

CONSULTATION PAPER NO.118



PROPOSED CHANGES TO THE DFSA'S ANTI MONEY LAUNDERING, COUNTER- TERRORIST FINANCING AND SANCTIONS REGIME

22 FEBRUARY 2018

PREFACE**Why are we issuing this Consultation Paper (CP)?**

In advance of the upcoming Financial Action Task Force (FATF) Mutual Evaluation of the United Arab Emirates (UAE), the DFSA is proposing changes to the Regulatory Law 2004 (Regulatory Law) and the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML) of the DFSA's Rulebook. The changes proposed are to ensure that the DFSA's AML regime is compliant with the 2012 FATF Recommendations¹ (the 2012 Recommendations) and the Federal AML Legislation².

Who should read this CP?

The proposals in this Paper should be of interest to Relevant Persons, including Authorised Firms, Authorised Market Institutions, Designated Non-Financial Businesses or Professions (DNFBPs), to their advisers, and to applicants and their advisers.

Terminology

In this CP, defined terms are identified by the capitalisation of the initial letter of a word, or of each word in a phrase, and are defined in the Glossary Module ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

All comments should be emailed to consultation@dfsa.ae using the table provided in Appendix 4. Please refer to the CP number in the subject line. You may identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. The deadline for providing comments is **24 March 2018**.

Following public consultation, we will proceed to recommend the proposed changes to the Regulatory Law to His Highness the President of the DIFC, for enactment by His Highness the Ruler of Dubai. If those proposed changes to the Regulatory Law are enacted, we shall then proceed to bring into force the relevant changes to the DFSA's Rulebook. You should not act on the proposals until the relevant changes to the laws and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

¹ The International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation.

² In this paper the Federal Law No.4 of 2002 (the Federal AML Law) and the Cabinet Resolution No.38 2014 (the Cabinet Resolution) are called, collectively, the Federal AML Legislation.



Structure of this CP

The remainder of this Consultation Paper contains:

- (a) background to the proposals;
- (b) an explanation of the proposed changes to the Regulatory Law 2004 and the AML Module;
- (c) Appendix 1: draft amendments to the Regulatory Law 2004;
- (d) Appendix 2: draft amendments to the AML Module;
- (e) Appendix 3: draft amendments to the GLO Module; and
- (f) Appendix 4: template for providing comments on this Consultation Paper.

Background

1. FATF is the global standard setter in the fight against money laundering and combatting the financing of terrorism and terrorist acts. They have developed Recommendations, which set out the legal, regulatory and operational measures that countries must have in place to protect the financial system from misuse.
2. These Recommendations are revised periodically, most recently in 2012, to ensure that countries respond to current money laundering and terrorist financing threats (AML/CTF) as well as other threats to the financial system. The interpretative notes, which accompany the Recommendations, are also revised on an on-going basis, most recently in June 2017.
3. FATF monitors, by means of a Mutual Evaluation (ME), the progress of its members (which include the UAE) in implementing these Recommendations. This ME also evaluates how effective their AML/CTF measures are. After a ME is carried out, a follow-up process provides a framework to monitor progress made by the countries to address any deficiencies identified.
4. The UAE, including the DIFC, was last subject to a FATF ME in 2007. The relevant ME Report was published in April 2008. The ME report identified areas requiring improvement. The DFSA made changes to its rules, in response to the recommendations in the report, at that time.
5. In 2012, FATF updated and issued a new set of Recommendations, with a particular emphasis on a Risk Based Approach. In response to the 2012 FATF Recommendations, the DFSA undertook a review of its entire AML framework, which resulted in the creation of a new AML regime that covered both Financial Institutions and DNFBPs, which came into effect in July 2013.
6. In late 2015, the DFSA carried out a further assessment of the AML regime against the 2012 Recommendations, and the Federal AML Legislation. We identified areas in the AML Module that needed to be amended. Those changes were proposed in June 2016 and came into effect in February 2017.³
7. It has been confirmed that the next UAE FATF ME will take place in July 2019 and preparations have begun at a Federal level to coordinate the UAE's response. As a stakeholder, the DFSA has been party to these preparations. This has given the DFSA insight into what the assessors are focusing on in this round of ME, and allowed us to obtain feedback given by experts, who have been engaged by the UAE government to assist in the preparation for the ME.
8. On this basis, we have identified areas in the Regulatory Law 2004 and AML Module that need modifying. These proposed changes are set out in this Consultation Paper.

