

**Appendix 2**

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



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# The DFSA Rulebook

Anti-Money Laundering, Counter-Terrorist  
Financing and Sanctions Module

(AML)

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## **1 INTRODUCTION**

### **1.1 Application**

#### **1.1.1** This module (AML) applies to:

- (a) every Relevant Person in respect of all its activities carried on in or from the DIFC;
- (b) the persons specified in Rule 1.2.1 as being responsible for a Relevant Person's compliance with this module; and
- (c) a Relevant Person, which is a DIFC entity, to the extent required by Rule 14.1.

except to the extent that a provision of AML provides for a narrower application.

#### **1.1.2** For the purposes of these Rules, a Relevant Person means:

- (a) an Authorised Firm other than a Credit Rating Agency;
- (b) an Authorised Market Institution;
- (c) a DNFBP; or
- (d) a Registered Auditor.

### **1.2 Responsibility for compliance with this module**

#### **1.2.1** (1) Responsibility for a Relevant Person's compliance with this module lies with every member of its senior management.

(2) In carrying out their responsibilities under this module every member of a Relevant Person's senior management must exercise due skill, care and diligence.

(3) Nothing in this Rule precludes the DFSA from taking enforcement action against any person including any one or more of the following persons in respect of a breach of any Rule in this module:

- (a) a Relevant Person;
- (b) members of a Relevant Person's senior management; or
- (c) an Employee of a Relevant Person.

## 1.3 Application table

### Guidance

| Relevant Person       | Applicable Chapters |         |
|-----------------------|---------------------|---------|
| Authorised Person     | 1 - 14              |         |
| Representative Office | 1 - 5*              | 10- 14  |
| Registered Auditor    | 1 -8                | 10 - 14 |
| DNFBP                 | 1 - 8               | 10 - 15 |

\* Chapters 6 – 9 are unlikely to apply to a Representative Office as such an office is only permitted to carry on limited activities in the DIFC and therefore must not have Customers.

## 2 OVERVIEW AND PURPOSE OF THE MODULE

### Guidance

1. In this module, for simplicity, a reference to “money laundering” also includes terrorist financing and the financing of unlawful organisations (see Rule 3.1.1).

### Overview of the DIFC’s AML regime

2. The DIFC is governed by two separate and complementary regimes in relation to AML regulation, both administered by the DFSA:
  - a. The Federal regime: Under Article 3 of Federal Law No. 8 of 2004, the provisions of Federal Law No. 4 of 2002 on Combating Money Laundering and Terrorist Financing and Federal Law No. 7 of 2014 on Combating Terrorism Offences and the implementing regulations under those laws apply in the DIFC. The DFSA, as the DIFC’s supervisory authority for the purposes of those laws, is obliged to issue regulations and guidance in the DIFC relating to the regulation of anti-money laundering and combating the financing of terrorism and unlawful organisations. The DFSA may also impose administrative penalties for breaches of those laws and the implementing regulations. See Article 11(2) of Federal Law No. 4 of 2002 and also Article 17 of Cabinet Resolution No. 38 of 2014; and
  - b. The DIFC regime: Under Article 70(3) of the DIFC Regulatory Law 2004 (the “Regulatory Law”), the DFSA has jurisdiction for the regulation of anti-money laundering in the DIFC relating to Relevant Persons (see para 4 below) and their officers, employees and agents. The DIFC specific regime is contained in

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Chapter 2 of Part 4 of the Regulatory Law and any DFSA Rules made in connection with anti-money laundering measures, policies and procedures.

3. Note that under Article 71(1) of the Regulatory Law, the DIFC regime requires compliance with the Federal regime. It follows that a failure to comply with a provision of Federal Law No. 4 of 2002 on Combating Money Laundering and Terrorist Financing or Federal Law No. 7 of 2014 on Combating Terrorism Offences or the implementing regulations under those laws may also provide evidence of failure to comply with Article 71(1), which may then be addressed under the disciplinary and remedial provisions of the Regulatory Law and DFSA Rules.

