive	No

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 25	when the DFSA is proposing to issue a stop order directing that no Offers, issue, sale or transfer of a Security to be made for an appropriate period	executive	Yes

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 26(1) and (2)	when the DFSA is proposing to direct an Authorised Market Institution to do, or, not to do specific things	executive	Yes
Article 29(3)	when the DFSA is proposing to transfer an Official List of Securities for an Authorised Market Institution	executive	No
Article 30(2)	when the DFSA is proposing to grant an application for an endorsement on a Licence of an Authorised Market Institution to maintain an Official List of Securities	executive	No
Article 30(2)	when the DFSA is proposing to refuse to grant an application for an endorsement on a Licence of an Authorised Market Institution to maintain an Official List of Securities	executive	Yes
Article 31	when the DFSA, at the request of an Authorised Market Institution, is proposing by written notice to suspend or withdraw the endorsement on the Licence of an Authorised Market Institution to maintain an Official List of Securities	executive	No
Article 31	when the DFSA, on its own initiative, is proposing by written notice to suspend or withdraw an endorsement on the Licence of an Authorised Market Institution to maintain an Official List of Securities	decision maker	Yes
Article 32(2)	when the DFSA is proposing to direct an Authorised Market Institution to make or amend its listing rules	executive	No

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 33(1)	when the DFSA is proposing to grant admission of Securities to an Official List of Securities maintained by it	executive	No
Article 34(1)	when the DFSA is proposing to object to the admission of Securities, or impose conditions or restrictions to the admission of Securities to an Official List of Securities maintained by an Authorised Market Institution, or, vary or withdraw such conditions and restrictions	executive	Yes
Article 34(2)	when the DFSA is proposing to refuse an application for the admission of Securities, or, impose conditions or restrictions to the admission of Securities to an Official List of Securities maintained by the DFSA, or, vary or withdraw such conditions and restrictions	executive	Yes
Article 35(1)	when the DFSA is proposing to suspend or delist Securities from its Official List of Securities with immediate effect, or, from such date and time as may be specified	executive	Yes
Article 35(2)	when the DFSA is proposing to direct an Authorised Market Institution to suspend or delist Securities from an Official List of Securities with immediate effect, or, from such date and time as may be specified	executive	Yes
Article 37(5)	when the DFSA is proposing to admit a person to its list of Recognised Persons	executive	No
Article 37(5)	when the DFSA is proposing not to admit a person to its list of Recognised Persons	executive	Yes

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 37(7)	when the DFSA is proposing to remove a person from its list of Recognised Persons	executive	Yes
Articles 38(1)(d) & (4)	when the DFSA is proposing to declare a Person to be, or not to be, a Reporting Entity, or impose conditions or restrictions as it considers appropriate in respect of such declaration	executive	Yes
Article 49(1)	when the DFSA is proposing to require a Reporting Entity to appoint a sponsor, compliance adviser or other expert adviser on such terms and conditions as it considers appropriate	executive	Yes
Article 50(1)(a)	when the DFSA is proposing to direct a Reporting Entity to disclose specified information to the market, or, take such other steps as the DFSA considers appropriate	executive	Yes
Article 50(1)(b)	when the DFSA is proposing to impose any additional continuing obligations on a Reporting Entity	executive	Yes

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
Rule 2.6.2(1)	when the DFSA is proposing to approve a Prospectus filed with the DFSA	executive	No
Rule 2.6.2(2)	when the DFSA is proposing not to approve a Prospectus or Supplementary Prospectus filed with the DFSA	executive	Yes
Rule 2.7.1	when the DFSA is proposing to approve an offer document from other jurisdictions	executive	No
Rule 2.13.1	when the DFSA is proposing to require a Prospectus Offer to be underwritten by an underwriter acceptable to the DFSA	executive	No
Rule 2.13.3(1)	when the DFSA is proposing to impose a requirement that monies held by a Person making a Prospectus Offer are held in an escrow account for a specified period and on specified terms	executive	No
Rule 2.13.3(2)	when the DFSA is proposing to require the appointment of a paying agent during the Offer Period	executive	No
Rule 4.2.4(3)	when the DFSA is proposing to specify the period during which disclosure of the information included in a confidential report need not be disclosed to the markets and may extend such period upon application by the Reporting Entity	executive	No

