

Appendix 5

In this appendix underlining indicates proposed new text and striking through indicates deleted text.



The DFSA Rulebook

Markets Rules

(MKT)

2 OFFER OF SECURITIES

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2.6 Approval and publication of a prospectus

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Approval of a prospectus

- 2.6.2** (1) The DFSA will only approve a Prospectus which has been filed with the DFSA in accordance with Rule 2.6.1 as soon as reasonably practicable where:
- (a) it is ~~reasonably~~ satisfied that:
 - (i) the Prospectus meets all the applicable requirements in the Law and the Rules; and
 - (ii) ~~it is satisfied that~~ the Board of the Undertaking whose Securities are to be offered complies with, and has adequate systems and controls in place to ensure on-going compliance with, the applicable requirements; and
 - (b) it has received all the necessary consents as required under the requirements in this chapter.
- (2) A Prospectus filed with the DFSA is not an Approved Prospectus for the purposes of Article 14(2) unless the DFSA has issued to the applicant a notice stating its approval:
- (a) of the Prospectus or the Supplementary Prospectus as the case may be; and
 - (b) in the case of a Prospectus in (a) comprising multiple documents, of all the multiple documents.
- ~~(3) Where the DFSA does not approve a Prospectus as specified in (2), it must notify the applicant as soon as reasonably practicable that the Prospectus has not been approved by the DFSA and the reasons for not doing so.~~
- ~~(4) The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a decision by the DFSA not to approve a Prospectus.~~
- (3) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA not to approve a Prospectus under this Rule.
- (4) If the DFSA decides to exercise its power not to approve a Prospectus under this Rule, the applicant may refer the matter to the FMT for review.

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2.7 Offer documents from other jurisdictions

- 2.7.1** (1) The DFSA may, subject to (2), approve an offer document produced under legislation in a jurisdiction other than the DIFC for the purposes of meeting the Prospectus requirements in this chapter where:
- (a) it is satisfied that:
 - (i) the Prospectus contains information equivalent to that which is required for a Prospectus in this chapter; and
 - (ii) the offeror meets all the other requirements relating to a Prospectus Offer as prescribed in the Rules; or
 - (b) the other jurisdiction provides a level of regulation relating to the offer which is acceptable to the DFSA.
- (2) The DFSA may, subject to (3), approve an offer document referred to in (1) in accordance with the requirements and procedures set out in section 2.6 and, subject to such conditions or restrictions imposed by the DFSA as it sees fit.
- (3) An application for approval of an offer document produced in accordance with the legislation in a jurisdiction other than the DIFC must:
- (a) be made using the appropriate form in AFN;
 - (b) be accompanied by the relevant fee prescribed in FER; and
 - (c) include:
 - (i) where the offer document referred to in (1) is not in the English language, an English translation acceptable to the DFSA; and
 - (ii) a clear statement that it is an offer document prepared in accordance with the requirements applicable in the relevant jurisdiction and not in the DIFC.
- (4) An offer document referred to in (1) is an Approved Prospectus for the purposes of Article 14(1) of the Law where it has been approved by the DFSA in accordance with the requirements in this Rule and section 2.6.
- (5) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule not to approve an offer document or to impose conditions or restrictions on an approval.
- (6) If the DFSA decides to exercise its power under this Rule not to approve an offer document or to impose conditions or restrictions on an approval, the applicant may refer the matter to the FMT for review.

Guidance

A Person considering filing an offer document pursuant to Rule 2.7.1 should approach the DFSA at the earliest possible time to discuss how to proceed. This is because the DFSA will undertake the assessment required under Rule 2.7.1 on a case-by-case basis. See Guidance item 1 under Rule 2.6.2 for details relating to the DFSA Prospectus approval process.

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2.13 Miscellaneous

2.13.1 (1) The DFSA may require a Prospectus Offer to be underwritten by an underwriter acceptable to the DFSA.

(2) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule.

(3) If the DFSA decides to exercise its power under this Rule, the Offeror may refer the matter to the FMT for review.

2.13.2 If one or more Directors of an Issuer are offering Shares they hold in the Issuer as part of a Prospectus Offer, an Issuer must ensure that the Prospectus contains a prominent statement of:

(a) the identity of each Directors offering his Shares; and

(b) the number of Shares such a Director is offering, and the proportion of the Issuers share capital represented by the holding of that Director.

2.13.3 (1) The DFSA may, during the Offer Period or such other longer period as specified, impose a requirement that the monies held by a Person making a Prospectus Offer or his agent pursuant to the Prospectus Offer or issuance are held in an escrow account for a specified period and on specified terms.

(2) The DFSA may also require the appointment of a paying agent during the offer period.

(3) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule.

(4) If the DFSA decides to exercise its power under this Rule, the Offeror may refer the matter to the FMT for review.

Guidance

See also section 3.4 which contains additional restrictions relating to dealings by Restricted Persons which may apply to executive Directors.

