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**REGULATORY LAW AMENDMENT**

**DIFC LAW No. 1 of 2021**

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## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the “Regulatory Law Amendment Law of 2021”.

### **2. Legislative Authority**

This Law is made by the Ruler of Dubai.

### **3. Date of enactment**

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

### **4. Commencement**

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

## **PART 2: AMENDMENTS TO THE REGULATORY LAW 2004**

5. The Regulatory Law 2004 is amended as prescribed in this Law.

6. In Article 8 (The Powers, Functions and Objectives of the DFSA) after paragraph (3A) insert the following new paragraphs (3B) and (3C):

“(3B) In pursuing the objective referred to in (3)(c):

(a) in the context of Recovery, the DFSA shall:

- (i) aim to ensure the continuity of systemically important financial services; and
- (ii) aim to avoid unnecessary destruction of value and losses to creditors;

(b) in the context of Resolution, the DFSA shall:

- (i) aim to ensure the continuity of systemically important financial services;
- (ii) aim to avoid unnecessary destruction of value and losses to creditors;
- (iii) aim to minimise the overall costs of Resolution, in home and host jurisdictions; and
- (iv) consider the potential impact of its resolution actions on financial stability in other jurisdictions.

(3C) In pursuing the objective referred to in (3)(e) in the context of Resolution, the DFSA shall aim to:

- (a) protect depositors; and
- (b) protect client assets by providing prompt access to assets through either:
  - (i) the continued functioning of the Authorised Firm following Resolution;
  - (ii) the rapid return to the clients of identifiable and segregated client assets; or
  - (iii) the transfer of the client assets to a performing third party.”

7. Article 38 (Confidential Information) is deleted and replaced with the following:

**“38. Confidential Information**

- (1) Subject to Article 38(3) and (4), confidential information must not be disclosed by the DFSA or by any of its officers, employees or agents, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.
- (2) Information is confidential when:
  - (a) it is received by the DFSA or any of its officers, employees or agents in the course of the performance by such person of a function under the Law or under any other legislation administered by the DFSA; and
  - (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under such Law or other legislation.
- (2A) Information is not confidential information if it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.
- (3) The DFSA may disclose confidential information where such disclosure:
  - (a) is permitted or required under the Law or Rules or under other legislation administered by the DFSA;
  - (b) is permitted or required by any other law;
  - (c) is made to:
    - (i) the Companies Registrar;

- (ii) a Financial Services Regulator;
- (iii) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
- (iv) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services;
- (v) a civil or criminal law enforcement agency;
- (vi) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers; or
- (vii) a Resolution Authority in another jurisdiction,

for the purpose of assisting the performance by any such person of its regulatory functions; or

- (d) is made in good faith for the purposes of performance and exercise of the functions and powers of the DFSA.
- (4) The DFSA may disclose confidential information to the DIFC Authority where the DFSA is satisfied that:
- (a) it is necessary and appropriate to disclose that information to the DIFC Authority to assist it to prepare policies or strategies for the development of the DIFC; and
  - (b) the information is to be used by the DIFC Authority only for internal purposes and the DIFC Authority has in place proper controls to ensure that the information is not disclosed to any other person.
- (5) The DFSA may specify in writing conditions or restrictions relating to the use of confidential information when it discloses information to a person under Article 38(3) or (4).
- (6) A person must not, without reasonable excuse, fail to comply with a condition or restriction imposed under Article 38(5).”

8. Article 39 (Exercise of Powers on Behalf of Other Regulators) is deleted and replaced with the following:

**“39. Exercise of Powers on Behalf of Other Regulators**

At the request of:

- (a) the Companies Registrar;
- (b) a Financial Services Regulator;

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

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

9. In Article 62 ((Public Registrars) paragraph (3) is deleted and replaced with the following:

“The DFSA shall publish and maintain registers of:

- (a) all persons in relation to whom action has been taken under Article 58(1);
- (b) all persons in relation to whom action has been taken under Article 59; and
- (c) all persons who have been prohibited under Article 90(2)(g) from holding office or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund,

indicating whether any such action is of past effect or current, in such manner as may be prescribed in the Rules.”

10. In Article 70 (Jurisdictions) paragraph (1) is deleted and replaced with the following:

“This chapter is made in recognition of the application in the DIFC of Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations, Federal Law No. 7 of 2014 on Combating Terrorism Offences and any other Federal legislation relating to money laundering, terrorist financing, the financing of unlawful organisations or sanctions non-compliance. ”.

