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**CONSULTATION PAPER NO. 96**

**18 AUGUST 2014**

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**PROPOSED AMENDMENTS TO THE DFSA FEE REGIME**

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### PROPOSED AMENDMENTS TO THE DFSA FEE REGIME

#### Why are we issuing this paper?

1. The DFSA proposes to amend the fee regime for regulated entities within the Dubai International Financial Centre (DIFC). This paper sets out those proposals for public consultation.
2. The proposals in this paper are designed to support on-going DFSA efforts towards cost recovery from the regulated community, while:
  - a. giving due consideration to the commercial considerations of affected parties; and
  - b. ensuring that we fulfil our regulatory objectives.

#### Who should read this paper?

3. The proposals in this paper would be of particular interest to:
  - a. Authorised Firms;
  - b. Authorised Individuals;
  - c. Representative Offices;
  - d. Designated Non-Financial Businesses and Professions (DNFBPs);
  - e. applicants considering managing a Collective Investment Fund being a (proposed) Qualified Investor Fund; and
  - f. others conducting or wishing to conduct activities in or from the DIFC.

#### Terminology in this paper

4. In this paper, defined terms are identified throughout by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module (GLO) or in the proposed amendments in this paper. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

#### How to provide comments

5. All comments should be in writing and emailed to the address specified below. Please refer to the Consultation Paper number in the subject line. You may, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

**Comments to be addressed or emailed to:**

**Consultation Paper No. 96  
Policy and Legal Services  
DFSA  
PO Box 75850  
Dubai, UAE**

**Email: [consultation@dfsa.ae](mailto:consultation@dfsa.ae)**

**Tel: +971(0)4 3621500**

**What happens next?**

6. The deadline for providing comments on the proposals is **17 September 2014**. Once we receive your comments, we shall consider if any refinements are required to these proposals. We shall then seek approval from our Board of the finalised proposals. Once the proposals are approved, we shall issue a notice on our website to this effect. Any approved changes to fees would be anticipated to take effect in 2015.

**Background**

7. The last wide-ranging review of the DFSA fees was undertaken in 2007. Following public consultation ([CP49](#)), a number of amendments were introduced effective from 1 January 2008 to the DFSA's fee regime as contained in the Fees Rule Module ([FER](#)).
8. The Consultation Paper 'Proposed Enhancements to the Auditor Regime' ([CP91](#)) noted that the DFSA does not have a formal policy to recover its full costs from those it regulates and stated that the DFSA would seek to recover a larger proportion of such costs in the future. Following recent internal discussions, the DFSA confirms that it will seek to recover a larger proportion of its costs from the regulated community, and will aim over time to achieve full cost recovery.
9. In making any changes to its fee regime, the DFSA remains committed to:
  - a. careful consideration of the impact of any potential fee change on the regulated (and potential regulated) community; and
  - b. full public consultation.
10. Other principles used by the DFSA to set its fees remain unchanged, namely:
  - a. the cost of regulation to the market should be proportionate, transparent and flexible;
  - b. fees should not be a disincentive to locate in the DIFC, as opposed to broadly comparable centres;
  - c. fees should not provide or create any undesirable behavioural incentives; and
  - d. fees should be efficient to be administered.

11. In assessing potential changes to its fees, the DFSA has undertaken benchmarking. The following jurisdictions were considered for various aspects of benchmarking: the federal regulatory regime applying in the United Arab Emirates (UAE) more broadly, as well as Australia, Bermuda, Guernsey, Jersey, Hong Kong; Singapore and the UK.
12. There are noticeable variations between the regulators, notably whether they are responsible for regulating a number of financial sectors ('integrated,' like the DFSA or Qatar Financial Centre Regulatory Authority) or focus solely on one sector of the financial industry (e.g. Hong Kong (HK), Australia). Driven by these and other considerations, the funding philosophies of regulators, and consequently their fee regimes, vary significantly.

### **Proposed Changes**

13. The proposed amendments to the DFSA's fee regime, and the structure of this consultation paper, are set out below:

Part 1: proposals relating to fees for commencing regulatory proceedings before the Financial Markets Tribunal;

Part 2: proposals relating to fees for Authorised Individuals;

Part 3: proposals relating to fees for changes in a Licence;

Part 4: proposals relating to fees for Representative Offices and DNFBPs;

Part 5: proposals relating to fees for managing a Collective Investment Scheme being a Qualified Investor Fund;

Part 6: proposals relating to supplementary fees set out in Rule 1.2.6 of FER; and

Appendix 1: draft amendments to the rules.

