



CONSULTATION PAPER NO. 86

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**PROPOSED CHANGES TO THE DFSA'S
ANTI-MONEY LAUNDERING AND
ANCILLARY SERVICE PROVIDER REGIMES**

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Why are we issuing this paper?

1. The proposals in this paper stem from a review undertaken of the Anti-Money Laundering (“AML”) laws and rules administered by the Dubai Financial Services Authority (“DFSA”). The goal of the review was to make changes to simplify and rationalise the existing AML framework and ensure that it remains up-to-date in light of the recent changes to the Financial Action Task Force (“FATF”) Recommendations regarding *International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation* (the “FATF Recommendations”) and other international best practice. We also took the opportunity to review the DFSA’s Ancillary Service Providers (“ASP”) regime.

Who should read this paper?

2. The proposals in this paper would be of interest to:
 - (a) Authorised Persons;
 - (b) Ancillary Service Providers;
 - (c) Registered Auditors; and
 - (d) any of the following persons not falling into (a) to (c) above who carry on business in the DIFC:
 - (i) real estate developers or agencies which carry out transactions with a customer which concern the buying or selling of real property;
 - (ii) dealers in precious metals or precious stones;
 - (iii) dealers in high-value goods;
 - (iv) law firms, notary firms, or other independent legal businesses;
 - (v) accounting, audit or insolvency firms;
 - (vi) company service providers; and
 - (vii) Single Family Offices.

How to provide comments?

3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use 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 addressed or emailed to:

Consultation Paper No. 86
Policy and Legal Services
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Dubai, UAE
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What happens next?

4. The deadline for providing comments on the proposals is **16 December 2012**. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to enact the relevant changes to the DFSA's legislation. You should not act on these proposals until the relevant changes to the DFSA legislation are made. We shall issue a notice on our website telling you when this happens.

Structure of the paper

5. This consultation paper provides a high-level overview of the rationale for the proposed changes and follows this with a brief description of each chapter of the proposed new AML module (hereafter the "new AML module") highlighting any significant changes and policies. While the paper flags specific issues for consideration the DFSA asks for any and all comments that readers may have on the proposals contained in this consultation paper. Any reference in this consultation paper to the "AML regime" should be read as a reference to the DFSA's AML, Counter-Terrorist Financing ("CTF") and sanctions regime.
6. It should be noted that the law changes proposed in this paper are subject to the approval of the Ruler of Dubai. Any proposals regarding the rules described in this paper are subject to change and any legislation which eventually comes into force to implement the proposed rules may differ from that described in these rules and any attachments. This should be taken into consideration when reading this paper and any guidance contained within.

Overview and key changes

7. The DFSA is proposing to create a new, consolidated AML module (Appendix 1) with general application for all persons who are subject to the DFSA AML regime. The DFSA commits to keep its regulatory regime in line with the standards set by the key international standard setters, including FATF. FATF published a revised set of recommendations on 16 February 2012 to replace the FATF 40+9 Recommendations which were last substantially revised in respect of AML in 2004. FATF's aim in publishing its revised recommendations was stated to be:

"... to strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against financial crime. At the same time, these new standards will address new priority areas such as corruption and tax crimes."

8. The DFSA has taken the above statement into consideration, and the new AML module has been designed to bring the DFSA AML rules into line with the new FATF Recommendations.
9. Under these proposals, the DFSA would repeal the current AML module and AML rules contained in other modules and replace it with a new consolidated AML module, applicable to all persons who fall within the DFSA AML regime, which combines all of the DFSA requirements on AML, CTF and relevant sanctions into one module.
10. The DFSA also proposes to bring ASPs into the Designated Non-Financial Businesses and Professions ("DNFBP") regime and consequently repeal the ASP regime, with existing ASPs being re-classified as DNFBPs.
11. The DFSA is recommending to the Ruler amendment of Articles 39 and 40 of the Regulatory Law 2004 (which deal with exercise by the DFSA of powers on behalf of other regulators and delegation of functions and powers to other regulators respectively) to include within the category of "other regulators" a governmental or regulatory authority exercising powers and performing functions relating to counter terrorist financing or international sanctions. Under this proposal the DFSA would be empowered to exercise its powers on behalf of other regulators (for example the Anti-Money Laundering Suspicious Cases Unit ("AMLSCU") of the UAE Central Bank) or to delegate its functions and powers to another regulator, in cases of suspected terrorist financing or sanctions breaches. The DFSA is also recommending to the Ruler to insert into the Regulatory Law 2004 a substantive obligation on a Relevant Person to undertake customer due diligence ("CDD").
12. If approved, these proposals would also have the following effect:
- (a) the new consolidated AML module, and repeal of the ASP regime, will result in the deletion of the following modules and chapters within modules of the DFSA Rulebook:
 - (i) Ancillary Service Providers module;
 - (ii) Designated Non-Financial Businesses and Professions module ("DNF");
 - (iii) chapter 6 of the Representative Office module ("REP");

