

## Annex B

In this annex underlining indicates new text and striking through indicates deleted text.

N.B. This consultation paper and these Regulations are made for the purposes of the new Companies Law 2018 (which is to come into force Q3 2018 and, is administered by DIFCA and the Registrar of Companies). Accordingly, the proposals in this Annex B are being consulted upon jointly by the DFSA and DIFCA.



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# Investment Companies (IC) Regulations

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## **Investment Companies (IC) Regulations**

### **CONTENTS**

The contents of this module are divided into the following chapters, sections and appendices:

The Board of Directors of the DIFCA, in the exercise of the powers conferred on them under Articles 136 and 155 of the Companies Law 2018 hereby make these Regulations.

## **1. INTRODUCTION**

### **1.1 Application and interpretation**

#### **1.1.1 These Regulations apply to:**

- (a) a person making an application to incorporate an Investment Company under the Law;
- (b) an Investment Company;
- (c) the Fund Manager of an Investment Company;
- (d) the Directors, employees and staff of an Investment Company and of its Fund Manager; and
- (e) any other person carrying on any function or service in relation to an Investment Company.

#### **1.1.2 Capitalised terms are defined terms in:**

- (a) the Law;
- (b) the Regulatory Law 2004;
- (c) the Collective Investment Law 2010 and Rules made under that law; and
- (d) the Insolvency Law 2009 and Rules made under that law.

#### **1.1.3 Where capitalisation of the initial letter is not used, an expression has its natural meaning, unless otherwise provided in these Regulations or the context requires otherwise. The terms:**

- (a) 'administrative receiver' has the meaning given in Article 14(5) of the Insolvency Law; and
- (b) 'receiver' has the meaning given in Article 14(1).

#### **1.1.4 These Investment Companies Regulations are referred to as 'these Regulations'.**

## 1.2 Rules, regulations, general powers of the DFSA

**1.2.1** Subject to Regulation 13.2.2, these Regulations are additional to any other legislation ~~that which may~~ apply to the incorporation of, or conversion to, an Investment Company, or ~~which that~~ may apply to the operations, affairs, listing on an Exchange and or winding up of an Investment Company, including the Law, the Collective Investment Law 2010, the Markets Law 2012 and the Insolvency Law 2009 and any Rules or Regulations made under such laws.<sup>1</sup>

**1.2.2** In accordance with Article 136(2)(b) of the Law, where there is any inconsistency between the provisions of:

(a) the DFSA administered legislation applicable to a Protected Cell Company; and

(b) the Law and Regulations made thereunder,

the provisions in (a) shall prevail over the provisions in (b) and be taken to exclude, waive or modify the Law or Regulations to the extent of any such inconsistency, unless expressly provided otherwise or the context requires otherwise.

**1.2.3** In accordance with Article ~~114(2)(b)~~136(2)(b) of the Law, the application of Article ~~51(1) and (2)~~ 68(1) and (2) of the Law is modified in relation to its application to Investment Companies so as to permit such an Investment Company to be managed by ~~one director, which may be a body corporate~~ its sole Corporate Director in accordance with the requirements in section 8.1A of the CIR module of the DFSA Rulebook.

**1.2.4** Without limiting the generality of powers of the DFSA under Article 23 of the Regulatory Law 2004 and Article 8 of the Collective Investment Law 2010, the DFSA shall have authority ~~from time to time~~ to make, issue, amend and rescind such Rules as are necessary or appropriate in the interests of the DIFC.

## 1.3 Incorporation of, or conversion into, an Investment Company

**1.3.1** Subject to the provisions of these Regulations, a person may, pursuant to Article 136(1) of the Law:

(a) incorporate an Open-ended ~~Open-Ended~~ Investment Company or a Closed-ended ~~Closed-Ended~~ Investment Company; or

(b) convert, if so authorised by its Articles of Association and by a Special Resolution, an existing Company into an Open-ended ~~Open-Ended~~

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<sup>1</sup> As the provisions in the Markets Law and MKT module also apply to the listing and trading of Funds, references to those are included here.

Investment Company or a Closed-ended ~~Closed-Ended~~ Investment Company,

for the ~~sole~~ main purpose of carrying on the business of a Fund, provided the DFSA has given its consent to such incorporation or conversion respectively.