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4 MARKET DISCLOSURE

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4.2 Disclosure of inside information

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Disclosure exceptions

- 4.2.4** (1) A Reporting Entity need not, subject to (2), make disclosure of information pursuant to Rule 4.2.1, where, in the reasonable opinion of the Reporting Entity, the disclosure required by that Rule would:
- (a) be unduly detrimental to the legitimate interests of the Reporting Entity; or
 - (b) disclose commercially sensitive material.
- (2) Where a Reporting Entity intends not to make the disclosure pursuant to (1), it must immediately file with the DFSA a confidential report which:
- (a) contains all the information which it seeks not to disclose and the reasons for non-disclosure; and
 - (b) is in the English language and, where any documents accompanying the report are not in the English language, an English translation of such documents.
- (3) The DFSA may, ~~in its absolute discretion~~:
- (a) specify the period during which disclosure of the information included in the confidential report need not be disclosed to the markets; and
 - (b) extend the period referred to in (a) upon application by the Reporting Entity.
- (4) Where a confidential report is filed with the DFSA under (2), the Reporting Entity need not comply with the requirements in Rule 4.2.1 during the period permitted by the DFSA pursuant to (3), unless or until one of the following occurs:
- (a) the DFSA directs the Reporting Entity to comply with Rule 4.2.1;
 - (b) the Reporting Entity becomes aware that there is a material change of circumstances that renders the reason for non-disclosure of the information no longer valid; or

- (c) the Reporting Entity becomes aware or has reasonable grounds to suspect that the relevant Inside Information has or may have come to the knowledge of any Person or Persons other than by way of selective disclosure in accordance with Rule 4.2.3.
- (5) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (3) or (4)(a).
- (6) If the DFSA decides to exercise its power under (3) or (4)(a), the Reporting Entity may refer the matter to the FMT for review.

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5 ACCOUNTING PERIODS AND FINANCIAL REPORTS AND AUDITING

Guidance

1. Article 44 of the Law provides that a Reporting Entity shall prepare and file with the DFSA an annual financial report in accordance with the requirements prescribed in the Rules.
2. Article 45 of the Law provides that a Reporting Entity shall prepare and file with the DFSA:
 - a. a semi-annual financial report; and
 - b. any other financial statements as are required by the DFSA,
 in the circumstances prescribed by Rules.
3. ~~Article 97(3) of the Regulatory Law 2004 provides that DFSA shall make Rules setting out the requirements an auditor must meet to become registered by the DFSA including the provision of auditing services to a Public Listed Company. The Rules in this chapter set out the requirements for an auditor of a Public Listed Company including the appointment and termination of an auditor by a Public Listed Company and registration and withdrawal by the DFSA.~~

5.1 Application

- 5.1.1** This section applies to every Reporting Entity other than that of a Listed Fund except where a narrower application is provided in respect of any particular class of Security.

Guidance

Chapter 6 contains the requirements relating to accounting periods and financial reporting in respect of Listed Funds.

Accounting Financial reporting standards

- 5.1.2** (1) A Reporting Entity must prepare financial statements for each financial year of the Reporting Entity.
- (2) A Reporting Entity must prepare and maintain all financial statements ~~and accounts~~ in accordance with the International Financial Reporting Standards (IFRS) or other ~~accounting~~ financial reporting standards acceptable to the DFSA.

Accounting periods

- 5.1.3** (1) A Reporting Entity must not change its accounting reference date as specified in its most recent Prospectus unless it has obtained the prior approval of the DFSA in accordance with the requirements in (2).
- (2) A Reporting Entity that proposes to change its accounting reference date must:

- (a) notify the DFSA of its proposal at least 28 business days prior to making such a change; and
- (b) obtain the DFSA's prior approval for the proposed change.

Annual financial report

- 5.1.4** (1) The annual financial report which is required to be produced by a Reporting Entity pursuant to Article 44 of the Law must include the information specified in (2).
- (2) In respect of the financial year to which the annual financial report relates, it must contain:
- (a) financial statements ~~and accounts~~ audited in accordance with Rule 5.1.5;
 - (b) a review of the operations during the year and the results of those operations;
 - (c) details of any significant changes in the Reporting Entity's state of affairs during the financial year;
 - (d) details relating to the Reporting Entity's principal activities during the year and any significant changes in the nature of those activities during the year;
 - (e) details of any matter or circumstance that has arisen since the end of the year that has significantly affected or may significantly affect:
 - (i) the Reporting Entity's operations in future financial years and the results of those operations; or
 - (ii) the Reporting Entity's state of affairs in future financial years; and
 - (f) likely developments in the Reporting Entity's operations in future financial years and the expected results of those operations;
 - (g) a statement of auditors required under Article 46(2) of the Law;
 - (h) a statement by Directors whether or not, in their opinion, the business of the Reporting Entity is a going concern, with supporting assumptions or qualifications as necessary; and
 - (i) details relating to the identity and holdings of any Connected Person of the Reporting Entity.

Guidance

With regard to the opinion required under the obligation in Rule 5.1.4(2)(h), the DFSA recognises that while the ~~accounts~~ financial statements will be prepared by Persons other than the Directors, the Board has overall responsibilities to ensure the integrity and independence of the financial reporting process.