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- (iv) chapter 11 of the Authorised Market Institutions module (“AMI”) ; and
 - (b) persons who fall within the DFSA AML regime will be defined as “Relevant Persons”.
13. In addition to the changes outlined at paragraph 12 above, other key changes which will result from these proposals include:
- (a) a greater emphasis will be placed on the risk-based approach (“RBA”) to AML;
 - (b) responsibility for compliance with the AML/CTF/sanctions obligations in the new AML module will fall on the Governing Body (for DIFC-incorporated firms) or senior management (of branches) of the Relevant Person;
 - (c) the new AML module will be re-ordered into 17 distinct chapters and will include useful diagrammatic guides for performing the RBA and CDD;
 - (d) the DFSA will introduce a definition of a “customer” and guidance on the definition;
 - (e) the exemption from the requirement to undertake CDD for certain types of customer, currently found in AML Rule 3.4.5, will be removed;
 - (f) in line with FATF, where a Relevant Person relies on a third party to conduct any of its CDD obligations, or where it relies on CDD previously undertaken by a third party, it will have to:
 - (i) immediately obtain the relevant CDD information (e.g. name, passport number, address); and
 - (ii) satisfy itself that certified copies of the documents used to undertake the relevant elements of CDD will be available from the third party upon request without delay;
 - (g) DIFC-incorporated Relevant Persons will need to apply the policies, procedures, systems and controls required by the AML module to their branches, subsidiaries and any group entities in the DIFC;
 - (h) the annual MLRO report to the Governing Body or senior management will be replaced by a standardised annual AML return to the DFSA;
 - (i) Suspicious Transaction Reports (“STR”) will be renamed Suspicious Activity Reports (“SAR”) to reflect the requirement for suspicions in relation to any activity (not just “transactions”) to be reported to the AMLSCU; and
 - (j) Relevant Persons will no longer have to provide a copy to the DFSA of any SAR made to the AMLSCU but will have to notify the DFSA of the making of a SAR.
14. The DFSA also intends to publish additional information and useful resources regarding AML/CTF/sanctions compliance on a dedicated page of the DFSA website.
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Issues for consideration

1. Do you have any general concerns or comments about the changes to the DFSA AML regime?

Chapter 1: Introduction

15. Under these proposals the new rules will apply to all “Relevant Persons”. The following will be Relevant Persons for the purposes of the new AML Module:
 - (a) Authorised Firms;
 - (b) Authorised Market Institutions (“AMI”);
 - (c) Designated Non-Financial Businesses and Professionals; and
 - (d) Registered Auditors.
16. The definition of a DNFBP will remain largely unchanged and will be the following persons:
 - (a) real estate developers or agencies which carry out transactions with a customer which concern the buying or selling of real property;
 - (b) dealers in precious metals or precious stones;
 - (c) dealers in high-value goods;
 - (d) law firms, notary firms, or other independent legal businesses;
 - (e) accounting, audit or insolvency firms;
 - (f) company service providers; and
 - (g) Single Family Offices.
17. This will be the population to which the new AML module will apply. However, the application of each of the 17 chapters of the new AML module will vary depending upon the Relevant Person’s business type and AML risk profile. To assist in determining which chapters are applicable to them, we have included in chapter 1 an application table which summarises applicability of the rules according to the type of Relevant Person. Every Relevant Person will be expected to familiarise itself with the chapters and sections which will apply to it.
18. The new AML module cannot be read in isolation from other relevant legislation or developments in international policy and best practice. A Relevant Person needs to be aware, and take account, of how such relevant information impacts on its day to day operations. This is particularly relevant when considering United Nations Security Council Resolutions (“UNSCRs”) which apply in the DIFC as it is part of the United Arab Emirates, and unilateral sanctions imposed by other jurisdictions which may apply given a Relevant Persons’ jurisdiction of origin, its business and client base.

Chapter 2: Interpretation and terminology

19. The DFSA recognises that for many Relevant Persons the AML Module will be the only DFSA Rulebook module which they will need to have regard to. Therefore, we propose to add a chapter to the new AML module to aid readers by setting out all key definitions in the module in one table. All defined terms used in the AML module which are also found in the DFSA Glossary module (“GLO”) will be in the table along with terms which are only used in the AML module or which have a different definition in the AML module.
20. This section, while not replacing the GLO module, should reduce the need for Relevant Persons to refer to the GLO module, in line with keeping the new AML module a one-stop-shop for AML.