- 1.3.2** An application for the incorporation of a Company as an Investment Company or for the conversion of an existing Company into an Investment Company shall not be made without submission to the Registrar of a copy of any consent of the DFSA given under Regulation ~~13.3.4~~ 1.5.1(b).

## **1.4 Name and Articles of Association of an Investment Company**

- 1.4.1** The name of an Investment Company shall, without prejudice to the application of Articles ~~32~~ 33 and 34 of the Law, include the expressions as provided below:

- (a) ~~the name of~~ in the case of an Open-ended ~~Open-Ended~~ Investment Company, the expression 'Open-ended ~~Open-Ended~~ Investment Company' or 'OEIC'; ~~or and~~
- (b) ~~the name of~~ in the case of an Closed-ended ~~Closed-Ended~~ Investment Company, the expression 'Closed-ended ~~Closed-Ended~~ Investment Company' or 'CEIC'.

- 1.4.2** The Articles of Association of an Open-ended ~~Open-Ended~~ Investment Company shall state that it is an Open-ended ~~Open-Ended~~ Investment Company with variable share capital.

- 1.4.3** The Articles of Association of an Open-ended ~~Open-Ended~~ Investment Company ~~shall must~~ contain a provision to the effect that ~~S~~shareholders are entitled to have their shares redeemed by the Fund Manager upon request at a price based on the net asset value of the property of the Fund and determined at a price based on ~~or~~ have a right, generally, on request or at specified frequency, to have their Shares redeemed or repurchased by the Fund Manager, at a value calculated based on the net asset value of the Fund Property in accordance with the requirements in section 8.6 of the CIR module of the DFSA Rulebook.<sup>2</sup>

- 1.4.4** The Articles of Association of an Investment Company ~~shall must~~ comply with the requirements imposed under the ~~Companies (IC) Regulations~~ in this Chapter and the Collective Investment Law 2010 and the ~~R~~rules ~~any legislation~~ made thereunder that law.

- 1.4.5** ~~In addition to any other requirements under the Regulations, the Articles of an Investment Company must contain provision as to the following matters:~~

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<sup>2</sup> Proposed amendments are to bring this provision in line with CIR section 8.6, which prescribes the mandatory provisions applicable to the establishment of the NAV of Fund Property and Unit price.

- ~~(a) the objects of the Investment Company, including:~~
- ~~(i) detail as to the kind of property in which the Investment Company is to invest; and~~
  - ~~(ii) a statement that the object of the Investment Company is to invest in property of that kind with the aim of spreading investment risk or with the aim of investing in a single property, as the case may be, and of giving its shareholders the benefit of the results of the management of that property; and~~
- ~~(b) any other requirements that may from time to time be imposed by the DFSA in legislation made under the Collective Investment Law 2010.<sup>3</sup>~~

**1.4.5** The Articles of Association of an Investment Company ~~shall must~~ contain the matters required to be included in the Constitution of a Domestic Fund under CIR App 5.<sup>4</sup>

**1.4.6** An Investment Company may alter its Articles of Association by Special Resolution in order to comply with the requirements of these Companies (IC) Regulations and the Collective Investment Law 2010.

## **1.5 Permissible uses and DFSA consent**

**1.5.1** A Company shall not be incorporated as, or operate as, an Investment Company, and an existing Company shall not be converted into, or operate as, an Investment Company, unless:

- ~~(a) the Company is formed, and will operate, for the main purpose of conducting the business of a Fund; and~~
- ~~(b) the DFSA has given its prior written consent.~~<sup>5</sup>

**1.5.2** An application for consent shall be made to the DFSA by ~~the Company and the Operator~~ the Incorporators of the Company and the Fund Manager and shall be in such form, containing such information and be accompanied by such other particulars, as required from time to time by the DFSA.

**1.5.3** Where under Regulation 1.5.2 the DFSA grants consent following any representations from an applicant as to the proposed activities or objectives of the Investment Company, including any representations in its business plan, the

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<sup>3</sup> The requirements set out herein are matters covered under the Collective Investment Law 2010 and CIR.

<sup>4</sup> CIR contains the mandatory disclosure required in the Constitution of a Fund. In the case of an Investment Company, its Constitution is its Articles of Association.