³ This relates to CP 107 http://dfsa.complinet.com/en/display/display_main.html?rbid=1547&element_id=23175
The announcement can be found here: [http://www.dfsa.ae/MediaRelease/News/Notice-of-Amendments-to-Legislation-\(14\)](http://www.dfsa.ae/MediaRelease/News/Notice-of-Amendments-to-Legislation-(14)).

We expect to propose further amendments to our AML regime later in 2018 in the lead up to the UAE's ME following further feedback due from the experts

Specific issues

1. Clarifications to the DFSAs AML Regime

Please see proposed changes to Articles 8(3(e), 60, 70 and 71 of the Regulatory Law in Appendix 1.

9. In [CP107](#),⁴ the DFSA consulted on certain changes to the Regulatory Law 2004. These changes related to the updates made to the Federal AML Legislation and included clarifying that the DFSA was the relevant AML Supervisory Authority in the DIFC. We said we would consider recommending these changes to His Highness the President of the DIFC at the appropriate point for presentation to His Highness the Ruler of Dubai for his consideration for enactment.
10. Following discussions with relevant stakeholders as part of the UAE's Mutual Evaluation (ME), we have delayed putting these changes forward, pending other clarifications. We are now proposing additional amendments to the Regulatory Law in order to align the DFSA regime more precisely with the Federal AML Legislation and 2012 Recommendations. These will include (to the extent still relevant) the changes we previously proposed under CP107.
11. The proposals include:
 - (a) adding a clear objective for the DFSA to monitor compliance by Relevant Persons (defined in draft Article 70(5))⁵ with anti-money laundering legislation and to prevent, detect and restrain conduct that amounts to breaches of such legislation – draft Article 8(3A);
 - (b) setting out that the DFSA is the exclusive AML regulator for all Relevant Persons in the DIFC – draft Article 70(3). This proposal is to clarify more precisely the boundary of responsibility for AML matters in the DIFC in accordance with the Federal AML Legislation;
 - (c) replacing references to person with Relevant Person – draft Articles 70(3), 70(5) and 71 - to clarify the DFSA's role as the AML regulator for all Relevant Persons in the DIFC; and
 - (d) a high-level requirement that Relevant Persons should maintain AML records – draft Article 71(5) - which is required by the 2012 Recommendations to be referenced in primary legislation.

⁴ CP107: Proposed changes to the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module.

⁵ Authorised Persons, Designated Non-Financial Businesses and Professions, Registered Auditors and the officers, employees and agents of such entities.

12. We are also proposing changes to the DNFBP regime, which are discussed in the section below.

Q1: Do you have any comments on, or concerns related to, the proposed changes? If so, what are they and how should they be addressed?

2. Regulation and supervision of Designated Non-Financial Businesses and Professions (DNFBPs)

13. As the international community strengthens DNFBP regulations in accordance with the FATF Recommendations, the DFSA also strives to put in place a suitable regime to provide appropriate AML/CTF oversight of DNFBPs. On this basis, we are proposing to amend the current definition of, and registration, supervision and withdrawal processes for, DNFBPs in the DIFC. In doing so, we are aware that we need to take a risk-based approach to ensure we have effective measures in place to tackle AML/CTF concerns in the DNFBP sector, which are commensurate to the risks presented.

A. Definition of a DNFBP

Please see proposed changes to Article 71A(2) of the Regulatory Law in Appendix 1, and AML Rules 3.2.1 and 14.5.1 in Appendix 2.