Beneficial Owner

21. The DFSA has not significantly altered its definition of a beneficial owner in the new AML module. However, the DFSA recognised that while other jurisdictions may set a percentage threshold to identify a beneficial owner, this is not necessarily the most appropriate method in all situations. As set out in the guidance to Rule 6.3.1, the DFSA would expect a Relevant Person to adopt a substantive approach to identifying and verifying a beneficial owner. This would mean focussing on the money laundering risks of the customer and the product/service and avoiding an approach which sets fixed percentages at which beneficial owners are identified. While percentage ownership can be a good proxy for control it should not be the only method employed. If a Relevant Person chooses a percentage ownership test for beneficial ownership then the DFSA would expect documentary evidence to justify such percentage threshold and would not expect a Relevant Person to adopt a blanket approach. Any percentage threshold set should be proportionate to the actual and perceived risks.

Customer

22. The new AML module defines the term “customer” for AML purposes. This definition is instructive for Relevant Persons in ascertaining when, and the circumstances in which, the new AML module will apply. This definition is not intended to impact on the definition of a client from a suitability point of view as set out in the COB module.

Politically Exposed Person (“PEP”)

23. The DFSA definition of PEP includes both domestic and foreign PEPs and the new AML module does not differentiate or prescribe a different approach to dealing with PEPs based on whether they are domestic or foreign.
24. It is generally considered that a foreign PEP may present a higher risk of money laundering compared to a domestic PEP. This is because a foreign PEP is more likely to attempt to launder money in or through a foreign jurisdiction where the person may be less likely to be recognised and where he or she may consider the assets are better protected from the courts of their home jurisdiction. A PEP may also attempt to disguise an unlawful transaction by routing it through a foreign jurisdiction.
25. However, this distinction is of less significance given the DIFC’s position as an international financial centre. Accordingly, the DFSA considers that the treatment of all PEPs, whether foreign or domestic, should be the same.

Issues for consideration

2. Do you have any concerns or comments about the proposed new chapter covering interpretation of the AML module?
3. Do you have any concerns or comments about the proposed new definitions?

Chapter 3 - Responsibility for compliance with the AML module

26. Chapter 3 contains new provisions which make the responsibility for compliance with the AML regime fall on the Governing Body (for DIFC-incorporated firms) or senior management (for branches) of the Relevant Person. This new approach is aimed at encouraging a better AML compliance culture within Relevant Persons. Historically, there has been too much responsibility placed on a firm's Money Laundering Reporting Officer ("MLRO") and not enough on the board and senior managers. This can result both in senior managers failing to engage sufficiently on AML matters and in the MLRO being placed under undue pressure not to act contrary to the firm's economic interests. The DFSA believes that a strong AML culture should be set at the top and then cascade down through the firm.
27. Chapter 3 also introduces a new Rule which requires that the individuals with responsibility for the Relevant Person's compliance with the AML module must exercise due skill, care and diligence. Such persons should consider the impact and effect of these new provisions and the guidance which indicates that the DFSA will consider taking appropriate enforcement action against the Governing Body or senior management for failure to exercise due skill, care and diligence in carrying out their AML responsibilities.

Chapter 4 - Applying the RBA

28. The concept of taking a risk-based approach to AML is not new and is found in the current AML module. However, the DFSA considers that the RBA deserves greater prominence in the new AML module. The AML module was first published in September 2004. However, since 2004 there has been an increase in guidance and commentary issued by international bodies such as FATF about how to best apply an effective RBA. Our proposals in chapter 4 reflect the increasing focus on the RBA.
29. Increasing the emphasis on the RBA should focus a Relevant Person's time and resources on developing and administering a more proportionate and effective AML compliance culture. It should also help to reduce the risk of a Relevant Person taking a "tick-box" approach to AML. Typically, with a "tick-box" approach a person uses the detailed rules and guidance as a checklist rather than first identifying the AML risks associated with its business and customers, and then adopting a proportionate response to such risks.
30. It is for the above reasons that the DFSA has decided to highlight the importance of the RBA by giving it its own specific chapter and increasing its prominence by making it the first functional chapter in the new AML module. The DFSA believes that performing a risk-based analysis of its business and customers should be the starting point for an effective AML framework.