<sup>5</sup> The newly introduced Article 26(4) of the Collective Investment Law 2010 prohibits the establishment of an Investment Company unless its main purpose is to carry on the business of a Fund.

Fund Manager must ensure that the Investment Company does not carry out any activity or pursue any objective contrary to any representations made to the DFSA without obtaining the further prior written consent of the DFSA.<sup>6</sup>

~~1.5.4~~ ~~The DFSA may in its absolute discretion grant its consent, refuse to grant its consent or withdraw its consent under Regulation **Error! Reference source not found.** as the DFSA deems it necessary or appropriate in the interests of the DIFC.~~

~~1.5.4~~ The DFSA may only grant its consent under Regulation 1.5.1 13.3.1 where it is satisfied that the requirements under these Regulations and under other applicable legislation administered by it are met by the applicant. The DFSA may grant its consent subject to such conditions and restrictions as it considers appropriate.

~~1.5.5~~ If the DFSA refuses to grant consent, or imposes conditions or restrictions relating to its consent, the DFSA shall, without undue delay, inform the applicant in writing of such refusal where requested by the Investment Company, state the reasons for such decision or conditions or restrictions. The procedures in Appendix 2 apply to such a decision.

~~1.5.6~~ In accordance with Article 27(2) of the Regulatory Law 2004, the Financial Markets Tribunal<sup>7</sup> has jurisdiction to hear and determine any referral appeal where an applicant refers appeals against a decision of the DFSA in relation to an application for consent under Regulation 1.5.5. 13.3.1.

## 1.6 Withdrawal of consent of the DFSA

~~1.6.1~~ The DFSA may revoke its consent to operate an Investment Company if it appears to it that:<sup>8</sup>

(a) any requirement for the continuation of the consent is no longer satisfied;

(b) the Investment Company, any Director of the Company or its Fund Manager:

(i) has contravened any requirement under the Law or these Regulations;

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<sup>6</sup> There is a similar prohibition applicable to a PCC (which can be a Fund), hence the proposal to include a similar prohibition applying to all Investment Companies.

<sup>7</sup> A reference to the Regulatory Appeals Committee in the current text has been replaced with a reference to the FMT.

<sup>8</sup> Revoking the DFSA consent for a PCC (which can be a Fund) contains grounds for withdrawal, hence the proposal to include a similar provision applying to all Investment Companies.

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- (ii) has contravened any applicable requirements under the Regulatory Law 2004 and the Collective Investment Law 2010 or Rules made under those laws;
- (iii) has failed to comply with a condition or restriction in relation to the grant of consent; or
- (iv) has, in purported compliance with any such requirement or any such condition or restriction, knowingly or recklessly given the DFSA or the Registrar information which is false or misleading in a material particular;
- (c) no activity relevant to the grant of the consent has been carried on in relation to the Investment Company for the previous 12 months; or
- (d) it is in the interests of the DIFC to revoke the consent in order to protect the interests of Shareholders or creditors, or potential Shareholders or creditors, of the Investment Company.

**1.6.2** For the purposes of Regulation 1.6.1(d), the DFSA may take into account any relevant matter, including those relating to or affecting:

- (a) the Company and its Fund Manager;
- (b) any person employed by or associated with the Company or by the Fund Manager;
- (c) any Director of the Company;
- (d) any person exercising influence over any Director of the Company;
- (e) any body corporate in the same group as the Company;
- (f) any Director of a body corporate referred to in (e);
- (g) any person exercising influence over a body corporate referred to in (e);  
or
- (h) the interests of a Shareholder or creditor of the Company.<sup>9</sup>

**1.6.3** Before revoking any consent, the DFSA will consider whether any necessary and appropriate steps have been taken to secure one or more of the following under the Insolvency Law 2009 and Insolvency Regulations:

- (a) appointment of a receiver or administrative receiver to the Investment Company; or

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<sup>9</sup> See the considerations noted under the previous footnote.

