

Appendix 1

In this appendix underlining indicates proposed new text and striking through indicates deleted text.

This appendix highlights (by footnotes) amendments to the text that were previously proposed under Consultation Paper No. 90 (RAC/FMT) and Consultation Paper No. 91 (Audit Regime).

Further please note that the numbering of Articles is provisional and will be adjusted in the final text to take into account the numbering in the Law as at that date.

Readers should also note that footnotes are included for information purposes only and are not part of the legislative proposals.

REGULATORY LAW DIFC LAW No.1 of 2004

PART 2: THE DFSA

NB – From this point on all changes are those proposed under Consultation Paper No. 94 unless footnoted otherwise.

CHAPTER 1 - THE STRUCTURE OF THE DFSA

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8. The Powers, Functions and Objectives of the DFSA

- (1)
- (4) In exercising its powers and performing its functions, the DFSA shall take into consideration the following guiding principles, being the desirability of:
 - (a) pursuing the objectives of the DIFC as set out under Dubai Law in so far as it is appropriate and proper for the DFSA to do so;
 - (b) fostering the development of the DIFC as an internationally respected financial centre;
 - (c) co-operating with and providing assistance to regulatory authorities in the ~~United Arab Emirates~~ State and other jurisdictions;¹
 - (d) minimising the adverse effects of the activities of the DFSA on competition in the financial services industry;
 - (e) using its resources in the most efficient way;
 - (f) ensuring the cost of regulation is proportionate to its benefit;
 - (g) exercising its powers and performing its functions in a transparent manner; and
 - (h) complying with relevant generally accepted principles of good governance.

9. Structure of the DFSA²

The DFSA shall be made up of:

- (a) the Chairman of the DFSA;

¹ It is proposed to delete references to the “United Arab Emirates” and insert instead the “State” (with a definition of that term in Schedule 1) as this is the normal practice in UAE Laws.

² The amendments proposed to this provision are those proposed under CP90 and no further amendments are proposed under this consultation.

- (b) the DFSA Board of Directors;
- ~~(e) the Regulatory Appeals Committee of the DFSA Board of Directors;~~
- ~~(d)~~(c) the Financial Markets Tribunal ~~of~~ appointed by the DFSA Board of Directors;
- ~~(e)~~(d) the Chief Executive and members of his staff; and
- ~~(f)~~(e) ~~other~~ any DFSA committees as may be duly appointed from time to time.

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CHAPTER 2 - THE DFSA BOARD OF DIRECTORS

20. The Powers and Functions of the DFSA Board of Directors

- (1) The general powers and functions of the DFSA Board of Directors are to:
 - (a) ensure that the DFSA exercises its statutory powers and performs its statutory functions in accordance with its objectives;
 - (b) make policies relating to the regulation of financial services and related activities and any other matters over which the DFSA has exclusive jurisdiction;
 - (c) review the performance of the Chief Executive;
 - (d) give the Chief Executive written directions as to the furtherance of any of the DFSA's objectives or the performance of any of the Chief Executive's statutory functions. Such written directions shall not constitute Rules;
 - (e) arrange for the DFSA to enter into binding and non-binding arrangements, including memoranda of understanding and co-operation with similar bodies provided they do not conflict with the treaties to which the ~~United Arab Emirates~~ State is a party; and

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NB – From this point on changes to the new provisions proposed under CP90 are shown in the usual manner.

CHAPTER 4 –THE FINANCIAL MARKETS TRIBUNAL

26. Constitution of the Financial Markets Tribunal

- (1) The DFSA shall maintain a tribunal of the DFSA called the Financial Markets Tribunal (referred to as the “FMT”).
- (2) The DFSA Board of Directors:
 - (a) shall appoint persons for fixed terms to serve as the president and members of the FMT; and
 - (b) may reappoint the president or any of the members for further fixed terms.
- (3) None of the following persons shall be the president or a member of the FMT:
 - (a) the Chairman of the DFSA;
 - (b) the Chief Executive of the DFSA; or
 - (c) any other Board Member, director, officer, employee or agent of the DFSA or of any other agency or body of the DIFC established under Dubai Law.
- (4) The president and members of the FMT shall have relevant qualifications, expertise and experience in the regulatory aspects of financial services and related activities.
- (5) The DFSA Board of Directors may dismiss the president or any of the members of the FMT for just cause. For the purpose of this Article, just cause means inability, incapacity or misbehaviour.

27. Powers and Functions of the FMT

- (1) The powers and functions of the FMT are to hear and determine references and regulatory proceedings as prescribed in Chapter 5 of Part 2.
- (2) The FMT may do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred for the purposes of Article 27(1), including the giving of directions as to practice and procedure to be followed in the FMT in the hearing and determination of references or regulatory proceedings.
- (3) The president of the FMT may establish one or more panels of the FMT to exercise the powers and perform the functions of the FMT.

- (4) The president of the FMT or the chairman of a panel appointed to hear and determine a reference or regulatory proceeding may make any procedural order or order granting interim relief that the FMT has the power to make.
- (5) For the purpose of a reference or regulatory proceeding, the president of the FMT or the chairman of a panel appointed to hear and determine the proceeding:
 - (a) may appoint one or more persons, who shall be independent and an expert in their field, to assist the FMT in deciding any of the issues arising in the proceeding, including assistance in the examination of the parties' experts and witnesses; and
 - (b) shall provide the parties with an opportunity to make submissions on the expert's assistance and shall ~~mention~~ record in its decision the issues on which, and the extent to which, such assistance was relied upon by the FMT.
- (6) Subject to the Law and Rules, the FMT may make rules of procedure governing the commencement, hearing and determination of references and regulatory proceedings, including as to:
 - (a) rules of evidence;
 - (b) the manner in which powers may be exercised;
 - (c) the manner in which conflicts of interest of members of the FMT may be prevented;
 - (d) the manner in which an FMT appointed expert may provide assistance to the FMT;
 - (e) notification to the Chief Executive of the commencement of a reference or regulatory proceeding; and
 - (f) the manner in which the Chief Executive may appear and be heard in the reference or regulatory proceeding.

CHAPTER 5 – PROCEEDINGS IN THE FINANCIAL MARKETS TRIBUNAL

28. References³

- (1) In this Chapter, unless the context provides otherwise:
- (a) a ‘reference’ is a proceeding before the FMT to review a decision of the DFSA under this Article; and
 - (b) an ‘officer, employee or agent’ of a person includes a person who proposes to become an officer, employee or agent of a person.
- (2) The FMT has jurisdiction to hear and determine any reference where a provision of this Law, the Rules or any other legislation administered by the DFSA provides that a matter may be referred to the FMT for review.⁴
- ~~(a) a person seeks review of a decision of the DFSA in relation to an application by that person for a Licence or for an extension to the scope of a Licence;~~
 - ~~(b) a person who is an applicant for authorisation, an Authorised Firm or Authorised Market Institution seeks review of a decision of the DFSA to impose or vary a condition or restriction to its Licence;~~
 - ~~(c) an Authorised Firm or Authorised Market Institution seeks review of a decision of the DFSA in relation to the exercise of its power to withdraw a Licence or to withdraw an authorisation in relation to a Financial Service;~~
 - ~~(d) an officer, employee or agent of an Authorised Person seeks review of a decision of the DFSA in relation to his application for Authorised Individual status or for extension of his status;~~
 - ~~(e) an Authorised Individual seeks review of a decision of the DFSA to impose or vary a condition or restriction to the grant of Authorised Individual status;~~
 - ~~(f) a person seeks review of a decision of the DFSA to:
 - ~~(i) issue a written notice under Article 58(1);~~
 - ~~(ii) vary a written notice to which he is subject, under Article 58(7); or~~~~

³ The CP 90 version of this provision has been amended by the addition or deletion of text.

⁴ It is proposed to delete this list of matters that can be referred to the FMT (which is the text as it appeared in CP 90). Instead, it is proposed that each individual power will specify whether the matter can be referred to the FMT.

- ~~(iii) — refuse to vary or withdraw a written notice following his request pursuant to Article 58(8);~~
- ~~(g) — an Authorised Individual seeks review of a decision of the DFSA to:

 - ~~(i) — issue a written notice under Article 58(2);~~
 - ~~(ii) — vary or withdraw a written notice to which he is subject, under Article 58(7);~~
 - ~~(iii) — refuse to vary or withdraw a written notice following his request or the request of an Authorised Firm pursuant to Article 58(8); or~~
 - ~~(iv) — suspend or withdraw his Authorised Individual status under Article 58(2), (3) or (5);~~~~
- ~~(h) — an Authorised Firm or Authorised Market Institution seeks review of a decision of the DFSA to issue a notice to it or make a requirement of it under Article 74, 75, 75A, 76 or 88;~~
- ~~(i) — a controller, an Authorised Firm or Authorised Market Institution seeks review of a decision of the DFSA made pursuant to its powers under Article 64 or the Rules made for the purposes of that Article;~~
- ~~(j) — a person seeks review of a decision of the DFSA in relation to its application for registration as an auditor or for the withdrawal of the registration by the DFSA;~~
- ~~(k) — a person seeks review of a decision of the DFSA to impose a sanction on that person under Article 90; or~~
- ~~(l) — the reference is brought under such other jurisdiction as may be conferred by or under this Law, the Rules or any other legislation administered by the DFSA.~~
- (3) A person may commence a reference to the FMT only in circumstances where the FMT has jurisdiction to hear and determine the reference under this Article.
- (4) A reference must be commenced:
 - (a) within 30 days of the relevant decision of the DFSA; or
 - (b) within such further period not exceeding 30 days as may be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances.
- (5) At the conclusion of a reference, the FMT may do one or more of the following:

- (a) affirm the original decision of the DFSA which is the subject of the reference;
- (b) vary that original decision;
- (c) set aside all or part of that original decision and make a decision in substitution;
- (d) decide what, if any, is the appropriate action for the DFSA to take and remit the matter to the Chief Executive;
- (e) make such order in respect of any matter or any of the parties which it considers appropriate or necessary in the interests of:
 - (i) the DFSA's regulatory objectives; or
 - (ii) the DIFC; or
- (f) issue directions for giving effect to its decision, save that such directions may not require the DFSA to take any step which it would not otherwise have the power to take.

29. Regulatory proceedings

- (1) In this Chapter, unless the context provides otherwise, a 'regulatory proceeding' is a proceeding before the FMT to hear and determine an issue of a regulatory nature as prescribed under the Law or the Rules or any other legislation administered by the DFSA.
- (2) The FMT has jurisdiction to hear and determine any regulatory proceeding ~~as may be prescribed under~~ where a provision of the Law, the Rules, or any other legislation administered by the DFSA provides that the FMT may hear and determine a regulatory proceeding relating to a matter.⁵
- (3) The DFSA or any other person may commence a regulatory proceeding in the FMT only in circumstances where the FMT has jurisdiction pursuant to this Article to hear and determine the matter.
- (4) A regulatory proceeding may be brought either:
 - (a) by the DFSA; or
 - (b) by another person with:
 - (i) sufficient interest in the matter to which the regulatory proceeding relates; and

⁵ This proposed change is simply to ensure the drafting is consistent with that in Article 28(2).

- (ii) the consent of the DFSA or, where such consent is denied, with the consent of the FMT.
- (5) At the conclusion of a regulatory proceeding, the FMT may do one or more of the following:
 - (a) declare that a person has committed a contravention of a specified provision;
 - (b) impose a fine on a person in respect of a contravention, of such amount as it considers appropriate;
 - (c) censure the person by any means, including by way of publishing a notice of censure;
 - (d) make an order requiring the person to effect restitution or compensate any other person for such period and on such terms as the FMT may direct;
 - (e) make an order requiring the person to account for, in such form and on such terms as the FMT may direct, such amounts as the FMT determines to be profits arising from wrongdoing or any other form of unjust enrichment as determined by the FMT;
 - (f) make an order requiring the person to cease and desist from such activity as the FMT may stipulate;
 - (g) make an order requiring the person to do an act or thing;
 - (h) make an order prohibiting the person from holding office at any body corporate carrying on business in the DIFC; or
 - (i) make a finding, declaration or order of a type prescribed under the Law, Rules or any other legislation administered by the DFSA.