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
Rule 4.5.1(1)	when the DFSA is proposing to issue a notice pursuant to Article 50(1) of the Markets Law to direct a Reporting Entity to disclose specified information to the market and to take any other steps as the DFSA considers appropriate	executive	Yes
Rule 4.7.2	when the DFSA is proposing to approve a Regulatory Announcement Services for the purposes of making the disclosure in Rule 4.7.1(c)	executive	No
Rule 5.2.6	when the DFSA is proposing to direct a Public Listed Company to appoint an auditor, where an auditor has not been appointed by such Public Listed Company	executive	No
Rule 5.2.7	when the DFSA is proposing to direct an auditor to remove itself as auditor of a Public Listed Company, where the DFSA is of the opinion that the existing auditor is unsuitable	decision maker	Yes
Rule 5.2.15	when the DFSA is proposing to impose any terms or conditions on the registration of an Auditor of a Public Listed Company	executive	Yes
Rule 5.2.27	when the DFSA, at the request of an Auditor of a Public Listed Company, is proposing under Article 98(3) of the Regulatory Law to withdraw the registration of such Auditor	executive	Yes
Rule 5.2.27(1) and 5.2.31	when the DFSA, on its own initiative, is proposing under Article 98(3) of the Regulatory Law 2004 to withdraw the registration of an Auditor of a Public Listed	decision maker	Yes

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
	Company		
Rule 5.2.35	when the DFSA, at the request of an Auditor of a Public Listed Company, is proposing under Article 105 of the Regulatory Law 2004 to suspend the registration of such Auditor	executive	Yes
Rule 5.2.35	when the DFSA, on its own initiative, is proposing under Article 105 of the Regulatory Law to suspend the registration of an Auditor of a Public Listed Company	decision maker	Yes
Rule 6.3.2(1)	when the DFSA is proposing to approve a Fund Prospectus	executive	No
Rule 6.3.2(2) and (3)	when the DFSA is proposing not to approve a Fund Prospectus	executive	Yes
Rule 6.5.4(3)	when the DFSA is proposing to specify the period during which disclosure of the information included in a confidential report need not be disclosed to the markets	executive	No
Rule 6.11.1(1)	when the DFSA is proposing to issue a notice pursuant to Article 50(1) of the Markets Law to direct a Reporting Entity of a Listed Fund to disclose specified information to the market or take any other steps as the DFSA considers appropriate	executive	No

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
Rule 7.1.2(1)	when the DFSA is proposing to issue a notice pursuant to Article 49(1) of the Markets Law, requiring a Person who makes or intends to make a Prospectus Offer, to appoint a sponsor and provide third party certification in respect of any specific matters relating to the Prospectus Offer	executive	No
Rule 7.2.2	when the DFSA is proposing pursuant to Article 49(1) of the Markets Law, to require a Reporting Entity to appoint a compliance adviser or replace a compliance advisor already appointed	executive	Yes

Authorised Market Institutions (AMI) Module

AMI Module	Description	Type of Decision	Right of appeal to RAC
Rule 7.2.20	when the DFSA is proposing to approve amendments to the Business Rules of an Authorised Market Institution	executive	No
Rule 8.2.1(1)	when the DFSA is proposing to approve the Listing Rules of an Authorised Market Institution wishing to admit Securities to its own Official List of Securities	executive	No

Authorised Market Institutions (AMI) Module

AMI Module	Description	Type of Decision	Right of appeal to RAC
Rule 8.2.1(2)	when the DFSA is proposing to approve amendments to the Listing Rules of an Authorised Market Institution	executive	No

Recognition (REC) Module

REC Module	Description	Type of Decision	Right of appeal to RAC
Rule 2.3.1	when the DFSA is proposing to refuse to recognise an applicant as a Recognised Person	executive	Yes

Price Stabilisation (PRS) Module

PRS Module	Description	Type of Decision	Right of appeal to RAC
Rule 3.2.3	when the DFSA is proposing to direct an Issuer to replace or appoint a Stabilisation Manager, where the DFSA considers a Stabilisation Manager appointed by an Issuer is not suitable or where one has not been appointed	executive	No
Rule 4.3.2(e)	when the DFSA is proposing to request a Stabilisation Manager within 2 business days following the end of the Stabilisation Window to disclose any additional information to the market.	executive	No
Rule 5.2.4(3)	when the DFSA is proposing to permit a Person to inspect the register maintained by a Stabilisation Manager under section 5.2 of PRS	executive	No
Rule 6.2.1(2)	where the DFSA is proposing to give its consent to a Person who conducts Price Stabilisation in the DIFC of dual-listed Eligible Securities	executive	No
Rule 6.2.1(3)	when the DFSA is proposing to attach a condition to the giving of its consent to a decision made under Rule 6.2.1(2)	executive	No