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- (b) the winding up of the Investment Company.
- 1.6.4** (1) On withdrawal of the DFSA consent, the Investment Company and the Fund Manager shall, without unnecessary delay, ~~forthwith~~ notify that fact to:
- (a) each regulatory authority in every country or territory to which the consent related prior to its withdrawal; and
  - (b) each Shareholder of the Investment Company in question.
- (2) The notice required of each of the persons respectively referred to in this Regulation may be given by them jointly.
- 1.6.5** Subject to Regulation ~~13.6.4~~1.6.6:
- (a) if the consent is revoked by the DFSA, such revocation does not affect the operation of any direction given by the DFSA which is then in force; and
  - (b) a direction may be given by the DFSA in relation to an Investment Company in the case of which a consent has been revoked, if a direction was already in force at the time of revocation.
- 1.6.6** Where a winding up order has been made by the Court, no direction given by the DFSA is to have effect in relation to the Investment Company concerned.
- 1.6.7** The DFSA may, on its own initiative, or on the application of the Investment Company or its Fund Manager, revoke or vary a direction given under this section if it appears to the DFSA that it would be necessary or appropriate in the interests of the DIFC.
- 1.6.8** The procedures in Appendix 2 apply to a decision under Regulation 1.6.1.
- 1.6.9** In accordance with Article 27(2) of the Regulatory Law 2004, the Financial Markets Tribunal has jurisdiction to hear and determine any referral where a Protected Cell Company, or its Fund Manager, refers a decision of the DFSA to revoke its consent under this section.
- 1.7** **Directions by the DFSA**
- 1.7.1** ~~The DFSA may, in the interests of the DIFC, give any direction to an Investment Company, its directors.~~
- 1.7.1** ~~Without limiting the generality of Regulation 13.6.1, the~~ The DFSA may:

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- (a) require an Open-ended Investment Company to cease the issue or redemption, or both the issue and redemption, of Shares or any class of Shares in the Investment Company;
- (b) require the Investment Company, any Director or any director or its Fund Manager, as the case may be, to present a petition to the Court to:
  - (i) make an order or orders for the appointment of a receiver or administrative receiver to the Company; or
  - (ii) make an order or orders for the winding up of the Investment Company under the Insolvency Regulations.
- (c) ~~require that the affairs of the Investment Company be wound up otherwise than by the Court~~ the Fund Manager to take such steps as necessary to wind up the affairs of the Investment Company otherwise than by an order of the Court.

### 1.7.2 Subject to Regulation 1.7.3 ~~13.6.4~~:

- (a) if the consent is revoked by the DFSA pursuant to section 1.6 of these Regulations, such revocation does not affect the operation of any direction given by the DFSA which is then in force; and
- (b) a direction may be given by the DFSA in relation to an Investment Company in the case of which a consent has been revoked, if a direction was already in force at the time of revocation.

**1.7.3** Where a winding up order has been made by the Court, no direction given by the DFSA is to have effect in relation to the Investment Company concerned.

**1.7.4** The DFSA may, on its own initiative, or on the application of the Investment Company or its Fund Manager, revoke or vary a direction given under this section if it appears to the DFSA that it would be necessary or appropriate in the interests of the DIFC. If the DFSA varies, on its own initiative, a direction given under section 1.7 of these Regulations, the procedures in in Appendix 2 apply to such a decision.

**1.7.5** In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Financial Markets Tribunal has jurisdiction to hear and determine any referral appeal where an Investment Company or its Fund Manager refers appeals against a decision of the DFSA made under this section 1.7 in relation to a direction.

## 1.8 Applications to the Court

**1.8.1** The Court may, on application of the DFSA, make one or more of the following orders:

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- (a) an order removing the Fund Manager or any Director of the Investment Company and replacing such a person with a person or persons nominated by the DFSA or as the Court may consider appropriate;
- (b) an order appointing a receiver or administrative receiver, or an order for the winding up of the Investment Company pursuant to the Insolvency Regulations; or
- (c) any other order as the Court thinks fit.

### 1.8.2 The DFSA shall:

- (a) give written notice of the making of an application under Regulation 1.8.1 ~~13.7.4~~ to:
  - (i) the Investment Company and its Fund Manager; and
  - (ii) where the application seeks the removal of any Director of the Investment Company, that Director; and
- (b) take such steps as it considers appropriate for bringing the application to the attention of the Shareholders of the Investment Company.

### 1.8.3 The Court may, on application of a person who is subject to an order, make any other orders it thinks fit including, but not limited to, orders:

- (a) revoking the order;
- (b) varying the order;
- (c) requiring the order to be complied with in a manner that the Court considers appropriate; or
- (d) requiring the Investment Company, its Fund Manager or the DFSA to do any act or thing.