30. Conduct of a reference or regulatory proceeding

- (1) In this Article, unless the context otherwise provides, a “proceeding” is a reference or a regulatory proceeding.
- (2) A person shall commence a proceeding by giving the FMT a written notice in the form provided for in the rules of procedure of the FMT.
- (3) Subject to Article 30(5), on the commencement of a proceeding, the president of the FMT shall, without undue delay:
 - (a) select and appoint a panel of one or more members of the FMT to exercise the powers and perform the functions of the FMT to hear and determine the matter; and

- (b) appoint a panel member to be the panel chairman.
- (4) For the purpose of Article 30(3), the president of the FMT may appoint himself as the chairman or as a member of a panel in a proceeding.
- (5) (a) Where:
- (i) a proceeding is commenced before the FMT;
 - (ii) there are common parties or there is a common question of law or fact in any other proceeding commenced before the FMT; and
 - (iii) the president of the FMT is satisfied that it is in the interests of justice and efficiency and is in the interests of the DIFC to make a direction under this Article;
- the president of the FMT may direct that:
- (iv) the proceedings be consolidated, heard and determined by the FMT constituted as a single panel, on such terms as the president may direct;
 - (v) the proceedings are to be heard at the same time, or one following another; or
 - (vi) a proceeding is to be stayed until the determination of another.
- (b) Where two or more original proceedings are consolidated into a single proceeding under Article 30(5)(a) the FMT panel constituted for the consolidated proceeding shall, in hearing and determining issues relevant to each of the original proceedings, have the same powers in relation to those issues as the FMT panel would have had in the original proceedings.
- (6) In hearing and determining a proceeding, the FMT may:
- (a) receive and consider any evidence by way of oral evidence, written statements or documents, even if such evidence may not be admissible in civil or criminal proceedings in a court of law;
 - (b) determine the manner in which such evidence is received by the FMT;
 - (c) where the proceeding is a reference, consider any evidence relating to the subject-matter of the reference, whether or not such evidence was available to the DFSA at the time of the decision to which the reference relates;

- (d) by notice in writing require a person to attend before it at any sitting and to give evidence and produce any item, record or document in his possession relating to the subject matter of the proceeding;
 - (e) administer oaths;
 - (f) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the FMT considers appropriate for the purpose of the proceeding;
 - (g) order a witness to provide evidence by sworn statement for the purpose of the proceedings;
 - (h) order a person not to publish or otherwise disclose any material disclosed by any person to the FMT;
 - (i) where the proceeding is a reference, stay the decision of the DFSA to which the reference relates and any related steps proposed to be taken by the DFSA until the FMT has determined the reference; and
 - (j) exercise such other powers or make such other orders as the FMT considers necessary for or ancillary to the conduct of the proceeding or the performance of its function.
- (7) Proceedings and decisions of the FMT shall be heard and given in public unless the FMT orders otherwise, or its rules of procedure provide otherwise.
- (8) Any finding of fact in a proceeding shall be determined on the balance of probabilities.
- (9) A decision of the FMT may be taken by a majority.
- (10) At the conclusion of a proceeding, the FMT may also make an order requiring a party to the proceedings to pay a specified amount, being all or part of the costs of the proceedings, including those of any party.
- (11) Where the FMT makes an order requiring a party to the proceedings to pay a party's costs under Article 30(10), such costs may be recovered from the recipient of the order in a court of competent jurisdiction as a debt due to the party which incurred the relevant costs.
- (12) Upon making its decision, the FMT must without undue delay inform each party to the proceeding in writing of:
- (a) such decision and the reasons for such decision, including its findings on material questions of fact and identifying the evidence or other material on which those findings were based;
 - (b) the date on which the decision is to take effect; and

- (c) where applicable, the date by which payment of any fine, restitution or compensation must be made.
- (13) A certificate that purports to be signed by the president or proper officer of the FMT and which states that the FMT on a specified day made a specified decision, including a finding that a specified person has committed a contravention of a specified provision of the Law or of the Rules or of any other legislation administered by the DFSA, or made a specified finding of fact is, in any other proceedings before FMT, or proceedings before the Court, where relevant:
- (a) conclusive evidence of the decision of the FMT made on that day;
 - (b) prima facie evidence that the person contravened that provision; and
 - (c) prima facie evidence of the relevant finding of fact.

31. Enforcement

- (1) A person commits a contravention if that person, without reasonable excuse:
- (a) fails to comply with a lawful order, notice, prohibition or requirement of the FMT;
 - (b) having been lawfully required by the FMT to attend before it, does not attend or leaves the place where his attendance is so required without the permission of the FMT;
 - (c) hinders or deters any person from attending before the FMT, giving evidence or producing any item, record or document, for the purposes of any reference or regulatory proceeding;
 - (d) threatens or causes any loss to be suffered by any person who has attended before the FMT, on account of such attendance;
 - (e) threatens or causes any loss to be suffered by any member of the FMT or any person assisting the FMT at any time; or
 - (f) engages in conduct, including without limitation the:
 - (i) destruction of documents; or
 - (ii) giving of information that is false or misleading;that is intended to obstruct the FMT in the exercise of any of its powers.
- (2) Without limiting the application of Article 31(3), where a person commits a contravention under Article 31(1) the FMT may make one or more orders

imposing a fine on the person of such amount as it considers appropriate, censuring the person, requiring the person to effect restitution or compensation, requiring the person to cease and desist from such activity as the FMT may stipulate, or requiring the person to do any act or thing.

- (3) Where a person fails to comply with a decision, lawful order, notice, prohibition or requirement of the FMT, or fails to pay a fine lawfully imposed by the FMT, the Court may, on application of:

- (a) the FMT; or
- (b) any party to the reference or regulatory proceeding, including the DFSA;

make any order as it thinks fit to enforce such decision, order, notice, prohibition, requirement or fine.

32. Appeal from a decision of the FMT

- (1) A party to a reference or a regulatory proceeding may, with the permission of the FMT or the Court, appeal a decision of the FMT to the Court only on a point of law.⁶
- (2) In this Article:
 - (a) “permission” means, in the first instance, permission of the FMT and where this is denied, permission of the Court; and
 - (b) “a party” includes the DFSA.

33. Savings and Transitional

- (1) For the purposes of this Article:
 - (a) “previous Law” means the Regulatory Law 2004 as it was in force immediately prior to the commencement of the [DIFC Laws Amendment Law of 2014]; and
 - (b) “current Law” means the provisions of this Law that came into force under the [DIFC Laws Amendment Law of 2014], including as amended from time to time.
- (2) The Financial Markets Tribunal that was established under the previous Law continues as if it had been established under the current Law.
- (3) The Regulatory Appeals Committee that was established under the previous Law continues only for the purposes of Article 33(5).

⁶ The CP 90 version of this provision has been amended by the addition of this text.

- (4) Except as provided in Article 33(5) and (6):
- (a) anything done or omitted to be done under or for the purposes of the previous Law, including a contravention, is deemed to be done or omitted to be done under or for the purposes of the current Law; and
 - (b) nothing in the current Law affects:
 - (i) any right, privilege, remedy, obligation or liability accrued to or incurred by a person under the previous Law; or
 - (ii) any investigation or legal or administrative proceeding commenced or to be commenced in respect of such a right, privilege, remedy, obligation or liability.
- (5) Any proceeding instituted in the Financial Markets Tribunal or the Regulatory Appeals Committee under the previous Law shall continue under the previous Law, and for that purpose, the provisions in Chapters 4 and 5 of Part 2 of the previous Law shall continue in force and effect until such time as the proceedings, and any related appeals and proceedings, are complete.
- (6) Where there is a contravention of Article 30(1) or 35(1) of the previous Law, proceedings may be instituted in the Financial Markets Tribunal pursuant to Article 30(2) or 35(2) of the previous Law, and, for that purpose, the provisions in Chapters 4 and 5 of Part 2 of the previous Law shall continue in force and effect until such time as those proceedings, and any related appeals and proceedings, are complete.
- ~~(7) The DFSA may make Rules prescribing any transitional or saving provisions as appear to the DFSA to be necessary or desirable to give effect to, or facilitate, the transition from the previous Law to the current Law.⁷~~

⁷ This sub-article is deleted as the intention is to use the proposed saving and transitional rulemaking power in Article 118 for all such Rules.

34. not in use

35. not in use

NB – From this point on all changes are those proposed under Consultation Paper No. 94 unless footnoted otherwise.

CHAPTER 6 - THE CHIEF EXECUTIVE OF THE DFSA

36. The Powers and Functions of the Chief Executive

The powers and functions of the Chief Executive are, so far as is reasonably practicable, to:

- (a) exercise the executive power of the DFSA by taking such steps as are reasonable and which he considers appropriate to meet the objectives of the DFSA;
- (b) license, authorise, register, recognise, regulate and supervise the conduct of activities and persons required to be regulated by the DFSA by or under Dubai Law or DIFC Law;
- (c) prepare or cause to be prepared in a timely and efficient manner:
 - (i) draft Rules; and
 - (ii) draft standards or codes of practice;

reasonably required to enable the DFSA to perform its statutory functions, and submit such drafts to the DFSA Board of Directors;

- (d) make and issue Guidance which does not constitute a standard or code of practice, and which is reasonably required to enable the DFSA to perform its statutory functions, and advise the DFSA Board of Directors of such Guidance;
- (e) grant waivers and modifications to the application of Rules;
- (f) exercise any power to grant waivers or modifications to the application of other legislation applying in the DIFC where such a power is conferred on the DFSA by that legislation, and advise the DFSA Board of Directors of any such exercise of power;
- (g) investigate ~~or cause to be investigated~~ matters capable of investigation under any legislation administered by the DFSA, undertake remedial or enforcement actions and, where appropriate, commence proceedings before the ~~Financial~~

~~Markets Tribunal~~ FMT and any other tribunals or courts of appropriate jurisdiction;⁸

- (h) where appropriate to do so, delegate such of his functions and powers as may more efficiently and effectively be performed by officers or employees of the DFSA or committees of such persons, and, with the approval of the DFSA Board of Directors either generally or in relation to any particular matter, by any other person; and⁹
- (i) exercise and perform such other powers and functions as may be delegated to the Chief Executive by the DFSA Board of Directors from time to time.

CHAPTER 7 – CONFLICTS OF INTEREST AND USE OF INFORMATION

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38. Confidential Information

- (1) Subject to Article 38(3), confidential information must not be disclosed by the DFSA or by any of its officers, employees or agents, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.
- (2) Information is confidential when:
 - (a) it is received by the DFSA or any of its officers, employees or agents in the course of the performance by such person of a function under the Law or under any other legislation administered by the DFSA; and
 - (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under such Law or other legislation.
- (3) The DFSA may disclose confidential information where such disclosure:
 - (a) is permitted or required under the Law or Rules or under other legislation administered by the DFSA;
 - (b) is permitted or required by any other law;
 - (c) is made to:
 - (i) the Companies Registrar;

⁸ The CP90 version of this provision has been amended by the deletion of the text in the first line.

⁹ The amendments proposed to this provision are those proposed under CP90 and no further amendments are proposed under this consultation.

- (ii) a Financial Services Regulator;
- (iii) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;¹⁰
- (iv) a self-regulatory body or organization exercising and performing powers and functions in relation to financial services;
- (v) a civil or criminal law enforcement agency; or
- (vi) 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;

for the purpose of assisting the performance by any such person of its regulatory functions; or

- (d) is made in good faith for the purposes of performance and exercise of the functions and powers of the DFSA.

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 sanctions compliance ~~or national or international sanctions~~;¹¹
- (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,

¹⁰ This text is proposed for consistency with other provisions which, when they refer to anti-money laundering, also refer to counter terrorism financing or sanctions compliance.

¹¹ It is proposed to delete references to national or international as these words appear unnecessary and could inadvertently limit the type of sanctions covered.

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 persons of ~~its~~ their regulatory functions.

40. Delegation of Functions and Powers to Other Regulators

(1) 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 ~~State United Arab Emirates~~ or elsewhere exercising powers and performing functions relating to anti-money laundering, counter terrorist financing or ~~national or international~~ sanctions compliance; or
- (c) a civil or criminal law enforcement agency of the ~~State 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.~~

(2) The DFSA may delegate a function or power under this Article only if it considers that the representative will be adequately supervised to the satisfaction of the DFSA in the exercise of the delegated function or power.¹²

PART 3: LICENCES, AUTHORISATION AND REGISTRATION

CHAPTER 1 - THE FRAMEWORK OF REGULATION

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41B. General prohibition against misconduct

(1) A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:

- (a) misleading or deceptive or likely to mislead or deceive;
- (b) fraudulent; or
- (c) dishonest.

¹² This amendment is proposed to allow greater flexibility as to who provides the supervision.

- (2) The DFSA shall make Rules prescribing what constitutes a Financial Product for the purposes of Article 41B(1).¹³
- (3) Nothing in this Article limits the scope or application of any other provision in legislation administered by the DFSA.

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43. ~~Authorised Individuals and Licensed Functions of Authorised Persons~~

- (1) The DFSA shall make Rules prescribing functions (“Licensed Functions”) of an Authorised Person that shall be carried out by individuals who have been appropriately authorised by the DFSA.
- (2) Licensed Functions prescribed under Article 43(1)~~which~~ may include the functions of senior officers or employees with material responsibility for both or either:
- (a) managing an Authorised ~~Firm~~ Person; ~~and~~or¹⁴
- (b) the carrying on by an Authorised ~~Firm~~ Person of its Financial Services.¹⁵
- ~~(2) The Licensed Functions of an Authorised Firm shall be carried out by its Authorised Individuals.~~
- (3) An individual who is authorised by the DFSA to carry out a Licensed Function:
- (a) for an Authorised Firm, shall be referred to as an Authorised Individual; and
- (b) for an Authorised Market Institution, shall be referred to as a Key Individual.
- (4) A person shall not carry out a Licensed Function for an Authorised Firm unless he is authorised by the DFSA as an Authorised Individual to carry out that Licensed Function for the Authorised Firm.

