

Appendix 1

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

Some text that is not being amended is included for information only.

**REGULATORY LAW AMENDMENT
DIFC LAW No. X of 2020**

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:

CONTENTS

PART 1: GENERAL.....

...

PART 5: POWERS OF SUPERVISION AND INVESTIGATION

...

77A. Appointment of Managers.....XX

PART 5A: RECOVERY AND RESOLUTION

CHAPTER 1 - GENERAL

84A. Application

84B. Other powers not limited

84C. Rules for the purposes of this Part

CHAPTER 2 - RECOVERY AND RESOLUTION PLANNING

84D. Recovery Plans

84E. Resolution Plans

84F. Resolvability Assessment

84G. Powers to address or remove impediments to Resolvability

84H. Loss Absorbing Capacity Requirement

CHAPTER 3 - EARLY INTERVENTION ACTIONS

84I. Conditions for Early Intervention Powers

84J. Early Intervention Powers

CHAPTER 4 - RESOLUTION

84K. Conditions for Resolution

84L. Independent valuer

84M. Pre-Resolution and Provisional Valuation

84N. Resolution Powers

84O. Sale of Business Tool

84P. Bail-in Tool

84Q. Temporary Administrator

84R. Resolution Safeguards

84S. Costs of Resolution

CHAPTER 5 - MISCELLANEOUS

84T. Recognition of resolution actions in other jurisdictions

84U. Statement of Policy

84V. Application of Insolvency Law

84W. Protection from liability

84X. Default Event Provision

PART 7: ENFORCEMENT 23

~~88. Appointment of Managers23~~

...

...

PART 2: THE DFSA

CHAPTER 1 - THE STRUCTURE OF THE DFSA

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8. The Powers, Functions and Objectives of the DFSA

(1) The DFSA has such functions and powers as are conferred, or expressed to be conferred, on it:

- (a) by or under the Law; and
- (b) by or under any other law made by the Ruler.

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(3) In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:

- (a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
- (b) to foster and maintain confidence in the financial services industry in the DIFC;
- (c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
- (d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;
- (e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;
- (f) to promote public understanding of the regulation of the financial services industry in the DIFC;
- (g) to foster and maintain the objectives of the DIFC under Dubai Law in relation to the exercise or performance of any powers or functions conferred upon the DFSA by Dubai Law or DIFC Law; and
- (h) to pursue any other objectives as the Ruler may from time to time set under DIFC Law.

(3A) In pursuing the objective referred to in (3)(d) in the context of money laundering, the DFSA shall:

- (a) monitor and enforce, or assist other appropriate authorities to monitor and enforce, compliance with Federal Anti-Money Laundering Legislation, as well as legislation administered by the DFSA;
- (b) prevent, detect and restrain conduct in so far as it relates to Authorised Firms; and
- (c) comply with the provisions of Chapter 2 of Part 4.

(3B) In pursuing the objective referred to in (3)(c):

- (a) in the context of Recovery, the DFSA shall:
 - (i) aim to ensure the continuity of systemically important financial services; and
 - (ii) aim to avoid unnecessary destruction of value and losses to creditors;
- (b) in the context of Resolution, the DFSA shall:
 - (i) aim to ensure the continuity of systemically important financial services; and
 - (ii) aim to avoid unnecessary destruction of value and losses to creditors;
 - (iii) aim to minimise the overall costs of Resolution, in home and host jurisdictions; and
 - (iv) consider the potential impact of its Resolution actions on financial stability in other jurisdictions.

(3C) In pursuing the objective referred to in (3)(e) in the context of Resolution, the DFSA shall aim to:

- (a) protect depositors; and
- (b) protect client assets by providing prompt access to assets through either:
 - (i) the continued functioning of the Authorised Firm following Resolution;
 - (ii) the rapid return to the clients of identifiable and segregated client assets; or
 - (iii) the transfer of the client assets to a performing third party.

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12. Liability

- (1) Subject to Article 12(2), the DFSA may be sued in its own name.
- (2) Neither the DFSA nor any officer, director, DFSA tribunal or committee members, employee, delegate or agent of the DFSA can be held liable for anything done or omitted to be done in the performance or purported performance of the functions or in the exercise or purported exercise of any power of the DFSA or any power or function delegated to the DFSA.
- (3) Article 12(2) does not apply if the act or omission is shown to have been in bad faith.

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CHAPTER 7 – CONFLICTS OF INTEREST AND USE OF INFORMATION

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38. Confidential Information

- (1) Subject to Article 38(3), confidential information must not be disclosed by the DFSA or by any of its officers, employees or agents, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.
- (2) Information is confidential when:
 - (a) it is received by the DFSA or any of its officers, employees or agents in the course of the performance by such person of a function under the Law or under any other legislation administered by the DFSA; and
 - (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under such Law or other legislation.
- (3) The DFSA may disclose confidential information where such disclosure:
 - (a) is permitted or required under the Law or Rules or under other legislation administered by the DFSA;
 - (b) is permitted or required by any other law;
 - (c) is made to:
 - (i) the Companies Registrar;
 - (ii) a Financial Services Regulator;

- (iii) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
- (iv) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services;
- (v) a civil or criminal law enforcement agency; ~~or~~
- (vi) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers; or
- (vii) a Resolution Authority in another jurisdiction,

for the purpose of assisting the performance by any such person of its regulatory functions; or

- (d) is made in good faith for the purposes of performance and exercise of the functions and powers of the DFSA.