## 1.9 Shares, Register of Shareholders

### ~~1.9.1 An Investment Company may, if so authorised by its Articles, issue fractions of shares.~~

- 1.9.1 (1) The DFSA may prescribe in Rules made under the Collective Investment Law 2010 the form and contents of share certificates and the manner in which such share certificates may be delivered by an Investment Company.
- (2) Nothing in Paragraph (1) shall prevent an Investment Company issuing Sshare certification in a dematerialised (electronic) form.

**1.9.2** An Investment Company shall maintain its register of Shareholders in accordance with the requirements:

- (a) in CIR section 8.7 of the DFSA Rulebook; and
- (b) chapter 5 of Part 7 of the Law, to the extent such requirements are not inconsistent with the requirements referred to in (a).

~~**1.9.3** Subject to any requirements as may be made by the DFSA, an Investment Company may, on giving notice by a press release, direct by communicating with the shareholders, posting on its website and, if listed, filing such notice with the relevant exchange if the Fund is a Listed Fund on that exchange, close the register of shareholders for any time or times not exceeding, in the whole, 30 days in each year.~~

~~**1.9.4** If:~~

- ~~(a) such evidence is furnished to the Fund Manager as the Fund Manager may require to show that default has been made by a shareholder in making any payment in money or transfer of property due to the Fund Manager under the provisions of these Regulations or the Articles of the Investment Company in respect of the creation and sale or resale of shares to that shareholder; and~~
- ~~(b) any share certificate in respect of those shares is received by the Fund Manager, the Fund Manager or the Registrar shall cancel or make any necessary amendments to that certificate and make any necessary deletion or alteration in the register and thereafter the Fund Manager shall be entitled to the shares in respect of which the defaulting shareholder's name has been removed from the register until the same be cancelled or resold by the Fund Manager and the name of the purchaser entered in the register.~~

~~**1.9.5** The Fund Manager of an Open-ended ~~Open Ended~~ Investment Company shall be deemed to hold each Share in the Company during such times as neither the Fund Manager nor any other person is entered in the Shareholder register as the holder of such Share.~~

## **1.10 Share transfers and redemptions**

**1.10.1** The Articles of Association of an Investment Company may contain provision as to share transfers in respect of any matter for which provision is not made in the ~~Law or Regulations~~ the Collective Investment Law 2010 or rules made for the purposes of that law.

- 1.10.2** Where any Sshares of an Investment Company are transferred to the Investment Company, the Investment Company must cancel those shares, unless it is an Open-ended Investment Company.<sup>10</sup>
- 1.10.3** For the purposes of Article ~~40(5)~~ 50(5) of the Law, an Investment Company may refuse to register a transfer of Sshares if:
- (a) there exists a minimum requirement as to the number or value of Shares that must be held by any Shareholder of the Investment Company and the transfer would result in either the transferor or transferee holding less than the required minimum; or
  - (b) the transfer would result in a contravention of any provision of the Investment Company's Articles of Association or would produce a result inconsistent with any provision of the Investment Company's Prospectus.
- 1.10.4** An Open-ended ~~Open-Ended~~ Investment Company shall redeem its shares at a price based on the net asset value of the property of the Company in accordance with its Articles of Association and the provisions in sections 8.6 and 8.6A<sup>11</sup> of the CIR module of the DFSA Rulebook and, where it does so, chapters ~~4 and 5~~ 6 and 7 of Part 7 of the Law shall not apply to such redemptions of Shares.
- 1.10.5** A Closed-ended ~~Closed-Ended~~ Investment Company ~~shall purchase any shares of any class of which it is the issuer except on an exchange facility or such other open market as the DFSA may prescribe by Rules or Regulations.~~ may purchase its Shares belonging to any class in accordance with the requirements in chapter 6 of Part 7 of the Law, subject to any restrictions in its Articles of Association or Prospectus.<sup>12</sup>

## **1.11 Distributions**

- 1.11.1** An Investment Company shall make distributions, as stated in its Articles of Association and the Prospectus, subject to the requirements in the Collective Investment Law 2010 and the CIR module of the DFSA Rulebook.

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<sup>10</sup> Open-ended Investment Companies may re-sell redeemed Shares.