### Purpose of the AML module

4. The AML module has been designed to provide a single reference point for all persons and entities (collectively called Relevant Persons) who are supervised by the DFSA for Anti-Money Laundering (AML), Counter-Terrorist Financing (CTF) and sanctions compliance under the two regimes referred to above. Accordingly it applies to Authorised Firms (other than Credit Rating Agencies), Authorised Market Institutions, Designated Non-Financial Businesses and Professions (DNFBPs), and Registered Auditors. The AML module takes into consideration the fact that Relevant Persons have differing AML risk profiles. A Relevant Person should familiarise itself with this module, and assess the extent to which the chapters and sections apply to it.
5. The AML module cannot be read in isolation from other relevant legislation or developments in international policy and best practice and, to the extent applicable, Relevant Persons need to be aware of, and take into account, how these aforementioned matters may impact on the Relevant Person's day to day operations. This is particularly relevant when considering United Nations Security Council Resolutions (UNSCRs) which apply in the DIFC, and unilateral sanctions imposed by other jurisdictions which may apply to a Relevant Person depending on the Relevant Person's jurisdiction of origin, its business and/or customer base.

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### **3 INTERPRETATION AND TERMINOLOGY**

#### **3.1 Interpretation**

**3.1.1** A reference in this module to “money laundering” in lower case includes a reference to terrorist financing and the financing of unlawful organisations, unless the context provides or implies otherwise.

**Guidance**

Chapter 6, section 6.2, of the General (GEN) module sets out how to interpret the Rulebook, including this module.

#### **3.2 Glossary for AML**

**Guidance**

1. A Relevant Person should note that, in order to make this module easier to read, some of the defined terms in this module have not had the initial letter of each word capitalised in the same way as in other Rulebook modules.
2. Some of the defined terms and abbreviations in this module may also be found in the DFSA’s Glossary module (GLO). Where a defined term in this module does not appear in Rule 3.2.1, a Relevant Person should look in GLO to find the meaning.
3. In accordance with the interpretation provisions in the Regulatory Law, a reference to legislation includes a reference to the legislation as amended or re-enacted from time to time.

**3.2.1** In this module, the terms and abbreviations listed in the table below have the following meanings:

|   |  |
|---|--|
| AMLSCU  | <del>Means the Anti-Money Laundering Suspicious Cases Unit, the Financial Intelligence Unit of the U.A.E Central Bank.</del> |
| .....   | .....  |
| CTF   | Means counter-terrorist financing.   |
| .....   | .....  |
| Designated Non-Financial Business or Profession (DNFBP) | Means:<br><br>(1) The following class of persons whose business or profession is carried on in or from the DIFC:             |

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|                                  |  |
|----------------------------------|--|
|                                  | <ul style="list-style-type: none"> <li>(a) a real estate developer or agency which carries out transactions with a customer involving the buying or selling of real property;</li> <li>(b) a dealer in precious metals or precious stones;</li> <li>(c) <del>a dealer in any saleable item of a price equal to or greater than \$15,000;</del></li> <li>(d) a law firm, notary firm, or other independent legal business;</li> <li>(e) an accounting firm, audit firm or insolvency firm;</li> <li>(f) a company service provider ; or</li> <li>(g) a Single Family Office.</li> </ul> <p>(2) A person who is an Authorised Person or a Registered Auditor is not a DNFBP.</p> |
| ...                              | ...  |
| <u>FID</u>                       | <u>The Financial Intelligence Department of the U.A.E Central Bank.</u>  |
| ...                              | ...  |
| Suspicious Activity Report (SAR) | Means a report in the prescribed format regarding suspicious activity (including a suspicious transaction) made to the <del>AMLSCU</del> <u>FID</u> under Rule 13.3.1(c).  |
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## **7 CUSTOMER DUE DILIGENCE**

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### **7.7 Failure to conduct or complete customer due diligence**

- 7.7.1** (1) Where, in relation to any customer, a Relevant Person is unable to conduct or complete the requisite Customer Due Diligence in accordance with Rule 7.1.1 it must, to the extent relevant:
- (a) not carry out a transaction with or for the customer through a bank account or in cash;
  - (b) not open an account or otherwise provide a service;
  - (c) not otherwise establish a business relationship or carry out a transaction;
  - (d) terminate or suspend any existing business relationship with the customer;
  - (e) return any monies or assets received from the customer; and
  - (f) consider whether the inability to conduct or complete Customer Due Diligence necessitates the making of a Suspicious Activity Report under Rule 13.3.1(c).
- (2) A Relevant Person is not obliged to comply with (1) (a) to (e) if:
- (a) to do so would amount to “tipping off” the customer, in breach of Federal AML legislation; or
  - (b) the AMLSCUFID directs the Relevant Person to act otherwise.