31. Figure 1 in chapter 4 sees the introduction of diagrammatic guidance in the proposed new AML module. These diagrams have been included to provide a graphic representation of the concepts being discussed and the diagrams should not be taken as being prescriptive, nor act as a checklist for users of the new AML module. They are merely guidance not rules.
32. Under the new AML module, the DFSA will expect a Relevant Person to take reasonable steps to identify and assess the money laundering risks its business is exposed to considering the nature, size and complexity of its activities. The assessment of business AML risk must be documented and made available to the DFSA upon request. A Relevant Person's AML documentation will be an important aspect of the DFSA's supervisory assessment of Relevant Persons.
33. The new AML module requires a Relevant Person to undertake a risk assessment of each of its customers taking into account such factors as the nature of the customer, nature of customer's business, the customer's sources of wealth and source of funds, residence, nationality, and the relevant product, service or transaction being undertaken. While there is inevitably some overlap between the RBA of a customer and subsequent CDD, the DFSA expects the RBA stage to inform the breadth and depth of the CDD which is undertaken for a particular customer. The assessment of customer AML risk must be documented and made available to the DFSA upon request.
34. In assessing the customer AML risk associated with an individual customer the DFSA has provided guidance on the factors that may elevate a customer's risk rating. While this guidance is not exhaustive, it is instructive as to the type of factors that should be considered. A Relevant Person needs to determine what specific factors apply to its business and customers.
35. The DFSA will expect a Relevant Person to articulate and record its business and customer risks assessments. The DFSA will expect a Relevant Person to use its risk-based assessment to justify the approach which it adopts for CDD. The outcome of the Relevant Person's risk assessment will also be used by the DFSA in its supervision of the Relevant Person, to assess the appropriateness and effectiveness of the Relevant Person's AML systems and controls.
36. PEPs have been included in chapter 4 as they present a higher risk of money laundering given their exposure to potential corruption risk. Under the new AML module, what was formerly guidance has been elevated into the Rules and there is now a requirement for Relevant Persons to have specific systems and controls to identify PEPs. Having identified a PEP the new AML module requires Relevant Persons to assign a higher risk to that customer and undertake Enhanced CDD. Relevant Persons should note that it would be possible to classify a PEP as having a lower AML risk if the business relationship involves certain low risk products as described in paragraph 37 below. The FATF Recommendations envisage that countries may tailor the FATF standards according to the risks. Accordingly, the DFSA considers that where there is little or negligible risk of money laundering, for example if the PEP business relationship involved the provision of health insurance, even PEPs should be capable of being treated as low risk.
37. As noted in the overview above, we are proposing to remove the existing exemption from the requirement to undertake CDD for certain types of customer, currently found in AML Rule 3.4.5. We propose to replace this blanket exemption with a similar but broader provision which allows a Relevant Person to automatically classify certain

persons as having a lower risk of money laundering without the need to undertake a risk based assessment. The category of low risk customers has been expanded to include government bodies and non-commercial government entities in the UAE and FATF member countries, and certain low-risk business relationships such as non-life insurance, certain life insurance products, re-insurance and pension and superannuation schemes.

Issues for consideration

4. Do you have any concerns or comments about the DFSA's proposed new approach to the RBA?

Chapter 5 - Customer Due Diligence

38. AML Customer Due Diligence is currently referred to in the AML module as the "Customer Identification Requirements". Our new CDD chapter differs from the current approach by establishing a direct link between CDD and the outcome of a Relevant Person's risk based assessments. Having established the risk rating of a customer, a Relevant Person is now obliged to undertake the level of CDD that is proportionate to the identified AML risk.
39. In essence this chapter requires a Relevant Person to conduct Standard CDD for every customer and, where the higher risks warrant it, undertake enhanced CDD measures over and above the Standard CDD or, for lower risk customers, modify Standard CDD using simplified measures. It also provides specific restrictions on Relevant Persons who are unable to complete CDD which should help to fill certain gaps in our current module.

Chapter 6 - Standard Customer Due Diligence

40. Chapter 6 of the new AML module sets out the Standard CDD requirements and process. Standard CDD is the CDD benchmark. The process and methodology by which a Relevant Person undertakes Standard CDD will differ from firm to firm, but the aim will always be the same. Sufficient information and documentary evidence must be obtained to satisfy the Relevant Person that its customer (and any beneficial owner) is who they say they are, and that the customer does not pose an unacceptable AML risk.
41. The new AML module aims to provide Relevant Persons with the liberty to formulate their own policies and procedures, including CDD processes which work best for them. It is important that such processes are adequately recorded and documented and enable the DFSA to understand the analysis and subsequent decisions made by the Relevant Person in meeting the DFSA's AML requirements.
42. The new AML module provides greater clarity as to the minimum standard expected by the DFSA when undertaking Standard CDD by elevating what was formerly guidance into the Rulebook. These minimum standards for Standard CDD include:
 - (a) where a customer is a natural person, identifying and verifying the customer's identity. For legal persons, identifying and verifying the person's identity and understanding its legal status. In both instances this must be based on