11. After Article 77 (Imposition of a prohibition or requirement), insert the following new Article 77A:

**“77A. Appointment of Manager**

- (1) The DFSA may by written notice require an Authorised Firm to appoint an individual to act (or one or more individuals to act jointly) as manager of the business of the Authorised Firm and shall specify in the notice the terms of the appointment and whether the manager is to be appointed:

- (a) to replace the management of the Authorised Firm; or
  - (b) to work with the management of the Authorised Firm.
- (2) An individual appointed to act as a manager under (1) must:
  - (a) have sufficient qualifications and experience, and be a fit and proper person, to act as a manager; and
  - (b) be nominated or approved by the DFSA.
- (3) The DFSA may require a manager to be appointed under (1):
  - (a) where it considers it necessary or desirable:
    - (i) to determine or address concerns about the solvency of the Authorised Firm or whether it is complying with prudential requirements;
    - (ii) for the orderly transition of the Authorised Firm from one set of owners or controllers to a new set of owners or controllers; or
    - (iii) to wind down the operations of the Authorised Firm to protect customers of the Authorised Firm; or
  - (b) where it has reasonable grounds to suspect that the Authorised Firm has committed serious contraventions of the law and the appointment is necessary or desirable;
    - (i) to ensure that customers or regulated entities are not adversely affected; or
    - (ii) to maintain the integrity of the DIFC.
- (4) The appointment of a manager shall be by way of a contract between the Authorised Firm and the manager and the contract shall include the requirement that the Authorised Firm pay the remuneration and costs of the manager.
- (5) The notice may specify any matters that the DFSA considers necessary to give effect to the appointment including that the directors are to be removed, are not to perform specified functions or are to obtain the consent of the manager before making decisions.
- (6) The DFSA may, by written notice given to the Authorised Firm, vary the terms of the appointment of the manager under (1).
- (7) A manager appointed under this Article:
  - (a) shall not be treated as a director (formally or de facto) of the Authorised Firm; and

- (b) is not liable for damages in respect of anything done or omitted to be done in good faith for the purposes of, or in connection with, the performance of functions under the appointment.
  - (8) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
  - (9) If the DFSA decides to exercise its power under this Article, the Authorised Firm may refer the matter to the FMT for review.”
12. After Article 84 (Enforcement of Compliance by Injunction or Search Warrant), insert the following new Part 5A as follows:

**“PART 5A: RECOVERY AND RESOLUTION**

**CHAPTER 1 – GENERAL**

**84A. Application**

- (1) This Part applies in relation to:
  - (a) an Authorised Firm of a class prescribed by the DFSA; and
  - (b) where specified, an entity in a Group to which an Authorised Firm referred to in (a) belongs.
- (2) An Authorised Firm does not cease to be an Authorised Firm or an Authorised Firm of a particular class for the purposes of this Part merely because it ceases to:
  - (a) hold a licence to carry on a Financial Service; or
  - (b) carry on a Financial Service,as a result of a resolution action.

**84B. Other powers not limited**

Nothing in this Part limits the scope or application of any other provision in this Law or any other legislation administered by the DFSA.

**84C. Rules for the purposes of this Part**

The DFSA may make Rules for the purposes of this Part, including Rules relating to:

- (a) the class of Authorised Firms to whom this Part applies;

- (b) Recovery or Resolution Plans;
- (c) Resolvability Assessments;
- (d) the holding and maintenance of Loss Absorbing Capacity;
- (e) the Resolution Powers and Resolution Tools;
- (f) the appointment of independent valuers and the valuations required under this Part;
- (g) the recognition of resolution action taken in other jurisdictions;
- (h) the effect of action taken under this Part on provisions in agreements or contracts;
- (i) the notification of events relevant to the DFSA's exercise of its powers under this Part;
- (j) the conditions and procedures relating to the DFSA exercising any powers under this Part; and
- (k) any other matter necessary or incidental to give effect to this Part.

## **CHAPTER 2 – RECOVERY AND RESOLUTION PLANNING**

### **84D. Recovery Plans**

- (1) This Article applies to an Authorised Firm which:
  - (a) is of a class prescribed in the Rules as requiring a Recovery Plan; or
  - (b) is not included in a class prescribed under (a), but has been given written notice by the DFSA that it must prepare a Recovery Plan.
- (2) An Authorised Firm must prepare and submit to the DFSA for review a plan setting out the measures to be taken to restore the financial position of the Authorised Firm (or one or more entities in its Group) in the event of a serious deterioration of the Authorised Firm's financial position (the "Recovery Plan").
- (3) The Recovery Plan must be in writing and set out such information as may be prescribed in the Rules.