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## **10 SANCTIONS AND OTHER INTERNATIONAL OBLIGATIONS**

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### **10.3 Government, regulatory and international findings**

- 10.3.1** (1) A Relevant Person must establish and maintain systems and controls to ensure that on an ongoing basis it is properly informed as to, and takes reasonable measures to comply with, any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions (each of which is referred to in this Rule as a “finding”) issued by:

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- (a) the government of the U.A.E. or any government departments in the U.A.E.;
  - (b) the Central Bank of the U.A.E. or the AMLSCUFID;
  - (c) FATF;
  - (d) U.A.E. enforcement agencies; and
  - (e) the DFSA,
- concerning the matters in (2).

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**Guidance**

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4. The Relevant Person's MLRO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCUFID if they do not qualify as suspicious under the Federal AML legislation. See chapter 13 on Suspicious Activity Reports.

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## 12 AML TRAINING AND AWARENESS

### 12.1 Training and awareness

#### 12.1.1 A Relevant Person must

- (a) provide AML training to all relevant Employees at appropriate and regular intervals;

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#### Guidance

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- 5. Relevant Persons should be aware of their duty under Cabinet Resolution No. 38 of 2014 to establish and provide AML training programmes in co-ordination with the AMLSCUFID.

## 13 SUSPICIOUS ACTIVITY REPORTS

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#### 13.3.1 A Relevant Person must ensure that where the Relevant Person's MLRO receives a notification under Rule 13.2.2, the MLRO, without delay:

- (a) inquires into and documents the circumstances in relation to which the notification made under Rule 13.2.2 was made;
- (b) determines whether in accordance with Federal AML legislation a Suspicious Activity Report must be made to the AMLSCUFID and documents such determination;
- (c) if required, makes a Suspicious Activity Report to the AMLSCUFID as soon as practicable; and
- (d) notifies the DFSA of the making of such Suspicious Activity Report immediately following its submission to the AMLSCUFID.

#### 13.3.2 Where, following a notification to the MLRO under 13.2.2, no Suspicious Activity Report is made, a Relevant Person must record the reasons for not making a Suspicious Activity Report.

#### 13.3.3 A Relevant Person must ensure that if the MLRO decides to make a Suspicious Activity Report, his decision is made independently and is not subject to the consent or approval of any other person.

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### Guidance

1. Relevant Persons are reminded that the failure to report suspicions of money laundering or terrorist financing may constitute a criminal offence that is punishable under the laws of the State.
2. SARs under Federal AML legislation should be emailed or faxed to the AMLSCUFID. The dedicated email address and fax numbers, and the template for making a SAR are available on the DFSA website.
3. In the preparation of a SAR, if a Relevant Person knows or assumes that the funds which form the subject of the report do not belong to a customer but to a third party, this fact and the details of the Relevant Person's proposed course of further action in relation to the case should be included in the report.
4. If a Relevant Person has reported a suspicion to the AMLSCUFID, the AMLSCUFID may instruct the Relevant Person on how to continue its business relationship, including effecting any transaction with a person. If the customer in question expresses his wish to move the funds before the Relevant Person receives instruction from the AMLSCUFID on how to proceed, the Relevant Person should immediately contact the AMLSCUFID for further instructions.

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### 13.5 Freezing assets

#### Guidance

The DFSA has power under the Regulatory Law to restrict an Authorised Person from disposing of or transferring property including, for example, assets or other funds suspected of relating to money laundering. It may also apply to the Court for an order restraining a person from transferring or disposing of any assets suspected of relating to money laundering. In cases involving suspected money laundering, the DFSA will usually take such action in co-ordination with the AMLSCUFID.

## 14 GENERAL OBLIGATIONS

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### 14.4 Record keeping

14.4.1 A Relevant Person must maintain the following records:

- (a) a copy of all documents and information obtained in undertaking initial and ongoing Customer Due Diligence;
- (b) the supporting records (consisting of the original documents or certified copies) in respect of the customer business relationship, including transactions;
- (c) notifications made under Rule 13.2.2;
- (d) Suspicious Activity Reports and any relevant supporting documents and information, including internal findings and analysis;
- (e) any relevant communications with the AMLSCUFID; and
- (f) the documents in Rule 14.4.2,

for at least six years from the date on which the notification or report was made, the business relationship ends or the transaction is completed, whichever occurs last.