CHAPTER 8 – OTHER REGULATORS

39. Exercise of Powers on Behalf of Other Regulators

At the request of:

- (a) the Companies Registrar;
- (b) a Financial Services Regulator;
- (c) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
- (d) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services;
- (e) a civil or criminal law enforcement agency; ~~or~~
- (f) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers; or
- (g) a Resolution Authority in another jurisdiction,

the DFSA may, where it considers appropriate, exercise its powers under the Law or under any other legislation administered by the DFSA for the purpose of assisting the performance by such persons of their regulatory functions.

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PART 5: POWERS OF SUPERVISION AND INVESTIGATION

CHAPTER 1 – POWERS OF SUPERVISION

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77A. Appointment of Managers

- (1) The DFSA may, by notice in writing, require an Authorised Firm to appoint an individual to act (or one or more individuals to act jointly) as manager of the business of the Authorised Firm and shall specify in the notice the terms of the appointment and whether the manager is to be appointed:
 - (a) to replace the management of the Authorised Firm; or
 - (b) to work with the management of the Authorised Firm.
- (2) The individual or individuals appointed to act as managers of the business under Article 77A(1) must have sufficient:
- (3)
 - (a) qualifications;
 - (b) experience; and
 - (c) fitness and propriety

and be nominated or approved by the DFSA.
- (3) The DFSA may impose a requirement under Article 77A(1) where it considers it necessary or desirable to appoint a manager:
 - (a) to determine or address concerns as to the solvency of the Authorised Firm or the extent to which its complying with prudential requirements;
 - (b) for the orderly transition of the Authorised Firm from one set of owners or controllers to a new set of owners or controllers;
 - (c) to wind down the operations of the Authorised Firm for the protection of customers of the Authorised Firm; or
 - (d) where it has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Firm and;

- (i) to ensure that customers or regulated entities are not adversely affected; or
 - (ii) to maintain the integrity of the DIFC.
- (4) The appointment of a manager shall be by way of a contract between the Authorised Firm and the manager and the contract shall include the requirement that the Authorised Firm pay the remuneration and costs of the manager.
- (5) The notice may specify any matters that the DFSA considers necessary to give effect to the appointment including that the directors are to be removed, are not to perform specified functions or are to obtain the consent of the manager before making decisions.
- (6) The DFSA may, by notice in writing given to the Authorised Firm, vary the terms of the appointment of the manager under Article 77A(1).
- (7) A manager appointed under this Article:
 - (a) shall not be treated as a director (formally or de facto) of the Authorised Firm; and
 - (b) is not liable for damages in respect of anything done or omitted to be done in good faith for the purposes of, or in connection with, the performance of functions under the appointment.
- (8) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (9) If the DFSA decides to exercise its power under this Article, the Authorised Firm may refer the matter to the FMT for review.

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PART 5A: RECOVERY AND RESOLUTION

CHAPTER 1 – GENERAL

84A. Application

- (1) This Part shall apply in relation to an Authorised Firm of a class prescribed by the DFSA.
- (2) For the purposes of this Part, an Authorised Firm does not cease to be an Authorised Firm merely because it ceases to:
 - (a) hold a licence to carry on a Financial Service; or
 - (b) carry on a Financial Service,as a result of a Resolution action.

84B. Other powers not limited

Nothing in this Part limits the scope or application of any other provision in this Law or any other legislation administered by the DFSA.

84C. Rules for the purposes of this Part

The DFSA may make Rules for the purposes of this Part, including Rules relating to:

- (a) the class of Authorised Firms to whom this Part applies;
- (b) Recovery or Resolution Plans;
- (c) Resolvability Assessments;
- (d) the holding and maintenance of Loss Absorbing Capacity;
- (e) the use of Resolution Powers and Tools;
- (f) the recognition of Resolution actions;
- (g) the effect of action taken under this Part on provisions in agreements or contracts;
- (h) the notification of events relevant to the DFSA's exercise of its powers under this Part; and
- (i) any other matter necessary or incidental to give effect to the provisions of this Part.

CHAPTER 2 – RECOVERY AND RESOLUTION PLANNING

84D. Recovery Plans

- (1) This Article applies to an Authorised Firm that:
 - (a) is of a class of Authorised Firms prescribed in the Rules as requiring a Recovery Plan; or
 - (b) has been given notice in writing by the DFSA that it must prepare a Recovery Plan.
- (2) The Authorised Firm must prepare and submit to the DFSA for review a plan setting out the measures to be taken to restore the financial position of the Authorised Firm (or one or more entities in its Group) in the event of a serious deterioration of the Authorised Firm's financial position (the "Recovery Plan").
- (3) The Recovery Plan must be in writing and set out such information as may be prescribed in the Rules.