- (4) The DFSA may, by written notice given to the Authorised Firm, require it to prepare and provide to the DFSA such information as the DFSA considers reasonably necessary for it to assess the adequacy of the Authorised Firm's Recovery Plan.
- (5) If the DFSA is not satisfied with an Authorised Firm's Recovery Plan it may, by written notice, require the Authorised Firm to take measures to rectify any deficiencies in the Recovery Plan and provide the rectified Recovery Plan to the DFSA.
- (6) An Authorised Firm must review and update its Recovery Plan and submit the updated Recovery Plan to the DFSA:
  - (a) annually;
  - (b) where there has been a material change reasonably likely to affect the implementation of the original Recovery Plan; or
  - (c) if otherwise directed in writing by the DFSA to do so.

#### **84E. Resolution Plans**

- (1) The DFSA may prepare a plan for securing an orderly Resolution (the "Resolution Plan") of an Authorised Firm.
- (2) The Resolution Plan shall set out the strategies for the Resolution including consideration of failure scenarios, the options for the exercise of the Resolution Powers, the application of the Resolution Tools and contain such information as may be prescribed in the Rules.
- (3) If the DFSA decides to prepare a Resolution Plan with respect to an Authorised Firm, it shall inform the Authorised Firm in writing of that decision.
- (4) An Authorised Firm that is informed under (3) of the DFSA's decision to prepare a Resolution Plan must, to the extent reasonably necessary for the DFSA to prepare, assess or update the Resolution Plan, do the following:
  - (a) maintain in the DIFC up to date information and systems; and
  - (b) if required in writing by the DFSA, provide to the DFSA any information and assistance within a specified period.

**84F.      **Resolvability Assessment****

- (1)       The DFSA may conduct an assessment to determine if there are any impediments that may prevent or affect the Resolvability of an Authorised Firm (the “Resolvability Assessment”).
- (2)       An Authorised Firm must provide the DFSA with such information and assistance that the DFSA considers reasonably necessary for the Resolvability Assessment.

**84G.      **Requirement to Remove Impediments to Resolvability****

- (1)       The DFSA may by written notice require an Authorised Firm or an entity in its Group to take such measures as the DFSA considers reasonably necessary to remove impediments to, or improve, the Resolvability of an Authorised Firm.
- (2)       The measures required under (1) may include but are not limited to changes relating to:
  - (a) legal, ownership or governance structure;
  - (b) operations, including intra-Group dependencies and relationships with third parties;
  - (c) business activities or practices;
  - (d) financial matters, including assets, liabilities, rights and obligations, or funding strategy, including measures to improve the resilience of core business lines and critical functions;
  - (e) risk profile, including liquidity risk; or
  - (f) terms to be included in contracts.
- (3)       The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (4)       If the DFSA decides to exercise its power under this Article, the Authorised Firm may refer the matter to the FMT for review.

#### **84H. Loss Absorbing Capacity Requirement**

- (1) The DFSA may by written notice require an Authorised Firm to hold and maintain a minimum amount of financial instruments or resources which will be available during Resolution to absorb losses and enable the Authorised Firm to be recapitalised so that it can continue to perform critical functions while Resolution is ongoing (“Loss Absorbing Capacity”).
- (2) The DFSA shall specify in the notice the nature of the financial instruments or resources to be held and maintained by the Authorised Firm under (1).
- (3) The DFSA may vary or revoke a requirement under this Article.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article, the Authorised Firm may refer the matter to the FMT for review.

### **CHAPTER 3 – EARLY INTERVENTION ACTIONS**

#### **84I. Conditions for exercise of Early Intervention Powers**

The DFSA may exercise one or more of its powers specified in Article 84J (the “Early Intervention Powers”) in relation to an Authorised Firm where it considers that:

- (a) an Authorised Firm’s liquidity or solvency is impaired, or may soon be impaired unless there is a major improvement in its financial resources, assets, leverage exposures, risk profile, business model, risk management systems and controls, or quality of its governance and management;
- (b) one or more indicators in the Authorised Firm’s Recovery Plan for taking action to restore its financial position are met; or
- (c) it is otherwise necessary and desirable to meet the DFSA’s objectives.