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### 14.5 Annual AML return

14.5.1 A Relevant Person ~~which is:~~

- ~~(a) an Authorised Person;~~
- ~~(b) a Registered Auditor; or~~
- ~~(c) a person who is a DNFBP in one of the following classes:~~
  - ~~(i) a real estate developer or agency which carries out transactions with a customer involving the buying or selling of real property;~~
  - ~~(ii) a law firm, notary firm, or other independent legal business;~~
  - ~~(iii) an accounting firm, audit firm or insolvency firm; or~~
  - ~~(iv) a company service provider,~~

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must complete the AML Return form in AFN and submit it to the DFSA by the end of September each year. The annual AML Return must cover the period from 1 August of the previous year to 31 July of the reporting year.

### Guidance

Relevant Persons should be aware of their obligation under Cabinet Resolution No. 38 of 2014 to prepare AML reports and copy them to the FIDAMLSU.

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## 14.7 Employee disclosures

**14.7.1** A Relevant Person must ensure that it does not prejudice an Employee who discloses any information regarding money laundering to the DFSA or to any other relevant body involved in the prevention of money laundering.

### Guidance

The DFSA considers that “relevant body” in Rule 14.7.1 would include the AMLSUFID or another financial intelligence unit, the police, or a Dubai or Federal ministry.

## **15 DNFBP REGISTRATION AND SUPERVISION**

### **Guidance**

1. A DNFBP should ensure that it complies with and has regard to relevant provisions of the Regulatory Law. The Regulatory Law gives the DFSA a power to supervise DNFBPs'; compliance with relevant AML laws in the State. The Regulatory Law requires a DNFBP to be registered by the DFSA to conduct its activities in the DIFC. Rule 15.1.2 sets out the criteria a DNFBP must meet to be registered. The Regulatory Law~~It~~ also gives the DFSA a number of other important powers in relation to DNFBPs, including powers of enforcement. This includes a power to obtain information and to conduct investigations into possible breaches of the Regulatory Law. The DFSA may ~~also~~ impose fines for breaches of the Regulatory Law or the Rules. It may also suspend or withdraw the registration of a DNFBP in various circumstances.
2. The DFSA takes a risk-based approach to regulation of persons which it supervises. Generally, the DFSA will work with DNFBPs to identify, assess, mitigate and control relevant risks where appropriate. RPP describes the DFSA's enforcement powers under the Regulatory Law and outlines its policy for using these powers.
3. Rule 3.2.1 defines a DNFBP by setting out a list of businesses or professions which, if carried on in or from the DIFC, constitute a DNFBP.
4. In determining if a person is carrying on a business or profession in the DIFC that falls within the DNFBP definition, the DFSA will adopt a 'substance over form' approach. That is, it will consider what business or profession is in fact being carried on, and its main characteristics, and not just what business or profession the person purports, or is licensed, to carry on in the DIFC.
5. The DFSA considers that "a law firm, notary firm or other independent legal business" in paragraph (1)(d) of the DNFBP definition, includes any business or profession that involves a legal service, including advice or services related to laws in the State or other jurisdictions. The DFSA does not consider it necessary for the purposes of the definition that:
  - a. the relevant person is licensed to provide legal services in the State; or
  - b. the individuals or employees providing the legal service are qualified or authorised to do so, whether in the State or in any other jurisdiction.
6. The DFSA considers that "an accounting firm, audit firm or insolvency firm" in paragraph (1)(e) of the DNFBP definition, includes forensic accounting services that use accounting skills, principles and techniques to investigate suspected illegal activity or to analyse financial information for use in legal proceedings.
7. The DFSA would also consider a tax advisory business carried on in or from the DIFC to be a DNFBP as it is likely to involve elements of both legal and accounting services i.e. advice on taxation law and the use of accounting skills to analyse financial records, and so fall within either paragraph (1)(d) or (e) of the DNFBP definition.

### **15.1 Registration and notifications**

- 15.1.1** ~~A DNFBP must register with the DFSA by way of a notification by completing and submitting the appropriate form in the AFN Sourcebook. An applicant for~~

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registration as a DNFBP must apply to the DFSA by completing and submitting the appropriate form in the AFN Sourcebook.

- 15.1.2** (1) To be registered as a DNFBP, an applicant must demonstrate to the DFSA's satisfaction that:
- (a) it is fit and proper to perform anti-money laundering functions; and
  - (b) it has adequate resources and systems and controls, including policies and procedures, to comply with applicable anti-money laundering requirements under Federal AML legislation, the Regulatory Law and these Rules.
- (2) In assessing if an applicant is fit and proper under (1)(a), the DFSA may, without limiting the matters it may take into account under that paragraph, consider the applicant, its senior management, its beneficial owners, other entities in its Group and any other person with whom it has a relationship.
- (3) The DFSA will in assessing if an applicant is fit and proper, consider the cumulative effect of matters that, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of the applicant.

