

CONSULTATION PAPER NO.140



MISCELLANEOUS CHANGES

26 APRIL 2021

PREFACE

Why are we issuing this Consultation Paper (CP)?

1. 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 and the Regulatory Law (DIFC Law No. 1 of 2004, "the Regulatory Law"). Each item is a discrete item.

Who should read this CP?

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

Terminology

3. 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?

4. 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 May 2021**.
5. 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 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 and the Regulatory Law;

Part 2: deals with updates of cross-references and correction of other errors in the DFSA Rulebook or laws;

- Appendix 1: draft amendments to the Regulatory Law (DIFC Law No. 1 of 2004);
- Appendix 2: draft amendments to the GEN (General) Module;
- Appendix 3: draft amendments to the AML Module;
- Appendix 4: draft amendments to the PIB Module;
- Appendix 5: draft amendments to the CIR (Collective Investment Rules) Module; and
- Annex 1: questions asked in this Consultation Paper.

Part I Various proposals for changes to the DFSA Rulebook and Regulatory Law

Delegations to the DFSA - amendments to the Regulatory Law

1. The DFSA may, under Article 20 of the Regulatory Law (DIFC Law No. 1 of 2004, “the Regulatory Law”), accept a delegation of powers or functions from another person where the delegation is pursuant to a Dubai law. The Regulatory Law also contain various provisions, such as Article 39, which permit the DFSA to exercise its powers at the request of another regulator, to assist that regulator to perform its regulatory functions.
2. During 2020 and 2021, the DFSA has been supporting the UAE authorities in responding to the FATF Mutual Evaluation report of the UAE, published in April 2020. As part of this work, it has become clear that there may be circumstances where the DFSA would want to accept a delegation of powers or functions from other bodies in the UAE, particularly at the Federal level.
3. We propose to seek amendment of the Regulatory Law:
 - a. to clarify further that the DFSA is able to accept a delegation of functions and powers from a person under a Federal Law; and
 - b. to describe how the DFSA may perform such functions or exercise such powers.

Please see draft Articles 20 and 39A of the Regulatory Law in Appendix 1.

Question 1:

Do you agree with our proposal to enable the DFSA to accept delegations of functions and powers from a person, under a Federal law? If not, why not?

Restricted Speculative Investments – minimum experience requirements

4. In July 2017, the DFSA published a Dear SEO letter setting out its expectations of how firms should deal with retail over-the-counter (OTC) derivatives. One of the points set out in this letter was that the DFSA expected all firms providing such services to have had at least five years’ experience in dealing with such products while regulated by a recognised financial services regulator. In addition, compliance and client-facing staff were expected to have at least three years relevant experience.
5. In November 2020 we published CP135 on Regulation of Retail OTC Leveraged Products. We consulted on introducing into our regime many of the expectations set out in the 2017 Dear SEO letter, together with points drawn from IOSCO’s recommendations in this area in 2018.
6. However, CP135 did not contain material relating to the experience expectations described above. This was omitted in error and it remains our policy intention that the expectations on experience requirements should form part of our regime going forward. We propose, therefore, further changes to the GEN module of our Rulebook to include the experience requirements for firms and individuals, by way of guidance. We consider this is necessary to provide retail investor protection given the highly speculative nature of investments involved.

Please see draft Guidance under GEN 7.3.1 in Appendix 2.

Question 2:

Do you agree with our proposals on experience requirements for dealing with RSIs? If not, why not?

Accounting and auditing standards for branches

7. Over time, the DFSA has received a large number of applications for waivers and modifications of the requirements relating to the use of accounting standards and auditing standards.
8. A Branch is a legally dependent part of a Regulated Financial Institution based in a jurisdiction outside the DIFC. For such Branches, the legal dependency means that suggesting the use of separate accounting or auditing standards to those used in the other jurisdiction is inappropriate.
9. We propose to clarify that Branches can use home country accounting and auditing standards.

Please see draft GEN 8.2.2 and 8.6.1 in Appendix 2.

Question 3:

Do you agree with our proposal for accounting and auditing standards for Branches? If not, why not?

Relevant Persons who are not Authorised Firms - Money Laundering Reporting Officers (MLROs)

10. Every Relevant Person must appoint a MLRO under AML 11.2.1(1). AML 11.2.5 allows the outsourcing of this role providing that the individual to whom the role is outsourced is, and remains, suitable to carry out the role.
11. It is an anomaly that AML 11.2.1 does not expressly require that a MLRO appointed by a Relevant Person must themselves be suitable to carry out the role. We propose to correct this anomaly.

Please see draft AML 11.2.1(1) in Appendix 3.

Question 4:

Do you agree with our proposal to provide greater clarity that MLROs need to be suitable to carry out the role? If not, why not?

Part II Other amendments to the DFSA Rulebook

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

Updates to PIB

13. The transition away from LIBOR and similar benchmarks, towards alternative reference rates, is well under way in global financial markets. By the end of 2021 the UK FCA will no longer accept the calculation and publication of LIBOR.
14. In preparation for this cut-off date, we propose to delete a number of references to LIBOR in Guidance in the PIB module of our Rulebook.

Please see draft PIB 7.4.1 Guidance 4(c) and 7.4.3 Guidance 3 in Appendix 4.

Updates to CIR

15. The current text in CIR 15.1.9 refers to various parts of Article 54 of the Regulatory Law

2004, including to non-existent parts of Article 54.

16. We propose to correct the cross-references in the CIR module.

Please see draft CIR 15.1.9(1)(a) and (b) in Appendix 5.

Question 5:

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

Annex 1: Questions in this Consultation Paper

Question 1:

Do you agree with our proposal to enable the DFSA to accept delegations of functions and powers from a person, under a Federal law? If not, why not?

Question 2:

Do you agree with our proposals on experience requirements for dealing with RSIs? If not, why not?

Question 3:

Do you agree with our proposal for accounting and auditing standards for Branches? If not, why not?

Question 4:

Do you agree with our proposal to provide greater clarity that MLROs need to be suitable to carry out the role? If not, why not?

Question 5:

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