¹³ For the proposed definition of a Financial Product see the proposed amendment in GEN 2.28.

¹⁴ A definition of “Authorised Person” was included in the proposed text in CP 91 (the Audit Regime). For consistency and simplicity it is proposed to use this expression in the Law where possible instead of referring to both an Authorised Firm and Authorised Market Institution.

¹⁵ Note: the amendments to this Article are proposed so that Key Individuals in AMIs are subject to the same legal framework and powers as Authorised Individuals in Firms. The amendments are also intended to ensure that the key prohibitions are in the Law itself.

- (5) A person shall not carry out a Licensed Function for an Authorised Market Institution unless he is authorised by the DFSA as a Key Individual to carry out that Licensed Function for the Authorised Market institution.
- (36) An Authorised ~~Firm~~ Person shall take all reasonable steps to ensure that none of its officers, employees or agents performs a Licensed Function:
- (a) without being authorised by the DFSA as an Authorised Individual or as a Key Individual in relation to ~~such~~ the relevant Licensed Function;
 - (b) contrary to a restriction imposed ~~written notice issued~~ by the DFSA under Article 58(1) ~~or (2)~~; or
 - (c) where Authorised Individual or Key Individual status of that individual has been suspended or withdrawn under Article 58~~(2), (3), (4)~~ (1), (2), (3) or (5).
- (47) An Authorised Individual or Key Individual shall:
- (a) act within the scope of his authority granted under his Authorised Individual or Key Individual status; and
 - (b) comply with any condition or restriction applicable to such status.
- (58) ~~A person who is not an Authorised Individual shall not represent that he is such a person.~~ A person who is not:
- (a) an Authorised Individual shall not represent that he is such a person; or
 - (b) a Key Individual shall not represent that he is such a person.

44. Prohibition relating to Endorsements

- (1) The DFSA may make Rules prescribing activities that may be carried on only by a Authorised Person that has an appropriate Licence Endorsement authorising it to carry on that activity.
- (2) A person shall not carry on an activity prescribed under Article 44(1) unless the person has an appropriate Licence Endorsement authorising it to carry on that activity.¹⁶

¹⁶ This amendment is proposed as we believe it is more appropriate for the legal framework for Licence endorsements to be in the Law rather than only in the Rules.

CHAPTER 2 – APPLICATIONS FOR A LICENCE

45. Application for a Licence, ~~or for Extension to a Licence~~ or an Endorsement

- (1) An application for a Licence authorising an Authorised Person Firm ~~or an Authorised Market Institution~~ to carry on one or more Financial Services or for a Licence Endorsement may be made to the DFSA by any:
 - (a) body corporate;
 - (b) partnership; or
 - (c) unincorporated association.
- (2) An Authorised Person Firm ~~or Authorised Market Institution~~ may apply to the DFSA:
 - (a) to extend its Licence to Financial Services other than those in respect of which it already has a Licence; or
 - (b) to obtain an additional Licence Endorsement.
- (3) The DFSA may make Rules providing that certain persons or types of person may not be granted a Licence in relation to particular Financial Services or a particular Licence Endorsement.
- (4) The DFSA shall make Rules ~~containing a set of~~ prescribing requirements which an ~~application~~ applicant for a Licence, or for extension of a Licence to other Financial Services, or for a Licence Endorsement, must meet before ~~such application can be accepted and~~ a Licence or extension or Licence Endorsement will be granted by the DFSA. Such Rules ~~shall~~ may, without limiting the generality of that power, include requirements relating to an applicant's:
 - (a) ~~the fitness and propriety of applicants;~~
 - (b) resources (including financial resources);
 - (c) compliance arrangements;
 - (d) systems and controls;
 - (e) legal form; and
 - (f) name (including terms that shall not be used in the name).
- (5) The DFSA may make Rules providing for such requirements referred to in Article 45(4) to be varied in cases where an application is made by a person

which is, at the time of application, regulated in a jurisdiction other than the DIFC.

- (6) The DFSA may make Rules:
- (a) ~~prescribing the requirements an applicant applying for a Licence must meet before authorisation can be granted by the DFSA. Such Rules may include requirements relating to the legal form an applicant must adopt;~~
 - (ba) prescribing certain persons or categories of person to be exempted from the requirements referred to in Article 45(4); and
 - (eb) providing for any such exemptions to be:
 - (i) limited to certain Financial Services or specified circumstances; or
 - (ii) subject to certain conditions and restrictions.
- (7) (a) If an Authorised Person Firm ~~or Authorised Market Institution~~ is:
- (i) a partnership; or
 - (ii) an unincorporated association;
- it does not need to reapply for a Licence by reason only of a change to its membership.
- (b) Article 45 (7) (a) applies subject to the effect of Article 64.

.....

47. Rejection of an Application

- (1) The DFSA may ~~in its absolute discretion~~ refuse to grant an application for a Licence or for an extension to a Licence or for a Licence Endorsement if it is not satisfied that the requirements under Article 45 for the grant of the Licence, extension to the Licence or the Licence Endorsement have been met.
- (2) ~~Upon refusing to grant a Licence or an extension to a Licence, the DFSA shall without undue delay inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal. The procedures in Schedule 3 apply to a decision of the DFSA under Article 47(1).~~
- (3) If the DFSA decides to exercise its power under Article 47(1), the applicant may refer the matter to the FMT for review.

48. **Granting of an application a Licence or Extension to a Licence**

- (1) The DFSA may grant an application for a Licence or for an extension to a Licence or for a Licence Endorsement if it is satisfied that the requirements under Article 45 for the grant of the Licence, extension to the Licence or the Licence Endorsement have been met, with or without conditions and restrictions.
- (1A) The DFSA may impose conditions or restrictions on a Licence or Licence Endorsement when it is granted or extended under Article 48(1).
- (2) Upon deciding to grant a Licence or an extension to a Licence or a Licence Endorsement, the DFSA shall without undue delay inform the relevant applicant in writing of:
 - (a) such decision;
 - (b) the date on which the Licence or extension or Licence Endorsement shall be deemed to take effect;
 - (c) the Financial Service or Financial Services or activity that the applicant is authorised to carry on; and
 - (d) any conditions and restrictions applicable to the Licence or the newly extended Licence or Licence Endorsement.
- (3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 48(1A) to impose conditions or restrictions.
- (4) If the DFSA decides to exercise its power under Article 48(1A) to impose conditions or restrictions, the applicant may refer the matter to the FMT for review.

CHAPTER 3 – CONDITIONS AND RESTRICTIONS ON A LICENCE

49. **Applying Conditions and Restrictions to a Licence**

- (1) Subject to Articles 49(2) and (3), the DFSA may at any time by written notice to an Authorised Person ~~Firm or Authorised Market Institution~~:
 - (a) impose conditions and restrictions or additional conditions and restrictions on a Licence or on a Licence Endorsement; ~~and~~ or
 - (b) vary or withdraw conditions and restrictions imposed on a Licence or on a Licence Endorsement.
- (2) The DFSA may act under Article 49(1) on its own initiative or at the request of an Authorised Person ~~Firm or Authorised Market Institution~~.

- (3) ~~Subject to Article 49(4), the DFSA may only impose conditions and restrictions or additional conditions and restrictions or vary or withdraw conditions and restrictions on the Licence if it has given the relevant Authorised Firm or Authorised Market Institution a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed changes. The procedures in Schedule 3 apply to a decision of the DFSA under Article 49(1).~~
- (4) If the DFSA decides to exercise its power under Article 49(1), the Authorised Person may refer the matter to the FMT for review.
- ~~(4) The requirement imposed on the DFSA under Article 49(3) shall not apply:~~
- ~~(a) in relation to the imposition of conditions and restrictions when a Licence, or an extension of a Licence, is granted;~~
- ~~(b) where the relevant person has requested the imposition, variation or withdrawal of conditions and restrictions under Article 49(2); or~~
- ~~(c) where the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC.~~
- ~~(5) Where pursuant to Article 49(4)(c) the DFSA imposes, varies or withdraws a condition or restriction without providing a prior opportunity to make representations, the DFSA shall:~~
- ~~(a) provide the relevant Authorised Firm or Authorised Market Institution an opportunity to make representations in person and in writing to the DFSA within the period of 14 days, or such further period as may be agreed, from the date on which such condition or restriction is imposed, varied or withdrawn; and~~
- ~~(b) provide a response to any such submission, and make any consequential imposition, variation or withdrawal of the condition or restriction, without undue delay.~~

CHAPTER 4 – WITHDRAWAL OR SUSPENSION OF A LICENCE OR AN AUTHORISATION OR ENDORSEMENT UNDER A LICENCE

50. Withdrawing an Authorisation under, or Endorsement on, under a Licence

- (1) Subject to Article 50(3), the DFSA may withdraw authorisation in relation to one or more Financial Services for which an Authorised Person Firm ~~or Authorised Market Institution~~ is authorised under a Licence or may withdraw a Licence Endorsement.

- (2) The DFSA may act under Article 50(1) on its own initiative or at the request of an Authorised ~~Person Firm or Authorised Market Institution~~.
- (3) The DFSA may exercise its power under Article 50(1) in the following circumstances:
- (a) the Authorised ~~Person Firm or Authorised Market Institution~~ is in breach of, or has been in breach of, one or more restrictions or conditions applicable to its Licence or a Licence Endorsement;
 - (b) the Authorised ~~Person Firm or Authorised Market Institution~~ is otherwise in breach of, or has otherwise been in breach of, the Law or Rules or other legislation administered by the DFSA;
 - (c) the Authorised ~~Person Firm or Authorised Market Institution~~ is no longer fit and proper to carry on a Financial Service for which it has an authorisation or an activity for which it has a Licence Endorsement;
 - (d) the Authorised ~~Firm Person or Authorised Market Institution~~ has failed for a period of at least twelve consecutive months to carry on one or more Financial Services for which it is authorised under a Licence or an activity for which it has a Licence Endorsement;
 - (e) the Authorised ~~Person Firm or Authorised Market Institution~~ requests the withdrawal; or
 - (f) the DFSA considers that the exercise of the power is necessary or desirable in the pursuit of its objectives.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

51. **Withdrawing a Licence**

- (1) The DFSA may withdraw a Licence of an Authorised ~~Person Firm or Authorised Market Institution~~ where:
- (a) as a consequence of withdrawal of authorisation in relation to one or more Financial Services under Article 50, the person is no longer authorised to carry on any Financial Service;
 - (b) the person is no longer fit and proper to hold a Licence;
 - (c) the person has failed either to remove a controller or to take such other action as required by the DFSA under Article 64; or
 - (d) the person asks the DFSA to withdraw the Licence.

- (2) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (3) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

52.—Procedure for Withdrawal

- (1) ~~Subject to Articles 52(2) and (3), the DFSA may only exercise its power under Articles 50 and 51 if it has given the relevant Authorised Firm or Authorised Market Institution a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed withdrawal.~~
- (2) ~~The restriction imposed on the DFSA under Article 52(1) shall not apply if:~~
 - (a) ~~the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC; or~~
 - (b) ~~the person requests the DFSA to:~~
 - (i) ~~withdraw its Licence; or~~
 - (ii) ~~withdraw authorisation in relation to one or more Financial Services under its Licence and the withdrawal goes no wider than such request.~~
- (3) ~~Where the DFSA takes steps to exercise its powers under Articles 50 or 51 in relation to an Authorised Firm or Authorised Market Institution following a determination of the FMT or a decision of the Court in relation to the conduct of such person, the obligation upon the DFSA to afford that person an opportunity to make representations to the DFSA shall not apply in relation to findings of fact of the FMT or the Court as the case may be.~~
- (4) ~~Where the DFSA has received a representation from a person under this Article, the DFSA shall without undue delay inform such person in writing of its response to such representation.~~
- (5) ~~Upon deciding to withdraw:~~
 - (a) ~~authorisation in relation to a Financial Service, or~~
 - (b) ~~a Licence;~~

~~the DFSA shall without undue delay inform the relevant person in writing of:~~

 - (c) ~~such decision;~~
 - (d) ~~the date on which such withdrawal shall be deemed to take effect; and~~

(e) ~~if relevant, the Financial Service to which such withdrawal relates.~~

52. Suspension of Authorisation, Endorsement or Licence¹⁷

- (1) The DFSA may suspend for a period not exceeding 12 months:
- (a) an authorisation in relation to one or more Financial Services for which an Authorised Person is authorised under its Licence;
 - (b) a Licence Endorsement; or
 - (c) a Licence of an Authorised Person.
- (2) The DFSA may act under this Article on its own initiative or at the request of an Authorised Person.
- (3) The DFSA may act under this Article on its own initiative if it has reasonable grounds to believe that:
- (a) the Authorised Person is:
 - (i) in breach of, or has been in breach of, one or more restrictions or conditions applicable to its Licence or a Licence Endorsement;
 - (ii) in breach of, or has been in breach of, the Law or Rules or other legislation administered by the DFSA; or
 - (iii) no longer fit and proper to carry on a Financial Service for which it has Authorisation under its Licence or an activity for which it holds a Licence Endorsement; and
 - (b) the exercise of the power is necessary or desirable in the interests of the DIFC.
- (4) If the DFSA imposes a suspension under this Article it may provide that the Authorised Person may continue to carry on specified activities despite the suspension.
- (5) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (6) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

¹⁷ The CP 90 version of this provision has been amended by deleting and replacing the text.