- (4) The DFSA may, by written notice given to the Authorised Firm, require it to prepare and provide to the DFSA such information as the DFSA considers reasonably necessary for it to assess the adequacy of the Authorised Firm's Recovery Plan.
- (5) If the DFSA is not satisfied with an Authorised Firm's Recovery Plan it may, by written notice, require the Authorised Firm to take measures to rectify any deficiencies in the Recovery Plan and provide the rectified Recovery Plan to the DFSA.
- (6) An Authorised Firm that has provided the DFSA with a Recovery Plan under Article 84D(1) shall review and update its Recovery Plan and provide the updated Recovery Plan to the DFSA:
 - (a) annually;
 - (b) where there has been a material change reasonably likely to affect the implementation of the original Recovery Plan; or
 - (c) if otherwise directed in writing by the DFSA to do so.

84E. Resolution Plans

- (1) The DFSA may prepare a plan for securing an orderly Resolution (the "Resolution Plan") of an Authorised Firm.
- (2) The Resolution Plan shall be in writing and set out the strategies for the Resolution including consideration of failure scenarios, the options for the exercise of the Resolution Powers, the application of the Resolution Tools and contain such information as may be prescribed in the Rules.
- (3) If the DFSA decides to prepare a Resolution Plan with respect to an Authorised Firm, it shall inform the Authorised Firm in writing of that decision.
- (4) An Authorised Firm which has been informed by the DFSA under Article 84E(3) shall, to the extent reasonably necessary for the DFSA to prepare, assess or update the Resolution Plan, do the following:
 - (a) maintain in the DIFC up to date information and systems;
 - (b) upon written notice from the DFSA:
 - (i) provide to the DFSA any information and assistance; and
 - (ii) allow the DFSA to enter its premises during normal business hours or at any other time as may be agreed.

84F. Resolvability Assessment

- (1) The DFSA may conduct an assessment to determine if there are any impediments that may prevent or affect the Resolvability of an Authorised Firm (the “Resolvability Assessment”).
- (2) An Authorised Firm shall provide the DFSA with such information and assistance that the DFSA considers reasonably necessary for the Resolvability Assessment.

84G. Power to Address or Remove Impediments to Resolvability

- (1) The DFSA may, in writing, require an Authorised Firm or an entity in its Group to take such measures as the DFSA considers reasonably necessary to remove impediments to, or improve, the Resolvability of an Authorised Firm, including but not limited to changes relating to:
 - (a) legal, ownership or governance structure;
 - (b) operations, including intra-Group dependencies and relationships with third parties;
 - (c) business activities or practices;
 - (d) financial matters, including assets, liabilities, rights and obligations, or funding strategy, including measures to improve in order to improve the resilience of core business lines and critical functions; or
 - (e) risk profile, including liquidity risk.
- (2) The procedures in Schedule 3 apply to a decision of the DFSA under Article 84G(1).
- (3) If the DFSA decides to exercise its power under Article 84G(1), the person may refer the matter to the FMT for review.

84H. Loss Absorbing Capacity Requirement

- (1) The DFSA may, in writing, require the Authorised Firm to hold and maintain a minimum amount of financial instruments or resources which will be available during Resolution to absorb losses and enable the Authorised Firm to be recapitalised to continue performing critical functions while Resolution is ongoing (“Loss Absorbing Capacity”).
- (2) The DFSA shall specify the nature of the financial instruments or resources to be held and maintained by the Authorised Firm under Article 84H(1).
- (3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 84H(1).

- (4) If the DFSA decides to exercise its power under Article 84H(1), the person may refer the matter to the FMT for review.

CHAPTER 3 – EARLY INTERVENTION ACTIONS

84I. Conditions for exercise of Early Intervention Powers

The DFSA may exercise one or more of its powers specified in Article 84J (the “Early Intervention Powers”) in relation to an Authorised Firm where it considers that:

- (a) an Authorised Firm’s liquidity or solvency is impaired, or may soon be impaired unless there is a major improvement in its financial resources, assets, leverage exposures, risk profile, business model, risk management systems and controls, or quality of its governance and management;
- (b) one or more Recovery indicators in the Authorised Firm’s Recovery Plan are met; or
- (c) it is necessary and desirable to meet the objectives of the DFSA.

84J. Early Intervention Powers

- (1) The DFSA may, by notice in writing, require an Authorised Firm to:
 - (a) prepare and submit to the DFSA a plan which examines the status of its liquidity or solvency impairment, and explains in detail the corrective actions that will be taken to address and rectify identified weaknesses and within what timeframes (the “Corrective Action Plan”);
 - (b) call a general meeting of shareholders, set an agenda and propose resolutions;
 - (c) search for, and communicate with, potential purchasers of the Authorised Firm’s business or part thereof;
 - (d) remove directors or senior management who have failed to meet their obligations, including fiduciary duties;
 - (e) limit or, where appropriate, clawback compensation to directors and senior management;
 - (f) obtain the DFSA’s written approval prior to any major capital expenditure, material commitment or contingent liability;
 - (g) enhance internal governance, systems, controls and risk management;
 - (h) implement one or more measures in the Authorised Firm’s Recovery Plan; or

- (i) take any of the measures referred to in Article 84D(5).
- (2) Nothing in this Article limits any other action that the DFSA may take in relation to the Authorised Firm or another person, including the exercise of a power under Part 5 of this Law.
- (3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 84J(1).
- (3) If the DFSA decides to exercise its power under Article 84J(1), the person may refer the matter to the FMT for review.

