

Appendix 4

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

In some cases this appendix highlights (by footnotes) amendments to the text that were previously proposed under Consultation Paper No. 90.

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

LAW REGULATING ISLAMIC FINANCIAL BUSINESS DIFC LAW No.13 of 2004

PART 2: CONDUCT OF ISLAMIC FINANCIAL BUSINESS

.....

11. Application for an endorsement

(1) An application for an endorsement on a Licence authorising an Authorised ~~Person Firm or Authorised Market Institution~~ to conduct Islamic Financial Business as an Islamic Financial Institution or by operating an Islamic Window may be made to the DFSA by any:

- (a) body corporate; or
- (b) partnership; ~~or~~
- (c) ~~unincorporated association~~

when applying for a Licence under Article 45 of the Regulatory Law 2004.

(2) An Authorised ~~Person Firm or Authorised Market Institution~~ may apply to the DFSA for an endorsement to conduct Islamic Financial Business as an Islamic Financial Institution or by operating an Islamic Window, or to vary such an endorsement.

(3) The DFSA Board of Directors may make Rules providing that certain persons or categories of person may not be granted an endorsement in relation to Islamic Financial Business.

(4) The DFSA Board of Directors may make Rules:

- (a) prescribing the requirements an applicant applying for an endorsement must meet before an endorsement can be granted by the DFSA. Such Rules may include requirements relating to the legal form an applicant must adopt;
- (b) providing for ~~the such~~ requirements referred to in Article 11(4)(a) 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;
- (c) prescribing certain persons or categories of person to be exempted from the requirements referred to in Article 11(4)(a); and
- (d) providing for any such exemptions to be:
 - (i) limited to certain Islamic Financial Business activities or specified circumstances; or
 - (ii) subject to certain conditions and restrictions.

- (5) ~~The DFSA may in its absolute discretion refuse to grant an application for an endorsement or for a variation to an endorsement if it is satisfied that the requirements for an endorsement or variation of an endorsement under this Article have been met.~~
- (5A) The DFSA may refuse an application if it not satisfied that the requirements for an endorsement or variation of an endorsement under this Article have been met.
- ~~(6) Upon refusing to grant an endorsement or a variation to an endorsement, the DFSA shall without undue delay inform the applicant in writing of the such refusal and, if requested by the applicant, shall give reasons for such refusal.¹The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under Article 11(5A).~~
- (7) If the DFSA decides to exercise its power under Article 11(5A), the applicant may refer the matter to the FMT for review.
- ~~(7) The Regulatory Appeals Committee FMT has jurisdiction to hear and determine any appeal reference in relation to a decision of the DFSA to:~~
- ~~(a) refuse an application for an endorsement or a variation to an endorsement made under this Article;~~
- ~~(b) impose a limitation, condition or restriction on a person's endorsement under Rules made for the purposes of Article 11(4)(d).²~~

12. Endorsements Conditions, restrictions and withdrawal

- ~~(1) The DFSA may endorse the Licence of an Authorised Firm or Authorised Market Institution authorising it to conduct Islamic Financial Business as an Islamic Financial Institution or by operating an Islamic Window.~~
- (2)(1) Subject to Articles 12, (3) and (4), † 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 in relation to on an endorsement;~~
- ~~(b) vary or withdraw conditions and restrictions imposed in relation to an endorsement; or~~
- (c) withdraw an endorsement.
- ~~(3)(2) The DFSA may act under Article 12(2) 12(1) on its own initiative or at the request of an Authorised Person Firm or Authorised Market Institution.~~

¹ This is text as proposed to be amended by CP 90 but it is now proposed to delete the text as it is replaced by the new procedures for decision making.

² This is text as proposed to be amended by CP 90 but it is now proposed to delete the text as it is superseded by the new review formulation in Article 11(7)

- (3) The DFSA may withdraw an endorsement on its own initiative under Article 12(1)(c) if:
- (a) the Authorised Person is in breach of, or has been in breach of, one or more restrictions or conditions applicable to the endorsement;
 - (b) the Authorised Person is in breach of, or has been in breach of, the Law or Rules or other legislation administered by the DFSA;
 - (c) the Authorised Person is no longer fit and proper to carry on Islamic Finance Business; or
 - (d) 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 to the Regulatory Law 2004 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.
- ~~(4) Subject to Article 12(5), the DFSA may only impose conditions and restrictions or additional conditions and restrictions or vary or withdraw conditions and restrictions in relation to an endorsement or withdraw an endorsement after 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.~~
- ~~(5) The requirement imposed on the DFSA under Article 12(4) shall not apply:~~
- ~~(a) in relation to the imposition of conditions and restrictions when a Licence is first endorsed;~~
 - ~~(b) where the relevant person has requested the imposition, variation or withdrawal of conditions and restrictions or withdrawal of an endorsement under Article 12(3) 12(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.~~
- ~~(6) Where pursuant to Article 12(5)(c) the DFSA imposes, varies or withdraws a condition or restriction or withdraws an endorsement 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 or from the date on which the endorsement is 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.~~
- ~~(7) The Regulatory Appeals Committee FMT has jurisdiction to hear and determine any appeal reference in relation to a decision to impose, vary or withdraw a~~

~~condition or restriction made under this Article. to impose or vary a condition or restriction at any time subsequent to granting an endorsement.~~³

.....

SCHEDULE 1
INTERPRETATION

3. Defined Terms

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

Term	Definition
<u>Authorised Person</u>	<u>has the meaning given in Schedule 1 to the Regulatory Law 2004.</u>
<u>Financial Markets Tribunal</u>	<u>the Financial Markets Tribunal established pursuant to Article 26 of the Regulatory Law 2004.</u>
<u>FMT</u>	<u>the Financial Markets Tribunal.</u>

³ This Article shows text as consulted on in CP 90, with further proposed additions to (3) and deletion of various text that is now covered by the proposed new decision making processes.