<sup>11</sup> Section 8.6A of CIR contains redemption related requirements.

<sup>12</sup> Redemption and purchase of own Shares of Companies are dealt with in detail in chapter 6 of Part 7 of the Companies Law and allows closed-ended Companies to issue redeemable shares. In addition, chapter 6 also provides for the purchase of own shares by a Company, with more stringent regulation of a purchase of own shares by a Public Company, as opposed to Private Companies. These provisions are suitable for closed-ended Investment Companies.

## 1.12 Records, accounts and audit

- 1.12.1 (1) Every Investment Company shall comply with the accounting, audit and reporting requirements in chapter 9 of the CIR module of the DFSA Rulebook.
- (2) Every Investment Company shall maintain and preserve such records for such period as the DFSA, by Rules ~~or Regulations~~, may prescribe.

App1 FEES

A1.1 Table of fees.

Upon receipt by the Registrar of:	
<u>Application for incorporation of an Open-ended/Closed-ended Investment Company</u>	<u>\$1,000</u>
<u>FMT fees:</u>	
<u>Making a referral to the FMT (which can be waived by the president of the FMT if the person commencing the reference is an individual and if, in the circumstances, the president considers it is equitable to do so)</u>	<u>\$5,000</u>

## **App2 Due Process Requirements**

### **Section 1 – Interpretation**

For the purposes of this Appendix:

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

### **Section 2 – Application of Schedule**

The procedures in this Appendix 2 apply to the DFSA, subject to Section 3, where a provision in these PCC Regulations requires the DFSA to make a decision pursuant to that provision.

### **Section 3 – Decisions to which procedures do not apply**

- (1) The procedures in this Appendix (other than paragraph (2) below) do not apply to a decision by the DFSA in relation to a person, if the person has requested, or consented in writing to, the making of the decision.
- (2) In the cases referred to in paragraph (1) above, the DFSA shall notify the person in writing of the decision and the date on which it is to take effect.
- (3) If the DFSA makes a decision in relation to a Relevant Person after a decision of the FMT or Court relating to the conduct of that person, the requirement to give the person an opportunity to make representations under Section 4 or 6 (as applicable) does not apply in relation to findings of fact of the FMT or Court.

### **Section 4 – Opportunity to make representations before a decision**

- (1) If the DFSA proposes to make a decision to which the procedures in this Appendix apply, it shall first give the Relevant Person:
  - (a) a written notice (a “Preliminary Notice”) containing the information in paragraph (2) below; and
  - (b) an opportunity to make representations to the DFSA in person and in writing concerning the decision the DFSA proposes to take.
- (2) The Preliminary Notice shall:
  - (a) specify the proposed decision;
  - (b) specify the reasons for that proposed decision, including any proposed findings of fact;

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

## **Section 5 – Decision Notice**

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

## **Section 6 – Opportunity to make representations after a decision**

- (1) If this paragraph applies under Section 4, paragraph (7), the DFSA shall:
  - (a) provide the Relevant Person with an opportunity to make representations to the DFSA in person and in writing within a period of fourteen (14) days, or such further period as may be determined by the DFSA, from the date on which the Decision Notice is given to the Relevant Person Section 5; and
  - (b) inform the Relevant Person in the Decision Notice that they may make representations concerning the decision and specify how and by when any representations may be made.
- (2) If the DFSA does not receive any representations within the period specified in the Decision Notice, it shall inform the Relevant Person in writing that the decision is to stand.
- (3) If the DFSA receives representations within the period specified in the Decision Notice, it shall consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (4) If after considering representations received the DFSA decides:

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- (a) to confirm the decision, it shall as soon as reasonably practicable notify the Relevant Person in writing that the decision is to stand;
  - (b) to withdraw the decision, it shall as soon as reasonably practicable notify the Relevant Person in writing that the decision has been withdrawn; or
  - (c) to vary the decision, it shall as soon as reasonably practicable give the Relevant Person an amended Decision Notice under Section 5.
- (5) For the avoidance of doubt, the opportunity to make representations under Section 6 does not arise:
  - (a) if the Relevant Person was given a Preliminary Notice and the opportunity to make representations under Section 4 before the decision was made; or
  - (b) in respect of an amended Decision Notice given under Section 6, subparagraph (4)(c).