

CONSULTATION PAPER NO.130



MISCELLANEOUS CHANGES

26 DECEMBER 2019

PREFACE

Why are we issuing this Consultation Paper (CP)?

This Consultation Paper seeks public comment on the DFSA's proposals to make a number of amendments to the DFSA's policy framework, as expressed in the DFSA Rulebook, the Regulatory Law (DIFC Law No. 1 of 2004, "the Regulatory Law") and the Markets Law (DIFC Law No.1 of 2012, "the Markets Law"). Each item is a discrete item.

Who should read this CP?

The proposals will be of interest to Authorised Persons, to applicants and to their advisers.

Terminology

Defined terms have the initial letter of the word capitalised, or of each word in a phrase. Definitions are set out 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?

Please send any comments using the [online response form](#). You will need to identify the organisation you represent when providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to remain confidential, you must expressly request, so at the time of making comments, and give your reasons for so requesting. The deadline for providing comments on this consultation is **26 January 2020**.

Following the public consultation, we will proceed to make the relevant changes to the DFSA Rulebook as appropriate to reflect points raised in consultation. The proposed changes to the Law and Markets Law will be submitted to His Highness the President of the DIFC for his consent that the changes should be passed, for assent, to His Highness the Ruler. You should not act on the proposals until the relevant changes are made. We will issue a notice on our website when this happens.

Structure of this CP

Part 1: deals with policy proposals that will result in changes to the DFSA Rulebook, the Regulatory Law and the Markets Law;

Part 2: deals with various updates or amendments that need to be made to the DFSA Rulebook or the Regulatory Law;

- Appendix 1: draft amendments to the COB (Conduct of Business) Module;
- Appendix 2: draft amendments to the CIR (Collective Investment Rules) Module;
- Appendix 3: draft amendments to the IFR (Islamic Finance Rules) Module;
- Appendix 4: draft amendments to the GEN (General) Module;
- Appendix 5: draft amendments to the Markets Law;
- Appendix 6: draft amendments to the Regulatory Law;
- Appendix 7: draft amendments to the PIN (Prudential – Insurance Business) Module;
- Appendix 8: draft amendments to the PIB (Prudential – Investment, Insurance Intermediation and Banking Business) Module;
- Appendix 9: draft amendments to GLO (Glossary) Module;
- Appendix 10: draft amendments to the AML (Anti-Money Laundering, Counter-Terrorist Financing and Sanctions) Module;

- Appendix 11: draft amendments to TKO (Takeover Rules) Module; and
- Annex 1: questions in this Consultation Paper.

Part I Various proposals for changes to the DFSA Rulebook, Law and Markets Law**Amendments to the COB Module**

Amendments to the classification of Assessed Professional Clients to recognise industry and professional associations

1. In COB 2.3.3(1), we set out three types of Professional Clients: Deemed, Service-Based and Assessed. There are certain criteria that a Person must meet in order to be assessed as a Professional Client, such as having requisite knowledge and experience and a certain quantity of assets.
2. An issue has been raised that an industry association, representing the financial services industry in the DIFC, is not able to meet all the criteria needed to be an Assessed Professional Client set out in COB 2.3.8. Specifically, such an association will not meet the first requirement set out in COB 2.3.8(1)(a) relating to the need to have a certain quantity of assets.
3. We believe it makes little sense to require this minimum level of assets for an industry organisation of this type in the DIFC, given that – in relation to certain types of financial service or product - they would clearly be expected to meet the second requirement set out in COB 2.3.8(1)(b) relating to knowledge and experience of relevant financial markets.
4. On this basis we propose to amend COB 2.3.8 to allow industry associations and other professional associations established in the DIFC, which have sufficient knowledge and experience and understanding of the relevant financial markets, to be classified as an Assessed Professional Client.

Please see draft COB 2.3.8(3) in Appendix 1.

Arranging and Advising on Credit

5. GEN 2.28 sets out the Financial Services activity of Arranging Credit and Advising on Credit. However, the DFSA Rulebook does not specify what type of Client a Firm can and cannot provide this service to, nor does it set out a regime specific to this activity.
6. We intend to clarify the position, for the avoidance of doubt, about what type of client a Firm can provide this service to. Our proposal is based on the position we have taken on Providing Credit in COB 4.3. An Authorised Firm will only be allowed to Arrange and Advise on Credit to Clients who are classified as a Professional Client; or to a Retail Client but only where that Retail Client is an Undertaking; and the Credit Facility is provided to the Retail Client for a business purpose.

Please see draft COB 4.3A.1 in Appendix 1.

