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**CONSULTATION PAPER NO. 105**

**14 FEBRUARY 2016**

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**ONLINE APPLICATIONS AND SUBMISSION OF DATA TO THE DFSA**

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### ONLINE APPLICATIONS AND SUBMISSION OF DATA TO THE DFSA

#### Why are we issuing this paper?

1. This Consultation Paper seeks public comment on the DFSA's proposals to conduct more of its regulatory business online. The paper discusses the DFSA's plans in this area. It also proposes rule changes to support these plans.
2. The DFSA committed, in its 2015/16 Business Plan, to making effective use of Information Technology to help achieve our strategic themes of Delivery and of Sustainability. The proposals set out in this paper form part of that commitment.

#### Who should read this paper?

3. The proposals in this Paper are likely to be of immediate interest to:
  - (a) all Authorised Persons;
  - (b) potential applicants;
  - (c) advisers and providers of third-party services to the above; and
  - (d) Relevant Persons who are required to complete the annual AML Return.
4. We anticipate that, in due course, these proposals will be of direct interest to a broader cross-section of our stakeholders, possibly including issuers and potential issuers, and their advisers.

#### How to provide comments?

5. All comments should be compiled using the template in Appendix 7<sup>1</sup> and sent by email as specified below; please state the Consultation Paper number in the subject line. You may, if relevant, 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 emailed to: [consultation@dfsa.ae](mailto:consultation@dfsa.ae)

#### What happens next?

6. The deadline for providing comments on this Consultation Paper is **14 April 2016**. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to enact appropriate changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

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<sup>1</sup> A Word version will be available on the DFSA website.

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### **Terminology in this paper**

7. 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 [GLO](#) Module or in the proposed amendments. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

### **Structure of this paper**

8. The remainder of this Consultation Paper is structured as follows:
- (a) Section 1: the DFSA's approach to carrying out business on-line;
  - (b) Section 2: rule changes for online business;
  - (c) Annex 1: list of forms to be moved online;
  - (d) Appendix 1: draft amendments to the GEN Module;
  - (e) Appendix 2: draft amendments to the AML Module;
  - (f) Appendix 3: draft amendments to the REC Module;
  - (g) Appendix 4: draft amendments to the REP Module;
  - (h) Appendix 5: draft amendments to the GLO Module;
  - (i) Appendix 6: draft amendments to the AUD Module; and
  - (j) Appendix 7: format for providing public comments.

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## PART 1 OUR APPROACH TO CARRYING OUT BUSINESS ONLINE

9. There are a number of ways in which the regulated community can already interact with the DFSA online. Examples of these are:
  - (a) the submission of prudential data through the Electronic Prudential Reporting System<sup>2</sup> ([EPRS](#)); and
  - (b) some Authorised Firms submit queries or requests to the DFSA using the template on our website (the [Supervised Firm Contact Form](#)).
10. We intend to increase the range of transactions, and interactions, which can take place online. We see this as part of our contribution to the fulfilment of the Government of Dubai's "Smart City" initiative.
11. This is also part of the DFSA's contribution to the DIFC 10-year strategy. With this in mind, we are working with colleagues in the DIFC Authority, including the Registrar of Companies, so that the online experience - for those wanting to set up business in the Centre - is as straightforward as possible, with the need to provide information more than once removed or minimised. While there are overlaps between the information needed to register a company in the Centre, and to authorise a firm to carry on financial services in or from the Centre, there are also differences, so the DFSA will continue to seek additional information from applicants where this is needed.
12. We plan to use an external interface, i.e., an online portal or gateway, that will provide entities and individuals (whether applicant, authorised or registered) the ability to submit electronic data (for the purpose of this paper, 'forms') directly to the DFSA. This portal will be accessible from the DFSA website in the same way as is currently the case for the EPRS system mentioned above.
13. The portal will be secure and dynamic, in that it will respond to the user's selections, rather than simply being an electronic version of a paper form or set of forms. Information will be reviewed and verified within the portal and then transferred to the DFSA's internal systems.
14. One of the outputs from this process will be the introduction of a greater degree of automation into some aspects of our work. For example, Authorised Firms can anticipate receiving automated reminders, through the portal, that submission of data to the DFSA is due.
15. As might be expected, we do not intend to move all current forms online at the same time. Rather, this will be done in a number of phases. Annex 1 to this paper lists those forms that the DFSA will make available through the portal in the first phase of work, which we intend to complete by the end of 2016. The choice of which forms to make available online has been driven, in part, by the volume of the forms we currently receive. As we believe there are benefits to ourselves and to stakeholders from doing more business online, we will aim to move higher volume forms online first. Annex 1 also lists forms that we currently plan to move online in later phases of work.

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<sup>2</sup> Use of EPRS will not be affected by the proposals in this consultation paper. Authorised Firms who use EPRS should continue to submit their regulatory returns as normal.

16. Providing facilities to carry out business online requires the DFSA to invest in its systems. It follows from this that, once the portal is up and running, where a form can be submitted through the online portal, the DFSA expects applicants, Authorised Firms and others to use this route and not submit applications or forms by some other method. The proposed rule changes discussed in Part 2 would require the use of the portal in all cases where a form can be submitted through it.