14. In 2013, following a strategic review by the DIFC Authority (DIFCA), the responsibility for AML/CTF supervision of Single Family Offices (SFOs) and DNFBPs was transferred to the DFSA by DIFCA. This was on the basis that the DFSA was to be the single authority responsible for AML/CTF supervision in the DIFC for Financial Institutions and DNFBPs.
15. As the single authority responsible for AML/CTF supervision of these entities, the DFSA consolidated its AML rules into one module.
16. However, during recent discussions with relevant stakeholders in the lead up to the UAE's ME, it has been pointed out that DFSA's definition of a DNFBP (in AML Rule 3.2.1) goes further than the definition set down in the 2012 Recommendations.⁶ This is because the DFSA's definition also includes SFOs and dealers in any saleable item of a price equal to or greater than \$15,000 (dealers in high value goods).
17. We have reflected on this matter and - to bring our regime more into alignment with the 2012 Recommendations - we are proposing to remove dealers in high value goods from the DFSA's definition of a DNFBP⁷. This proposed change means that these entities would no longer have to register with the DFSA, nor would they be categorised as a Relevant Person and come under the DFSA's AML supervisory remit. Instead, such

⁶ <http://www.fatf-gafi.org/glossary/d-i/>

⁷ To note, dealers in precious metals and stones remain in the DFSA's definition of a DNFBP and subject to the AML regime.

an entity would need to be incorporated or recognised by the DIFC Registrar of Companies (RoC), obtain a commercial licence from the RoC, and then comply on an ongoing basis with the Federal AML Legislation requirements, and appropriate DIFC laws and regulations.

18. In respect of SFOs, we are minded also to remove them from the DFSA's DNFBP regime, in order to bring our regime more into alignment with the 2012 Recommendations. Looking at other jurisdictions, the prevalent model appears to be not to supervise SFOs directly, for AML purposes, but to ensure that those who provide services to SFOs are appropriately regulated.
19. We intend to look at the activities of such service providers, in particular trust service providers (TSP) and company service providers (CSP)⁸. Both TSPs and CSPs are included in the FATF definition of a DNFBP, and CSPs are included within the DFSA's DNFBP definition. Some TSPs are required to be an Authorised Firm. We will consider whether classifying CSPs as a DNFBP provides a sufficient regulatory framework, given the wide range of services they provide to entities in the DIFC. We will also consider whether to maintain the exclusions in our General (GEN) Module applicable to some providing trust services,⁹ or whether all TSPs should be Authorised Firms.

B. FATF Recommendation 28

Please see proposed changes to Articles 71A, 71B, 71C, 71D and 71E of the Regulatory Law in Appendix 1 and to AML 15.1 in Appendix 2.

20. In the 2012 Recommendations, Recommendation 28 states that all DNFBPs should be subject to regulatory and supervisory measures, which include having an effective system for monitoring and ensuring their compliance with AML/CFT requirements.¹⁰
21. Following discussions with external stakeholders involved in the UAE's ME (and following our own internal assessment), we do not think that the DFSA's current approach to the registration and supervision of DNFBPs is sufficiently aligned with Recommendation 28. We believe that we need to have more detailed powers to perform our AML/CTF supervisory function for DNFBPs and that we have the necessary powers, for example, to be able to exclude a person from being a DNFBP if they are not fit and proper to perform this function (such as if there are concerns about the person's integrity).

⁸ Recent international work in this area suggests that both TSPs and CSPs should be subject to a broader regulatory regime than solely for AML/CTF purposes. See <http://www.gifcs.org/index.php/tcsp-supervision>.

⁹ These exclusions are listed in GEN 2.23.3 and GEN 2.3.5.

¹⁰ Recommendation 28, and the methodology for assessing compliance with the Recommendation, can be found here: [http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate)).