#### **84J. Early Intervention Powers**

- (1) The DFSA may by written notice require an Authorised Firm to:
  - (a) prepare and submit to the DFSA a plan which examines the status of its liquidity or solvency

impairment, and explains in detail the corrective actions that will be taken to address and rectify identified weaknesses and within what timeframes (the “Corrective Action Plan”);

- (b) call a general meeting of shareholders, set an agenda and propose specified resolutions;
  - (c) search for, and communicate with, potential purchasers of the Authorised Firm’s business or part thereof;
  - (d) remove directors or senior management who have failed to meet their obligations, including fiduciary duties;
  - (e) limit or, where appropriate, clawback compensation paid to directors and senior management;
  - (f) obtain the DFSA’s written approval before making or incurring any major capital expenditure, material commitment or contingent liability;
  - (g) enhance internal governance, systems, controls and risk management; or
  - (h) implement one or more measures in the Authorised Firm’s Recovery Plan.
- (2) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (3) If the DFSA decides to exercise its power under this Article, the Authorised Firm may refer the matter to the FMT for review.
- (4) Nothing in this Article limits any other action that the DFSA may take in relation to the Authorised Firm or another person, including the exercise of a power under Part 5 of this Law.

## **CHAPTER 4 – RESOLUTION**

### **84K. Conditions for Resolution**

- (1) The DFSA may exercise its Resolution Powers or apply its Resolution Tools in relation to an Authorised Firm only where it is satisfied that the following conditions (the “Resolution Conditions”) are met:
- (a) the Authorised Firm is failing or is likely to fail;

- (b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action will be taken by or in respect of the Authorised Firm that will prevent the failure or likely failure of the Authorised Firm within a reasonable timeframe; and
- (c) the taking of resolution action is in the public interest.

(2) For the purposes of this Article, an Authorised Firm is failing or likely to fail where one or more of the following circumstances exist:

- (a) it no longer meets requirements under the Law or Rules or other legislation administered by the DFSA, such as prescribed capital or liquidity levels;
- (b) its access to market-based funding sources is seriously impaired;
- (c) there is a significant deterioration in the value of its assets;
- (d) there are serious governance issues or deficiencies in its risk management and controls that may have a significant impact on the Authorised Firm's financial condition; or
- (e) it is unable to pay its debts or other liabilities as they fall due,

but an Authorised Firm is not failing or likely to fail merely because one or more Early Intervention Powers have been exercised in relation to it.

(3) In determining whether (1)(a) and (2) are met, the DFSA may take into account the likely impact on the Authorised Firm of the failure or likely failure of another entity in the Authorised Firm's Group.

(4) For the purposes of (1)(c), an action is in the public interest where:

- (a) it is necessary and proportionate to achieve one or more of the DFSA's objectives; and
- (b) winding up the Authorised Firm under the Insolvency Law or other applicable insolvency laws would not meet the DFSA's objectives to the same extent.

- (5) An Authorised Firm must immediately notify the DFSA if its senior management reasonably considers or is aware that:
- (a) it is failing or likely to fail;
  - (b) another entity in its Group is failing or likely to fail;
  - (c) in the case of an Authorised Firm operating as a branch in the DIFC, the Resolution Authority in the jurisdiction of its head office is considering, or has initiated, resolution action in relation to the Authorised Firm;
  - (d) a Resolution Authority, in a jurisdiction where another entity in its Group is present is considering, or has initiated, resolution action in relation to that entity; or
  - (e) a Resolution Authority in the jurisdiction of the head office of the legal entity of which the Authorised Firm is a subsidiary is considering, or has initiated, resolution action in relation to the head office.
- (6) If the DFSA determines that the Resolution Conditions are met in respect of an Authorised Firm, it:
- (a) shall record its decision together with the reasons for that decision and the actions that it intends to take as a result of the decision;
  - (b) shall give written notice of the decision to:
    - (i) the Authorised Firm;
    - (ii) if applicable, the Financial Services Regulator and Resolution Authorities of jurisdictions in which any relevant Group entity or significant branches are located; and
    - (iii) if applicable, any scheme for the protection of depositors or clients that is relevant to the Authorised Firm; and
  - (c) may publish information about the decision if it appears to the DFSA to be desirable to do so in the public interest.

#### **84L. Appointment of Independent Valuer**

- (1) The DFSA may arrange for an independent valuer to be appointed to carry out a valuation of the assets and liabilities of an Authorised Firm for the purposes of this Part.

- (2) The DFSA may prescribe in the Rules the eligibility requirements for a person to be appointed as an independent valuer under (1).
- (3) A valuation by an independent valuer shall be carried out in such manner as the DFSA may prescribe in the Rules.
- (4) The DFSA may require the Authorised Firm to pay, or recover from the Authorised Firm, the costs of any valuation.