CHAPTER 5 - AUTHORISED INDIVIDUAL AND KEY INDIVIDUAL STATUS

53. Applications for Authorised Individual or Key Individual status ~~in a Firm or for Extension of status~~

- (1) In this Chapter:
 - (a) "Authorised ~~Firm~~ Person" includes a person whose application for a Licence or application for extension of a Licence is being considered by the DFSA; and
 - (b) "director, officer, employee or agent" of a person includes a person who proposes to become a director, officer, employee or agent of a person.
- (2) An application for Authorised Individual or Key Individual status of a director, officer, employee or agent of an Authorised Firm Person shall be made by:
 - (a) such director, officer, employee or agent; and
 - (b) the Authorised Firm Person for which the Licensed Function is to be performed under the terms of office, employment or agency between such Authorised Firm Person and such director, officer, employee or agent.
- (3) Where a person holds Authorised Individual or Key Individual status, ~~in relation to Licensed Functions of an Authorised Firm such Authorised Individual and Authorised Firm~~ that individual together with the relevant Authorised Person may apply to the DFSA to extend the scope of the Authorised Individual or Key Individual status to Licensed Functions other than those in respect of which the ~~individual Authorised Individual~~ individual already holds such status.
- (4) The DFSA shall make Rules ~~containing~~ prescribing the requirements which an application for Authorised Individual or Key Individual status must meet before ~~such application can be accepted and~~ authorisation is granted by the DFSA. Such Rules shall, without limiting the generality of the power, include requirements relating to the fitness and propriety of applicants.
- (5) The DFSA may make Rules providing for such requirements to be varied in cases where:
 - (a) an application is made to extend the scope of Authorised Individual or Key Individual status to Licensed Functions other than those in respect of which he already holds such status; or
 - (b) an application is made for the grant of Authorised Individual or Key Individual status by and for an officer, employee or agent who is, at the time of application, regulated in a jurisdiction other than the DIFC to

perform a role which is substantially similar to the Licensed Function in relation to which the application is made.

- (6) The DFSA may make Rules:
- (a) prescribing certain persons or categories of persons to be exempted from the requirements referred to in Article 53(4); and
 - (b) providing for any such exemptions to be:
 - (i) limited to certain Licensed Functions or specified circumstances; and/or
 - (ii) subject to certain conditions and restrictions.

54. Providing Information in relation to the Application

- (1) At any time after the filing of an application under Article 53, the DFSA may require the Authorised ~~Firm~~ Person or the relevant director, officer, employee or agent to provide additional information reasonably required for the DFSA to be able to decide the application.
- (2) If at any time between the filing of an application and the grant of Authorised Individual or Key Individual status or of an extension to his status, the relevant director, officer, employee or agent becomes aware of a material change in his circumstances reasonably likely to be relevant to the application under consideration, he shall inform the Authorised ~~Firm~~ Person in writing of such change without delay.
- (3) If at any time between the filing of an application and the grant of Authorised Individual or Key Individual status or of an extension to a status the Authorised ~~Firm~~ Person becomes aware of a material change reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.

55. Deleted Rejecting an Application

- (1) ~~The DFSA may in its absolute discretion reject an application for Authorised Individual status or for extension to status.~~
- (2) ~~Upon refusing to grant Authorised Individual status or an extension to status, the DFSA shall without undue delay inform the relevant director, officer, employee or agent and the Authorised Firm in writing of such refusal and, where requested by either the relevant director, officer, employee or agent or Authorised Firm the reasons for such refusal.~~

56. Granting an application or rejection of an application for authorised status

- (1) The DFSA may grant Authorised Individual or Key Individual status, ~~or including an extension to such status, with or without conditions and~~

restrictions if it is satisfied that the requirements under Article 53 for the grant of the application have been met.

(1A) The DFSA may refuse to grant Authorised Individual or Key Individual status or an extension to such status if it is not satisfied that the requirements under Article 53 have been met.

(2) The DFSA may, if it considers it appropriate to do so:

(a) grant Authorised Individual or Key Individual status subject to conditions and restrictions;

(b) impose such conditions and restrictions at any time after the grant of Authorised Individual or Key Individual status; or

(c) vary or withdraw such conditions or restrictions.

(23) Upon deciding to authorise a director, officer, employee or agent of an Authorised ~~Person Firm~~ as an Authorised Individual or Key Individual, or to extend the scope of an Authorised Individual or Key Individual status to other Licensed Functions, the DFSA shall without undue delay inform the relevant director, officer, employee or agent and the Authorised ~~Person Firm~~ in writing of:

(a) such decision;

(b) the date on which the authorisation or extension shall be deemed to take effect;

(c) the Licensed Functions to which the authorisation relates; and

(d) any conditions and restrictions applicable to the Authorised Individual status or extended status.

(4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article:

(a) to refuse to grant Authorised Individual or Key Individual status to an individual or to extend such status; or

(b) to impose or vary conditions or restrictions on an Authorised Individual or Key Individual.

The DFSA shall give both the applicant, Authorised Individual or Key Individual (as the case may be) and the relevant Authorised Person or applicant to be an Authorised Person (as the case may be) an opportunity to make representations under the procedures in Schedule 3.

(5) If the DFSA decides to exercise its power under this Article:

- (a) to refuse to grant Authorised Individual or Key Individual status to an individual or to extend such status; or
- (b) to impose or vary conditions or restrictions on an Authorised Individual or Key Individual,

the applicant, Authorised Individual or Key Individual (as the case may be) or the relevant Authorised Person or applicant to be an Authorised Person (as the case may be) may refer the matter to the FMT for review.

CHAPTER 6 – ~~DELETED~~ CONDITIONS AND RESTRICTIONS ON AUTHORISED INDIVIDUAL STATUS

57. ~~Deleted Applying Conditions and Restrictions to Authorised Individual Status~~

- (1) ~~Subject to Articles 57(2) and (3), the DFSA may at any time by written notice to an Authorised Individual and the Authorised Firm in relation to which the Authorised Individual is a director, officer, employee or agent:~~
 - (a) ~~impose conditions and restrictions or additional conditions and restrictions on the grant of Authorised Individual status; and~~
 - (b) ~~vary or withdraw conditions and restrictions imposed on the grant of such status.~~
- (2) ~~The DFSA may act under Article 57(1) on its own initiative or at the request of the Authorised Individual or Authorised Firm.~~
- (3) ~~Subject to Article 57(4), the DFSA may only impose conditions and restrictions or additional conditions and restrictions or vary or withdraw conditions and restrictions on a grant of Authorised Individual status if it has given the relevant Authorised Individual and Authorised Firm a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed changes.~~
- (4) ~~The requirement imposed on the DFSA under Article 57(3) shall not apply:~~
 - (a) ~~in relation to the imposition of conditions and restrictions when Authorised Individual status is granted;~~
 - (b) ~~where the relevant person has requested the imposition, variation or withdrawal of conditions and restrictions under Article 57(2);~~
 - (c) ~~where the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC.~~

- (5) ~~Where pursuant to Article 57(4)(c) the DFSA imposes, varies or withdraws a condition or restriction without providing a prior opportunity to make representations; the DFSA shall:~~
- ~~(a) provide the relevant Authorised Individual and Authorised Firm an opportunity to make representations in person and in writing to the DFSA within the period of 14 days, or such further period as may be agreed, from the date on which such condition or restriction is imposed, varied or withdrawn; and~~
 - ~~(b) provide a response to any such submission, and make any consequential imposition, variation or withdrawal of the condition or restriction, without undue delay.~~

CHAPTER 7 – RESTRICTION, SUSPENSION AND WITHDRAWAL OF AUTHORISED INDIVIDUAL OR KEY 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 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.~~¹⁸

- (21) If the DFSA reasonably concludes that:

- (a) an Authorised Individual or Key Individual is in breach of, or has been in breach of, an obligation that applies as a result of such ~~person's~~ individual's Authorised Individual or Key Individual status; or
- (b) ~~a person~~ an individual is no longer fit and proper to perform a role in respect of which he is an Authorised Individual or Key Individual;

it may:

- (c) ~~by means of a written notice~~¹⁹ restrict the ~~person~~ individual from performing one or more Licensed Functions; or
- (d) suspend or withdraw Authorised Individual or Key Individual status from such ~~person~~ individual.

¹⁸ As this provision applies generally to all persons and not just to authorised individuals and key individuals it is proposed to delete it from this Article and include it in a new Article 59.

¹⁹ Some references to powers being exercised “by written notice” become redundant as the new decision making procedures in Schedule 3 require various notices in writing to be given to the relevant person. Accordingly in this and various other provisions we are proposing to delete “by written notice”.

- (32) The DFSA may withdraw the Authorised Individual or Key Individual status of ~~a person~~ an individual if:
- (a) the ~~person~~ individual becomes bankrupt;
 - (b) the ~~person~~ individual is convicted of a serious criminal offence;
 - (c) the ~~person~~ individual becomes incapable (through mental or physical incapacity) of managing his affairs;
 - (d) the ~~person~~ individual or the relevant Authorised Person Firm asks the DFSA to withdraw the relevant status; or
 - (e) the Licence of the relevant Authorised Person Firm is withdrawn.
- (43) The DFSA may withdraw authorisation in relation to one or more Licensed Functions of an Authorised Individual or Key Individual if the ~~Authorised Individual~~ Individual or relevant Authorised Person Firm asks the DFSA to withdraw such authorisation.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under Article 58(1) or (2).
- (5) Where the DFSA:
- (a) is conducting an investigation under Article 78; and
 - (b) in the course of such investigation ~~suspects~~ believes on reasonable grounds that ~~a person~~ an individual has engaged in serious misconduct ~~conduct~~ that may form grounds for the withdrawal of the ~~person~~ individual's Authorised Individual or Key Individual status;
- it may suspend the Authorised Individual or Key Individual status of such ~~person~~ individual for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the ~~person~~ individual.
- (6) The procedures in Schedule 3 apply to a decision of the DFSA under Article 58(5).
- (67) ~~A person~~ An individual commits a contravention if the individual ~~who:~~
- (a) ~~performs a function in breach of Article 58(1); or~~
 - (b) performs a Licensed Function:
 - (i) in breach of ~~the Rules~~ a provision in legislation administered by the DFSA that applies to that person;
 - (ii) contrary to a ~~written notice issued~~ restriction imposed under Article 58(21); or

- (iii) where his Authorised Individual or Key Individual status has been suspended or withdrawn under Article 58(21), (32), (43) or (5);²

~~commits a contravention.~~

- (78) The DFSA may vary or withdraw a ~~written notice issued~~ restriction or suspension imposed under Article 58(1) ~~or (2)~~ where it is reasonable to do so.
- (89) The DFSA may act under Article 58(78) on its own initiative or at the request of the relevant person or Authorised Person ~~Firm~~.
- (10) The DFSA shall give both the individual and the Authorised Person an opportunity to make representations under the procedure in Schedule 3 where the procedures in that Schedule apply under this Article.
- (11) If the DFSA decides to exercise a power under this Article, the individual or the Authorised Person may refer the matter to the FMT for review.

59. ~~Procedure for Restricting Persons or Suspending or Withdrawing an Authority~~²⁰

- (1) ~~Subject to Articles 59(2) and (3), the DFSA may only exercise its power to:~~
 - (a) ~~issue or vary a written notice; or~~
 - (b) ~~suspend or withdraw Authorised Individual status;~~

~~under Article 58 if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed written notice or variation of notice or suspension or withdrawal.~~
- (2) ~~The restriction imposed on the DFSA under Article 59(1) shall not apply where:~~
 - (a) ~~the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC;~~
 - (b) ~~the DFSA proposes to withdraw Authorised Individual status under Article 58(3); or~~
 - (c) ~~the Authorised Individual has requested the issue or variation of a written notice or the suspension of his status.~~
- (3) ~~Where the DFSA takes steps to exercise its powers under Article 58 in relation to an Authorised Individual following a determination of the FMT or a decision of the Court relating to the conduct of such person, the obligation upon the DFSA to afford the person an opportunity to make representations to the DFSA~~

²⁰ The CP 90 version of this provision has been amended by deleting and replacing the text.

~~shall not apply in relation to findings of fact of the FMT or the Court as the case may be.~~

~~(4) Where the DFSA has received a representation from a person under this Article, the DFSA shall without undue delay inform such person in writing of its response to such representation.~~

~~(5) Upon deciding under Article 58 to:~~

~~(a) issue, vary or withdraw a written notice; or~~

~~(b) suspend or withdraw Authorised Individual status;~~

~~the DFSA shall without undue delay inform the relevant person in writing of:~~

~~(c) such decision;~~

~~(d) the date on which the issue, variation or withdrawal of the written notice or suspension or withdrawal of Authorised Individual status shall be deemed to take effect; and~~

~~(e) the Licensed Functions or other functions to which such issue, variation or withdrawal of the written notice or suspension or withdrawal of Authorised Individual status may relate.~~

59. Restricting persons from performing functions in the DIFC

(1) If the DFSA believes on reasonable grounds that a person is not a fit and proper person to perform functions in connection with the provision of Financial Services in or from the DIFC, it may restrict the person from performing all or any such functions.