- 5.1.5** The annual financial report of a Reporting Entity that is not a Public Listed Company must be audited by an independent, competent and qualified auditor in accordance with the International Standards on Auditing as issued by the International Auditing and Assurance Standards Board (“IAASB”) or other standards acceptable to the DFSA.

Guidance

1. MKT Rule 5.1.5 applies to a Reporting Entity that is not a Public Listed Company.
2. A Public Listed Company is required under Article 99 of the Regulatory Law to appoint an auditor that is a Registered Auditor (see MKT 5.2). Under MKT Rule 5.2.7 a Public Listed Company must require its Registered Auditor to conduct an audit of its financial statements in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of its financial business or other standards acceptable to the DFSA and produce audit reports as specified in AUD.

- 5.1.6** The annual financial report must be signed by at least two Directors of the Reporting Entity.

Guidance

The DFSA expects a Reporting Entity to make, within its annual financial report, appropriate levels of disclosure for different types of Securities. Accordingly, the disclosure made for an issuer of Shares would be significantly more extensive than the disclosure made in respect of an issuer of Debentures.

Semi-annual financial report

- 5.1.7** (1) Pursuant to Article 45(1)(a) of the Law, a Reporting Entity in respect of Shares or Certificates over Shares must, in addition to the annual financial report, prepare and file a semi-annual financial report which meets the requirements in (2) and (3).
- (2) A Reporting Entity must:
- (a) prepare such report:
 - (i) for the first six months of each financial year or period; and if there is a change to the accounting reference date, prepare such report in respect of the period up to the old accounting reference date; and
 - (ii) in accordance with the applicable IFRS standards or other standards acceptable to the DFSA;
 - (b) if the ~~figures~~ financial statements have either been audited or reviewed by auditors, include in the report statements to that effect; and
 - (c) ensure that ~~that~~ the report includes:

- (i) an indication of important events that have occurred during the first six months of the financial year, and their impact on the financial statements;
 - (ii) a description of the principal risks and uncertainties for the remaining six months of the financial year; and
 - (iii) a condensed set of financial statements, an interim management report and associated responsibility statements.
- (3) A semi-annual financial report must be signed by at least two Directors of the Reporting Entity.

Market disclosure

- 5.1.8** (1) A Reporting Entity where it is required by the Law and the Rules to prepare the following financial reports must disclose to the market, in accordance with Rule 4.7.1:
- (a) its annual financial report;
 - (b) its semi-annual financial report; and
 - (c) its preliminary financial results.
- (2) A Reporting Entity must make the market disclosure required in (1) within the following time periods:
- (a) in relation to its annual financial report, as soon as possible after the ~~accounts~~ financial statements have been approved, but no later than 120 days after the end of the financial period;
 - (b) in relation to its semi-annual financial report, as soon as possible and in any event no later than 60 days after the end of the period to which the report relates; and
 - (c) in relation to its preliminary financial results, as soon as possible but no later than 30 minutes before the market opens on the day after the approval of the Board.
- (3) A Reporting Entity must, where there is a change to its accounting reference date, disclose to the market in accordance with Rule 4.7.1:
- (a) the change to its accounting reference date as soon as possible; and
 - (b) a second interim report within six months of the old accounting reference date if the change of the accounting reference date extends the annual accounting period to more than 14 months.

5.2 Application in respect of a public listed company

- 5.2.1** (1) This section applies to every:
- (a) Public Listed Company;
 - (b) Auditor of a Public Listed Company; and
 - (c) applicant for registration with the DFSA as an auditor of a Public Listed Company.
- (2) In this chapter in relation to a Public Listed Company a reference to “auditor” includes references to an “Auditor”.

Guidance

1. This chapter contains the requirements relating to auditors of a Public Listed Company as provided for in Article 97 of the Regulatory Law 2004. In particular it relates to a number of requirements an auditor of a Public Listed Company must comply with in order to be registered by the DFSA in order that it can provide auditing services to a Public Listed Company.
2. Article 97(2) of the Regulatory Law 2004 defines a Public Listed Company as one that is incorporated or formed in the DIFC and is admitted to an Official List of Securities or is admitted to an equivalent list of securities in another jurisdiction.
 1. A Public Listed Company is defined in the Regulatory Law to mean a person incorporated or formed in the DIFC and who is admitted to an official list of securities in the DIFC or to an equivalent list of securities in another jurisdiction.
 2. A Public Listed Company is required under Article 99 of the Regulatory Law to appoint an auditor that is a Registered Auditor.