CHAPTER 4 – RESOLUTION

84K. Conditions for Resolution

- (1) The DFSA may exercise its Resolution Powers or use its Resolution Tools where it is satisfied that the following circumstances exist in respect of an Authorised Firm (the “Resolution Conditions”):
 - (a) the Authorised Firm is failing or is likely to fail;
 - (b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action will be taken by or in respect of the Authorised Firm that will prevent the failure or likely failure of the Authorised Firm within a reasonable timeframe; and
 - (c) it is in the public interest to do so.
- (2) For the purposes of this Article, an Authorised Firm is failing or likely to fail where one or more of the following circumstances exist:
 - (a) it no longer meets the requirements that must be met to be granted a Licence such as the prescribed capital or liquidity levels;
 - (b) its access to market-based funding sources is seriously impaired;
 - (c) there is a significant deterioration in the value of its assets;
 - (d) there are serious governance issues or risk management and controls deficiencies that may have a significant impact the Authorised Firm’s financial condition; or
 - (e) it is unable to pay its debts or other liabilities as they fall due,

but the Authorised Firm shall not be deemed to be failing or likely to fail merely because one or more Early Intervention Powers have been exercised in relation to it.

- (3) In determining whether Article 84K(1)(a) and (2) are met, the DFSA may take into account the likely impact on the Authorised Firm of the failure or likely failure of another entity in the Authorised Firm's Group.
- (4) For the purposes of Article 84K(1)(c), an action is in the public interest where:
- (a) it is necessary to achieve, and is proportionate to, one or more of the DFSA's objectives; and
 - (b) winding up the Authorised Firm under the Insolvency Law or any other applicable insolvency laws would not meet the DFSA's objectives to the same extent.
- (5) An Authorised Firm must immediately notify the DFSA if its senior management reasonably considers or is aware that:
- (a) it is failing or likely to fail;
 - (b) another entity in its Group is failing or likely to fail;
 - (c) in the case of an Authorised Firm operating as a branch in the DIFC, the Resolution Authority in the jurisdiction of its head office is considering or has initiated resolution action in relation to the Authorised Firm;
 - (d) a Resolution Authority in a jurisdiction where another entity in its Group is present has taken, or is likely to take, resolution action in relation to that entity; or
 - (e) a Resolution Authority in the jurisdiction of the head office of the legal entity of which the Authorised Firm is a subsidiary is considering, or has initiated, resolution action in relation to the head office.
- (6) If the DFSA determines that the Resolution Conditions are met in respect of an Authorised Firm, it:
- (a) shall record its decision together with the reasons for that decision and the actions that it intends to take as a result of it;
 - (b) shall give written notice of the decision to:
 - (i) the Authorised Firm;
 - (ii) if applicable, the Financial Services Regulator and Resolution Authorities of the jurisdictions in which any relevant Group entity or significant branches are located; and
 - (iii) if applicable, any deposit guarantee scheme relevant to the Authorised Firm; and

- (c) may publish information about the decision if it appears to the DFSA to be desirable to do so in the public interest.

84L. Independent Valuer

- (1) The DFSA may arrange for the appointment of an independent valuer to carry out a valuation of the assets and liabilities of an Authorised Firm for the purposes of this Part.
- (2) A valuation by an independent valuer shall be carried out in such manner and form as the DFSA may prescribe in the Rules.
- (3) The DFSA may require the Authorised Firm to pay, or recover from the Authorised Firm, the costs of any valuation.

84M. Pre-Resolution and Provisional Valuation

- (1) The DFSA shall, before exercising a Resolution Power in respect of an Authorised Firm, cause a valuation to be carried out to assess the value of the assets and liabilities of the Authorised Firm (the “Pre-Resolution Valuation”).
- (2) The DFSA may, notwithstanding (1), where the urgency of the case makes it appropriate for a Resolution Power to be exercised in respect of an Authorised Firm before a Pre-Resolution Valuation can be carried out, cause a provisional valuation to be carried out of the assets and liabilities of the Authorised Firm (the “Provisional Valuation”).
- (3) The Pre-Resolution Valuation and Provisional Valuation shall be carried out in such manner and form as the DFSA may prescribe in the Rules.