(2) A restriction under this Article may relate to a function whether or not it is a Licensed Function.

(3) The DFSA may vary or withdraw a restriction imposed under this Article.

(4) A person who performs a function in breach of a restriction under this Article commits a contravention.

(5) The procedures in Schedule 3 apply to a decision of the DFSA under Article 59(1).

(6) If the DFSA decides to exercise its power under Article 59(1), the person may refer the matter to the FMT for review.²¹

²¹ This provision is currently in Article 58(1) of the Law, but as it has a broader scope (extending to any individual and any function), we believe it is appropriate for it to be a stand alone provision.

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CHAPTER 10 - OTHER MATTERS RELATING TO LICENSING

62. Public Registers²²

- (1) The DFSA shall publish and maintain a register of current and past grants, withdrawals and suspensions of Licences, Licence Endorsements and authorisations of all Authorised Persons, Firms, Authorised Market Institutions ~~and~~ Authorised Individuals and Key Individuals in such manner as may be prescribed in the Rules.
- (2) The DFSA shall publish and maintain a register of current and past registrations of all 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~~ action has been taken under Article 58(1); and
 - (b) all persons in relation to whom ~~written notices have been issued~~ action has been taken under Article ~~598(2)~~;indicating whether any such ~~notice~~ action 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~~ Registered Auditors and Audit Principals 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 jurisdiction²³

- (1) Any power which the DFSA may exercise in relation to an Authorised Person ~~Firm, Authorised Market Institution~~, Registered Auditor, Authorised Individual, Key Individual, Audit Principal, Principal Representative, DNFBP or Domestic Fund or an officer, employee or agent of an Authorised Person, Registered Auditor, DNFBP or Domestic Fund under the Law or Rules or other legislation administered by the DFSA may, subject to Article 63(2), continue to be exercised ~~for a period of two years~~ after the date on which:

²² The CP 91 version of this provision has been amended by the addition and deletion of text.

²³ The CP 90 and CP 91 version of this provision has been amended by the addition and deletion of text.

- (a) the Licence of such Authorised Person Firm or Authorised Market Institution;
- (b) the registration of a DNFBP, ~~or Registered Auditor or Audit Principal~~;
- (c) the Authorised Individual or Key Individual status of such individual 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 the FMT 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.~~
- (2) The DFSA may only exercise its power under this Article in relation to a person if proceedings against the person are commenced within three years after the day on which the DFSA became aware of the act or omission that gave rise to the right to exercise the power in respect of that person.
- (3) For the purposes of Article 63(2):
 - (a) the DFSA is aware of an act or omission if it has information from which the act or omission can reasonably be inferred; and
 - (b) proceedings against a person are commenced when a notice is first provided to the person under Schedule 3, or any proceedings are commenced by the DFSA in the FMT or the Court, with respect to that contravention.
- (4) If any proceedings are commenced within the period referred to in Article 63 (2), then the provisions to which Article 63(1) apply shall remain in force until such time as the proceedings and any reviews or appeals relating to the proceedings are completed.

PART 4: GENERAL REGULATION AND ANTI-MONEY LAUNDERING PROVISIONS

CHAPTER 1 – GENERAL PROVISIONS

64. Provisions Governing Controllers

- (1) The DFSA may make Rules in connection with the change of control of Authorised Persons ~~Firms and Authorised Market Institutions~~, including Rules as to:
 - (a) when a person becomes or ceases to be a controller of an Authorised Person ~~Firm or Authorised Market Institution~~;
 - (b) when the acquisition or increase in the level of control of an Authorised Person ~~Firm or Authorised Market Institution~~ requires either the prior approval of, or notification to, the DFSA;
 - (c) when the DFSA may object to an existing controller;
 - (d) the procedures relating to the approval, notification and objections referred to in Article 64(1)(b) and (c); and
 - (e) any other matter necessary or incidental to give effect to the provisions governing controllers.
- (2) Without limiting the generality of the DFSA powers, the DFSA may:
 - (a) approve or object to a person becoming a controller of an Authorised Person ~~Firm or Authorised Market Institution~~;
 - (b) approve or object to an increase in the level of control of an existing controller of an Authorised Person ~~Firm or Authorised Market Institution~~;
 - (c) object to an existing controller of an Authorised Person ~~Firm or Authorised Market Institution~~ where it has reasonable grounds to believe that such a person is no longer an acceptable controller; and
 - (d) approve a person as a controller or approve an increase of control by an existing controller subject to such conditions as it considers appropriate.
- (3) Where the DFSA considers an existing controller of an Authorised Person ~~Firm or Authorised Market Institution~~ to be an unacceptable controller:
 - (a) it must notify the controller and the Authorised Person ~~Firm or Authorised Market Institution~~ in writing that the controller is no longer an acceptable controller; and
 - (b) it may require that the controller, the Authorised Person ~~Firm or Authorised Market Institution~~ take such actions as specified by the DFSA.
- (4) Without limiting the generality of the DFSA powers, the DFSA may, for the purposes of Article 64(3)(b):

- (a) require an Authorised ~~Person Firm or Authorised Market Institution~~ to take such action as specified by the DFSA in relation to an unacceptable controller;
- (b) where an Authorised ~~Person Firm or Authorised Market Institution~~ has failed to comply with a requirement referred to in Article 64(4)(a) to the satisfaction of the DFSA, either withdraw, or impose conditions, on the Authorised ~~Person's Firm's or Authorised Market Institution's~~ licence; or
- (c) require the unacceptable controller to take such action as specified by the DFSA.

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PART 5: POWERS OF SUPERVISION AND INVESTIGATION

CHAPTER 1 – POWERS OF SUPERVISION

73. Powers to Obtain Information

- (1) The DFSA may require an Authorised ~~Person Firm, Authorised Market Institution~~, DNFBP, Domestic Fund, Registered 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 ~~require~~ enter the premises of any Authorised ~~Person Firm, Authorised Market Institution~~, Domestic Fund, DNFBP or Registered Auditor to allow the DFSA to enter its premises²⁴ 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 this Article 73(1) in respect of any person specified under Article 73(1) or (2) 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 or DNFBP.~~

²⁴ This is redrafted as a requirement for consistency and to ensure that, if there is non-compliance, other provisions that apply to a breach of a requirement are invoked.

- (54) Information given or a document produced as a result of the exercise by the DFSA of powers under this 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.

74. Requirement to Provide a Report

- (1) The DFSA may require, in such manner and in such form as it may prescribe in the Rules, an Authorised Person Firm ~~or Authorised Market Institution~~ to provide the DFSA with a report on any matter about which the DFSA has required or could require the giving of information or production of documents under Article 73.
- (2) The DFSA may require, at such frequency and in such manner and in such form as it may prescribe in the Rules, an Authorised Market Institution to provide the DFSA with a report or reports relating to the conduct of or the performance of the regulatory functions of an Authorised Market Institution, including but not limited to a report or reports addressing:
- (a) ongoing compliance of the Authorised Market Institution with the terms of its Licence;
 - (b) complaints received and dealt with and disciplinary matters arising and dealt with;
 - (c) adequacy and performance of systems and controls; or
 - (d) financial matters concerning the operation of the Authorised Market Institution.
- (3) The person appointed to make a report required by Article 74(1) or (2) must be a person nominated or approved by the DFSA.
- (4) Where a requirement has been made of an Authorised Person Firm ~~or Authorised Market Institution~~ under this Article, it must take all reasonable steps to ensure that any person who is providing or has provided services to the Authorised Person Firm ~~or Authorised Market Institution~~ shall provide all such assistance as the appointed person may reasonably require.
- (5) Subject to Article 74(6), information given or a document produced as a result of the exercise by the DFSA of powers under Article 74 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.
- (6) The DFSA shall not disclose a statement made by a person in a report made pursuant to a requirement made of the person under Article 74(1) or (2) to any law enforcement agency for the purpose of criminal proceedings against the person unless:

- (a) the person consents to the disclosure; or
- (b) the DFSA is required by law or court order to disclose the statement.

(7) The procedures in Schedule 3 apply to a decision of the DFSA under Article 74 (1) or (2).

(8) If the DFSA decides to exercise its power Article 74 (1) or (2), the person may refer the matter to the FMT for review.

75. Imposing Prohibitions or Restrictions on Business

(1) Subject to Article 77, the DFSA may impose any one or more of the following prohibitions or requirements ~~by written notice:~~

(a) a prohibition on an Authorised Person ~~Firm or Authorised Market Institution~~ from:

- (i) entering into certain specified transactions or types of transaction;
- (ii) soliciting business from certain specified persons or types of person;
- (iii) carrying on business in a specified manner or other than in a specified manner; or
- (iv) using a particular name or description in respect of the Authorised Person; or
- ~~(iv)~~ using a particular name for a Fund or a sub-fund of a Fund; or

(b) a requirement that an Authorised Person ~~Firm or Authorised Market Institution~~ ~~to~~ carry on business in, and only in, a specified manner.

(2) The prohibitions or requirement in Article 75(1) may be imposed on the Fund Manager in relation to the management of a Fund or on the Fund itself, even where the Fund has no legal personality.

(3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 75(1).

(4) If the DFSA decides to exercise its power under Article 75(1), the Authorised Person may refer the matter to the FMT for review.

75A. Power to issue directions for prudential purposes

- (1) For prudential purposes, the DFSA may, ~~by written notice~~, direct that a particular Authorised Firm or Authorised Firms within a specified class:
 - (a) comply with any specified additional capital or liquidity requirements;
 - (b) apply a specific provisioning policy or treatment of specified assets;
 - (c) comply with specified limits on material risk exposures;
 - (d) comply with specified limits on exposures to related parties;
 - (e) meet additional or more frequent reporting requirements; or
 - (f) take such other action as is specified in the direction.
- (2) The DFSA may direct an Affiliate of an Authorised Person to take specified steps or not to carry out specified activities if the DFSA:
 - (a) is the consolidated supervisor of the Group to which the Authorised Person belongs; and
 - (b) is satisfied that the direction is necessary or appropriate for the purposes of the effective prudential supervision of the Group on a consolidated basis.
- (3) A direction under Article 75A(2) may include a requirement that the Affiliate:
 - (a) limit any activities it undertakes or may undertake (including closing any foreign office) if the activities are reasonably likely to expose the Authorised Person or its Group to excessive risks or risks that are not properly managed; or
 - (b) take such other measures as are necessary to remove any impediments to effective supervision of the group on a consolidated basis, including a direction to take steps to restructure the Group.
- (4) Nothing in this Article limits the scope or application of any other power that the DFSA may have in legislation administered by the DFSA.
- (25) A direction issued under this Article 75A(1) comes into force on the date specified in the ~~written~~ notice and remains in force, subject to Article 75A(47), until it is revoked or varied in writing by the DFSA pursuant to Article 75A(36).
- (36) The DFSA may, by ~~written~~ notice, revoke or vary, any direction given pursuant to this Article-75A(1).
- (47) A direction issued to Authorised Firms within a specified class under Article 75(1), including any variation made to such a direction pursuant to Article 75A(36), shall not remain in force for a period longer than 12 months from the date specified in the initial direction notice issued pursuant to Article 75A(1).

- (8) The procedures in Schedule 3 apply to a decision of the DFSA under this Article to issue a direction to a particular person or to vary such a direction.
- (9) If the DFSA decides to exercise its power under this Article to issue a direction to a particular person or to vary such a direction, the person may refer the matter to the FMT for review.