**84M. Valuations**

- (1) Before the DFSA exercises a Resolution Power or applies a Resolution Tool in respect of an Authorised Firm, it shall cause a valuation to be carried out to assess the value of the assets and liabilities of the Authorised Firm (a “Pre-Resolution Valuation”).
- (2) Notwithstanding (1), where the urgency of the case makes it appropriate for a Resolution Power or Resolution Tool to be exercised or applied in respect of an Authorised Firm before a Pre-Resolution Valuation can be carried out, the DFSA may cause a provisional valuation to be carried out of the assets and liabilities of the Authorised Firm (a “Provisional Valuation”).
- (3) Where the DFSA causes a Provisional Valuation to be carried out under (2), it shall cause a further valuation (a “Definitive Valuation”) to be carried out on the assets and liabilities of the Authorised Firm as soon as practicable after the Provisional Valuation.
- (4) A Pre-Resolution Valuation, Provisional Valuation and Definitive Valuation shall be carried out in such manner as the DFSA may prescribe in the Rules.

**84N. Resolution Powers**

- (1) Where the DFSA is satisfied that the Resolution Conditions have been met, it may, by written notice, exercise one or more of the following Resolution Powers with respect to an Authorised Firm:
  - (a) remove and replace any director or member of senior management (irrespective of whether they are responsible for the failure);
  - (b) appoint one or more individuals to act as a Temporary Administrator in accordance with Article 84Q;

- (c) recover monies from any person whose acts or omissions materially contributed to the failure, including by the claw-back of variable remuneration such as bonuses;
- (d) terminate contracts, continue or assign contracts or purchase or sell assets;
- (e) write down or convert any instrument or liability;
- (f) ensure continuity of essential services and functions by:
  - (i) requiring other entities in the Group to continue to provide essential services or facilities to the Authorised Firm or any successor or an acquiring entity; or
  - (ii) procuring the necessary services or facilities from unaffiliated third parties;
- (g) override rights of shareholders of the Authorised Firm, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of business operations, recapitalisation or other measures to restructure and dispose of the Authorised Firm's business, liabilities or assets;
- (h) apply the Sale of Business Tool;
- (i) apply the Bail-in Tool;
- (j) require the Authorised Firm to prepare and implement a business reorganisation plan;
- (k) temporarily suspend the exercise of early termination rights under any contracts or agreements that may otherwise be triggered upon entry of the Authorised Firm into Resolution or in connection with the exercise of Resolution Powers or application of a Resolution Tool;
- (l) impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments to central counterparties, payment, clearing and settlements systems and central banks) and a stay on creditor actions to attach assets or otherwise collect money or property from the Authorised Firm, while protecting the enforcement of eligible netting and collateral agreements;

- (m) take any action necessary to effect the restructure or closure and orderly wind-down of the whole or part of the business of the Authorised Firm while facilitating prompt access to transaction accounts and to segregated client assets;
  - (n) require the Authorised Firm or any of the entities in the Group to provide any services or facilities;
  - (o) require the Authorised Firm to promptly return client assets to clients;
  - (p) suspend any payment or delivery obligations pursuant to any contract to which the Authorised Firm is a party; or
  - (q) restrict secured creditors of the Authorised Firm from enforcing security interests in relation to any assets of the Authorised Firm.
- (2) In addition to the powers specified in (1), the DFSA may:
- (a) require any person to provide any information required for the DFSA to decide upon and prepare resolution action, including to update or supplement information provided in the Resolution Plan;
  - (b) remove rights to acquire further shares, such as shareholders' pre-emption rights in the case of a new share issue under the Companies Law;
  - (c) cancel or modify the terms of a contract to which the Authorised Firm is a party or substitute a purchaser under the Sale of Business Tool as a party;
  - (d) in relation to debt instruments and other eligible liabilities issued by the Authorised Firm:
    - (i) amend or alter the maturity;
    - (ii) amend the amount of interest payable; or
    - (iii) amend the date on which the interest becomes payable, including by suspending payment for a temporary period;
  - (e) close out and terminate financial contracts or derivative contracts for the purposes of the application of the Bail-in Tool; and

(f) require a person to discontinue or suspend the admission to trading of financial instruments relating to the Authorised Firm.

(3) The DFSA may exercise its Resolution Powers:

(a) irrespective of any restriction on, or requirement to obtain consent for, the transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply;

(b) without the requirement to obtain approval or consent from any person either public or private, including the shareholders or creditors of the Authorised Firm; and

(c) without the requirement to notify any person, including any requirement to publish any notice or Prospectus or to file or register any document with any other authority.