Appointment and termination of auditors

- 5.2.2** A Public Listed Company must:
- (a) notify the DFSA of the appointment of an auditor a Registered Auditor by completing and submitting the appropriate form in AFN, including the name and business address of the auditor and the date of the commencement of the appointment;
 - (b) prior to the appointment of the Registered Auditor auditor, take reasonable steps to ensure that the Registered Auditor auditor has the required skills, resources and experience to audit the business of the Public Listed Company for which the Registered Auditor auditor has been appointed; and
 - (c) ensure that the Registered Auditor auditor, at the time of appointment and for the duration of the engagement as auditor, is registered with the DFSA as a Registered Auditor.
- 5.2.3** A Public Listed Company must notify the DFSA immediately if the appointment of its Registered Auditor auditor is or is about to be terminated, or on the resignation of its Registered Auditor auditor, by completing and submitting the appropriate form in AFN giving the reasons for the cessation of the appointment.

5.2.4 A Public Listed Company must appoint a Registered Auditor ~~an auditor~~ to fill any vacancy in the office of Registered Auditor ~~auditor~~ and ensure that the replacement Registered Auditor ~~auditor~~ can take up office at the time the vacancy arises or as soon as reasonably practicable.

- 5.2.5** (1) A Public Listed Company must take reasonable steps to ensure that the Registered Auditor and the relevant audit staff of the Registered Auditor ~~auditor~~ are independent of and not subject to any conflict of interest with respect to the Public Listed Company.
- (2) A Public Listed Company must notify the DFSA if it becomes aware, or has reason to believe, that the Registered Auditor or the relevant audit staff of the Registered Auditor ~~auditor~~ are no longer independent of the Public Listed Company, or have a conflict of interest which may affect their judgement in respect of the Public Listed Company.

Guidance

1. ~~———— A Public Listed Company should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Registered Auditor or any of the relevant Employees of the Registered Auditor that may affect the judgement of the Registered Auditor when conducting an audit of the Public Listed Company or complying with all its legal obligations, including the Regulatory Law, AUD, AML and other relevant modules of the DFSA Rulebook. The relevant staff of a Registered Auditor an auditor are independent if their appointment or retention by a Public Listed Company is not contrary to any applicable ethical guidance issued by the professional supervisory body to which they are subject.~~
2. ~~———— A Public Listed Company should consider rotating the appointed relevant staff of the auditor every five years to ensure that the relevant staff of the auditor remain independent.~~

~~**5.2.6** Where an auditor has not been appointed by a Public Listed Company, the DFSA may direct a Public Listed Company to appoint an auditor in accordance with the requirements in this chapter.~~

~~**5.2.7** Where an auditor appointed by a Public Listed Company is in the opinion of the DFSA not suitable to audit that Public Listed Company, the DFSA may direct that auditor to remove itself as the auditor of that Public Listed Company.~~

~~**5.2.8** The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to such a direction made under Rule 5.2.7.~~

Co-operation with auditors

5.2.96 A Public Listed Company must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Registered Auditor that its Registered Auditor reasonably requires, or is entitled to receive as Registered Auditors ~~such assistance as the auditor reasonably requires to discharge its duties;~~
- (b) give the Registered Auditor ~~auditor~~ right of access at all reasonable times to relevant records and information within its possession;

- (c) allow the Registered Auditor to make copies of any records or information referred to in paragraph (b);
- (ed) do not interfere with the Registered Auditor's ability to discharge its duties;
- ~~(d) do not provide false or misleading information to the auditor; and~~
- (e) report to the Registered Auditor any matter which may significantly affect the financial position of the Public Listed Company; and
- (f) provide such other assistance as the Registered Auditor may reasonably request it to provide.

Function of the auditor

5.2.710 A Public Listed Company, must in writing require its Registered Auditor~~auditor~~ to:

- (a) conduct an audit of the Public Listed Company's accounts financial statements in accordance with the requirements of the relevant standards published by the International Standards on Auditing as issued by the International Auditing and Assurance Standards Board (IAASB) in respect of its financial business or other standards acceptable to the DFSA or where appropriate, AAOIFI standards; and
- (b) produce a Public Listed Company Auditor's Report ~~report~~ on the audited accounts which states; financial statements in accordance with the Markets Law 2012 and AUD App6.
 - ~~(i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;~~
 - ~~(ii) in particular, whether the accounts give a true and fair view of the financial position of the Public Listed Company for the financial year and of the state of the Public Listed Company's affairs at the end of the financial year end; and~~
 - ~~(iii) any other matter or opinion relating to the requirements of this chapter;~~
- ~~(c) submit the reports produced pursuant to Rule 5.2.10(b) above to the Public Listed Company; and~~
- ~~(d) notify the DFSA in writing if the auditor resigns due to significant concerns which have previously been raised with senior management of the Public Listed Company and which have not been addressed.~~

5.2.814 A Public Listed Company must submit any auditor's reports and financial statements required by this chapter to the DFSA within four months of the Public Listed Company's financial year end.

Registration of an Auditor

~~5.2.12~~ An Auditor intending to audit Public Listed Companies must apply to the DFSA for registration in accordance with the Rules in this Chapter.

~~5.2.13~~ An applicant for registration must complete and submit the appropriate form in AFN, supported by such additional material as may be required by the DFSA.

Guidance

Applicants and Auditors are required to pay fees as prescribed in FER.