76. Restriction on Dealing with Property

- (1) In Article 76:
- (a) “dealing” in relation to property includes the maintaining, holding, disposing and transferring of property; and
- (b) “relevant property”, in relation to an Authorised Person Firm or Authorised Market Institution, means:
- (i) any property held by the person, ~~acting within the capacity for which it holds a Licence,~~²⁵ on behalf of any of the clients of the person, or held by any other person on behalf of or to the order of the person ~~acting within such capacity;~~ or
- (ii) any other property which the DFSA reasonably believes to be owned or controlled by the person.
- (2) ~~Subject to Article 77, t~~ The DFSA may ~~by written notice:~~
- (a) prohibit an Authorised Person Firm or Authorised Market Institution from:
- (i) dealing with any relevant property in a specified manner or other than in a specified manner; or
- (ii) assisting, counselling or procuring another person to deal with any relevant property in a specified manner or other than in a specified manner;
- (b) require an Authorised Person Firm or Authorised Market Institution to deal with any relevant property in a specified manner;
- (c) require an Authorised Person Firm or Authorised Market Institution to deal with any relevant property such that:
- (i) the property remains of the value and of the description that appear to the DFSA to be desirable with a view to ensuring

²⁵ This text is proposed to be deleted as we believe it is unnecessary and may inappropriately restrict the use of this power where the Licensee has exceeded the scope of their Licence.

that the person will be able to meet its liabilities in relation to the business which constitutes a Financial Service for which it holds a Licence; and

- (ii) the person is able at any time readily to transfer or dispose or otherwise deal with the property when instructed to do so by the DFSA;
 - (d) withdraw an existing prohibition or requirement imposed on an Authorised Person; or
 - (e) substitute or vary an existing prohibition or requirement imposed on an Authorised Person.
- (3) The DFSA may in any prohibition or requirement imposed under Article 76(2) direct that, for the purposes of such requirement, property of a specified description shall or shall not be taken into account.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

77. Imposition of a prohibition or requirement

- (1) The DFSA may impose a prohibition or requirement under Article 75 or 76 in the circumstances prescribed in the Rules.
- (2) ~~Where a prohibition or requirement imposed under Article 75 or 76 is in force, the DFSA may by written notice to the person on whom the prohibition or requirement is imposed:~~
- ~~(a) withdraw the prohibition or requirement; or~~
 - ~~(b) substitute another prohibition or requirement for, or vary, the prohibition or requirement.~~
- (32) Any prohibition or requirement including any variation or substitution of such prohibition or requirement, made under Articles 75 or and 76, and the imposition, withdrawal, substitution or variation of a prohibition or requirement under such Articles does not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published in relation to such imposition, withdrawal, substitution or variation.

- (43) The withdrawal of a Licence under Chapter 4 of Part 3 of the Law does not affect the validity of a current prohibition or requirement made under Articles 75 or 76.

CHAPTER 2 - THE CONDUCT OF INVESTIGATIONS

78. Power of the DFSA to conduct an investigation

- (1) The DFSA may conduct such investigation as ~~it the Chief Executive~~ considers appropriate and expedient under Chapter 2 of Part 5:
- (a) where ~~it he~~ has reason to suspect that a contravention of the Law or of the Rules or of any other legislation administered by the DFSA is being or may have been committed; or
- (b) further to a request made under Article 39.
- (2) A person is entitled to legal representation during the course of an investigation.

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80. Powers to Obtain Information and Documents for Investigation

- (1) Where the DFSA considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:
- (a) enter the business premises of such person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
- (b) require such person to give, or procure the giving of, specified information in such form as it may reasonably require;
- (c) require such person to produce, or procure the production of, specified documents;
- (d) require such person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) at a specified time and place to answer questions in private (compulsory interview); or
- (e) require such person to give it any assistance in relation to the investigation which the person is able to give.
- (2) Where the DFSA exercises its power under Article 80(1)(a) to enter business premises, it may:
- (a) require any appropriate person to make available any relevant information stored at those premises for inspection or copying;

- (b) require any appropriate person to convert any relevant information into a form capable of being copied; and
 - (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) Where the DFSA exercises its power under Article 80(1)(d) to conduct a compulsory interview, it may give a direction:
- (a) concerning who may be present;
 - (b) preventing any person present during any part of the compulsory interview from disclosing to any other person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
 - (c) concerning the conduct of any person present, including as to the manner in which they will participate in the interview;
 - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
 - (e) requiring the interviewee to answer any questions relevant to the investigation.
- (4) A requirement made under Article 80(1) (b),(c), (d), and (e) shall be stated in writing.
- (5) The DFSA may require the relevant person to give such information or produce such documents by the end of a reasonable period and at a place specified in the notice.
- (6) The DFSA may exercise its powers under Article 80(1) in respect of any person within, or outside of, the DIFC: provided that, if the person is outside the DIFC and is not a Regulated Person, the DFSA shall either:
- (a) use any arrangements it has with a regulatory authority in the jurisdiction in which the person is resident or domiciled, or the premises are located, to assist it to exercise the power; or
 - (b) apply to the Court for an order compelling the person to provide the information, produce or procure the production of the documents, answer questions or permitting the DFSA to enter the premises of that person.
- ~~(7) In exercising its powers under Article 80(1) outside of the DIFC, the DFSA shall comply with local requirements relevant to the exercise of those powers including, where appropriate, informing or proceeding in collaboration with a local regulator.~~
- (7) In Article 80(6), a Regulated Person means an Authorised Person, DNFBP, Fund, Auditor or any director, officer, employee or agent of such person.
- (8) Subject to Article 80(9), information given or documents produced as a result of the exercise by the DFSA of powers under Article 80 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.

- (9) The DFSA shall not disclose a statement made by a person in answer to any question asked pursuant to a requirement made of the person under Article 80(1)(d) to any law enforcement agency for the purpose of criminal proceedings against the person unless:
- (a) the person consents to the disclosure; or
 - (b) the DFSA is required by law or court order to disclose the statement.
- (10) The DFSA may retain possession of any information and documents given to it pursuant to a requirement made under Article 80(1) for so long as is necessary:
- (a) for the purposes of the investigation to which the notice relates;
 - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
 - (c) for such a proceeding to be completed.
- (11) A person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under Article 80(1), but any lien is not otherwise prejudiced.
- (12) Where a person is unable to produce information or documents in compliance with a requirement made under Article 80(1), the DFSA may require the person to state, to the best of that person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (13) Where the DFSA considers that, if disclosed, the fact of the issuing of a notice requiring a person to:
- (a) produce documents;
 - (b) give information;
 - (c) attend a compulsory interview; or
 - (d) give assistance;

may hinder the investigation to which it relates, the DFSA may direct a person who receives a notice under Article 80(1) not to disclose the receipt of a notice or any information relating to compliance therewith to any other person, other than his legal representative under a duty of confidentiality.

80A. Use and effect of Information and Documents obtained for an Investigation²⁶

- (81) Subject to Article 80A(92), information given or documents produced as a result of the exercise by the DFSA of powers under Article 80 is admissible in evidence in any proceedings, provided that any such information or document

²⁶ This is existing text. As Article 80 is very lengthy it is recommended that it be split into two Articles.

also complies with any requirements relating to the admissibility of evidence in such proceedings.

(92) The DFSA shall not disclose a statement made by a person in answer to any question asked pursuant to a requirement made of the person under Article 80(1)(d) to any law enforcement agency for the purpose of criminal proceedings against the person unless:

- (a) the person consents to the disclosure; or
- (b) the DFSA is required by law or court order to disclose the statement.

(103) The DFSA may retain possession of any information and documents given to it pursuant to a requirement made under Article 80(1) for so long as is necessary:

- (a) for the purposes of the investigation to which the notice relates;
- (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
- (c) for such a proceeding to be completed.

(114) A person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under Article 80(1), but any lien is not otherwise prejudiced.

(125) Where a person is unable to produce information or documents in compliance with a requirement made under Article 80(1), the DFSA may require the person to state, to the best of that person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.

(136) Where the DFSA considers that, if disclosed, the fact of the issuing of a notice requiring a person to:

- (a) produce documents;
- (b) give information;
- (c) attend a compulsory interview; or
- (d) give assistance;

may hinder the investigation to which it relates, the DFSA may direct a person who receives a notice under Article 80(1) not to disclose the receipt of a notice or any information relating to compliance therewith to any other person, other than his legal representative under a duty of confidentiality.

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PART 6: CONTRAVENTIONS AND FINES

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87. DELETED Fines²⁷

- (1) ~~Except as provided in Article 90, a fine in relation to a contravention may be imposed either by the Financial Markets Tribunal under Article 34 or by the DFSA under Article 90 but not by both in relation to the same contravention.~~
- (2) ~~Subject to Article 87(3) and Article 90(1), the Law sets no limit on a fine that may be imposed in relation to a contravention.~~
- (3) ~~The President may by means of regulations set or revise a maximum amount of fine applicable in respect of a contravention.~~
- (4) ~~Any fine that is imposed on a person by the Financial Markets Tribunal under Article 34 or by the DFSA under Article 90 is payable to the DFSA within:~~
 - (a) ~~the time period ordered or directed for payment; or~~
 - (b) ~~otherwise, within 30 days of the date of imposition of the fine;~~

~~unless the person takes such action as may be prescribed in the Law, Rules or other legislation administered by the DFSA to remove his liability to pay the fine.~~
- (5) ~~The Court may order, on application of the DFSA, the recovery as a debt due so much of a fine as is not paid in accordance with Article 87(4).~~
- (6) ~~The DFSA may make Rules in connection with the payment and recovery of fines under this Article.~~
- (7) ~~Nothing in Article 87 affects the powers that the DFSA may have apart from this Article.~~

PART 7: ENFORCEMENT

88. Appointment of Managers

- (1) The DFSA may ~~by written notice~~ require an Authorised Person ~~Firm or Authorised Market Institution~~ to appoint one or more individuals to act as managers of the business of the person on such terms as the DFSA may specify ~~stipulate in its written notice~~. Such terms may be varied from time to time by notice in writing given by the DFSA to the person.
- (2) The individual or individuals appointed to act as managers of the business under Article 88(1) must be nominated or approved by the DFSA.
- (3) The DFSA may impose a requirement under Article 88(1) where it considers it necessary or desirable to appoint a manager:

²⁷ The amendments proposed to this provision are those proposed under CP90 and no further amendments are proposed under this consultation.

- (a) to determine or address concerns as to the solvency or the level of compliance with prudential requirements of the Authorised Person Firm or Authorised Market Institution;
 - (b) for the orderly transition of the Authorised Person Firm or Authorised Market Institution from one set of owners or controllers to a new set of owners or controllers;
 - (c) to wind down the operations of the Authorised Person Firm or Authorised Market Institution for the protection of customers of the Authorised Person Firm or Authorised Market Institution; or
 - (d) where it has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Person Firm or Authorised Market Institution and to ensure that customers or regulated entities are not adversely affected or to maintain the integrity of the DIFC.
- (4) The procedures in Schedule 3 apply to to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

.....

~~90~~ **Administrative Fine**²⁸

- (1) ~~The DFSA may fine a person where such person contravenes:~~
- (a) ~~a Rule made by the DFSA; or~~
 - (b) ~~a provision of any legislation administered by the DFSA except for Articles 30 and 35.~~
- (2) ~~Where the DFSA considers that a person has contravened a provision of the Rules or legislation under Article 90(1), it may impose by written notice given to the person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding:~~
- (a) ~~\$20,000 in the case of a natural person; or~~
 - (b) ~~\$100,000 in the case of a body corporate;~~
- ~~in respect of each contravention.~~
- (3) ~~The DFSA may exercise its power under Article 90(1) only if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed fine.~~

²⁸ The amendments proposed to this provision are those proposed under CP90 and no further amendments are proposed under this consultation.

- ~~(4) Upon deciding to impose a fine upon a person, the DFSA must without delay inform the person in writing of:~~
- ~~(a) such decision and the reasons for such decision;~~
 - ~~(b) the date on which the decision is to take effect; and~~
 - ~~(c) the date by which payment of the fine must be made.~~
- ~~(5) If the person has not paid the full amount of the fine within the period specified in the notice, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs.~~

~~91 Administrative Censures²⁹~~

- ~~(1) The DFSA may censure a person where such person contravenes:~~
- ~~(a) a Rule made by the DFSA; or~~
 - ~~(b) a provision of any legislation administered by the DFSA except for Articles 30 and 35.~~
- ~~(2) The DFSA may exercise its power under Article 91(1) only if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed censure.~~
- ~~(3) Upon deciding to impose a censure upon a person, the DFSA must without delay inform the person in writing of:~~
- ~~(a) such decision and the reasons for such decision; and~~
 - ~~(b) the date on which the censure is to be made.~~
- ~~(4) The DFSA may censure a person by any means, including by way of publishing a notice of censure.~~

90. Sanctions and directions³⁰

- (1) Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 31, the DFSA may ~~by written notice~~³¹ exercise one or more of the powers in Article 90(2) in respect of that person.
- (2) For the purposes of Article 90(1) the DFSA may:
- (a) fine the person such amount as it considers appropriate in respect of the contravention;
 - (b) censure the person in respect of the contravention;

²⁹ The amendments proposed to this provision are those proposed under CP90 and no further amendments are proposed under this consultation.

³⁰ The CP90 version of this provision has been amended by the addition and deletion of the text.

³¹ As previously noted, we are proposing to delete some references to “by written notice” as the decision making procedures in Schedule 3 require various notices to be given in writing.