### **Annual Information Return**

- 15.1.3** A DNFBP must complete the annual information return in AFN for each calendar year and submit the return to the DFSA by 31 January of the following year.

### **Notification of changes**

- 15.1.24** A DNFBP must promptly notify the DFSA of any change in its:

- (a) name;
- (b) legal status;
- (c) address;
- (d) MLRO;
- (e) senior management; or
- (e) beneficial ownership.

## **15.2 Request to wWithdrawal of registration**

- 15.2.1** (1) A DNFBP must notify the DFSA in writing 14 days in advance of it ceasing to carry on its DNFBP business activities in or from the DIFC.

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- (2) The notice must include a request to cancel its registration, an explanation of the reason for it ceasing business, and attached copies of any relevant documents.

A DNFBP must notify the DFSA in writing when it proposes to cease carrying on its business activities in or from the DIFC.

**15.2.2** ~~A DNFBP which proposes to cancel its registration as a DNFBP must provide the DFSA with 14 days' written notice of such cancellation and provide written evidence of the basis of its withdrawal.~~

- 15.2.3** (1) ~~The DFSA may cancel the registration of a DNFBP:~~
- (a) ~~if the DNFBP notifies the DFSA of the cancellation in accordance with Rule 15.2.2 and the DFSA is satisfied with the evidence provided;~~
  - (b) ~~if the DNFBP's commercial licence is cancelled or expires and a reasonable time has passed without such licence being renewed;~~
  - (c) ~~following a request by the ROC;~~
  - (d) ~~in the event of the insolvency or the entering into administration of the DNFBP; or~~
  - (e) ~~if the DFSA considers it necessary or desirable in the interests of the DIFC.~~
- (2) ~~The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to cancel registration under (1)(b) to (e).~~
- (3) ~~If the DFSA decides to exercise its power to cancel registration under (1)(b) to (e), the DNFBP may refer the matter to the FMT for review.~~

### Guidance

1. A DNFBP may request the withdrawal ~~a cancellation~~ of its registration because, for example, it no longer meets the definition of a DNFBP, becomes insolvent or enters into administration, or proposes to leave the DIFC.
2. ~~The DFSA would expect to use the power to cancel the registration of a DNFBP under Rule 15.2.3(1)(e) once its supervisory tools have been exhausted. Examples of when it might use this power include where a DNFBP commits serious or persistent breaches of the AML Rules which it fails to rectify, or where the DNFBP or its activities in or from the DIFC create risks to the DFSA's regulatory objectives.~~
2. In addition to being able to withdraw registration at a DNFBP's request, the DFSA may suspend or withdraw the registration of a DNFBP on its own initiative in various circumstances (see Article 71F of the Regulatory Law).

## 15.3 Disclosure of regulatory status

**15.3.1** A DNFBP must not:

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- (a) misrepresent its regulatory status with respect to the DFSA expressly or by implication; or
- (b) use or reproduce the DFSA logo without express written permission from the DFSA and in accordance with any conditions for use.

### **15.4 Transitional**

- 15.4.1** (1) This Rule applies to a Person who, immediately before the commencement date, was registered as a DNFBP, other than a Person who was registered as a DNFBP by reason only of being a dealer in any saleable item of a price equal to or greater than \$15,000.
- (2) The Person is on the commencement date taken to continue to be registered by the DFSA as a DNFBP.
- (3) The Person must, by no later than the end of the transitional period, certify in writing to the DFSA:
- (a) that it continues to carry on its DNFBP business or profession in or from the DIFC;
  - (b) the names of the individuals who comprise its senior management;
  - (c) details of its beneficial owners;
  - (d) the name of the individual it has appointed as MLRO; and
  - (e) that it has in place adequate resources and systems and controls to comply with applicable anti-money laundering requirements under the Law, these Rules and Federal AML legislation.
- (4) The DFSA may require the certification in (3) to be in such form and verified in such manner as it thinks fit.
- (5) In this Rule:
- (a) “commencement date” means the day on which the Regulatory Law Amendment Law 2018 comes into force; and
  - (b) “transitional period” means the period starting on the commencement date and ending three months after that date.

### **Guidance**

If a DNFBP fails to provide the duly completed certification to the DFSA by the end of the transitional period, it will contravene these Rules. The DFSA may because of that failure take steps to suspend or withdraw the DNFBP’s registration.

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