Consideration of the application

~~5.2.14~~ (1) An applicant for registration must be able to demonstrate to the DFSA's satisfaction that:

- ~~(a)~~ it is fit and proper as provided in (2);
- ~~(b)~~ it has professional indemnity insurance as required under Section 5.2.43;
- ~~(c)~~ 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
 - ~~(iii)~~ the Code of Ethics for Professional Accountants;
- ~~(d)~~ 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;
- ~~(e)~~ it is controlled by Persons each of whom hold a Recognised Professional Qualification from a Recognised Professional Body; and
- ~~(f)~~ it has complied with any other requirement as specified by the DFSA.

~~(2)~~ For the purposes of assessing whether an applicant for registration meets the fit and proper requirement under (1)(a), the DFSA will consider:

- ~~(a)~~ the application and submissions;
- ~~(b)~~ background and history;
- ~~(c)~~ the ownership and the Group structure;
- ~~(d)~~ resources, including human and technological;

- ~~(e) — whether the applicant’s affairs are likely to be conducted and managed in a sound and prudent manner; and~~
- ~~(f) — any other matter considered relevant by the DFSA.~~
- ~~(3) — For the purposes of (1)(e):~~
 - ~~(a) — “control” means:~~
 - ~~(i) — in a body corporate, a majority of the directors and a majority of the votes of the shareholders; or~~
 - ~~(ii) — in a partnership (except a limited partnership) means a majority of the partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote; and~~
 - ~~(iii) — in a limited partnership means a majority of the general partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote;~~
 - ~~(b) — “majority” means:~~
 - ~~(i) — where under the Auditor’s constitution matters are decided on by the exercise of voting rights, a majority of the rights to vote on all, or substantially all, matters; or~~
 - ~~(ii) — in any other case a majority of the Persons having rights under the constitution of the Auditor to enable them to direct its overall policy or alter its constitution.~~

~~**5.2.15** The DFSA may impose in its absolute discretion any terms or conditions on the registration.~~

Regulatory appeals

~~**5.2.16** An applicant may appeal to the Regulatory Appeals Committee against any refusal to grant registration, or any terms or conditions of registration imposed under Rule 5.2.15 and the Regulatory Appeals Committee has jurisdiction to hear any such appeal.~~

Guidance

~~Under Article 98 of the Regulatory Law 2004, the DFSA may in its absolute discretion grant or refuse to grant registration.~~

Obligations of auditors and audit principals

~~**5.2.17** An Auditor must:~~

- ~~(a) — continue to comply with all its obligations including those in Chapter 5;~~

- ~~(b) — comply with the applicable International Standards of Auditing, Quality Control and Codes of Ethics referred to in Rule 5.2.14 (1)(c) and (d);~~
- ~~(c) — appoint an Audit Principal in accordance with the International Standards on Quality Control; and~~
- ~~(d) — ensure that each Audit Principal is fit and proper to conduct audit work on behalf of the Auditor.~~

5.2.18 ~~An Audit Principal must:~~

- ~~(a) — manage the conduct of audit work undertaken by the Auditor;~~
- ~~(b) — sign audit reports on behalf of the Auditor; and~~
- ~~(c) — sign any other report as may be required by the DFSA from time to time.~~

5.2.19 ~~In assessing whether an Audit Principal is fit and proper, the Auditor must ensure that the Audit Principal at a minimum:~~

- ~~(a) — holds a Recognised Professional Qualification;~~
- ~~(b) — has at least five years of prior relevant audit experience in the past seven years; and~~
- ~~(c) — is a member in good standing of a Recognised Professional Body.~~

Guidance

~~When assessing a person's suitability to be appointed as an Audit Principal, an Auditor should ascertain matters such as whether any disciplinary action has been taken against that person by a Recognised Professional Body.~~

Notification of changes

5.2.20 ~~An Auditor must notify the DFSA in writing within 30 days:~~

- ~~(a) — of any change of its Audit Principals, including the appointment of any new Audit Principal;~~
- ~~(b) — of any claims made against the Auditor including but not limited to those lodged against the Auditor's professional indemnity insurance;~~
- ~~(c) — of any matter that can reasonably be regarded as having a material adverse effect on the DFSA's registration of the Auditor;~~
- ~~(d) — of a change of name or address of the Auditor; and~~
- ~~(e) — if it no longer meets the requirements for registration as an Auditor.~~

Books and records

5.2.21 ~~An Auditor must maintain proper books and records at all times to facilitate the proper performance of its functions and discharge of its duties under these Rules.~~

~~5.2.22~~ An Auditor must maintain records demonstrating how it established the fitness and propriety of each Audit Principal for the purposes of Rules 5.2.17 to 5.2.19.

~~5.2.23~~ An Auditor must:

- ~~(a)~~ — maintain records and all relevant information relating to its professional indemnity insurance including the terms of cover and its duration; and
- ~~(b)~~ — upon a request by the DFSA, provide to the DFSA forthwith evidence of the terms of cover and the validity of those policies.

