

**Appendix 2**

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

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**PROPOSED CHANGES TO  
THE REGULATORY LAW 2004**

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## **PART2: THE DFSA**

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### **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 international sanctions;
- (d) a self-regulatory body or organization 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,

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 person of its regulatory functions.

#### **40. Delegation of Functions and Powers to Other Regulators**

Without limiting in any way the generality of any other provisions of the Law, including Article 36, the DFSA may delegate functions and powers to a representative of:

- (a) a Financial Services Regulator;
- (b) a governmental or regulatory authority in the United Arab Emirates or elsewhere exercising powers and performing functions relating to anti-money laundering, counter terrorist financing or international sanctions; or
- (c) a civil or criminal law enforcement agency of the United Arab Emirates;

for the purpose of exercising the powers of the DFSA under Chapters 1 and 2 of Part 5, save that such representative shall be supervised in the exercise of his powers by the Chief Executive or his delegated officer.

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## PART 3: LICENCES, AUTHORISATION AND REGISTRATION

### CHAPTER 1 - THE FRAMEWORK OF REGULATION

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#### 44. ~~The Ancillary Services Prohibition and Ancillary Service Providers~~

- ~~(1) Subject to Article 44(5), a person shall not carry on an Ancillary Service in or from the DIFC.~~
- ~~(2) The DFSA shall make Rules prescribing the activities which constitute an Ancillary Service.~~
- ~~(3) The prohibition in Article 44(1) is referred to in the Law as the "Ancillary Services Prohibition".~~
- ~~(4) The DFSA may make Rules adding to, removing activities from, or otherwise modifying the list of Ancillary Services made under Article 44(2).~~
- ~~(5) A person may carry on an Ancillary Service in or from the DIFC if such person is registered as an Ancillary Service Provider or is an Authorised Firm.~~
- ~~(6) An Ancillary Service Provider shall:
  - ~~(a) act within the scope of its authority under its registration; and~~
  - ~~(b) comply with any terms of its registration.~~~~
- ~~(7) A person who is not an Ancillary Service Provider shall not represent that he is such a person.~~

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### CHAPTER 7 – RESTRICTION, SUSPENSION AND WITHDRAWAL OF AUTHORISED INDIVIDUAL STATUS

#### 58. Restricting Persons or Suspending or Withdrawing Authorisations

- (1) If the DFSA reasonably concludes that a person is not a fit and proper person to perform any functions in or in connection with the provision of Financial Services ~~or Ancillary Services~~ in the DIFC, whether or not they are Licensed Functions, it may by means of written notice restrict such person from performing any or all such functions.
- (2) If the DFSA reasonably concludes that:
  - (a) an Authorised Individual is in breach of or has been in breach of, an obligation that applies as a result of such person's Authorised Individual status; or

- (b) a person is no longer fit and proper to perform a role in respect of which he is an Authorised Individual;

it may:

- (c) by means of a written notice restrict the person from performing one or more Licensed Functions; or
- (d) suspend or withdraw Authorised Individual status from such person.

- (3) The DFSA may withdraw the Authorised Individual status of a person if:

- (a) the person becomes bankrupt;
- (b) the person is convicted of a serious criminal offence;
- (c) the person becomes incapable (through mental or physical incapacity) of managing his affairs;
- (d) the person or the relevant Authorised Firm asks the DFSA to withdraw the status; or
- (e) the Licence of the relevant Authorised Firm is withdrawn.

- (4) The DFSA may withdraw authorisation in relation to one or more Licensed Functions of an Authorised Individual if the Authorised Individual or relevant Authorised Firm asks the DFSA to withdraw such authorisation.

- (5) Where the DFSA:

- (a) is conducting an investigation under Article 78; and
- (b) in the course of such investigation suspects that a person has engaged in conduct that may form grounds for the withdrawal of the person's Authorised Individual status;

it may suspend the Authorised Individual status of such person for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the person.

- (6) A person who:

- (a) performs a function in breach of Article 58(1); or
- (b) performs a Licensed Function:
  - (i) in breach of the Rules;
  - (ii) contrary to a written notice issued under Article 58(2); or

- (iii) where his Authorised Individual status has been suspended or withdrawn under Article 58(2), (3), (4) or (5);

commits a contravention.

- (7) The DFSA may vary or withdraw a written notice issued under Article 58(1) or (2) where it is reasonable to do so.
- (8) The DFSA may act under Article 58(7) on its own initiative or at the request of the relevant person or Authorised Firm.