#### **84O. Sale of Business Tool**

(1) The DFSA may apply the Sale of Business Tool to an Authorised Firm by effecting a sale of all or part of the business of the Authorised Firm to one or more purchasers by making:

(a) one or more property transfer instruments for the transfer of all or any rights, assets or liabilities of the Authorised Firm; and

(b) if an Authorised Firm is not a branch, one or more share transfer instruments for the transfer of all or part of the shares of the Authorised Firm.

(2) The DFSA may apply the Sale of Business Tool to an Authorised Firm without:

(a) the consent of the shareholders of the Authorised Firm or any third party other than the purchaser; and

(b) complying with any procedural requirements under the Companies Law or the constitutional documents of the Authorised Firm.

(3) The DFSA may prescribe Rules relating to the application of the Sale of Business Tool.

#### **84P. Bail-in Tool**

(1) The DFSA may apply the Bail-in Tool in relation to an Authorised Firm that is not a branch:

(a) to recapitalise the Authorised Firm:

- (i) to the extent sufficient to restore the Authorised Firm's ability to comply with the authorisation requirements as applicable;
    - (ii) to continue to carry out the activities for which the Authorised Firm is authorised under the Law; or
    - (iii) to sustain sufficient market confidence in the Authorised Firm; or
  - (b) to convert to shares or reduce the principal amount of claims or debt instruments that are transferred under the Sale of Business Tool.
- (2) The DFSA may, in applying the Bail-in Tool under (1), use the Write Down or Conversion Power in such manner as may be prescribed in the Rules.
- (3) The DFSA may prescribe Rules relating to the application of the Bail-in Tool.

**84Q. Temporary Administrator**

- (1) The DFSA may appoint a Temporary Administrator to replace the management of an Authorised Firm.
- (2) The Temporary Administrator shall have such powers of the shareholders and management of the Authorised Firm, as are specified by the DFSA in the instrument of appointment.
- (3) The Temporary Administrator shall have a duty to take all measures necessary to promote the DFSA's objectives in relation to that Resolution which duty may, where necessary, override any other duty placed upon a director under DIFC Law and the Authorised Firm's constitutional documents.
- (4) The person appointed to be the Temporary Administrator may be an individual (or one or more individuals acting jointly) or a body corporate.
- (5) Before appointing a person to be a Temporary Administrator, the DFSA must be satisfied that the person has sufficient qualifications, experience, and the fitness and propriety necessary to carry out the functions of a Temporary Administrator.
- (6) A Temporary Administrator shall not be treated as a director (formally or de facto) of the Authorised Firm.

- (7) The instrument of appointment shall specify the date on which the appointment takes effect and the period of the appointment, which shall be for an initial period of not more than twelve months and the DFSA may extend that appointment for a further period not exceeding twelve months.
- (8) The instrument of appointment may require the Temporary Administrator to report to the DFSA on any matter specified in the instrument and at the time or at intervals specified in the instrument.
- (9) The instrument of appointment may provide for the DFSA to pay the remuneration and costs of the Temporary Administrator or for the remuneration and costs of the Temporary Administrator to be paid by the Authorised Firm, its Parent or another entity in its Group.
- (10) The DFSA may vary the terms of appointment of a Temporary Administrator.

#### **84R. Resolution Safeguards**

The DFSA shall, when using a Resolution Power or Resolution Tool with respect to an Authorised Firm, aim to meet the following safeguards:

- (a) no shareholder or creditor shall be worse off under the resolution action than if the Authorised Firm had been wound up under ordinary insolvency proceedings; and
- (b) any other Resolution Safeguards that may be prescribed in the Rules.

#### **84S. Costs of Resolution**

- (1) The DFSA may require the Authorised Firm to pay, or recover from the Authorised Firm, any costs of using a Resolution Power or Resolution Tool.
- (2) Without limiting (1), the DFSA may recover the costs:
  - (a) as a deduction from any consideration paid by a transferee to the Authorised Firm (in the case of a transfer of property under Article 84O(1)(a)), or from the owners of the shares (in the case of a transfer of shares under Article 84O(1)(b)); or
  - (b) from the Authorised Firm, as a preferred creditor.