~~5.2.24~~ An Auditor must maintain records of insurance claims made under its professional indemnity insurance policy. Such records, together with each annual renewal proposal form, must be available for inspection by the DFSA.

~~5.2.25~~ An Auditor must maintain proof of records of continuing professional development undertaken by its Employees, including Audit Principals.

~~5.2.26~~ An Auditor must maintain books and records referred to in the above Rules for a period of at least 6 years. In the case of the books and records referred to in Rule 5.2.21, those records must be kept for at least a period of 6 years after the completion of each audit carried out in respect of each client that is a Public Listed Company.

Withdrawal of registration

Guidance

Under Article 98(3) of the Regulatory Law 2004, the DFSA may make Rules setting out how and on what grounds registration may be withdrawn.

~~5.2.27~~ (1) — The DFSA may withdraw an Auditor's registration either on its own initiative or at the request of the Auditor.

~~(2)~~ — A request for withdrawal by an Auditor must be in writing.

~~5.2.28~~ In considering requests for the withdrawal of an Auditor's registration, the DFSA must be satisfied that:

- ~~(a)~~ — the Auditor has made appropriate arrangements with respect to its existing customers; and
- ~~(b)~~ — any other matter which the DFSA would reasonably expect to be resolved has been resolved;

before granting a request for a withdrawal.

Guidance

An application by an Auditor to withdraw its registration does not in itself result in a cancellation of its registration. Until such time as the DFSA withdraws the registration, the Auditor remains subject to, and must comply with, the Regulatory Law 2004, Rules and any other relevant legislation administered by the DFSA.

~~5.2.29~~ Once an Auditor applies to withdraw its registration, the Auditor must not accept appointments as an Auditor nor issue any audit reports without obtaining the prior written consent of the DFSA.

~~5.2.30~~ The DFSA must take the necessary steps to withdraw the registration of an Auditor as soon as practicable after an Auditor has applied to withdraw its registration.

Withdrawal on the DFSA's initiative

~~5.2.31~~ The DFSA may withdraw the registration of an Auditor on its own initiative if 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.

~~5.2.32~~ The DFSA may only withdraw the registration of an Auditor on its own initiative if it has given to the Auditor:

- ~~(a)~~ — a prior written notice setting out the DFSA's reasons for proposing to withdraw its registration; and
- ~~(b)~~ — a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed withdrawal.

~~5.2.33~~ Upon deciding to withdraw the registration of an Auditor, the DFSA must without delay inform the Auditor in writing of:

- ~~(a)~~ — such decision; and
- ~~(b)~~ — the date on which the decision is to take effect.

Guidance

Generally, the DFSA will consider exercising the power to withdraw the registration of an Auditor on its own initiative only after a thorough investigation.

~~5.2.34~~ An Auditor may appeal to the Regulatory Appeals Committee against a decision of the DFSA to withdraw its registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

Suspension by the DFSA

Guidance

Under Article 105 of the Regulatory Law, the DFSA may make Rules setting out how and on what grounds registration may be suspended.

~~5.2.35~~ The DFSA may suspend an Auditor's registration if 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.~~

~~**5.2.36** Subject to Rule 5.2.37, the DFSA may only suspend the registration of an Auditor after it has given to the Auditor:~~

~~(a) — a prior written notice setting out the DFSA's reasons for proposing to suspend its registration; and~~

~~(b) — a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed suspension.~~

~~**5.2.37** Where the DFSA forms the view that any delay likely to arise as a result of having to comply with the requirements in Rule 5.2.36 is likely to be prejudicial to the interests of the DIFC, it may suspend an Auditor's registration immediately. In such circumstances, the Auditor may make representations during the suspension period.~~

~~**5.2.38** An Auditor may appeal to the Regulatory Appeals Committee against the DFSA's decision to suspend the Auditor's registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.~~

~~**5.2.39** Upon deciding to exercise its powers under Rule 5.2.35, the DFSA must, without delay, inform the Auditor in writing of:~~

~~(a) — its decision;~~

~~(b) — the reasons for the suspension; and~~

~~(c) — the date on which the decision is to take effect and, if known, the duration of the suspension.~~

Guidance

~~The decision of the DFSA to suspend an Auditor's registration remains in effect until the appeal is heard and a decision is rendered, unless the Regulatory Appeals Committee orders a stay of the suspension decision.~~

Continuing professional development

~~**5.2.40** An Auditor must ensure that all Employees, including Audit Principals, engaged in audit work undertake continuing professional development in accordance with the requirements of:~~

~~(a) — the Recognised Professional Body of which the Employee or Audit Principal is a member;~~

~~(b) — any applicable internal standards of the Auditor; and~~

~~(c) — any direction or order given by the DFSA.~~

~~**5.2.41** Deleted~~

~~**5.2.42** Deleted~~

5.2.43 Deleted**Professional indemnity insurance**

~~5.2.44~~ An Auditor must hold adequate professional indemnity insurance covering all types of civil liability arising in connection with the conduct of the Auditor's business by Employees including its Audit Principals.