***Detail of the Phase 1 work***

17. In the first phase of this work, the DFSA plans to make available online the following application forms:
- (a) application for firms wishing to be licensed to carry on the Financial Services of Advising on financial products or credit and/or Arranging credit or deals in Investments;
  - (b) application for Authorised Individuals in relation to (a);
  - (c) application for those wishing to establish a Representative Office;
  - (d) application for the Principal Representative in relation to (c);
  - (e) application to be licensed solely as a Qualified Investor Fund (QIF) Manager;
  - (f) application to alter the scope of an existing licence to become a QIF Manager; and
  - (g) application to register a QIF.
18. Additionally, the annual AML return, required to be submitted by all Relevant Persons under AML 14.5.1, will be available online. Instead of being due four months' after the end of the Relevant Person's financial year, this return will in future be due by the end of September each year and the report must cover the period from August of the previous year up to and including July of the lodgement year. The DFSA will, if it proceeds with these proposals, provide further information on transitional arrangements in due course.
19. For many Relevant Persons, the period after their financial year end is busy, in part because of regulatory and other reporting requirements. The proposal to change to a fixed reporting period for all Relevant Persons will, we hope, be helpful for many Relevant Persons in reducing the number of reports that are tied to and need to be provided after their financial year end.
20. The proposal to reduce the submission period for the annual AML return, from four months to two months, is to enable the DFSA to maximise the benefit of moving to the same reporting period for all Relevant Persons. We will be better able to analyse DIFC-wide data - which we have not previously had for the same period - in a timely manner.
21. We expect that the work to complete Phase 1 will be finished during 2016, with the forms made available online around the end of the year.

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### **Testing of self-certification of compliance**

22. As part of our risk-based supervisory approach, the DFSA is considering the use of self-certifications of compliance by Authorised Firms. These declarations could serve as a supplemental supervisory tool to assess compliance with key DFSA rules on a periodic basis by certain categories of Authorised Firms.
23. We intend to test this approach by making the declarations available using the portal. We will ask certain Authorised Firms to complete declarations, stating their compliance with a number of DFSA requirements and providing the opportunity to explain non-compliance, where this has occurred. At this stage, the purpose of this self-certification is to try and obtain information about the compliance position of lower risk Authorised Firms without having to conduct such frequent 'catch-all' on-site inspections - which are onerous both for us and for Authorised Firms in resource terms - as we do at present. Participation in the tests will be voluntary.
24. After a period of testing, we will assess whether the use of self-certification delivers benefits in terms of the overall level of compliance; of identification of compliant and non-compliant activity; and in relation to the effective use of our resources. If this assessment is positive, we would expect to consult publicly – at that point - on the introduction of requirements for self-certification, on a periodic basis, for specified categories of Authorised Firms.

- Q1: Do you have any comments or concerns about the DFSA's general plans to move more regulatory business online?
- Q2: Do you have any comments or concerns about the DFSA's plans to move the annual AML Return online?
- Q3: Do you have any comments or concerns about the proposed move in reporting deadlines for the annual AML Return?
- Q4: Do you have any comments or concerns about the proposed testing of self-certification of compliance by some Authorised Firms?
- Q5: Are there other areas of the DFSA's operations that you think should be a priority to be moved online? Please explain what these areas are and why they should be a priority.

### **PART 2 RULE CHANGES FOR ONLINE BUSINESS**

25. At present, there are various sections of the DFSA Rulebook that include requirements on how Authorised Persons, or others, should provide forms to the DFSA.
26. We propose to amend the Rules so that the GEN Module contains a section that sets out our requirements for the submission of forms to the DFSA (GEN 6.10). Other modules and sourcebooks can then cross-refer to the provisions in GEN. The consolidation of the requirements in the new section of GEN will, in some cases, require deletion of Rules in other modules that specify how notifications are made.
27. In addition, we do not propose to spell out in exhaustive detail which forms need to be provided in what way by different types of Authorised Person.

Instead, reflecting the fact that we intend to move more business online in phases, the proposed Rule will simply state that if a form can be submitted online, then it must be submitted online.

28. If a form cannot be submitted online, then a variety of submission methods will be permitted, as now, until such time as the form in question becomes available through the online portal.
29. The submission requirements discussed above are not relevant for forms currently submitted through EPRS, which – as noted earlier - will remain unchanged.
30. The change in the proposed timing of submission of the Annual AML Return, discussed in paragraphs 19 and 20, means that the relevant Rule (AML 14.5.1) needs to be amended. We also propose to introduce transitional provisions to cover the period during which Relevant Persons are moving from reporting for the year to their financial year end, to reporting for the year from August to July.
31. The proposed Rules and Guidance can be found in Appendices 1 to 6 of this paper.

- Q6: Do you have any concerns about the proposed Rules? If so, what are they and how should they be addressed?
- Q7: What transitional Rules, if any, would your firm need to facilitate the changes proposed for submission of the AML Annual Return?

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## **Annex 1: List of forms to be moved online**

### **Phase 1**

AFN AUT CORE - applications to Advise and/or Arrange in relation to Investments and/or Credit.

AFN AUT IND1 - applications to be an Authorised Individual as part of the above.

AFN AUT REP - applications to establish a Representative Office.

AFN AUT IND4 - Applications to become a Principal Representative.

AFN AUT QIFM - applications to be a QIF Manager.

AFN AUT QIF - applications to set up a QIF.

AFN AML - Annual AML return for all Relevant Persons.

### **Phase 2** *(tentative)*

AFN AUT CORE – other applications to be licensed.

AFN AUT IND1 – other applications to be an Authorised Individual.

AFN AUT AMS – Asset Management Supplement as part of an application.

AFN AUT PFS – Public Fund Supplement as part of an application.

AFN AUT EFF – Exempt Fund Form as part of an application.

AFN AUT EFM – application to be an External Fund Manager.

AFN AUT EXF – External Fund notification form.

AFN AUT CON – applications and notifications concerning a Change in Control.

AFN GEN 1 – request for a waiver or modification.

AFN SUP 4 – application to vary a licence.

Applications for endorsements.