C. Registration of DNFBPs

22. We are proposing to amend the current registration process for DNFBPs, so that DNFBPs would not be able to conduct any activities in or from the DIFC unless they are registered by the DFSA as a DNFBP.
23. To register as a DNFBP, an applicant would need to satisfy the DFSA that:
 - (a) it is fit and proper to perform anti-money laundering functions. In assessing this, the DFSA may consider matters relating to the integrity and suitability of the applicant, including its background and history, its management, beneficial ownership and group structure, as well as any other matters considered relevant by the DFSA;
 - (b) it has adequate resources and systems and controls, including policies and procedures, to comply with the applicable anti-money laundering requirements under the Federal AML Legislation, the Regulatory Law and the AML Module; and
 - (c) it satisfies any other requirements prescribed by the DFSA.
24. We would emphasise that the registration process for DNFBPs will be different to that for Authorised Firms and focus on the issue of the integrity and suitability of the applicant to control a DNFBP, rather than on qualifications and experience. This would include, among other things, reviewing the fitness and propriety of relevant persons, and ascertaining the identity of the ultimate beneficial owners.
25. If, at any time between the filing of an application and the grant of a DNFBP registration, the applicant becomes aware of a material change reasonably likely to be relevant to the application under consideration, they must immediately inform the DFSA in writing of such a change.
26. If the DFSA is satisfied that the applicant meets the above criteria, in-principle registration would be granted (as is the case for applicants to be Authorised Firms today) and the applicant would be notified in writing of that decision. They would then be able to sort out the other issues, such as obtaining a commercial licence, and premises, that need to be resolved before registration can be completed.
27. If the DFSA is not satisfied that the applicant meets the above criteria, registration would not be granted, in which case both the applicant and the RoC would be notified. The procedures in Schedule 3 of the Regulatory Law 2004 would apply to a proposed refusal of registration and the applicant would have the option of referring the matter to the Financial Markets Tribunal (FMT) for review.

D. Supervision of DNFBPs

Please see proposed changes to AML Rules 15.1.2 and 15.1.3 in Appendix 2.

28. AML Rule 15.1.2 requires DNFBPs to notify the DFSA promptly of any change in name, legal status, address, MLRO, or beneficial owners. We are proposing to add a further notification requirement to this list, which would require a DNFBP to notify the DFSA if there have been any changes to its senior management. Given responsibility for compliance with the AML Module lies with members of senior management (AML 1.2), it is only right that a DNFBP notifies the DFSA of a senior management change.
29. We are also proposing to add a requirement for DNFBPs to submit an Annual Information Return. This would require DNFBPs to report on information relating to a change in its name, legal status, address, MLRO, senior management or beneficial owners as well as information relating to the business the DNFBP is engaged in and the volumes of that business. This report would contain information relating to each calendar year, and would be submitted online to the DFSA by 31 January in the year after the year to which the return applies.
30. This return will provide the DFSA with the appropriate information to be able to continue with a risk-based approach to supervising DNFBPs. To note, this report does not replace the requirement for DNFBPs to report certain changes, as required in AML Rule 15.1.2, or the requirement for a DNFBP to submit an annual AML Return, as required in AML Rule 14.5.1.

E. Suspension or withdrawal of DNFBPs

Please see proposed changes to Article 71F of the Regulatory Law in Appendix 1 and AML 15.2 in Appendix 2.

31. The DFSA is also proposing to amend the Regulatory Law to provide the DFSA with additional powers to suspend or withdraw the registration of a DNFBP if we consider that:
- (a) the DNFBP is in breach of the law or the rules or other AML legislation;
 - (b) the DNFBP no longer meets the criteria for registration (i.e., it is no longer fit and proper to perform AML functions);
 - (c) the DNFBP is insolvent or has entered into administration;
 - (d) the DNFBP has ceased to carry on business in the DIFC, or
 - (e) the exercise of this power is necessary or desirable in the pursuit of the DFSA's anti-money laundering objective.
32. The procedures in Schedule 3 of the Regulatory Law would apply to such a suspension or withdrawal of registration and the DNFBP would have the right to refer the matter to the FMT for review.

33. Alternatively, if a DNFBP wishes to withdraw its registration with the DFSA, it would need to notify the DFSA in writing when it proposes to cease carrying on their activities in or from the DIFC.
34. In either case, the DFSA would notify the RoC as soon as possible if it suspends or withdraws the registration of a DNFBP. The RoC will, as soon as practicable after receiving notification from the DFSA, suspend or withdraw the commercial licence

F. DNFBPs already in the DIFC

Please see proposed changes to AML 15.4 in Appendix 2.