~~5.2.45~~ An Auditor must, upon request of the DFSA, provide to the DFSA any information relating to the Auditor's professional indemnity insurance policy including the terms and duration of, and any claims made under, such policy.

~~5.2.46~~ An Auditor's professional indemnity insurance may be effected with any reputable insurance company or other underwriter provided that the DFSA may require Auditors not to use certain insurance companies or underwriters or forms of insurance cover.

Run-off cover

~~5.2.47~~ An Auditor, who intends to cease operations in the DIFC, must make appropriate arrangements to cover its liability in connection with past conduct of the Auditor for a period of at least 2 years.

Register of Auditors**Guidance**

The DFSA maintains a register of Auditors pursuant to GEN 8.18 by recording the following information in respect of current and former Auditors:

- a. — full name of the Auditor;
- b. — names of the Audit Principals of the Auditor;
- c. — address of the Auditor;
- d. — contact details of the Auditor;
- e. — date of registration of the Auditor;
- f. — date of withdrawal of registration of the Auditor;
- g. — date of any suspensions of registration applicable to an Auditor; and
- h. — date of cessation of suspension or registration.

6 LISTED FUNDS

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6.3 Prospectus requirements relating to a listed fund

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Approval of a prospectus

- 6.3.2** (1) The DFSA will approve a Fund Prospectus which has been filed with the DFSA in accordance with Rule 6.3.1 as soon as reasonably practicable where it is ~~reasonably~~ satisfied that the Prospectus complies with all the requirements applicable to that Prospectus.
- (2) A Fund Prospectus is not an Approved Prospectus for the purposes of Article 14(2) of the Law unless the DFSA has issued to the applicant a notice stating its approval:
- (a) of the Prospectus or Supplementary Prospectus, as the case may be; and
 - (b) in the case of a, Prospectus in (a) comprising multiple documents, of all the multiple documents.
- ~~(3) Where the DFSA does not approve a Fund Prospectus as specified in (2), it must notify the applicant as soon as reasonably practicable that the Prospectus has not been approved by the DFSA and the reasons for not doing so.~~
- ~~(4) The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a decision by the DFSA not to approve a Prospectus.~~
- (3) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule not to approve a Fund Prospectus.
- (4) If the DFSA decides to exercise its power not to approve a Fund Prospectus under this Rule, the applicant may refer the matter to the FMT for review.

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- 6.3.3** (1) For the purposes of Rule 6.3.1(b)(ii), the offer document relating to the Foreign Fund must comply with the requirements:
- (a) relating to a Designated Fund in a Recognised Jurisdiction; or
 - (b) in a jurisdiction which provides a level of regulation relating to the offer which is acceptable to the DFSA.
- (2) The DFSA may accept an offer document referred to in (1)(b) subject to such conditions or restrictions imposed by the DFSA as it sees fit.
- (3) Where the offer document referred to in (1) is not in the English language, it must be accompanied by an English translation acceptable to the DFSA.

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

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6.5 Market disclosure relating to a listed fund

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Disclosure exceptions

- 6.5.4** (1) A Reporting Entity of a Listed Fund need not, subject to (2), make disclosure of information pursuant to Rule 6.5.1, where, in the reasonable opinion of the Reporting Entity, the disclosure required by that Rule would:
- (a) be unduly detrimental to the legitimate interests of the Reporting Entity or the Listed Fund as is applicable; or
 - (b) disclose commercially sensitive material.
- (2) Where a Reporting Entity of a Listed Fund intends not to make the disclosure pursuant to (1), it must immediately file with the DFSA a confidential report which:
- (a) contains all the information which it seeks not to disclose and the reasons for non-disclosure; and
 - (b) is in the English language and, where any documents accompanying the report are not in the English language, an English translation of such documents.
- (3) The DFSA may, ~~in its absolute discretion~~:
- (a) specify the period during which disclosure of the information included in the confidential report need not be disclosed to the markets; and
 - (b) extend the period referred to in (a) upon application by the Reporting Entity.
- (4) Where a confidential report is filed with the DFSA under (2), the Reporting Entity need not comply with the requirements in Rule 6.5.1 during the period permitted by the DFSA pursuant to (3), unless or until one of the following occurs:
- (a) the DFSA directs the Reporting Entity to comply with Rule 6.5.1;
 - (b) the Reporting Entity becomes aware that there is a material change of circumstances that renders the reason for non-disclosure of the information no longer valid; or
 - (c) the Reporting Entity becomes aware or has reasonable grounds to suspect that the relevant Inside Information has or may have come to the knowledge of any Person or Persons other than by way of selective disclosure made pursuant to Rule 6.5.3(4).

- (5) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (3) or (4)(a).
- (6) If the DFSA decides to exercise its power under (3) or (4)(a), the Reporting Entity may refer the matter to the FMT for review.