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## **Part 1: Proposals relating to fees for commencing regulatory proceedings before the Financial Markets Tribunal**

14. The DFSA proposes introducing a fee of USD 5,000 for the filing of an application to commence a regulatory proceeding by a person other than the DFSA.
15. Currently, under Rule 4.2 of FER, a fee of USD 5,000 must be paid to the DFSA when a Notice of Appeal to the Regulatory Appeals Committee (RAC) is filed. Following the recent review of the RAC and Financial Markets Tribunal (FMT) regime, a revised provision in Rule 4.2 of FER has been proposed, where a fee of USD 5,000 should be paid to the DFSA for filing a reference with the FMT (since it is proposed that the FMT should replace the RAC as the body that can review DFSA decisions) (see [Appendix 11](#) to [CP94](#)).
16. In the context of the review of RAC/FMT, the FMT's existing jurisdiction to hear proceedings called 'regulatory proceeding' under Article 30 of the Regulatory Law has been confirmed. A regulatory proceeding takes place before the FMT to hear and determine an issue of a regulatory nature, for example, a markets issue arising between an issuer and an investor. It may be brought either by the DFSA or, more likely, by another person on condition that the person demonstrates sufficient interest in the matter to which the regulatory proceeding relates.
17. Similarly to filing a reference to the FMT, the regulatory proceeding requires the DFSA's involvement. As a result, it would appear reasonable that the DFSA should charge a fee for this work. In order to keep the FMT-related fees relatively aligned, we propose to charge a similar level of fee to the one that it is charged for filing of the reference to the RAC/FMT. The possibility to waive the fee would be available for individuals if the DFSA considers it equitable, under FER 4.3.2.

### **Issues for consideration**

- Q1 Are there any objections to charging a fee for seeking the consent of the DFSA to bring a regulatory proceeding before the FMT? If so, what are they and how should they be addressed?
- Q2 Are there any concerns about the level of the proposed fee?

## **Part 2: Proposals relating to fees for Authorised Individuals**

19. The DFSA proposes to introduce a fee of USD 1,000 per application for every replacement or new registration of an Authorised Individual. We do not propose to introduce a fee for an application to withdraw an Authorised Individual.
20. At present, the DFSA does not charge separately for the initial registration of Authorised Individuals at the time of application for authorisation by a prospective Authorised Firm, even if it involves changes in respect of such individuals in the pre-authorisation phase. This is on the basis that the cost of this work is bundled into the overall application fee paid by the applicant.
21. In the post-authorisation stage of the Authorised Firm's operation, no fee is currently charged for the DFSA's work related to changes comprising replacing and registering new Authorised Individuals. The DFSA has consistently been receiving a large number of applications in this respect (e.g. more than 400 in

2013) and has decided that the additional work necessary to process these applications calls for the introduction of the proposed fee.

22. We now have an improved understanding of resourcing required for the type of activities related to replacing existing Authorised Individuals and registering new Authorised Individuals and the proposed fee of USD 1,000 reflects the level of resourcing required.

#### **Issues for consideration**

- Q3 Does the proposed approach to charge a fee for work related to Authorised Individuals in the post-authorisation stage seem appropriate? If not, why not?
- Q4 Is the level of the proposed fee considered to be appropriate? If not, what alternative is suggested?

### **Part 3: Proposals relating to fees for changes in a Licence**

23. At present, the DFSA does not charge separately for its work related to applications, instigated at the initiative of the Authorised Firm, to effect changes in that Firm's existing Licence in a number of cases. Such cases could potentially include:
- a. changes related to adding or modifying a Financial Service to the existing Licence, while the Firm remains in the same prudential Category;
  - b. changes effected to an existing Licence that lead to a change in prudential Category but do not lead to an increase in fees (as per the current FER); or
  - c. endorsement of a Licence or a variation of the endorsement.
24. Taking into account the estimated regulatory effort and cost associated with the assessment of such applications, introducing a fee to cover the DFSA's costs is consistent with cost recovery efforts, while ensuring that this does not hamper the Authorised Firm's development.
25. Bearing this in mind, the DFSA proposes to introduce a fee of USD 5,000 for applications related to:
- a. changes consisting of adding or modifying a Financial Service to the Licence, while the Firm remains in the same prudential Category; or
  - b. changes effected to an existing Licence that lead to a change in prudential Category but that do not lead to an increase in fees; or
  - c. endorsement of a Licence or a variation of the endorsement.

#### **Issues for consideration**

- Q5. Does the proposed approach in relation to the three additional types of fees seem appropriate? If not, why not?
- Q6. Is the level of the proposed fees considered to be appropriate? If not, what alternative is suggested?