35. We are proposing that Persons currently registered as DNFBPs would be transitioned into the new arrangements, without the need to apply for registration. However, these DNFBPs would be required to self-certify certain matters to the DFSA. These matters would include, for example, confirming the identity of the MLRO, senior management and beneficial ownership information, and the suitability of procedures relating to AML/CTF controls.¹¹
36. We would expect DNFBPs to provide this self-certification within three months of the date of commencement of the Regulatory Law Amendment Law 2018. The form is not onerous to complete, as every DNFBP should already have an appointed MLRO and have appropriate AML/CTF controls in place. The self-certification would merely require confirmation that this is indeed the situation.
37. If this self-certification were not completed and submitted to the DFSA by the end of this transitional period, the DFSA could take action, in accordance with Article 71F of the Regulatory Law 2004, to suspend or withdraw the registration of that DNFBP.

Q2: Do you have any comments on whether we should remove SFOs from the DFSA's definition of a DNFBP? If so, what are they and how should they be addressed?

Q3: Do you have any comments on the potential removal of the current exclusions applied to some providing trust services in the DIFC, so that in future all such activities are classified as a financial service? If so, what are they and how should they be addressed?

¹¹ To note, in the Dear MLRO letter issued on 18 December 2017 the DFSA explained the expectation that all DNFBPs registered with the DFSA must be in full compliance with the obligations set out in the AML module. We also explained that we would be carrying out periodic visits to the place of business of DNFBPs as part of the DFSA's risk-based approach to the supervision of AML/CTF risks.



Q4: Do you have any concerns about our consideration of further regulation of other service providers to SFOs, such as CSPs, in the DIFC? If so, what are they and how should they be addressed?

Q5: Do you have any comments on, or concerns related to, the proposed changes in respect of the registration and supervision of DNFBPs in the DIFC? If so, what are they and how should they be addressed?

3. Definition of Financial Intelligence Department (FID)

Please see the proposed changes to AML 3.2.1 in Appendix 2.

38. The Federal AML Legislation refers to a Financial Intelligence Department (FID), previously known as the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU), of the UAE Central Bank. Following this update in name, we propose to delete references to AMLSCU in the AML Module and replace those with FID.

Appendix 4: Table of Comments

| | | |
|--|----------------------------------|-----------------------------|
| Name of commentator: | Click or tap here to enter text. | |
| Name of entity (if applicable) | Click or tap here to enter text. | |
| Is your response confidential? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| If your response to the previous question is Yes, please state your reasons for such a request: | | |

Notes:

- The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case. You must also provide an explanation of why you wish your comments be kept confidential.
- Your answers may require explanations. Please include those in the second column.
- If you do not wish to comment on any issue, please select the “no comments” box.

| Ref. | Response | Comments on proposal |
|------------|--|--------------------------------------|
| Q1: | Do you have any comments on, or concerns related to, the proposed changes? If so, what are they and how should they be addressed? | |
| | <input type="checkbox"/> Yes | Click here to enter text. |
| | <input type="checkbox"/> No | <input type="checkbox"/> No comments |
| Q2: | Do you have any comments on whether we should remove SFOs from the DFSA's definition of a DFNBP? If so, what are they and how should they be addressed? | |
| | <input type="checkbox"/> Yes | Click here to enter text. |
| | <input type="checkbox"/> No | <input type="checkbox"/> No comments |
| Q3: | Do you have any comments on the potential removal of the current exclusions applied to some providing trust services in the DIFC, so that in future all such activities are classified as a financial service? If so, what are they and how should they be addressed? | |

| Ref. | Response | Comments on proposal | |
|------------|---|---------------------------|--------------------------------------|
| | <input type="checkbox"/> Yes | Click here to enter text. | <input type="checkbox"/> No comments |
| | <input type="checkbox"/> No | | |
| Q4: | Do you have any concerns about our consideration of further regulation of other service providers to SFOs, such as CSPs, in the DIFC? If so, what are they and how should they be addressed? | | |
| | <input type="checkbox"/> Yes | Click here to enter text. | <input type="checkbox"/> No comments |
| | <input type="checkbox"/> No | | |
| Q5: | Do you have any comments on, or concerns related to, the proposed changes in respect of the registration and supervision of DNFBPs in the DIFC? If so, what are they and how should they be addressed? | | |
| | <input type="checkbox"/> Yes | Click here to enter text. | <input type="checkbox"/> No comments |
| | <input type="checkbox"/> No | | |