

Appendix 2

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



The DFSA Rulebook

General Module

(GEN)

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5.4 Whistleblowing

5.4.1 In this section:

- (a) “regulatory concern”, in relation to an Authorised Person, means a concern held by any person that the Authorised Person, an officer or employee of the Authorised Person, an Affiliate of the Authorised Person or an officer or employee of an Affiliate of the Authorised Person has or may have:
- (i) contravened a provision of legislation administered by the DFSA; or
 - (ii) engaged in money laundering, fraud or any other financial crime; and
- (b) “whistleblower” means a person that has reported, or intends to report, a regulatory concern.

Policies and procedures

- 5.4.2** (1) An Authorised Person must have appropriate and effective policies and procedures in place to facilitate the reporting of regulatory concerns made by a whistleblower and for the assessment and, where appropriate, escalation of those concerns.
- (2) The policies and procedures required under (1) must be in writing.
- (3) An Authorised Person must periodically review the policies and procedures in (1) to ensure they are adequate, effective and up to date.

Record of whistleblowing reports

- 5.4.3** An Authorised Person must maintain a record of each report made by a whistleblower, including appropriate details of the regulatory concern and the outcome of its assessment of the report.

Guidance

1. The DFSA would expect an Authorised Person to implement policies and procedures under Rule 5.4.2 that are appropriate based on the nature, scale and complexity of the Authorised Person’s business. We would expect larger, more complex firms to have more detailed and comprehensive policies and procedures in place.
2. The policies and procedures should:
 - a. include internal arrangements to allow for reports to be made by whistleblowers;
 - b. include adequate procedures to deal with, assess and, where appropriate, escalate reports to the senior management of the Authorised Person or, if necessary, to the DFSA or to any other relevant authority;
 - c. include reasonable measures to protect the identity and confidentiality of whistleblowers;
 - d. include reasonable measures to protect the whistleblower from suffering any detriment, as a result of the report;
 - e. ensure that, where appropriate and feasible, feedback is provided to the whistleblower;
and

- f. include reasonable measures to manage any conflicts of interest and ensure the fair treatment of any person who is the subject of an allegation in a report.
3. The DFSA would expect an Authorised Person's whistleblowing policies and procedures generally to encourage reporting of concerns first to the Authorised Person itself. However, the policies and procedures should also take into account that there may be circumstances where it is appropriate, or a whistleblower may prefer, to report the concerns directly to the DFSA or to another relevant authority.
4. The records under Rule 5.4.3 should include:
 - a. the date the report was received;
 - b. a summary of the concerns raised;
 - c. steps taken by the Authorised Person in relation to the report until the matter is resolved;
 - d. any steps taken to maintain the confidentiality of the whistleblower and to ensure fair treatment of the whistleblower;
 - e. the list of persons who have knowledge of the report;
 - f. the outcome of the review of the report including the rationale for the outcome and any decision on whether or not to disclose the report to the DFSA or any other relevant authority; and
 - g. references or links to all documentation and review papers in relation to the report.
5. An Authorised Person may be required to make its records available to the DFSA for inspection.
6. In addition to the requirements in these Rules, Article 68A of the Regulatory Law provides legal protection to a whistleblower who discloses information about suspected misconduct in good faith to a Regulated Entity, the auditor of the Regulated Entity, the DFSA or other relevant authorities.
7. The protection under the Regulatory Law applies to any person who makes such a disclosure. For example, the disclosure may be made by a person who is or has been an officer, employee or agent of the Regulated Entity, a Person who provides services or products to the Regulated Entity or a person who has no formal connection with the Regulated Entity.
8. The DFSA would expect an Authorised Person, as part of its policies and procedures, to inform its officers and employees of the protection under Article 68A of the Regulatory Law.