84N. Resolution Powers

- (1) The DFSA may, by notice in writing, exercise one or more of the following Resolution Powers with respect to an Authorised Firm where it is satisfied that the Resolution Conditions have been met:
- (a) remove and replace any director or member of senior management (irrespective of whether they are responsible for the failure);
- (b) appoint one or more individuals to act as a Temporary Administrator in accordance with Article 84Q;
- (c) recover monies from any person whose acts or omissions materially contributed to the failure, including by the claw-back of variable remuneration such as bonuses;
- (d) terminate contracts, continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the Authorised Firm’s operations;
- (d) ensure continuity of essential services and functions;

- (i) by requiring other entities in the Group to continue to provide essential services to the Authorised Firm or any successor or an acquiring entity;
- (ii) so that the Authorised Firm can temporarily provide such services to a successor or an acquiring entity; or
- (iii) procuring the necessary services from unaffiliated third parties;
- (f) override rights of shareholders of the Authorised Firm, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of business operations, recapitalisation or other measures to restructure and dispose of the Authorised Firm's business, liabilities or assets;
- (g) apply the Sale of Business Tool;
- (h) apply the Bail-in Tool;
- (i) require the Authorised Firm to prepare and implement a business reorganisation plan;
- (j) temporarily suspend the exercise of early termination rights under any contracts or agreements that may otherwise be triggered upon entry of the Authorised Firm into Resolution or in connection with the use of Resolution Powers;
- (k) impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments to central counterparties, payment, clearing and settlements systems and central banks) and a stay on creditor actions to attach assets or otherwise collect money or property from the Authorised Firm, while protecting the enforcement of eligible netting and collateral agreements;
- (l) effect the closure and orderly wind-down of the whole or part of the business of the Authorised Firm while facilitating prompt access to transaction accounts and to segregated client assets;
- (m) require the Authorised Firm or any of the entities in the Group to provide any services or facilities;
- (n) require the Authorised Firm to promptly return client assets to clients;
- (o) suspend any payment or delivery obligations pursuant to any contract to which the Authorised Firm is a party; and
- (p) restrict secured creditors of the Authorised Firm from enforcing security interests in relation to any assets of the Authorised Firm.

(2) In addition to the powers specified in Article 84N(1), the DFSA may:

- (a) require any person to provide any information required for the DFSA to decide upon and prepare Resolution action, including updates and supplements of information provided in the Resolution plans and including requiring information to be provided through on-site inspections;
- (b) take Resolution action without taking control of the Authorised Firm in Resolution;
- (c) remove rights to acquire further shares, such as shareholders' pre-emption rights in the case of a new share issue under the Companies Law;
- (d) cancel or modify the terms of a contract to which the Authorised Firm in Resolution is a party or substitute a purchaser under the Sale of Business Tool as a party;
- (e) in relation to debt instruments and other eligible liabilities issued by the Authorised Firm:
 - (i) amend or alter the maturity;
 - (ii) amend the amount of interest payable; or
 - (iii) amend the date on which the interest becomes payable, including by suspending payment for a temporary period;
- (f) close out and terminate financial contracts or derivative contracts for the purposes of the use of the Bail-in Tool; and
- (g) require a person to discontinue or suspend the admission to trading of financial instruments relating to the Authorised Firm in Resolution.

(3) The DFSA may exercise its Resolution Powers:

- (a) irrespective of any restriction on, or requirement to obtain consent for, the transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply;
- (b) without the requirement to obtain approval or consent from any person either public or private, including the shareholders or creditors of the Authorised Firm in Resolution; and
- (c) without the requirement to notify any person including any requirement to publish any notice or Prospectus or to file or register any document with any other authority.

840. Sale of Business Tool

- (1) The DFSA may apply the Sale of Business Tool to an Authorised Firm by effecting a sale of all or part of the business of the Authorised Firm in Resolution to one or more purchasers by making:
 - (a) one or more property transfer instruments for the transfer of all or any rights, assets or liabilities of the Authorised Firm; and

- (b) in the case of an Authorised Firm that is not a branch, one or more share transfer instruments for the transfer of all or part of the shares of the Authorised Firm.
- (2) The DFSA may, subject to the Resolution Safeguards, apply the Sale of Business Tool to an Authorised Firm without:
 - (a) the consent of the shareholders of the Authorised Firm or any third party other than the purchaser; and
 - (b) complying with any procedural requirements under the Companies Law or the constitutional documents of the Authorised Firm other than those procedural requirements specified in the Law or prescribed in the Rules.
- (3) The DFSA may prescribe Rules in respect of the application of Sale of Business Tool.

84P. Bail-in Tool

- (1) The DFSA may apply the Bail-in Tool in relation to an Authorised Firm (that is not a branch) for any of the following purposes:
 - (a) to recapitalise an Authorised Firm that meets the Resolution Conditions:
 - (i) to the extent sufficient to restore the Authorised Firm's ability to comply with the authorisation requirements as applicable;
 - (ii) to continue to carry out the activities for which the Authorised Firm is authorised under the Law; and
 - (iii) to sustain sufficient market confidence in the Authorised Firm;
or
 - (b) to convert to shares or reduce the principal amount of claims or debt instruments that are transferred under the Sale of Business Tool.
- (2) The DFSA may, in applying the Bail-in Tool under Article 84P(1), use the write down or conversion power in relation to an Authorised Firm in such manner as may be prescribed in the Rules.