- original documents, data or information issued by a reliable and independent source;
- (b) establishing whether there exists a beneficial owner and, where appropriate, identifying and verifying the beneficial owner's identity;
 - (c) obtaining information on the purpose and intended nature of the business relationship;
 - (d) understanding the customer's source of funds;
 - (e) understanding the customer's source of wealth; and
 - (f) undertaking ongoing due diligence of the business relationship by monitoring the customer's transactions and keeping information obtained up to date.
43. The new AML module provides guidance on the types of identification information that a Relevant Person may utilise in complying with its obligations to undertake Standard CDD. This guidance is not substantially different from the current module, but will be complemented by the information to be published on the DFSA website.
44. The new AML module will provide specific rules in relation to how a Relevant Person must monitor its customers, as required by Standard CDD. The current rules set this out in guidance. The proposed rules will include transaction monitoring and enquiring into transactions that are not consistent with the intended nature of business, or are complex or unusually large. Further, these monitoring provisions now include a specific requirement to screen customers against the UNSC Resolutions and against any other relevant sanctions lists that the Relevant Person determines to be applicable.
45. Other new rules contained in this chapter of the module include:
- (a) a prohibition on Relevant Persons establishing a business relationship with a customer if the presence of bearer shares prevents the identification of one or more beneficial owners; and
 - (b) specific rules providing certainty to those Relevant Persons dealing with life insurance or other similar products as to when they are required to identify beneficiaries and the timing of this identification.

Chapter 7 - Enhanced Customer Due Diligence

46. Where a customer risk rating resulting from a Relevant Person's business and customer risk assessment is indicative of a customer being high risk, Enhanced CDD must be performed in relation to the relevant customer. The starting point for Enhanced Due Diligence is Standard CDD, with the Relevant Person conducting additional due diligence measures as appropriate to the nature of the increased AML risk.
47. One key difference between Standard and Enhanced CDD is that under Standard CDD a person is required to verify the identity of the customer and beneficial owner but does not have to verify the purpose and intended nature of the business relationship or the source of funds and wealth, but simply obtain information on and understand such matters. Under Enhanced CDD measures, a Relevant Person

would be required to verify these additional matters. Verification should be obtained using independent corroborating evidence; the guidance in this chapter of the module provides examples, such as bank statements or salary certificates, as verification of source of funds. Reputable news sources or third party information vendors may also be appropriate sources of verification.

48. It is also proposed that a Relevant Person must obtain senior management approval for taking on a customer as part of the Enhanced CDD process and the DFSA would also expect to see a proportionate increase in the degree and nature of monitoring of a customer's activities as part of a Relevant Person's Enhanced CDD.

Chapter 8 - Simplified Customer Due Diligence

49. Simplified CDD has been introduced into the new AML module to replace and enhance the existing customer identification exemption provided by AML Rule 3.4.5 and to bring the DFSA regime into line with the FATF Recommendations. The existing exemption applied to classes of customers that pose a low AML risk, such as another Authorised Firm or a regulated financial institution in a FATF country. Under the new AML module, where a risk rating resulting from a Relevant Person's business and customer risk assessment is indicative of a lower AML risk, Simplified CDD measures may be performed. Part 4.4 of the new AML module provides additional information on lower risk customers.
50. The new AML module includes guidance on the nature of the simplified measures that may be undertaken as part of Simplified CDD. Such measures include deciding not to verify an identification document and not enquiring into source of wealth and source of funds. It is important for Relevant Persons to adequately record and document how a decision to utilise Simplified CDD has been arrived at, with such records enabling the DFSA to understand the analysis and subsequent decisions made by the Relevant Person. However, Simplified CDD may only be undertaken in relation to a customer, or class of customer, which poses a low risk of money laundering.

Issues for consideration

5. Do you consider that Simplified CDD is necessary or will your firm always apply Standard CDD for all customers other than those who are high-risk?
6. Would it be preferable to remove the concepts of Simplified, Standard and Enhanced Customer Due Diligence and simply use a single concept of Customer Due Diligence, which is augmented for high risk customers using "enhanced CDD measures" and which may be modified for low risk customers using "simplified CDD measures"?

Chapter 9 - Reliance and Outsourcing

51. Chapter 9 of the proposed new AML module governs the circumstances under which a Relevant Person may rely on the CDD undertaken by a third party and also the parameters under which CDD can be outsourced to a service provider. This is a key aspect of AML compliance which we have made more comprehensive. It is important to note that in the context of the DIFC many businesses may have customers introduced by third parties or may seek to rely on a third party's previously obtained CDD information in order to identify a customer.