- (c) make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention in respect of such period and on such terms as the DFSA may direct;
 - (d) make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;
 - (e) make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;
 - (f) make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or
 - (g) make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Public Listed Company or Domestic Fund.
- ~~(3) Before exercising a power under Article 90(2), the DFSA shall, in accordance with Article 90(4), give the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed action.~~
- ~~(4) Where the DFSA proposes to exercise a power under Article 90(2), the DFSA shall without undue delay inform the person by notice in writing of:~~
- ~~(a) the proposed decision and the reasons for such decision, including its findings on material questions of fact and a reference to the evidence or other material on which those findings were based; and~~
 - ~~(b) the person's right to make representations under Article 90(3).~~
- ~~(5) If, having heard or received a person's representations made under Article 90(3), or where no such representations are made, the DFSA decides to exercise a power under Article 90(2), the DFSA shall without delay inform the person by notice in writing of:~~
- ~~(a) the decision and the reasons for such decision;~~
 - ~~(b) the date on which the decision is to take effect;~~
 - ~~(c) where relevant, the date by which payment of any fine, restitution or compensation shall be made; and~~
 - ~~(d) the person's right to refer the matter to the FMT.~~

- (63) Nothing in this Article prevents the DFSA from exercising any other power that may exercise under this Law or any other legislation administered by the DFSA.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.
- (5) If the DFSA decides to exercise its power under this Article in relation to a person, the person may refer the matter to the FMT for review.
- (76) The DFSA shall prepare, publish and maintain a statement of:
- (a) ~~prepare, publish and maintain a statement of~~ its policy in relation to the factors to be considered by the DFSA in exercising a power in respect of a person under Article 90(2)(a) and (b); and
 - (b) ~~prepare, publish and maintain a statement of~~ the procedure which the DFSA has adopted ~~proposes to follow in relation to the giving of a notice under Article 90(1), which is~~ shall be designed to secure, among other things, that the decision ~~which gives rise to the obligation to give any such notice~~ is taken by a person ~~decision maker~~ not directly involved in establishing the evidence on which that decision is based; and³²
 - (c) ~~make Rules prescribing the manner of payment and recovery of fines.~~³³
- (87) The DFSA may at any time modify or replace a statement published by it under this Article and where it does so it shall publish any modified or replacement statement.
- (98) A statement required to be published under this Article shall be published in a way appearing to the DFSA to be best calculated to bring it to the attention of the public.
- (109) In exercising, or deciding whether to exercise, its power under Article 90(2)(a), the DFSA shall have regard to any statement published by it under this Article and in force at the time when the contravention in question occurred.
- (104) If the person who is subject to a fine under Article 90(2)(a) has not paid to the DFSA the full amount of the fine within the period specified in the notice, the Court may order, on application of the DFSA, the recovery as a debt due so much of the fine as remains outstanding, together with costs.

³² This text is amended from the previous consultation text in CP 90. This is because the initial text contemplated a statement of general procedures applying to the exercise of these powers this is now set out under Schedule 3.

³³ Paragraph (c) about recovery of costs is deleted as recovery of costs is dealt with in Article 90(10).

91. Saving and Transitional³⁴

(1) For the purposes of this Article:

(a) “previous Law” means the Regulatory Law 2004 as it was in force immediately prior to the [DIFC Laws Amendment Law of 2014] coming into force; and

(b) “current Law” means the provisions of this Law that came into force under the [DIFC Laws Amendment Law of 2014].

~~(1) (2)~~ The saving and transitional provisions in this Article apply ~~are applicable in circumstances~~ where the DFSA has issued a notice under Article 90 or 91 of the previous Law. ~~For the purpose of this Article the “previous Law” means the version of the Regulatory Law 2004 in force immediately prior to the DIFC Laws Amendment (No. 2) Law of 2012 coming into force. (2) Where such a notice has been issued by the DFSA, Articles 90 and 91 (as amended) under this law~~ of the current Law shall not affect:

(a) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or

(b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,

in relation to the relevant notice, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under ~~this law~~ the current Law subject to Article ~~90(3)-91A(3)~~.

(3) Where such a notice has been issued by the DFSA, Article 90 ~~Articles 90 and 91~~ as prescribed in the previous Law ~~are~~ is deemed to continue in force until such time as necessary for the purposes of any investigation or proceeding specified in this Article to be concluded.

~~(4) The DFSA may, by Rules, prescribe any transitional or saving provisions as appear to the DFSA necessary or desirable so as to give effect to, or to facilitate, the transition from the previous Law to this the current Law.~~³⁵

.....

92. Injunctions and Orders

(1)

(3)

³⁴ The CP90 version of this provision has been amended by the deletion of the text in sub-article (4).

³⁵ This sub-article is deleted as the intention is to use the proposed saving and transitional rulemaking power in Article 118 for all such Rules.

- (e) an order prohibiting the relevant person or any other person from taking or sending out of the jurisdiction of the Court or out of the ~~United Arab Emirates~~ State any assets of the relevant person or held on his behalf;
- (f) in the event that the relevant person is a natural person, an order appointing a receiver or trustee, having such powers as the Court may see fit, of the property or any of the property of the relevant person;
- (g) in the event that the relevant person is a body corporate, an order appointing a receiver or receiver and manager, having such powers as the Court may see fit, of the property or any of the property of the relevant person;
- (h) in the event that the relevant person is a natural person, an order requiring him to deliver up to the Court his passport and such other documents as the Court sees fit; or
- (i) in the event that the relevant person is a natural person, an order prohibiting him from leaving the jurisdiction of the Court or of the ~~United Arab Emirates~~ State without the consent of the Court.

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93. Compulsory Winding up

Where it appears to the DFSA that it is just and equitable and in the interests of the DIFC that a company which is or has been:

- (a) an Authorised ~~Person Firm or Authorised Market Institution~~ Person; or
- (b) carrying on Financial Services in breach of the Financial Services Prohibition;

should be wound up, it may apply to the Court for, and the Court may make orders considered necessary and desirable for, the winding up of such company.

.....

PART 8: ACCOUNTING AND AUDITING

NB – From this point on, for the purpose of this consultation, the amendments proposed in CP 91 (the Audit Regime) to the following provisions have been accepted and any further amendments proposed under CP 94 are shown in the usual manner.

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CHAPTER 2 – REGISTRATION OF AUDITORS AND AUDIT PRINCIPALS

[101]. Registration and conditions and restrictions

- (1) The DFSA shall make Rules setting out the criteria a person must meet to become and remain registered by the DFSA as a Registered Auditor or as an Audit Principal.
- (2) An application to be registered as an Audit Principal shall be made jointly by the Registered Auditor and the person who will be the Audit Principal if registration is granted.
- (3) The DFSA may:
 - (a) grant or refuse to grant an application for registration as a Registered Auditor or Audit Principal; and
 - (b) impose restrictions and conditions upon the registration.
- ~~(4) Upon refusing to grant an application for registration, the DFSA shall without undue delay, inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal.³⁶~~
- (54) Upon granting registration as a Registered Auditor or as an Audit Principal, the DFSA shall inform the applicant of that fact and whether there are any restrictions or conditions imposed upon the registration.
- (65) A Registered Auditor and an Audit Principal shall act within the scope of the relevant registration and comply with any restrictions and conditions imposed upon such registration.
- (76) The DFSA may, ~~subject to Articles 101(8) and (9),~~³⁷ at any time by written notice to a Registered Auditor or Audit Principal, as appropriate:
 - (a) impose restrictions or conditions on the registration of that Registered Auditor or that Audit Principal; and

³⁶ The CP 91 version of this provision has been amended by the deletion of this text.

³⁷ The CP 91 version of this provision has been amended by the deletion of this text.

- (b) vary or withdraw restrictions or conditions imposed on such registration.
- (87) The DFSA may act under Article 101(67) on its own initiative or at the request of the Registered Auditor or Audit Principal.
- (8) The procedures in Schedule 3 apply to a decision of the DFSA under this Article to refuse to grant an application for registration or to impose or vary conditions and restrictions on any registration. If a power is being exercised in relation to an Audit Principal, the DFSA shall give both the Audit Principal and its Registered Auditor an opportunity to make representations under those procedures.
- (9) If the DFSA decides to exercise its power under this Article to refuse to grant an application for registration or to impose or vary conditions or restrictions on any registration, the applicant or Registered Auditor or Audit Principal may refer the matter to the FMT for review.³⁸
- ~~(9) The DFSA may, subject to Article 101(10), impose or vary a restriction or condition in respect of the registration of a Registered Auditor or an Audit Principal only if it has given the relevant Registered Auditor or Audit Principal, as appropriate, a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed changes.~~
- ~~(10) The requirement imposed on the DFSA under Article 101(9) shall not apply:~~
- ~~(a) in respect of any restrictions or conditions imposed on a registration at the time it was granted;~~
- ~~(b) where the relevant person has requested the imposition or variation of a restriction or condition; or~~
- ~~(c) where the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC.~~
- ~~(11) Where under Article 101(10)(c) the DFSA imposes or varies a restriction or a condition without providing a prior opportunity to make representations, the DFSA shall:~~
- ~~(a) provide the relevant Registered Auditor or Audit Principal, as appropriate, an opportunity to make representations in person and in writing to the DFSA within a period of 14 days, or such further period as may be agreed, from the date on which such restriction or condition is imposed or varied; and~~

³⁸ The CP 91 version of this provision has been amended by the addition of this text.

- ~~(b) provide a response to any such submission, and make any consequential imposition or variation of the condition or restriction, without undue delay.³⁹~~

CHAPTER 3 - SUSPENSION AND WITHDRAWAL OF REGISTRATION OF REGISTERED AUDITORS AND AUDIT PRINCIPALS

[102]. Suspension and withdrawal of registration

- (1) The DFSA may suspend or withdraw the registration of a Registered Auditor or an Audit Principal:
 - (a) in the case of the registration of a Registered Auditor, at the request of the Registered Auditor;
 - (b) in the case of the registration of an Audit Principal, at the request of the Audit Principal or the Registered Auditor who appointed the Audit Principal; or
 - (c) on its own initiative.
- (2) The DFSA may exercise its powers under Article 102(1)(c) in the following circumstances:
 - (a) the Registered Auditor or Audit Principal is in breach of, or has been in breach of, one or more restrictions or conditions applicable to its registration;
 - (b) the Registered Auditor or Audit Principal is in breach of, or has been in breach of, this Law or the Rules;
 - (c) the Registered Auditor is no longer fit and proper to provide the Audit Services permitted under its registration or the Audit Principal is no longer fit and proper to perform the role of Audit Principal;
 - (d) the Registered Auditor has failed for a period of at least twenty-four consecutive months to provide Audit Services permitted under its registration;
 - (e) in the case of an Audit Principal, if the Audit Principal:
 - (i) becomes bankrupt;
 - (ii) is convicted of a serious criminal offence;

³⁹ The CP 91 version of this provision has been amended by the deletion of this text.

- (iii) becomes incapable (through mental or physical incapacity) of managing his affairs; or
 - (iv) is no longer employed by the Registered Auditor who appointed the Audit Principal; or
 - (f) in the case of an Audit Principal, if the registration of its Registered Auditor is suspended or withdrawn.
- (3) The DFSA may make Rules setting out requirements that a Registered Auditor and an Audit Principal must meet before it will grant a request to suspend or withdraw registration.
- (4) The procedures in Schedule 3 apply to a decision of the DFSA under Article 102(1)(c) to suspend or withdraw registration on its own initiative. If a power is being exercised in relation to an Audit Principal, the DFSA shall give both the Audit Principal and its Registered Auditor an opportunity to make representations under those procedures.⁴⁰
- (45) Where:
- (a) either or both of the following occur:
 - (i) the DFSA conducts an investigation under Article 78 that relates to a Registered Auditor or Audit Principal; or
 - (ii) a recognised professional body conducts an investigation relating to a member who is an Audit Principal; and
 - (b) arising out of such an investigation, the DFSA believes on reasonable grounds that the Registered Auditor or Audit Principal has engaged in serious misconduct that may form grounds for the withdrawal of the registration of the Registered Auditor or Audit Principal,
- the DFSA may suspend the relevant registration for the duration of the investigation or any related proceedings insofar as the investigation or proceedings relate to that Audit Principal or Registered Auditor.
- (6) The procedures in Schedule 3 apply to a decision of the DFSA under Article 102(5). If a power is being exercised in relation to an Audit Principal, the DFSA shall give both the Audit Principal and its Registered Auditor an opportunity to make representations under the procedures in Schedule 3.
- (7) If the DFSA decides to exercise its power under this Article to suspend or withdraw the registration of a Registered Auditor or Audit Principal, the Registered Auditor or Audit Principal may refer the matter to the FMT for review.⁴¹

⁴⁰ The CP 91 version of this provision has been amended by the addition of this text.

⁴¹ The CP 91 version of this provision has been amended by the addition of this text.