84Q. Temporary Administrator

- (1) The DFSA may appoint a Temporary Administrator to replace the management of the Authorised Firm in Resolution.
- (2) The Temporary Administrator shall have such powers of the shareholders and management of the Authorised Firm, as are specified by the DFSA in the instrument of appointment.
- (3) The Temporary Administrator shall have a duty to take all measures necessary to promote the DFSA's objectives in relation to that Resolution which duty may,

where necessary, override any other duty placed upon a director under DIFC Law and the Authorised Firm's constitutional documents.

- (4) The person appointed to be the Temporary Administrator may be an individual (or one or more individuals acting jointly) or a body corporate.
- (5) Before appointing a person to be a Temporary Administrator, the DFSA must be satisfied that the person has sufficient qualifications, experience, and the fitness and propriety required to carry out the functions of a Temporary Administrator.
- (6) Any Temporary Administrator appointed shall not be treated as a director (formally or de facto) of the Authorised Firm.
- (7) The instrument of appointment shall specify the date on which the appointment takes effect and the period of the appointment, which shall be a period of not more than twelve months but may be renewed (provided that renewal does not exceed twelve months).
- (8) The instrument of appointment may require the Temporary Administrator to report to the DFSA on any matter specified in the instrument and at the time or at intervals specified in the instrument.
- (9) The instrument of appointment may provide for the DFSA to pay the remuneration and costs of the Temporary Administrator or for remuneration and costs of the Temporary Administrator to be paid by the Authorised Firm or its Group entity.
- (10) The DFSA may vary the terms of appointment of a Temporary Administrator.

84R. Resolution Safeguards

- (1) In any use of a Resolution Power or Resolution Tool with respect to an Authorised Firm, the DFSA shall aim to meet the following safeguards:
 - (a) no shareholder or creditor shall be worse off under the Resolution action than if the Authorised Firm had been wound up under ordinary insolvency proceedings; and
 - (b) such other Resolution Safeguards as may be prescribed in the Rules.
- (2) The safeguard referred to in Article 84R(1)(a) shall be based on an evaluation of the difference, if any, between the treatment that shareholders and creditors (the "Difference of Treatment Valuation"):
 - (a) have actually been afforded (or are likely to be afforded) as a result of the use of the Resolution Power or Resolution Tool; and
 - (b) would have received under ordinary insolvency proceedings.

- (3) The DFSA may require the Authorised Firm to pay, or recover from the Authorised Firm, any costs of the Difference of Treatment Valuation referred to in Article 84R(2) with respect to the Authorised Firm.

84S. Costs of Resolution

- (1) The DFSA may require the Authorised Firm to pay, or recover from the Authorised Firm, any costs of using a Resolution Power or Resolution Tool.
- (2) Without limiting Article 84S(1), the DFSA may recover the costs:
- (a) as a deduction from any consideration paid by a transferee to the Authorised Firm in Resolution (in the case of a transfer of property under Article 84O(1)(a)), or as the case may be, from the owners of the shares (in the case of a transfer of shares under Article 84O(1)(b)); or
 - (b) from the Authorised Firm in Resolution, as a preferred creditor.

CHAPTER 5 – MISCELLANEOUS

84T. Recognition of resolution actions in other jurisdictions

- (1) Where the DFSA is notified by a Resolution Authority in another jurisdiction that it intends to take or has taken resolution action with respect to an entity in that jurisdiction and the Resolution Authority requests the DFSA to recognise that resolution action, the DFSA may:
- (a) recognise the resolution action;
 - (b) recognise part of the resolution action, and refuse to recognise the remainder of it; or
 - (c) refuse to recognise the resolution action.
- (2) The DFSA shall, when considering whether to recognise resolution action taken in another jurisdiction, consider the impact of its decision on financial stability in the DIFC, and in other jurisdictions outside the DIFC (including in the State).
- (3) For the purposes of Articles 84T(1)(b) and 84T(1)(c), the DFSA may refuse to recognise resolution action taken in another jurisdiction, or any part thereof, if it is satisfied that one or more of the following conditions are met:
- (a) the recognition would have an adverse effect on financial stability or the economy of the DIFC or the State, or would be contrary to the interest of the DIFC or the State, whether this effect would occur directly or indirectly as a result of the recognition;
 - (b) the exercise of a Resolution Tool or Resolution Power by the DFSA, rather than recognition of the resolution action in relation to the entity is

necessary to achieve one or more of the DFSA's objectives with respect to Resolution;

- (c) under the resolution action, creditors (including, in particular, depositors) or shareholders located or payable in the DIFC would not, by reason of being located and payable in the DIFC, receive the same treatment, and have similar legal rights, as creditors (including depositors) or shareholders who are located or payable in the other jurisdiction concerned; or
- (d) the recognition would have a significant detrimental impact on the DIFC or be unlawful under any DIFC Law.

(4) Where the DFSA makes a decision under Article 84T(1) (a "Recognition Order"), the DFSA:

- (a) shall record its decision together with the reasons for that decision;
- (b) shall give written notice of the decision to:
 - (i) the Resolution Authority in the other jurisdiction;
 - (ii) if it considers it necessary, the entity; and
 - (iii) if it considers it necessary, any Resolution Authority in any other relevant jurisdiction; and
- (c) may publish information about the decision if it considers it is desirable to do so in the public interest.