Questions:

1. **Do you agree with our proposal to amend COB 2.3.8 to allow industry and professional bodies and associations to be classified as an Assessed Professional Client?**
2. **Do you agree with our proposal to clarify the position regarding what types of clients a Firm can Arrange and Advise on Credit for?**

Amendment to the CIR and IFR Modules

7. CIR 13.4.5 allows a Fund Manager of a Property Fund, and IFR 6.11.5 allows a Fund Manager of an Islamic Real Estate Investment Trust (REIT), to borrow up to 50% of the Gross Asset Value (GAV) of the Fund for financing investments or for operating purposes.
8. We have recently received, and considered, several modification requests from Firms relating to this requirement. They have argued that the borrowing limit is too restrictive, out of line with other jurisdictions, such as the UK, USA and Australia (who do not have limits), and restricts their ability to build up their portfolio of assets for the benefit of their investors.
9. We have carefully considered these requests and permitted, by modification, an increase in borrowing limits from 50% GAV to 65% GAV in a number of cases. This higher limit is in line with some other jurisdictions that do have numerical limits. We now propose to update the Rulebook, so that any Firm can benefit from this higher limit without needing to seek a modification of the Rule. We are proposing to make changes to CIR 13.4.5 and IFR 6.11.5 and increase the borrowing limit from 50% GAV to 65% GAV.

Please see draft CIR 13.4.5(1) in Appendix 2 and draft IFR 6.11.5 in Appendix 3.

Question 3:

Do you agree with our proposal to amend CIR 13.4.5 and IFR 6.11.5 and update the borrowing limit from 50% GAV to 65% GAV?

Amendment to the GEN Module

10. GEN 3.4.1 sets out the DFSA's approach to Financial Promotions. A Person is considered not to have made a Financial Promotion in the DIFC if they are able to meet one of the three criteria set down in GEN 3.4.2.
11. We have received inquiries relating to Employee Share Schemes (ESS) and whether these may be offered to employees without triggering the Financial Promotions requirements. Under such schemes, employees have the opportunity to participate in the scheme as part of their remuneration package and will receive shares or other securities issued by their relevant employer.
12. It is our view that such ESSs would generally fall outside the scope of our Financial Promotions regime, as employees are offered the securities as part of their employment and not as a result of any promotion or marketing by the employer to unrelated individuals/clients. Additionally, such activity is not undertaken for a commercial or business purpose.
13. We believe the above to be the generally understood position. Nonetheless, for the sake of clarity, we are proposing to add a new exclusion in GEN 3.4.2, as we believe it will be helpful to clearly set out that ESS offers and communications are exempt from the Financial Promotions regime.

Please see draft GEN 3.4.2(c) in Appendix 4.

Question 4:

Do you agree with our proposal to amend GEN 3.4.2 to provide certainty that ESSs are not covered by the DFSA's Financial Promotions regime?

Amendments to the Markets Law

14. Part 6: Prevention of Market Abuse in the Markets Law sets out various prohibitions, which state that a person shall not, in the DIFC, or elsewhere, engage in any of the specified activities.
15. Article 59, regarding the provision of inside information, does not include the same wording that a person shall not, in the DIFC or elsewhere, engage in this activity. For consistency with the other provisions in Part 5 we propose to amend Article 59 to include this same wording. We also propose to clarify that an insider shall not, in the DIFC or elsewhere, *otherwise than in the proper course of his employment, profession or duties* disclose inside information to another person.

Please see draft Article 59 of the Markets Law in Appendix 5.

Question 5:

Do you agree with our proposal to amend Article 59 of the Markets Law?

Disclosure of information by the DFSA

16. The DIFC Authority (DIFCA) is responsible for the development and running of the Centre. On occasion, DIFCA has asked the DFSA to share confidential information with it to, for example, assist it to develop its strategy for the future of the Centre. However, there is currently no clear gateway for the DFSA to disclose such information. We propose to include a power in Article 38 of the Law to permit such disclosure.
17. At the same time, we propose to clarify in the Law that information provided in the form of a summary or collection of information, which does not permit the identification of any particular person, is not confidential information. Similar provisions exist in other jurisdictions.
18. We believe it is also appropriate to include in the Law an express power to impose conditions or restrictions on the use of confidential information, when it is provided to another person. Again, this is a power found in other jurisdictions.
19. We intend, in due course, to update Chapter 8 of the Regulatory Policy and Process Sourcebook, on 'Confidential Regulatory Information' to set out in more detail for stakeholders how we would intend to act under these amended powers.

Please see draft Article 38 of the Regulatory Law in Appendix 6.

Question 6:

Do you agree with our proposal to amend Article 38 of the Law?

Part II Other amendments to the DFSA Rulebook and Laws

20. The proposed changes set out in this part of the Consultation Paper are to update or amend other provisions, where change is needed.

Updating references to the revised DIFC Companies Law

21. In 2018, the DIFC Authority introduced changes to its companies' regime via the Companies Law (DIFC Law No. 5 of 2018), the Operating Law (DIFC Law No. 7 of 2018), the Companies Regulations and the Operating Regulations, collectively referred to as "the DIFC Companies Law". The DIFC Companies Law replaced the previous Companies Law (DIFC Law No. 2 of 2009), known as "the DIFC Companies Law 2009."
22. There are various references in the DFSA Rulebook and Regulatory Law that still refer to the DIFC Companies Law 2009. These include:
- a) GEN 6.5(5)(b);
 - b) PIN Application 10.4 Guidance;
 - c) TKO 4.1.2 Guidance items 1 and 2;
 - d) Defined Terms in Schedule 1 of the Regulatory Law; and
 - e) GLO under various definitions.
23. We propose to update the references in the DFSA Rulebook and the Regulatory Law and refer to the revised DIFC Companies Law.