~~[103]. Procedure for suspension and withdrawal of registration⁴²~~

- ~~(1) — The DFSA may, subject to Articles 103(2) and (3), exercise its power under Article 102 only if it has given the relevant Registered Auditor or Audit Principal a prior written notice setting out the DFSA's reasons for proposing to suspend or withdraw its registration and a suitable opportunity for the Registered Auditor or Audit Principal to make representations in person and in writing to the DFSA in relation to the proposed suspension or withdrawal.~~
- ~~(2) — The procedure under Article 103(1) shall not apply if:
 - ~~(a) — the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC; or~~
 - ~~(b) — the person requests the DFSA to withdraw its registration.~~~~
- ~~(3) — Where the DFSA takes steps to exercise its powers under Article 102 in relation to an Registered Auditor or Audit Principal following a determination of the [Regulatory Appeals Committee or] Financial Markets Tribunal or a decision of the Court in relation to the conduct of such person, the obligation upon the DFSA to afford that person an opportunity to make representations to the DFSA shall not apply in relation to findings of fact of that [committee or] tribunal or Court.~~
- ~~(4) — Where the DFSA has received a representation from a person under this Article, the DFSA shall without undue delay inform the person in writing of its response to the representation.~~
- ~~(5) — Upon deciding to suspend or withdraw the registration of a Registered Auditor or Audit Principal, the DFSA shall without undue delay inform the relevant person in writing of:
 - ~~(a) — such decision;~~
 - ~~(b) — the reasons for the suspension or withdrawal;~~
 - ~~(c) — the date on which the suspension or withdrawal shall be deemed to take effect; and~~
 - ~~(d) — if relevant, the duration of the suspension.~~~~
- ~~(6) — Where under Article 103(2)(a) the DFSA suspends or withdraws the registration of a Registered Auditor or an Audit Principal without providing a prior opportunity to make representations, the DFSA shall provide the relevant Registered Auditor or Audit Principal with an opportunity to make representations in person and in writing to the DFSA within 14 days, or such further period as may be agreed, from the date of the withdrawal or suspension.~~

⁴² The CP 91 version of this provision has been amended by the deletion of this text.

CHAPTER 4 – APPOINTMENT AND REMOVAL OF AUDITORS

[104]. Appointment and removal of auditors

- (1) In this Article, a Relevant Person means an Authorised Person, a Public Listed Company and, in relation to a Domestic Fund, the Fund Manager of that Fund.
- (2) A Relevant Person, subject to Article 104(5), shall:
 - (a) at each annual general meeting appoint a person to act as Auditor from the conclusion of that meeting to the conclusion of the next annual general meeting; or
 - (b) at the beginning of each financial year appoint a person to act as Auditor until the beginning of the next financial year.
- (3) A person who becomes a Relevant Person after the beginning of a financial year must, subject to Article 104(5), appoint a person who shall act as Auditor until the conclusion of that financial year.
- (4) A Relevant Person shall as soon as practicable fill any vacancy that arises in the appointment of an Auditor.
- (5) The DFSA may make Rules exempting a specified class of Relevant Person from the requirements in this Article. If a Relevant Person is exempted by the DFSA from the requirements in this Article, then the other requirements in this chapter and in chapters 5 and 6 of this Part do not apply to, or in relation to, the Relevant Person.
- (6) In the case of an Domestic Fund which is an Investment Trust:
 - (a) the Trustee of that Fund shall ensure that at all times the Domestic Fund has an Auditor; and
 - (b) the Fund Manager of that Fund shall obtain the prior approval of the Trustee before carrying out any activities under this Article relating to the appointment or removal of an Auditor for that Domestic Fund.
- (7) A Relevant Person shall not appoint an Auditor under this Article unless:
 - (a) the Auditor has, prior to the appointment, consented in writing to the Relevant Person to hold such office; and
 - (b) the Relevant Person, and the Trustee of a Domestic Fund which is an Investment Trust, is not, on reasonable inquiry, aware of any matter which should preclude the Auditor from giving his consent under Article 105(2).
- (8) A Relevant Person may at any time remove an Auditor notwithstanding anything in any agreement between it and the Auditor.

- (9) The DFSA may direct, or the Court on an application made by the DFSA may order, a Relevant Person to:
- (a) appoint an Auditor, where an Auditor has not been appointed by the Relevant Person; or
 - (b) remove an Auditor and appoint a new Auditor, where in the opinion of the DFSA or the Court (as the case may be) the Auditor appointed by the Relevant Person is not suitable to provide Audit Services to the Relevant Person.
- (10) The procedues in Schedule 3 apply to a decision of the DFSA under this Article to give a direction.
- (11) If the DFSA decides to exercise its power under this Article to give a direction, the person may refer the matter to the FMT for review.⁴³
- (12~~9~~) The appointment of a firm as an Auditor of an Authorised Person, a Public Listed Company or a Domestic Fund is taken to be an appointment of all persons who are partners of the firm.
- (13~~4~~) Nothing in this Article is to be taken as depriving an Auditor removed under it of compensation or damages payable to the Auditor in respect of the termination of appointment as Auditor.

NB – From this point on all changes are those proposed under Consutlation Paper No. 94 unless footnoted otherwise.

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[118]. General Saving and Transitional

- (1) For the purposes of this Article:
- (a) “previous Law” means the Regulatory Law 2004 as it was in force immediately prior to the commencement of the [DIFC Laws Amendment Law of 2014]; and
 - (b) “current Law” means the provisions of this Law that came into force under the [DIFC Laws Amendment Law 2014].
- (2) The DFSA may, by Rules, prescribe any transitional or saving provisions as appear to the DFSA necessary so as to give effect to, or facilitate, the transition from the previous Law to the current Law.

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⁴³ The CP 91 version of this provision has been amended by the addition of this text.

SCHEDULE 1
INTERPRETATION

1. Rules of interpretation

- (1) In the Law, unless the contrary intention appears, a reference to:
- (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
 - (d) unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official ~~s~~State holiday in the DIFC, the obligation shall take place on the next calendar day which is a business day;
 - (e) a calendar year shall mean a year of the Gregorian calendar;
 - (f) a reference to the masculine gender includes the feminine; and
 - (g) any reference to ‘dollars’ or ‘\$’ is a reference to United States Dollars.
- (2) The headings in the Law shall not affect its interpretation.

2. Legislation in the DIFC

References to legislation and Guidance in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the State ~~United Arab Emirates~~ Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Law is the Regulatory Law, DIFC Law No.1 of 2004 made by the Ruler;
- (e) the Rules are legislation made by the DFSA under the Law and are binding in nature;

- (f) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the Chief Executive as notations to the Rules; and (ii) any standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules; and
- (g) references to "legislation administered by the DFSA" are references to DIFC Law and Rules conferring functions and powers on the DFSA.

3. Defined Terms

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

Term	Definition
<u>Affiliate</u>	<u>in relation to an Authorised Person, means any other entity in the Group to which the Authorised Person belongs.</u>
<u>Authorised Person</u>	<u>an Authorised Firm or an Authorised Market Institution.⁴⁴</u>
Authorised Individual	a natural person who has been authorised by the DFSA to perform one or more Licensed Functions <u>for an Authorised Firm.</u>
<u>Decision Notice</u>	<u>a written notice given by the DFSA to a person pursuant to paragraph 5 of Schedule 3</u>
Financial Markets Tribunal	the Financial Markets Tribunal established pursuant <u>referred to in Article 34 26</u> of the Law. ⁴⁵
<u>Financial Service</u>	<u>has the meaning given in Article 41 of this Law.</u>
<u>FMT</u>	<u>the Financial Markets Tribunal.⁴⁶</u>
<u>Group</u>	<u>means a group of entities which includes an entity (the ‘first entity’) and:</u> <u>(a) any Parent of the first entity; and</u> <u>(b) any Subsidiaries (direct or indirect) of the Parent or Parents in (a) of the first entity.</u>
<u>Key Individual</u>	<u>a natural person who has been authorised by the DFSA to perform one or more Licensed Functions for an Authorised Market Institution.</u>
<u>Licence Endorsement</u>	<u>An endorsement made by the DFSA on a Licence that permits an Authorised Person to carry on an activity prescribed under Article 44.</u>
Licensed Function	a function prescribed pursuant to Article 43(1).
<u>Parent</u>	<u>a holding company as defined in Schedule 1 to the DIFC Companies Law.</u>
<u>Preliminary Notice</u>	<u>a written notice given by the DFSA to a person under paragraph 4(1) of Schedule 3.</u>

⁴⁴ This definition of “Authorised Person” is proposed in CP 91 (Audit Regime). It is included in this text for information as various amendments are proposed which use this definition.

⁴⁵ The amendments proposed to this definition are those proposed under CP90 and no further amendments are proposed under this consultation.

⁴⁶ The amendments proposed to this definition are those proposed under CP90 and no further amendments are proposed under this consultation.

Term	Definition
<u>Principal Representative</u>	<u>has the meaning prescribed in the Rules.</u>
Regulatory Appeals Committee	a standing committee of the DFSA Board of Directors, established under and governed by Chapter 4 of Part 2 of the Law and includes a sub-committee constituted under Article 29 of this Law.⁴⁷
Respondent	a person who is the subject of a matter before a Financial Markets Tribunal or the Court. ⁴⁸
<u>State</u>	<u>United Arab Emirates.</u>
<u>Subsidiary</u>	<u>a subsidiary as defined in Schedule 1 to the DIFC Companies Law.</u>

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⁴⁷ The amendments proposed to this definition are those proposed under CP90 and no further amendments are proposed under this consultation.

⁴⁸ The amendments proposed to this definition are those proposed under CP90 and no further amendments are proposed under this consultation.

SCHEDULE 3 – DECISION-MAKING PROCEDURES

1. Interpretation

For the purposes of this Schedule:

“Relevant Person” means a person in relation to whom a power is exercised or proposed to be exercised.

2. Application of Schedule

This Schedule applies to the DFSA, subject to paragraph 3, where a provision in legislation administered by the DFSA requires the DFSA to make a decision in accordance with the procedures in this Schedule.

3. Decisions to which procedures do not apply

(1) The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the DFSA:

- (a) to withdraw a direction, requirement, restriction or prohibition;
- (b) to withdraw a condition or restriction imposed on a Licence, Licence Endorsement, registration, authorisation or approval; or
- (c) in relation to a person, if the person has requested, or consented in writing to, the making of the decision.⁴⁹

(2) In the cases referred to in subparagraph (1), the DFSA must notify the person in writing of the decision and the date on which it is to take effect.

(3) If the DFSA makes a decision in relation to a person after a determination of the FMT or a decision of the Court relating to the conduct of the person, the requirement to give the person an opportunity to make representations under paragraph 4 or 6 (as applicable) does not apply in relation to findings of fact of the FMT or the Court.

4. Opportunity to make representations before a decision

(1) If the DFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:

- (a) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (2); and
- (b) an opportunity to make representations to the DFSA in person and in writing concerning the decision the DFSA proposes to take.

⁴⁹ The decision making procedures are not appropriate in these cases as these are decisions which do not adversely affect the person or decisions which the persons has specifically requested or consented to.

- (2) The Preliminary Notice must:
- (a) specify the proposed decision;
 - (b) specify the reasons for that proposed decision, including any proposed findings of fact;
 - (c) include a copy of the relevant materials which were considered in making the proposed decision;
 - (d) inform the person that they may make representations to the DFSA concerning the proposed decision; and
 - (e) specify how and by when any representations may be made.
- (3) For the purposes of sub paragraph (2)(c), the DFSA:
- (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
 - (b) is not required to provide material that is the subject of legal professional privilege.
- (4) If the DFSA does not receive any representations within the period specified in the Preliminary Notice, it may proceed to make the proposed decision and give the person a Decision Notice in accordance with paragraph 5.
- (5) If the DFSA receives representations within the period specified in the Preliminary Notice, it must consider the representations in making the decision.
- (6) If, after considering the representations, the DFSA decides:
- (a) to make the proposed decision (either as proposed or with variations), then it must give the person a Decision Notice under paragraph 5; or
 - (b) not to make the proposed decision, then it must as soon as practicable notify the person in writing that it has decided not to make the decision.
- (7) If the DFSA concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of investors or market participants or otherwise prejudicial to the interests of the DIFC:
- (a) the requirements in subparagraphs (1) to (6) do not apply; and
 - (b) instead the DFSA must provide the person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.

5. Decision Notice

- (1) If the DFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a “Decision Notice”) specifying:
 - (a) the decision;
 - (b) the reasons for the decision, including its findings of fact;
 - (c) the date on which the decision is to take effect;
 - (d) if applicable, the date by which any relevant action must be taken by the person; and
 - (e) the person’s right to seek review of the decision by the FMT (where applicable).
- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of subparagraph (2), the DFSA:
 - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
 - (b) is not required to provide material that is the subject of legal professional privilege.

6. Opportunity to make representations after a decision

- (1) If this paragraph applies under paragraph 4(7), the DFSA must:
 - (a) provide the Relevant Person with an opportunity to make representations to the DFSA in person and in writing within a period of 14 days, or such further period as may be agreed, from the date on which the Decision Notice is given to the person under paragraph 5; and
 - (b) inform the Relevant Person in the Decision Notice that they may make representations concerning the decision and specify how and by when any representations may be made.
- (2) If the DFSA does not receive any representations within the period specified in the Decision Notice, it must inform the person in writing that the decision is to stand (subject to any right of the person to refer the matter to the FMT for review).

- (3) If the DFSA receives representations within the period specified in the Decision Notice, it must consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (4) If after considering representations received the DFSA decides:
- (a) to confirm the decision, it must as soon as practicable notify the person in writing that the decision is to stand (subject to any right of the person to refer the matter to the FMT for review);
 - (b) to withdraw the decision, it must as soon as practicable notify the person in writing that the decision has been withdrawn; or
 - (c) to vary the decision, it must as soon as practicable give the person an amended Decision Notice under paragraph 5.
- (5) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
- (a) if the person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made;
or
 - (b) in respect of an amended Decision Notice given under sub-paragraph (4)(c).