(5) For the purposes of supporting, or giving full effect to, a Recognition Order recognises entirely or in part any resolution action in another jurisdiction, the DFSA may exercise one or more Resolution Powers or Resolution Tools as appropriate in the circumstances.

(6) A Recognition Order recognising a resolution action entirely or in part shall not prejudice the winding up of an Authorised Firm under ordinary insolvency proceedings, unless the winding up conflicts with the resolution action, in which case the recognised resolution action shall take precedence.

(7) A Recognition Order may include any incidental, consequential or transitional provisions as the DFSA considers necessary.

84U. Statements of Policy

(1) The DFSA may prepare, publish and maintain a statement of its policy in relation to the principles to be considered by the DFSA in exercising its powers under this Part.

- (2) The DFSA may at any time modify or replace a statement published under this Article and where it does so it shall publish any modified or replacement statement.
- (3) In exercising, or deciding whether to exercise, its powers under this Part, the DFSA shall have regard to a statement of policy (if any) published under this Article.

84V. Application of Insolvency Law

- (1) To the extent that this Part, including any Rule made or requirement issued under this Part, is inconsistent with the Insolvency Law, the provision of this Part or the Rule or requirement under this Part shall prevail.
- (2) If the DFSA has determined that the Resolution Conditions have been met in relation to an Authorised Firm, a person may not commence insolvency proceedings under the Insolvency Law in respect of the Authorised Firm except with the DFSA's consent.
- (3) The DFSA may apply to the Court under Article 93 of this Law for the winding up of an Authorised Firm or commence insolvency proceedings under the Insolvency Law in respect of the Authorised Firm even if it has determined that the Resolution Conditions have been met or it has taken Resolution action under this Part in respect of the Authorised Firm.
- (4) The DFSA may exercise a Resolution Tool or Resolution Power in relation to an Authorised Firm even if insolvency proceedings have already commenced in relation to the Authorised Firm.

84W. Protection from liability

- (1) A Temporary Administrator or an independent valuer appointed under this Part is not liable for damages in respect of anything done or omitted to be done in good faith for the purposes of, or in connection with, the performance of functions under that appointment.
- (2) A director of an Authorised Firm or of another entity in its Group is not to be regarded as failing to comply with any duty owed to any person, including a shareholder, creditor or employee, by virtue of anything done or omitted to be done in accordance with a requirement made by the DFSA under this Part.
- (3) An Authorised Firm, an entity in its Group or a director or employee of the Authorised Firm or an entity in its Group is not liable for damages in respect of anything done or omitted to be done in good faith in accordance with a requirement made by the DFSA under this Part.

84X. Default Event Provision

(1) The following shall be disregarded in determining whether a Default Event Provision applies:

- (a) the exercise of a measure in an Authorised Firm's Recovery Plan, the removal of impediments to Resolvability of an Authorised Firm, the imposition of an Early Intervention Power, the appointment of a Temporary Administrator, the exercise of the write down or conversion power, the exercise of a Resolution Tool or Resolution Power, or the recognition of a resolution action taken by a Resolution Authority; and
- (b) the occurrence of any event directly linked to the application of such measure, power or action,

if the substantive obligations under the contract or other agreement (which provides the Default Event Provision), including payment and delivery obligations and the provision of collateral, continue to be performed.

(2) Article 84X(1) applies where a contract or other agreement:

- (a) is entered into by an Authorised Firm or a Regulated Financial Institution;
- (b) is entered into by a Subsidiary of an Authorised Firm, whose obligations are guaranteed by another Group entity in the Authorised Firm's Group or Regulated Financial Institution's Group; or
- (c) includes cross-default provisions, and is entered into by another Group entity in the Authorised Firm's Group or Regulated Financial Institution's Group,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

(3) A notice under Article 84N may make provision for (4) or (5) to apply in circumstances where (1) would not apply.

(4) If (4) applies, the notice under Article 84N shall be disregarded in determining whether a default event provision applies.

(5) If (5) applies, the notice under Article 84N shall be disregarded in determining whether a default event provision applies except so far as the the notice under Article 84N order provides otherwise.

(6) A reference in (3), (4) or (5) to the notice under Article 84N is a reference to:

- (a) the making of the notice under Article 84N;
 - (b) anything to be done under the notice under Article 84N or is to be, or may be, done under the notice under Article 84N; and
 - (c) any action or decision taken or made under this Law or another enactment in so far as it resulted in, or was connected to, the making of the notice under Article 84N.

- (7) A provision in the notice under Article 84N under (6) may apply (4) or (5):
 - (a) generally or only for specified purposes, cases or circumstances; or
 - (b) differently for different purposes, cases or circumstances.

- (8) A thing is not done under the notice under Article 84N for the purposes of (6)(b) merely by virtue of being done under a contract or other agreement, rights or obligations which have been affected by the notice under Article 84N.

- (9) In this Article, “specified” in relation to a contract or agreement means specified in the contract or other agreement .