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## **CHAPTER 8 – REGISTRATION OF ~~ANCILLARY SERVICE PROVIDERS AND~~ DNFBPS**

### **60. Registration of ~~Ancillary Service Providers and~~ DNFBPs**

- ~~(1) An application for registration of an Ancillary Service Provider to carry on one or more Ancillary Services may be made to the DFSA by any:
  - ~~(a) body corporate;~~
  - ~~(b) partnership; or~~
  - ~~(c) unincorporated association.~~~~
- ~~(2) The DFSA shall make Rules containing a set of requirements which an application for registration by an Ancillary Service Provider must meet before such application can be accepted and registration granted by the DFSA.~~
- ~~(3) The DFSA may in its absolute discretion grant or refuse to grant an application for registration by an Ancillary Service Provider.~~
- ~~(4) The DFSA may make Rules setting out the grounds on which and manner in which the registration of an Ancillary Service Provider may be suspended, varied or withdrawn by the DFSA.~~
- ~~(5) (a) If an Ancillary Service Provider is:
  - ~~(i) a partnership; or~~
  - ~~(ii) an unincorporated association;~~it does not need to reapply for registration by reason only of a change to its membership.~~
- ~~(b) Article 60 (5) (a) applies subject to the effect of Article 64.~~

- (61) The DFSA shall make Rules prescribing the person or class of persons which are designated to be a DNFBP.
- (72) A person who meets the definition of a DNFBP, as defined in the Rules made for the purposes of Article 60(6) (1), must register with the DFSA.
- (83) The DFSA may make Rules prescribing the requirements for registration under Article 60(7) (2) and prescribing the circumstances under which the DFSA may de-register a person who is registered under Article 67(2).

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## CHAPTER 10 - OTHER MATTERS RELATING TO LICENSING

### 62. Public Registers

- (1) The DFSA shall publish and maintain a register of current and past grants, withdrawals and suspensions of Licenses and authorisations of all Authorised Firms, Authorised Market Institutions and Authorised Individuals in such manner as may be prescribed in the Rules.
- (2) The DFSA shall publish and maintain a register of current and past grants and withdrawals of registration of all ~~Ancillary Service Providers~~ and DNFbps in such manner as may be prescribed in the Rules.
- (3) The DFSA shall publish and maintain registers of:
  - (a) all persons in relation to whom written notices have been issued under Article 58(1); and
  - (b) all persons in relation to whom written notices have been issued under Article 58(2);

indicating whether any such notice is of past effect or current, in such manner as may be prescribed in the Rules.
- (4) The DFSA shall publish and maintain a register of current and past registrations, suspensions and withdrawals of registrations of auditors in such manner as may be prescribed in the Rules.
- (5) The DFSA shall publish and maintain a register of all Domestic Funds.
- (6) The DFSA shall make a reasonably current version of any registers maintained under Article 62(1), (2), (3), (4) and (5) readily available for viewing by the public during the normal business hours of the DFSA.

### 63. Extended jurisdiction

- (1) Any power which the DFSA may exercise in relation to an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~, Registered Auditor, Authorised Individual, DNFBP or Domestic Fund under the Law or Rules or

other legislation administered by the DFSA may continue to be exercised for a period of two years after the date on which:

- (a) the Licence of such Authorised Firm or Authorised Market Institution;
- (b) the registration of an ~~Ancillary Service Provider~~ or DNFBP or Registered Auditor;
- (c) the Authorised Individual status of such Authorised Individual;
- (d) the registration of the Principal Representative; or
- (e) the registration of a Domestic Fund;

is withdrawn by the DFSA under the Law or other legislation administered by the DFSA.

- (2) If, pursuant to the Law, proceedings are commenced before a Financial Markets Tribunal or the Regulatory Appeals Committee before the expiry of the period of two years referred to in Article 63(1), then the provisions of Article 63(1) shall remain in force until such time as the proceedings and any related appeals and proceedings are completed.

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## **PART 4: GENERAL REGULATION AND ANTI-MONEY LAUNDERING PROVISIONS**

### **CHAPTER 1 – GENERAL PROVISIONS**

#### **64. Provisions Governing Change of Control**

- (1) The DFSA may make Rules in connection with the change of control of Authorised Firms and, Authorised Market Institutions ~~and Ancillary Service Providers~~, including Rules as to:
  - (a) the circumstances in which a person becomes or ceases to be a controller;
  - (b) the circumstances in which a change in a measure of control requires notice to be given to the DFSA;
  - (c) the manner in which and by whom such notification is to be given;
  - (d) in relation to the Authorised Firms and Authorised Market Institutions, the circumstances in which approval of the DFSA may be required prior to a change in control; and

(e) the manner by which and circumstances in which the DFSA will notify an Authorised Firm or Authorised Market Institution that a controller is unacceptable to the DFSA.

(2) Where:

(a) the DFSA notifies an Authorised Firm or Authorised Market Institution that a controller is unacceptable to the DFSA; and

(b) such Authorised Firm or Authorised Market Institution fails to remove the controller without undue delay or take other action to the satisfaction of the DFSA;

the DFSA may exercise its powers under Article 51 to withdraw the Licence of the Authorised Firm or Authorised Market Institution.