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7 SPONSORS AND COMPLIANCE ADVISERS

7.1 Sponsors

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- 7.1.5** (1) Where, in the opinion of the DFSA, a sponsor appointed by a Person is not suitable, or where a sponsor has not been appointed or has resigned, the DFSA may direct the Person to replace or appoint a sponsor.
- (2) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule. The DFSA must give both the Person and, if in the DFSA's opinion a sponsor is not suitable, the sponsor an opportunity to make representations under the procedures in that Schedule.
- (3) If the DFSA decides to exercise its power under this Rule, the Person may refer the matter to the FMT for review.

Guidance

The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a direction given by the DFSA relating to sponsors (see Article 49(4) of the Law).

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- 7.2.4** (1) The DFSA may, by written notice, require a Reporting Entity to appoint a compliance adviser for a specified period to assist the Reporting Entity in meeting its continuing obligations under the Law and the Rules.
- (2) A Reporting Entity that is required to appoint a compliance adviser in accordance with the requirements in this section must ensure that a compliance adviser continues to fulfil the role of compliance adviser until such time as the DFSA advises the Reporting Entity in writing that a compliance adviser is no longer required.

Guidance

The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a direction given by the DFSA relating to the appointment of a compliance adviser (see Article 49(4) of the Law).

9 THE LISTING RULES

9.5 Determination of applications and references appeals

Guidance

Determination of applications

1. Under Article 33(1) of the Law, an Authorised Market Institution or the DFSA may only grant admission of Securities to an Official List of Securities maintained by it, in accordance with the requirements in the Law and the Rules made for the purposes of the Law.
2. Under Article 34(1)(b) and 34(2)(b) of the Law, the DFSA may impose conditions or restrictions in respect of the admission of Securities to the Official List of Securities or vary or withdraw such conditions or restrictions.
3. Under Article 33(2) of the Law, where an Authorised Market Institution or the DFSA, as is relevant, grants admission of Securities to an Official List of Securities it will notify the applicant in writing of its decision in relation to the application for admission of Securities to the Official List of Securities.
4. ~~Under Article 34(1)(a) of the Law, if the DFSA refuses an admission of Securities to the Official List of Securities, the DFSA shall without undue delay, inform the applicant in writing of such refusal and the reasons for such refusal.~~
45. Where the DFSA grants admission of Securities to an Official List of Securities, it will include such Person in its Official List of Securities published on the DFSA website.

References Appeals

56. Under Article ~~34(7)~~ 36(e) of the Law, an Applicant may commence a reference appeal to the FMT DFSA's Regulatory Appeals Committee against in relation to any decision determination by the DFSA in relation to object to or refuse an application for admission of Securities to the Official List of Securities, or to impose conditions or restriction on the admission of Securities to the Official List of Securities, or to vary such conditions or restrictions.
7. ~~Under Article 36(d) of the Law, an Applicant may appeal to the DFSA's Regulatory Appeals Committee against any decision by the DFSA to impose conditions or restrictions in respect of the admission of Securities to the Official List of Securities, or vary or withdraw such conditions or restrictions.~~
68. Under Article ~~29~~ 28 of the Regulatory Law ~~2004~~, a Person that commences a reference wishing to appeal to the FMT Regulatory Appeals Committee a decision of the DFSA must

~~submit a written notice of appeal~~ must do so within 30 days of the ~~notification of the~~ relevant decision.

79. The form of submission that a reference ~~an appeal~~ must take is specified in the rules of procedure of the FMT ~~Regulatory Appeals Committee~~.

9.6 Suspending, delisting and restoring a Listing

Guidance

1. Under Article 35(4) of the Law, the DFSA may, suspend or delist, or require 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 where it is satisfied that there are circumstances that warrant such action or it is in the interests of the DIFC.

References Appeals

2. Under Article 35(4) ~~36(e)~~ of the Law, a Person may commence a reference appeal to the ~~FMT DFSA's Regulatory Appeals Committee~~ in relation to any decision by the DFSA to suspend or delist such Person's Securities from the Official List of Securities or to direct an Authorised Market Institution to suspend or delist the Person's Securities.
3. Under Article 29 ~~28~~ of the Regulatory Law-2004, a Person that commences a reference wishing to appeal to the ~~FMT Regulatory Appeals Committee~~ a decision of the DFSA must submit a written notice of appeal must do so within 30 days of the ~~notification of the~~ relevant decision.
4. The form of submission that an ~~appeal~~ reference must take is specified in the rules of procedures of the ~~FMT Regulatory Appeals Committee~~.

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9.7 Continuing obligations

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- 9.7.4**
- (1) A Listed Entity must not purchase its own Shares without the prior written approval of the DFSA.
 - (2) The DFSA may make its approval of a proposal by a Listed Entity to purchase its own Shares subject to conditions or restrictions.
 - (3) A Listed Entity which proposes to purchase more than 15% of any class of its Shares must do so only by way of a tender offer to all shareholders of that class.
 - (4) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (1) not to approve a purchase of Shares and under (2) to approve a proposal subject to conditions or restrictions.
 - (5) If the DFSA decides to exercise its power under (1) not to approve a purchase of Shares or under (2) to make its approval subject to conditions or restrictions, the Listed Entity may refer the matter to the FMT for review.