- (10) In this Article, “Default Event Provision” means a provision of a contract or other agreement:
 - (a) that has the effect that if a specified event or situation arises:
 - (i) the agreement is terminated, modified, replaced or suspended;
 - (ii) rights or duties under the agreement are terminated, modified, replaced or suspended;
 - (iii) a right accrues to terminate, modify or replace the agreement;
 - (iv) a right accrues to terminate, modify or replace rights or duties under the agreement;
 - (v) a set-off or netting right accrues under the contract;
 - (vi) a sum becomes payable or ceases to be payable;
 - (vii) a right accrues to obtain possession, exercise control or enforce any security over any property;
 - (viii) delivery of anything becomes due or ceases to be due;
 - (ix) a right to claim a payment or delivery accrues, changes or lapses;
 - (x) any other right accrues, changes or lapses; or

- (xi) an interest is created, changes or lapses; or
- (b) that has the effect that a provision of the contract or agreement:
 - (i) takes effect only if a specified event occurs or does not occur;
 - (ii) takes effect only if a specified situation arises or does not arise;
 - (iii) has effect only for so long as a specified event does not occur;
 - (iv) has effect only while a specified situation lasts;
 - (v) applies differently if a specified event occurs;
 - (vi) applies differently if a specified situation occurs; or
 - (vii) applies differently while a specified situation lasts.

...

PART 7: ENFORCEMENT

88. ~~DELETED~~Appointment of Managers

- (1) ~~The DFSA may require an Authorised Firm to appoint one or more individuals to act as managers of the business of the person on such terms as the DFSA may specify. Such terms may be varied from time to time by notice in writing given by the DFSA to the person.~~
- (2) ~~The individual or individuals appointed to act as managers of the business under Article 88(1) must be nominated or approved by the DFSA.~~
- (1) ~~The DFSA may impose a requirement under Article 88(1) where it considers it necessary or desirable to appoint a manager:~~
 - (a) ~~to determine or address concerns as to the solvency or the level of compliance with prudential requirements of the Authorised Firm;~~
 - (b) ~~for the orderly transition of the Authorised Firm from one set of owners or controllers to a new set of owners or controllers;~~
 - (c) ~~to wind down the operations of the Authorised Firm for the protection of customers of the Authorised Firm; or~~
 - (d) ~~where it has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Firm and to ensure that customers or regulated entities are not adversely affected or to maintain the integrity of the DIFC.~~
- (4) ~~The procedures in Schedule 3 apply to a decision of the DFSA under this Article.~~
- (5) ~~If the DFSA decides to exercise its power under this Article, the Authorised Firm may refer the matter to the FMT for review.~~

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PART 9: CONTROL OF FINANCIAL SERVICES TRANSFERS

106. Financial services business transfer schemes

No financial services business transfer scheme (“transfer scheme”) is to have effect unless an order has been made in relation to it under Article 108 or where the Sale Of Business Tool has been used under Article 84Q.

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SCHEDULE 1 INTERPRETATION

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Defined Terms

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Term	Definition
<u>Authorised Firm in Resolution</u>	<u>an Authorised Firm in respect of which the DFSA has taken a decision under Article 84K(6) and has exercised a Resolution Power or Resolution Tool.</u>
...	
<u>Bail-in Tool</u>	<u>the power referred to in Articles 84N(1)(h) and 84P.</u>
...	
<u>Insolvency Law</u>	<u>DIFC Law No. 1 of 2019.</u>
...	
<u>Pre-Resolution Valuation</u>	<u>a valuation carried out, or intended to be carried out, under Article 84M(1).</u>
<u>Provisional Valuation</u>	<u>a valuation carried out, or intended to be carried out, under Article 84M(2).</u>
...	
<u>Recovery</u>	<u>the process to restore an Authorised Firm's financial position.</u>
<u>Recovery Plan</u>	<u>the plan referred to in Article 84D.</u>
<u>Resolution</u>	<u>the process of resolving an Authorised Firm, including the stabilisation and restructuring of that Authorised Firm through the exercise of, or application of, one or more Resolution Powers or Resolution Tools.</u>
<u>Resolution Authority</u>	<u>a body or authority established in a jurisdiction other than the DIFC that exercises powers or performs functions relating to the Recovery or Resolution of persons providing financial services.</u>
<u>Resolution Conditions</u>	<u>the conditions referred to in Article 84K.</u>
<u>Resolution Powers</u>	<u>the powers referred to in Article 84N.</u>
<u>Resolution Plan</u>	<u>the plan referred to in Article 84E.</u>

Term	Definition
<u>Resolution Safeguards</u>	<u>the safeguards referred to in Article 84R.</u>
<u>Resolution Tool</u>	<u>the Sale of Business Tool or the Bail-In Tool referred to in Articles 84O and 84P respectively.</u>
<u>Resolvability</u>	<u>the ability of an Authorised Firm to be resolved by an orderly Resolution.</u>
<u>Resolvability Assessment</u>	<u>an assessment made under Article 84F.</u>
.....	
<u>Sale of Business Tool</u>	<u>the power referred to in Articles 84N(1)(g) and 84O.</u>
.....
<u>Temporary Administrator</u>	<u>a Temporary Administrator appointed by the DFSA under Article 84Q.</u>
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