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52. Under these proposals, in relying on a third party to either conduct CDD on its behalf, or when relying on information previously obtained by a third party, a Relevant Person would need to document clearly any decision to rely on a third party and to evidence that it has satisfied itself of the pre-requisite conditions under the rules. For example, under proposed Rule 9.1.1(4)(c) where the third party is a Financial Institution subject to AML regulation to FATF standards, the DFSA would expect to see evidence that the Relevant Person has undertaken adequate research and due diligence to ensure that the rule is satisfied, and not just rely on a statement by the third party.
53. When relying on a third party under the rules in chapter 9, Relevant Persons should note the following matters:
- (a) reliance on a third party under chapter 9 is not a license to ignore the AML risks of a customer. A Relevant Person must immediately obtain the CDD information for the relevant customer and, crucially, must take adequate steps to satisfy itself that certified copies of the documents used to undertake the relevant elements of CDD by the third party (e.g. the certified passport copy) are available from the third party on request without delay. Consequently, should the DFSA make a request for the documents held by a third party which were used to verify a customer or beneficial owner, or any other information regarding a customer, the DFSA will expect the Relevant Person to be able provide the information without delay; and
 - (b) the proposed rules in chapter 9 will require a Relevant Person which relies on a third party's CDD to fill any gaps in the CDD which may arise through any inconsistencies between the third party's AML regulations and the new AML module. This expectation extends to ensuring that any reliance placed on a third party's CDD is appropriate to the risk assessment undertaken by the Relevant Person of its business and customer risk. For example any CDD undertaken at the equivalent of the DFSA's standard or simplified level could not be relied upon for CDD required to be completed at the Enhanced level.
54. Notwithstanding the Relevant Person's reliance on the CDD undertaken by a third party, the Relevant Person will remain liable for compliance with the new AML module. The same principle applies in relation to any outsourcing agreement under section 9.2. For Authorised Persons, the rules on outsourcing should be read in conjunction with the relevant outsourcing rules GEN 5.3.21 & 5.3.22 found in the General module of the DFSA Rulebook.

Issues for consideration

7. Do you have any comments or concerns regarding the DFSA's proposed new approach to third party reliance for CDD purposes?

Chapter 10 - Correspondent banking, wire transfers, anonymous accounts and audit

55. Chapter 10 of the new AML module will contain AML requirements which apply exclusively to Authorised Persons. The rules regarding correspondent banking relationships apply only to Authorised Firms and are more specific than the previous provisions. The requirements include the need to:
- (a) undertake appropriate CDD on the respondent bank;

- (b) understand the respondent bank's business;
 - (c) inquire as to the respondent bank's reputation, the quality of its supervision and whether it has any AML related antecedents;
 - (d) assess the respondent bank's AML controls and the adequacy of such controls in light of the FATF Recommendations;
 - (e) obtain prior approval of senior management before entering into a new correspondent relationship;
 - (f) ensure that respective responsibilities of the parties to the relationship are properly documented;
 - (g) where appropriate, ensure that the respondent bank has undertaken CDD of its own customers at a level equivalent to the DFSA standards and is able to provide this CDD information upon request; and
 - (h) adequately document the basis for the Relevant Person's satisfaction of all the above requirements.
56. While the existing prohibition on entering into a correspondent relationship with shell banks has remained unchanged, an Authorised Firm would now also be required to take measures to ensure it does not enter into relationships with a respondent bank which is known to permit its accounts to be used by shell banks.
57. The DFSA has added a new section dealing with wire transfers by Authorised Persons. This section updates the rules to meet the current FATF standards. The DFSA's provisions on wire transfers are currently covered by AML Rule 3.8, "transfer of funds". The new rules require accurate originator and beneficiary information to be contained in any wire transfer conducted by a Relevant Person. The associated guidance provides additional details on the content of originator and beneficiary information and makes it clear that any attempt to conceal or remove information accompanying a wire transfer would be a breach of the requirement to ensure that the wire transfer contains accurate originator and beneficiary information.
58. As in the existing AML module, the new AML module requires a Relevant Person to review the effectiveness of its AML Policies, procedures, systems and controls. However, chapter 10 of the new AML module introduces a responsibility for Authorised Persons to maintain an audit function that is adequately resourced and independent, and which will be able regularly to review and assess the effectiveness of the Authorised Person's AML policies, procedures, systems and controls and its compliance with its obligations. This new rule brings the DFSA rules into line with the FATF Recommendations. It should be noted that the audit requirement only applies to Authorised Persons who under Rule 5.3.14 of the General module of the DFSA Rulebook are required to establish and maintain an internal audit function.

Chapter 11 - Sanctions and other international obligations

59. Authorised Persons will be familiar with the provisions of chapter 11, regarding implementing relevant United Nations' resolutions and sanctions. This chapter replicates and replaces the current GEN module Rule 5.3.29. The rationale for its inclusion in this part is that the new AML module has a broader application covering entities such as DNFBPs. It is the DFSA's expectation that all Relevant Persons in

the DIFC be aware of United Nations' resolutions and sanctions and, where applicable, establish and maintain systems to ensure compliance with these sanctions.

