

**Appendix 1**

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

Note: some text that is not being amended is included for reference only.

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**REGULATORY LAW  
DIFC LAW No. 1 of 2014**

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## **AMENDMENTS TO THE REGULATORY LAW 2004**

The Regulatory Law 2004 is amended by inserting the underlined text and deleting the struck through text as shown below:

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### **PART 2: THE DFSA**

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### **CHAPTER 5 – PROCEEDINGS IN THE FINANCIAL MARKETS TRIBUNAL**

#### **29. References**

- (1) The FMT has jurisdiction to hear and determine any reference where a provision of legislation administered by the DFSA or a provision in or made under a DIFC Law provides that a matter may be referred to the FMT for review.
- (2) A person may commence a reference to the FMT only in circumstances where the FMT has jurisdiction to hear and determine the reference under this Article.
- (3) A reference must be commenced:
  - (a) within 30 days of the relevant decision of the DFSA; or
  - (b) within such further period not exceeding 30 days as may be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances.
- (4) At the conclusion of a reference, the FMT may do one or more of the following:
  - (a) affirm the original decision of the DFSA which is the subject of the reference;
  - (b) vary that original decision;
  - (c) set aside all or part of that original decision and make a decision in substitution;
  - (d) decide what, if any, is the appropriate action for the DFSA to take and remit the matter to the Chief Executive;
  - (e) make such order in respect of any matter or any of the parties which it considers appropriate or necessary in the interests of the DFSA's regulatory objectives or otherwise in the interests of the DIFC; or
  - (f) issue directions for giving effect to its decision, save that such directions may not require the DFSA to take any step which it would not otherwise have the power to take.

- (5) If a person refers a decision to the FMT, the DFSA must publish such information about the decision as it considers appropriate unless:
- (a) in the DFSA's opinion, publication of such information would be prejudicial to the interests of the DIFC; or
  - (b) the FMT has made an order under Article 31(5) preventing such publication.
- (6) Information about a decision referred to in paragraph (5):
- (a) must be published as soon as practicable after the referral of the decision to the FMT;
  - (b) may be published in such manner as the DFSA considers appropriate; and
  - (c) must include a statement that the person has exercised their right to refer the matter to the FMT and the decision is subject to review.
- (7) Nothing in paragraph (5) limits the DFSA's power under Article 116 to publish information or statements about a decision or matter in other circumstances.
- (8) The FMT may make an order referred to in paragraph (5)(b) prohibiting publication of information only if it is satisfied that:
- (a) such publication would be likely to cause serious harm to the person to whom the decision relates or to some other person; and
  - (b) it is proportionate to make such an order, having regard to the principle that the DFSA should exercise its powers as transparently as possible.

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### 31. **Conduct of proceedings**

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- (5) In hearing and determining a proceeding, the FMT may:
- (a) receive and consider any evidence by way of oral evidence, written statements or documents, even if such evidence may not be admissible in civil or criminal proceedings in a court of law;
  - (b) determine the manner in which such evidence is received by the FMT;
  - (c) where the proceeding is a reference, consider any evidence relating to the subject-matter of the reference, whether or not such evidence was available to the DFSA at the time of the decision to which the reference relates;

- (d) by notice in writing require a person to attend before it at any sitting and to give evidence and produce any item, record or document in his possession relating to the subject matter of the proceeding;
  - (e) administer oaths;
  - (f) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the FMT considers appropriate for the purpose of the proceeding;
  - (g) order a witness to provide evidence by sworn statement for the purpose of the proceedings;
  - (h) order a person not to publish or otherwise disclose any material disclosed by any person to the FMT;
  - (i) where the proceeding is a reference, stay the decision of the DFSA to which the reference relates and any related steps proposed to be taken by the DFSA until the FMT has determined the reference; and
  - (j) exercise such other powers or make such other orders as the FMT considers necessary for or ancillary to the conduct of the proceeding or the performance of its function.
- (6) Proceedings and decisions of the FMT shall be heard and given in public unless the FMT orders otherwise, or its rules of procedure provide otherwise.

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#### 116. **Publication by the DFSA**

- (1) The DFSA shall make available to the public without undue delay after their making or issuing:
  - (a) Rules made by the DFSA Board of Directors;
  - (b) Guidance in the form of:
    - (i) guidance made and issued by the Chief Executive under the Law; and
    - (ii) a standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules.
- (2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA, the FMT and of the Court, ensures sanctions, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

- (3) Publications made under this Article may be provided with or without charge as the DFSA Board of Directors may determine.

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### **SCHEDULE 3 DECISION-MAKING PROCEDURES**

#### **1. Interpretation**

For the purposes of this Schedule:

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

#### **2. Application of Schedule**

This Schedule applies to the DFSA, subject to paragraph 3, where a provision in legislation administered by the DFSA requires the DFSA to make a decision in accordance with the procedures in this Schedule.

#### **3. Decisions to which procedures do not apply**

- (1) The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the DFSA:
- (a) to withdraw a direction, requirement, restriction or prohibition;
  - (b) to withdraw a condition or restriction imposed in relation to a Licence, Licence Endorsement, registration, authorisation or approval; or
  - (c) in relation to a person, if the person has requested, or consented in writing to, the making of the decision.
- (2) In the cases referred to in sub-paragraph (1), the DFSA must notify the person in writing of the decision and the date on which it is to take effect.
- (3) If the DFSA makes a decision in relation to a person after a determination of the FMT or a decision of the Court relating to the conduct of the person, the requirement to give the person an opportunity to make representations under paragraph 4 or 6 (as applicable) does not apply in relation to findings of fact of the FMT or the Court.

#### **4. Opportunity to make representations before a decision**

- (1) If the DFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:
- (a) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (2); and

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

- (b) instead the DFSA must provide the person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.

## **5. Decision Notice**

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

## **6. Opportunity to make representations after a decision**

- (1) If this paragraph applies under paragraph 4(7), the DFSA must:
  - (a) provide the Relevant Person with an opportunity to make representations to the DFSA in the manner specified in paragraph 7 ~~in person and in writing~~ within a period of 14 days, or such further period as may be agreed, from the date on which the Decision Notice is given to the person under paragraph 5; and
  - (b) inform the Relevant Person in the Decision Notice that they may make representations concerning the decision and specify how and by when any representations may be made.
- (2) If the DFSA does not receive any representations within the period specified in the Decision Notice, it must inform the person in writing that the decision is to stand (subject to any right of the person to refer the matter to the FMT for review).

- (3) If the DFSA receives representations within the period specified in the Decision Notice, it must consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (4) If after considering representations received the DFSA decides:
  - (a) to confirm the decision, it must as soon as practicable notify the person in writing that the decision is to stand (subject to any right of the person to refer the matter to the FMT for review);
  - (b) to withdraw the decision, it must as soon as practicable notify the person in writing that the decision has been withdrawn; or
  - (c) to vary the decision, it must as soon as practicable give the person an amended Decision Notice under paragraph 5.
- (5) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
  - (a) if the person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made; or
  - (b) in respect of an amended Decision Notice given under sub-paragraph (4)(c).

## **7. Representations to be in writing**

- (1) Representations to the DFSA shall, except as provided in sub-paragraph (2), be in writing.
- (2) The DFSA may permit a Relevant Person to make representations in person, in addition to written representations, if the DFSA is satisfied that written representations alone will not be adequate in the circumstances and it is necessary for representations to be made in person.