#### Part 4: Proposals relating to fees for Representative Offices and DNFBPs

26. Under Rules 3.2.1(4), 3.7 and 3.8 of FER, Representative Offices and DNFBPs are currently charged disparate application and annual fees despite the fact that both types of entities attract, based on the DFSA's internal data, approximately equal amounts of regulatory effort.
27. As a result, the DFSA considers that the differences between the fees are not justified and it proposes aligning them across the board. A single fee level of USD 4,000 is proposed as set out in the table below.
28. This level of fees takes account of the estimated regulatory effort and cost associated with the assessment of applications for authorisation and on-going compliance of the two types of entities and is thus consistent with cost recovery efforts.
29. The proposed fees for Representative Offices and DNFBPs are as follows:

	Representative Offices		DNFBPs	
Fees (in USD)	Authorisation	Annual	Authorisation	Annual
<b>Current</b>	2000	4000	3000	3000
<b>Proposed</b>	4000	4000	4000	4000

#### Issues for consideration

- Q7. Does the proposed approach to application and annual fees related to Representative Offices and DNFBPs seem appropriate? If not, why not?
- Q8. Is the level of the proposed fees considered to be appropriate? If not, what alternative is suggested?

#### Part 5: Proposals relating to fees for managing a Collective Investment Scheme which is a (proposed) Qualified Investor Fund

30. The DFSA has recently consulted on a proposed regime for a new category of Fund called a Qualified Investor Fund (QIF) ([CP93](#)). In that consultation we did not propose any changes to fees relating to the management of such funds.
31. On the basis of the recent benchmarking exercise with other comparable jurisdictions, the DFSA has concluded that regulatory costs (one part of the overall costs) of setting up and carrying on certain types of fund management business in the DIFC appear to be relatively high.
32. Bearing this in mind, the DFSA proposes a significant reduction in authorisation and annual fees for a firm carrying on the activity of Managing a Collective Investment Fund that is a (proposed) QIF. This is, however, subject to the condition that managing a QIF remains the only activity of the firm.
33. The proposed fees would be as follows:

	<b>Managing a Collective Investment Fund being a (proposed) QIF</b>	
<b>Fees (in USD)</b>	<b>Authorisation</b>	<b>Annual</b>
<b>Current</b>	10,000	10,000
<b>Proposed</b>	5,000	5,000

34. It should be noted that, as regards the fees for establishing and operating a (proposed) QIF itself, they remain in line with other comparable jurisdictions based on the benchmarking conducted by the DFSA, and as stated in paragraph 82 of CP93. The DFSA has, therefore, not proposed to charge an application fee for establishing a QIF.

#### **Issues for consideration**

- Q9. Do the proposed authorisation and annual fees for managing a QIF seem appropriate? If not, why not?
- Q10. Is the level of the proposed fees considered to be appropriate? If not, what alternative is suggested?

#### **Part 6: Proposals relating to supplementary fees set out in Rule 1.2.6 of FER**

35. In line with Rule 1.2.6 of FER, the DFSA may require a Person to pay, following a notification, a supplementary fee in circumstances where the DFSA expects to incur substantial additional costs in dealing with an application, notification or when conducting ongoing supervision.
36. The DFSA has not made a significant use of this rule to date, but based on:
- a. retrospective analysis of the DFSA's internal data; and
  - b. recent experience in a number of matters,
- there appear to be a number of circumstances which might call for the increased use of this power in the future.
37. The DFSA proposes to add further guidance to Rule 1.2.6 of FER to provide further information on the circumstances in which it might avail itself of this power. Such circumstances could, for example, include:
- a. complex authorisations by reason of the firm's start-up profile, origin, ownership structure or proposed business model;
  - b. the necessity to conduct intense supervisory scrutiny from a risk perspective;
  - c. complex waiver or modification requests, complex restructurings, changes in an Authorised Person's structure, or activities which necessitate a change in the Rulebook; or

- d. novel proposals and applications that cover untested ground or untested areas of the regulatory regime.
- 38. It is possible that these issues could arise at an initial application stage or during the ongoing supervision of the Authorised Person.
- 39. Those subject to a supplementary fee would have, as now, the right to seek judicial review of the decision to impose the fee.
- 40. For the proposed wording of the Guidance, please refer to Appendix 1.

**Issues for consideration**

- Q13. Does the proposed guidance on the circumstances in which a supplementary fee could be imposed seem appropriate? If not, why not?
- Q14. Are there any other circumstances which should be included in the guidance?