Please see draft GEN 6.5(5)(b) in Appendix 4; draft PIN Application 10.4 Guidance in Appendix 7; draft TKO 4.1.2 Guidance items 1 and 2 in Appendix 11; draft Schedule 1 of the Regulatory Law in Appendix 6 and draft GLO changes in Appendix 9.

Updates to CIR

Valuation of Real Property

24. CIR 10.5.9(3) requires a Fund Manager of a Fund (other than a Property Fund), who invests in Real Property, to value that property at least every six months. This is not consistent with the valuation requirements set down for Property Funds (which also invest in Real Property) in CIR 13.4.18(3). CIR 13.4.18(3) requires a Fund Manager of a Property Fund to obtain a Valuation Report (which includes an individual value for each property) on an annual basis.
25. These two provisions should be aligned and we propose to amend CIR 10.5.9(3) to align it with CIR 13.4.18(3) that require a Fund Manager to value Real Property at least on an annual basis.

Please see draft CIR 10.5.9(3) in Appendix 2.

Removal of incorrect reference in the Content of a Public Fund Prospectus in CIR

26. Appendix 7 (App 7) in CIR sets out the required content of a Public Fund Prospectus, with App 7.4 setting out a table with the key mandatory disclosures. In this table under the heading "Additional mandatory disclosure for specialist classes of Public Funds," paragraph 7 refers to Exchange Trade Funds (ETFs). However, 7.1 mistakenly refers to Money Market Funds (MMFs) and duplicates the requirements included in 6.1. On this basis, we propose to delete 7.1.

Please see draft CIR App 7.1.4 in Appendix 2.

Update to COB

27. COB 6.3.6(1), relating to restrictions on own account transactions, incorrectly refers to COB 6.2.2 when it should refer to COB 6.3.6(2). We propose to amend this cross-reference.

Please see draft COB 6.3.6(1) in Appendix 1.

Update to PIB

28. In [CP114](#), the Liquidity Requirements Review, we proposed amendments to the PIB Module to align our regime with the standards published by the Basel Committee on Banking Supervision.
29. In the paragraph relating to the Net Stable Funding Ratio (NSFR), we proposed certain factors needed to calculate the Required Amount of Stable Funding (RSF). These were to be set out in Table 1 of PIB App 9.4.2. However, one of the components of the RSF categories was not included in that Table that is the 15% RSF risk factor relating to all other loans to financial institutions with a residual maturity of less than six months. In order to rectify this, we propose to include this factor in Table 1 of PIB App 9.4.2.

Please see draft PIB App 9.4.2 Table 1 in Appendix 8.

Updates to reflect new Federal Anti-Money Laundering Law

30. In 2018, the UAE issued an updated Anti-Money Laundering (AML) Law, the Federal Law No. 20 of 2018 on Anti-Money Laundering and Combatting the Financing of Terrorism and Illegal Organisations (“the Federal AML Law”). This Federal AML Law replaces the previous Federal AML Law of 2014.
31. Chapter 2 of the Regulatory Law sets out the DFSA’s role in respect to AML compliance and how the Federal AML Law is to be applied in the DIFC. However, Article 70(1) of this Chapter refers to the previous law. We propose to update this reference, and refer to the updated Federal AML Law.

Please see draft Regulatory Law Article 70(1) in Appendix 6.

Updates to the AML Module

32. We also intend to update the AML Module to specify that DFSA must apply the decision-making procedures in Schedule 3 in the Law when it makes certain decisions. This is in respect of decisions to impose administrative penalties, such as fines or suspension of activities, made under Article 14(1) of the Federal AML Law. Where the DFSA decides to make such decisions under the Federal Law, we are also proposing to specify that an affected person may refer that matter to the Financial Markets Tribunal (FMT) for review.

Please see draft AML Rules 14.8.1 and 14.8.2 in Appendix 10.

Question 7:

Do you have any objections to our proposals to update or amend the DFSA Rulebook and the Regulatory Law? If so, what are your objections and what alternative course of action would you suggest?

Annex 1: Questions in this Consultation Paper

Questions:

1. Do you agree with our proposal to amend COB 2.3.8 to allow industry and professional bodies and associations to be classified as an Assessed Professional Client?
2. Do you agree with our proposal to clarify the position regarding what types of clients a Firm can Arrange and Advise on Credit for?
3. Do you agree with our proposal to amend CIR 13.4.5 and IFR 6.11.5 and update the borrowing limit from 50% GAV to 65% GAV?
4. Do you agree with our proposal to amend GEN 3.4.2 to provide certainty that ESSs are not covered by the DFSA's Financial Promotions regime?
5. Do you agree with our proposal to amend Article 59 of the Markets Law?
6. Do you agree with our proposal to amend Article 38 of the Law?
7. Do you have any objections to our proposals to update or amend the DFSA Rulebook and the Law? If so, what are your objections and what alternative course of action would you suggest?