## CHAPTER 5 – MISCELLANEOUS

### 84T. Recognition of resolution actions in other jurisdictions

- (1) Where a Resolution Authority in another jurisdiction notifies the DFSA that it intends to take or has taken resolution action with respect to an entity in that jurisdiction and requests the DFSA to recognise that resolution action, the DFSA may:
  - (a) make an order recognising the resolution action;
  - (b) make an order recognising part of the resolution action, and refuse to recognise the remainder of it; or
  - (c) refuse to recognise the resolution action.
- (2) When considering whether to recognise resolution action taken in another jurisdiction, the DFSA shall consider the impact of its decision on financial stability in the DIFC, and in other jurisdictions outside the DIFC (including in the State).
- (3) The DFSA may refuse to recognise resolution action in another jurisdiction, or any part thereof, if it is satisfied that one or more of the following conditions are met:
  - (a) the recognition would have an adverse effect on financial stability, the financial services industry in the DIFC or the economy of the State, whether this effect would occur directly or indirectly as a result of the recognition;
  - (b) the exercise of a Resolution Power or Resolution Tool by the DFSA, rather than recognition of the resolution action in relation to the entity is necessary to achieve one or more of the DFSA's objectives with respect to Resolution;
  - (c) under the resolution action, creditors (including, in particular, depositors) or shareholders located or payable in the DIFC would not, by reason of being located and payable in the DIFC, receive the same treatment, and have similar legal rights, as creditors (including depositors) or shareholders who are located or payable in the other jurisdiction concerned; or
  - (d) the recognition would have a significant detrimental impact on the DIFC or be unlawful under any DIFC Law.

- (4) Where the DFSA makes a decision under (1), the DFSA:
  - (a) shall record its decision together with the reasons for that decision;
  - (b) shall give written notice of the decision to:
    - (i) the Resolution Authority in the other jurisdiction;
    - (ii) if it considers it necessary, the entity; and
    - (iii) if it considers it necessary, any Resolution Authority in any other relevant jurisdiction; and
  - (c) may publish information about the decision if it considers it is desirable to do so in the public interest.
- (5) For the purposes of supporting, or giving full effect to, an order under (1) (a) or (b) (a “Recognition Order”), the DFSA may:
  - (a) include in the order any provision that the DFSA considers necessary to give effect to the order; or
  - (b) exercise in conjunction with the order one or more Resolution Powers or Resolution Tools as it considers appropriate in the circumstances.
- (6) A Recognition Order shall not prejudice the winding up of an Authorised Firm under ordinary insolvency proceedings, unless the winding up conflicts with the resolution action, in which case the recognised resolution action shall take precedence.

#### **84U. Statements of Policy**

- (1) The DFSA may prepare and publish a statement of its policy about the principles it will consider in exercising its powers under this Part.
- (2) The DFSA may at any time amend or replace a statement published under this Article and where it does so it shall publish the amended or new statement.
- (3) In exercising its powers under this Part, the DFSA shall have regard to a statement of policy (if any) published under this Article.

#### **84V. Application of Insolvency Law**

- (1) To the extent that this Part, including any Rule made or requirement issued under this Part, is inconsistent with the Insolvency Law, the provision of this Part or the Rule or requirement under this Part shall prevail.
- (2) If the DFSA has determined that the Resolution Conditions have been met in relation to an Authorised Firm, a person may not commence insolvency proceedings under the Insolvency Law in respect of the Authorised Firm except with the DFSA's consent.
- (3) The DFSA may apply to the Court under Article 93 of this Law for the winding up of an Authorised Firm or commence insolvency proceedings under the Insolvency Law in respect of the Authorised Firm notwithstanding that it has determined that the Resolution Conditions have been met or has taken resolution action under this Part in respect of the Authorised Firm.
- (4) The DFSA may take resolution action under this Part in relation to an Authorised Firm even if insolvency proceedings have already commenced in relation to the Authorised Firm.

#### **84W. Protection from liability**

- (1) An Authorised Firm, an entity in its Group or a director or employee of the Authorised Firm or an entity in its Group is not liable for damages in respect of anything done or omitted to be done in good faith in accordance with a requirement made by the DFSA under this Part.
- (2) A Temporary Administrator or an independent valuer appointed under this Part is not liable for damages in respect of anything done or omitted to be done in good faith for the purposes of, or in connection with, the performance of functions under that appointment.

#### **84X. Default Event Provision**

- (1) Article 84X(2) applies where a contract or other agreement:
  - (a) is entered into by an Authorised Firm or a Regulated Financial Institution; or
  - (b) includes cross-default provisions, and is entered into by another Group entity in the Authorised Firm's Group or Regulated Financial Institution's Group,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