(3) Nothing in Article 64(2) affects the powers and liabilities that the DFSA or a person may have apart from this Article.

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## **67. Obligations of Disclosure to the DFSA**

(1) (a) Subject to Article 67(2), any of the following persons:

(i) an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~ or DNFBP; or

(ii) an auditor of any person in (i);

shall disclose to the DFSA anything which reasonably tends to show a matter specified in (b):

(b) The relevant matters for the purposes of (a) are:

(i) a breach, or likely breach of a provision of the Law or Rules or other legislation administered by the DFSA;

(ii) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or

(iii) any other matter as the DFSA may prescribe in Rules;

which may be attributable to the conduct of the person in (a)(i) or its directors, officers, employees or agents.

(2) Article 67(1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.



- (3) A person referred to in Article 67(1)(a) shall establish and implement appropriate systems and internal procedures to enable its compliance, and compliance by its auditor, with Article 67(1).
- (4) Any provision in an agreement between a person referred to in Article 67(1)(a) and a director, officer, employee, agent or auditor is void in so far as it purports to hinder compliance with an obligation under Article 67(1).
- (5) Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the DFSA:
  - (a) a notification as required under this Article; or
  - (b) any other information or opinion in relation to any such matter;

if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.
- (6) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist a person referred to in Article 67(1)(a) or (b) to comply with an obligation under Article 67(1).
- (7) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 67(6).

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## **CHAPTER 2 – ANTI-MONEY LAUNDERING COMPLIANCE**

### **70. Jurisdiction**

- (1) This chapter is made in recognition of the application in the DIFC of Federal Law No. 4 of 2002 ‘Criminalisation of Money Laundering’ and Decree by Federal Law No. 1 of 2004 ‘Combating Terrorism Offences’.
- (2) A reference in this chapter to money laundering is to be taken to include terrorist financing unless the context otherwise provides or implies.
- (3) The DFSA has, subject to (4), exclusive jurisdiction for regulation in relation to money laundering in the DIFC.
- (4) Nothing in the Law affects the operation of:
  - (a) Federal Law No. 4 of 2002;
  - (b) Federal Law No. 1 of 2004;
  - (c) the Penal Code of the United Arab Emirates; or

- (d) any other Federal Law that is applicable in the DIFC in relation to money laundering.

## **71. Obligations**

- (1) A person shall comply with any provision of Federal Law relating to money laundering as it applies to such person in the DIFC.
- (2) A person shall comply with any duty, requirement, prohibition, obligation or responsibility to which that person is subject under the Rules.
- (3) Where the DFSA detects conduct which it suspects may relate to money laundering, it shall advise the relevant authority exercising powers and performing functions under Federal Law No. 4 of 2002 without undue delay.
- (4) A person who is subject to Rules made pursuant to Article 72 shall conduct customer due diligence in the circumstances prescribed by the Rules.

## **72. Rules**

The DFSA shall make Rules in connection with the creation and implementation of anti-money laundering measures, policies and procedures, including Rules as to:

- (a) the persons or classes of persons who shall be subject to any such measures, policies and procedures;
- (b) the nature and extent of any duty, requirement, prohibition, obligation or responsibility applicable to such persons; and
- (c) registration of any or all of such persons with the DFSA.

## **PART 5: POWERS OF SUPERVISION AND INVESTIGATION**

### **CHAPTER 1 – POWERS OF SUPERVISION**

#### **73. Powers to Obtain Information**

- (1) The DFSA may require an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~, DNFBP, Fund, auditor or any director, officer, employee or agent of such person by written notice to:
  - (a) give, or procure the giving of, such specified information; or
  - (b) produce, or procure the production of, such specified documents;

to the DFSA as the DFSA considers necessary or desirable to meet the objectives of the DFSA.

- (2) The DFSA may enter the premises of any Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~, Fund, DNFBP or Auditor during normal business hours or at any other time as may be agreed for the purpose of inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.
- (3) The DFSA may exercise its powers under Article 73 (1) in respect of any person within, or outside of, the DIFC.
- (4) The Court may on application by the DFSA order that: the DFSA may make a requirement under Article 73(1) outside of the jurisdiction of the DIFC in respect of a person to whom Article 73(1) applies other than an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~ or DNFBP.
- (5) Information given or a document produced as a result of the exercise by the DFSA of powers under Article 73 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.

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## SCHEDULE 1 INTERPRETATION

### 3. Defined Terms

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

Term	Definition
<del>Ancillary Service</del>	<del>is an activity prescribed in the Rules made under Article 44(2).</del>
<del>Ancillary Services Prohibition</del>	<del>has the meaning given in Article 44(3).</del>
<del>Ancillary Service Provider</del>	<del>a person who is registered by the DFSA in relation to the carrying on of one or more Ancillary Services.</del>