60. It is incumbent on Relevant Persons to identify the relevant United Nations' resolutions and sanctions and make appropriate use of them. Commentary on what constitutes "appropriate use" is contained in the guidance and includes a Relevant Person not undertaking a transaction for or on behalf of a Person and the circumstances in which it may need to undertake further due diligence in respect of the named Person in the relevant sanction or resolution.
61. It is important for Relevant Persons to note that not all sanctions and resolutions are drafted and applied equally and different sanctions may impose restrictions on different activities and classes or persons.
62. Chapter 11 also obliges firms to consider findings, recommendations, guidance, resolutions, sanctions, notices and other conclusions issued by the named authorities and agencies where they apply to:
 - (a) preventing money laundering, terrorist financing or the financing of weapons of mass destruction;
 - (b) assessments of material deficiencies of relevant countries in adopting international standards; and
 - (c) names of persons, groups, organisations, entities or any other body where suspicion of money laundering or terrorist financing exists.
63. The DFSA may from time to time issue recommendations, guidance or other conclusions via "Dear SEO" letters (letters written by the DFSA addressed directly to the company's senior executive officer), or on its website. Where such communications are made, a Relevant Person must ensure it makes appropriate use of the information and takes action where appropriate. Any such communications should be considered by a Relevant Person when formulating its AML systems and controls and in particular the Relevant Person's assessment of its business and customer AML risk.

Chapter 12 - AML Training and Awareness

64. The new AML module's training and awareness rules are not materially different from the current rules. However, the new AML module seeks to clarify and limit the obligation to "relevant employees". Guidance provides that a relevant employee would include a member of the Governing Body or senior management, all operational staff, any employee with customer contact or who handles or may handle customer monies or assets, and any other employee who might otherwise encounter money laundering. Again this reflects the emphasis upon a Relevant Person being required to implement a risk based approach to AML risks. AML training should be risk-based and tailored to a particular employee's specific role.
65. The new rules also allow a Relevant Person to establish the level and intervals of training commensurate to the role and responsibilities of the employee. While the guidance sets out the DFSA's expectation that this should occur on an annual basis there may be circumstances where training is conducted on a longer cycle. In such instances the DFSA would expect the rationale for this decision to be documented

and recorded. Similarly the DFSA does not stipulate the manner in which this AML training is required to be conducted. Depending on the circumstances training may be provided in a formal classroom, online or by other appropriate methods.

Chapter 13 - Suspicious Activity Reports

66. Under these proposals, STRs have been renamed SARs to reflect that all suspicious activities in relation to potential money laundering or terrorist financing should be reported to the AMLSCU, regardless of whether such activity is in relation to a transaction.
67. The establishment and maintenance of an effective SAR reporting mechanism is a Federal Law requirement and the assessment of internal SARs and the timely escalation of them to the AMLSCU is an important responsibility executed by the Relevant Person's MLRO.
68. The new AML module requires that the DFSA be notified when a Relevant Person makes a SAR to the AMLSCU. Under the current AML module, the DFSA is copied in on STRs. This requirement has been removed and instead the new AML module simply requires that the DFSA be notified when a Relevant Person makes a SAR to the AMLSCU.

Chapter 14 - General Obligations

69. Chapter 14 of the new AML module will require a Relevant Person which is a DIFC entity to ensure that its relevant policies, procedures, systems and controls apply to any of its branches or subsidiaries and to members of its group entities in the DIFC. In the event that the above is not possible the Relevant Person will have to inform the DFSA and apply appropriate additional measures to manage any money laundering risk.
70. Chapter 14 also imposes other requirements on Relevant Persons who are part of a group including requirements dealing with group policies, confidential information and group wide risk assessment. These new rules bring the DFSA AML module into line with the latest FATF Recommendations.
71. This chapter also imposes certain notification and record keeping requirements on Relevant Persons and requires a Relevant Person to be open and cooperative in all its dealings with the DFSA, and to ensure its communications with the DFSA are conducted in the English language. Chapter 14 also includes a provision which requires a Relevant Firm to ensure that it does not prejudice an employee who discloses any information regarding money laundering to the DFSA or to any other relevant body involved in the prevention of money laundering. This new provision should be highlighted to all employees of Relevant Persons and included in the AML training covered by chapter 12.
72. Chapter 14 of the new AML module also replaces the required Annual MLRO Report with a standardised AML return which is required to be submitted to the DFSA within 4 months of a Relevant Person's year end. The new AML return, which will be on the DFSA website, will be required to be signed by the Governing Body and/or senior management.