- (2) The following shall be disregarded in determining whether a Default Event Provision applies:
  - (a) the exercise of a measure in an Authorised Firm's Recovery Plan, the removal of impediments to Resolvability of an Authorised Firm, the imposition of an Early Intervention Power, the appointment of a Temporary Administrator, the exercise of a Resolution Power or application of a Resolution Tool, or the recognition of a resolution action taken by a Resolution Authority; and
  - (b) the occurrence of any event directly linked to the application of such measure, power or action.
- (3) A notice under Article 84N may specify additional matters that are to be disregarded under (2) and those matters shall be disregarded.
- (4) In this Article, "specified" in relation to a contract or agreement means specified in the contract or other agreement .
- (5) In this Article, "Default Event Provision" means a provision of a contract or other agreement:
  - (a) that has the effect that if a specified event or situation arises:
    - (i) the agreement is terminated, modified, replaced or suspended;
    - (ii) rights or duties under the agreement are terminated, modified, replaced or suspended;
    - (iii) a right accrues to terminate, modify or replace the agreement;
    - (iv) a right accrues to terminate, modify or replace rights or duties under the agreement;
    - (v) a set-off or netting right accrues under the agreement;
    - (vi) a sum becomes payable or ceases to be payable;

- (vii) a right accrues to obtain possession, exercise control or enforce any security over any property;
  - (viii) delivery of anything becomes due or ceases to be due;
  - (ix) a right to claim a payment or delivery accrues, changes or lapses;
  - (x) any other right accrues, changes or lapses; or
  - (xi) an interest is created, changes or lapses; or
- (b) that has the effect that a provision of the contract or agreement:
- (i) takes effect only if a specified event occurs or does not occur;
  - (ii) takes effect only if a specified situation arises or does not arise;
  - (iii) has effect only for so long as a specified event does not occur;
  - (iv) has effect only while a specified situation lasts;
  - (v) applies differently if a specified event occurs;
  - (vi) applies differently if a specified situation occurs; or
  - (vii) applies differently while a specified situation lasts.”

13. Article 88 (Appointment of Managers) is deleted.

14. Article 106 (Financial services business transfer schemes) is deleted and replaced with the following:

**“106. Financial services business transfer schemes**

No financial services business transfer scheme (“transfer scheme”) is to have effect unless an order has been made in relation to it under Article 108 or where the Sale Of Business Tool has been used under Article 84N(1)(h) or 84O.”

15. In Section 3 (Defined Terms) of the Schedule 1, insert the following new defined terms:

Term	Definition
...	

<b>Term</b>	<b>Definition</b>
Bail-in Tool	the tool referred to in Articles 84N(1)(i) and 84P, including the powers to write down and convert any instrument or liability and to close out or terminate any contract.
...	
Insolvency Law	DIFC Law No. 1 of 2019.
...	
Pre-Resolution Valuation	a valuation referred to in Article 84M(1).
Provisional Valuation	a valuation referred to in Article 84M(2).
...	
Recognition Order	An order made by the DFSA under Article 84T that recognises in, in whole or in part, resolution action taken by another Resolution Authority.
Recovery	the process of restoring an Authorised Firm's financial position.
Recovery Plan	the plan referred to in Article 84D.
Resolution	the process of resolving an Authorised Firm, including the stabilisation and restructuring of the Authorised Firm through the exercise or application of one or more Resolution Powers or Resolution Tools.
Resolution Authority	a body or authority established in a jurisdiction other than the DIFC that exercises powers or performs functions relating to the Recovery or Resolution of persons providing financial services.
Resolution Conditions	the conditions referred to in Article 84K.
Resolution Powers	the powers referred to in Article 84N.
Resolution Plan	the plan referred to in Article 84E.
Resolution Safeguards	the safeguards referred to in Article 84R.
Resolution Tool	the Sale of Business Tool or the Bail-In Tool referred to in Articles 84O and 84P respectively.
Resolvability	the ability of an Authorised Firm to be resolved by an orderly Resolution.
Resolvability Assessment	an assessment made under Article 84F.
.....	
Sale of Business Tool	the tool referred to in Articles 84N(1)(h) and 84O.
.....	.....
Temporary Administrator	a Temporary Administrator appointed by the DFSA under Article 84Q.

<b>Term</b>	<b>Definition</b>
.....	.....
Write Down or Conversion Power	the power referred to in Article 84N(1)(e) to write down or convert any instrument or liability.

16. In Section 3 (Defined Terms) of the Schedule 1, the definition of the following terms are deleted and replaced as follows:

<b>Term</b>	<b>Definition</b>
....	....
Companies Law	DIFC Law No. 5 of 2018 relating to the incorporation of Companies.
Companies Registrar	the person appointed to the office of Registrar under the Companies Law.
....	....
Parent	a holding company as defined in Schedule 1 to the Companies Law.
....	....
Subsidiary	a subsidiary as defined in Schedule 1 to the Companies Law.