Chapter 15 - Money Laundering Reporting Officer

73. Relevant Persons (other than DNFBPs which are dealers in precious metals or precious stones or dealers in high-value goods) are required to appoint an individual as a MLRO who must be resident in the UAE.
74. Given the importance of the MLRO's role in managing a Relevant Person's day to day compliance with its AML obligations, this part of the new AML module requires that the Relevant Person ensures that its MLRO has sufficient support, resources and access within the firm to information and the Governing Body (or senior management) to enable him the MLRO carry out his or her duties.
75. The duties and responsibilities of the MLRO are found in this part of the module. Relevant Persons should note that the MLRO is responsible for implementation and oversight of the Relevant Person's compliance with the rules. However, ultimate responsibility for a Relevant Person's compliance with the AML module will lie with the Relevant Person's Governing Body or senior management depending on whether the person is a branch or a DIFC-incorporated entity. The DFSA expects that if an MLRO comes to the view that he or she does not have sufficient support, resources or access within the firm to information or to enable him or her to carry out his or her duties then after notifying the Governing Body (or senior management) and having allowed a reasonable period of time for the Relevant Person to remedy the concerns, he or she should raise those concerns directly with the DFSA.

Chapter 16 - DNFBP Registration and Supervision

76. Given the proposed new AML module will replace the current DNF and ASP modules of the DFSA Rulebook, chapter 16 covers how DNFBPs will be granted registration and the circumstances under which this registration can be withdrawn. Under these proposals, the DFSA would be given a power to withdraw the registration of a DNFBP if it considers it necessary or desirable in the interests of the DIFC. The DFSA would expect to use this power against a DNFBP once its supervisory tools have been exhausted. Examples of when it might use this power include where a DNFBP commits serious or persistent breaches of the AML rules which it fails to rectify, or where the DNFBP or its activities in or from the DIFC create risks to the DFSA's regulatory objectives.

Chapter 17 - Transitional Rules

77. When the new AML module Rulebook is enacted all ASPs will automatically be registered as DNFBPs without having to make a new notification.

Changes to the ASP regime

78. During the review of its AML rules, the DFSA also decided to absorb ASPs, who are law firms and accountancy firms which provide services to Authorised Persons, into the DNFBP regime. Since 2006, the DFSA supervision of an ASP has been primarily focussed on its compliance with our AML rules. This supervisory approach is reflected in the contents of the ASP Module, the bulk of which is made up of AML rules which largely duplicate those in the AML module. Also, as the definition of a DNFBP includes law firms and accounting firms, the DFSA proposes to merge the two classes of firm into the DNFBP regime to avoid having a twin track regime depending on whether a person provides services to an Authorised Person. This

would align the DIFC regime with other jurisdictions, where law firms and accounting firms are not differentiated merely because they provide services to regulated financial institutions.

Issues for consideration

8. Do you have any comments or concerns regarding the DFSA's proposal to remove the ASP regime?
9. Are there any unintended consequences?

Changes to legislation and rules

79. The changes to our AML and ASP regimes set out in this consultation will, if adopted, have an impact on the Regulatory Law 2004 and on certain Rulebook modules. The changes can be summarised as follows:
 - (a) the Regulatory Law 2004 (Appendix 2):
 - (i) all references to the ASP regime will be removed, including the Ancillary Services Prohibition in Article 44, Registration of ASPs in Article 60 and the related definitions in Schedule 1;
 - (ii) a new provision will be inserted as Article 71(4) which mandates customer due diligence by persons to whom the AML rules apply;
 - (iii) Article 39, which deals with the exercise by the DFSA of powers on behalf of other regulators, will be amended to include a governmental or regulatory authority exercising powers and performing functions relating to counter terrorist financing or international sanctions; and
 - (iv) Article 40, which deals with the delegation of functions and powers to other regulators, will similarly be amended to include a governmental or regulatory authority exercising powers and performing functions relating to counter terrorist financing or international sanctions;
 - (b) the ASP module will be deleted;
 - (c) the DNF module will be deleted;
 - (d) the GEN module (Appendix 3) will see the deletion of Rule 5.3.29 regarding UN resolutions and sanctions, the amendment of the definition of a MLRO to remove ultimate responsibility for AML and consequential amendments;
 - (e) the MKT module (Appendix 4) – Rules 5.2.41 to 5.2.43 which impose AML requirements on Auditors will be deleted;
 - (f) the REP module (Appendix 5) – section 4.9 regarding UN resolutions and sanctions and Chapter 6 regarding AML will be deleted;
 - (g) the FER module (Appendix 6) will see consequential amendments;
 - (h) the COB module (Appendix 7) - Rule 5.8.5 will be deleted; and

- (i) the AMI module (Appendix 8) – AML-related provisions will be deleted except those relating to taking appropriate measures to ensure Members have adequate AML systems and controls.

Other matters

- 80. The UAE federal authorities are currently in the process of reviewing and updating the UAE's AML laws and regulations, including Federal Law No.4 of 2004 regarding criminalisation of money laundering. Therefore, changes to our AML and ASP regimes set out in this consultation may need to be amended post-consultation to include any changes brought about by the above Federal Law changes which have a direct impact on the DFSA AML rulebook.