



The DFSA Rulebook

Enforcement Module

(ENF)

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1 INTRODUCTION

1.1 Application

Guidance

This module outlines the DFSA's approach to enforcement.

- 1.1.1** This module applies to Persons who may be the subject of the DFSA investigative or enforcement powers. It is relevant to Authorised Firms, Authorised Market Institutions, Ancillary Service Providers, Authorised Individuals and other Persons, whether or not they are regulated by the DFSA, in respect of the exercise by the DFSA of its enforcement powers under the Regulatory Law 2004 and other DIFC legislation which it administers.

1.2 Purpose

Guidance

1. The appropriate use of the enforcement powers granted to the DFSA plays an important part in ensuring that the DFSA achieves its various objectives as set out in Article 8 of the Regulatory Law 2004. In particular, the exercise of investigative powers and the taking of subsequent remedial action where breaches of legislation or levels of expected conduct have occurred or may occur will:
 - a. foster and maintain the integrity, fairness, transparency and confidence in the financial services industry in the DIFC;
 - b. foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
 - c. assist in the prevention, detection and reduction of conduct that may damage the reputation of the DIFC or of the financial services industry in the DIFC;
 - d. provide appropriate protection to users and prospective users of the financial services industry in the DIFC; and
 - e. promote understanding of the regulation of the financial services industry in the DIFC.

2. The use of these enforcement powers by the DFSA must be open and transparent if it is to have the confidence of DIFC participants. Likewise, it must be accountable for the use of those powers.
3. This module has therefore been produced and made available to ensure that the DFSA's policies, procedures and processes in respect of the use of its enforcement powers are open and transparent.

1.3 Structure and use of the module

Guidance

1. The chapters of this module are structured to provide the information set out in the following table:

Chapter	Content
Chapter 1	General introduction to the module.
Chapter 2	Contains information about the general approach to enforcement adopted by the DFSA, the manner in which it will exercise its information gathering and investigative powers and the process by which it will determine whether to take action in any particular case.
Chapter 3	Contains information about the complaint assessment process adopted by the DFSA. It explains the mechanism through which any and all allegations of misconduct will be considered and assessed.
Chapter 4	Contains information about the process of commencing investigations and the DFSA's approach to publicity associated with investigations.
Chapter 5	Contains information about the various information gathering and investigative powers available to the DFSA and the manner in which those powers will be exercised.
Chapter 6	Contains information about the conclusion of investigations and the preparation of a final report.
Chapter 7	Contains information about the steps which the DFSA may take upon the conclusion of an investigation and the process through which the decision as to what action, if any, to take is made.
Chapter 8	Contains information about the DFSA's policy on Enforceable Undertakings.
Chapter 9	Contains information about the possible settlement of matters.
App1	Forms.
App2	Enforcement process diagram.
App3	Process for receiving representations.
App4	Process diagram – fines.

2. References to Articles throughout this module are references to the Regulatory Law 2004 unless otherwise stated. The Guidance in this module should not be relied upon as a statement of the law. For a proper understanding of the rights and obligations, reader should refer to the Regulatory Law 2004, Rules, and any other legislation.
3. When considering references to Authorised Firms, Authorised Market Institutions, Ancillary Service Providers, Authorised Individuals, Recognised Bodies or Recognised Members in this module, reference should be made to Article 63, which provides, in effect, that powers of the DFSA in respect of Authorised Firms, Authorised Market Institutions, Ancillary Service Providers, Authorised Individuals, Recognised Bodies or Recognised Members may continue to be exercised for a period of two years after the date on which:
 - a. the Licence of such Authorised Firm or Authorised Market Institution is withdrawn;
 - b. the registration of an Ancillary Service Provider is withdrawn;
 - c. the Authorised Individual status of an Authorised Individual is withdrawn; or
 - d. the Recognition Notice for the Recognised Body or the Recognised Member is withdrawn.
4. Further, Article 63(2) provides that where proceedings are commenced before the Financial Markets Tribunal or Regulatory Appeals Committee, before the expiry of a period of two years referred to in Article 63(1), then the provisions of Article 63(1) must remain in force until such time as the proceedings in any related appeals and proceedings are completed.

2 ENFORCEMENT APPROACH OF THE DFSA

2.1 General approach to enforcement

Enforcement philosophy

Guidance

The DFSA has a broad range of enforcement powers and this module provides guidance about the use of specific powers. However, the principles which form the basis of the DFSA's approach to enforcement generally and therefore its enforcement philosophy are as follows:

- a. In keeping with the DFSA's risk based approach to regulation, the DFSA will adopt a pro-active approach to enforcement.
- b. The DFSA will work closely with home regulators of international firms to ensure that there is a co-ordinated approach.
- c. The DFSA will exercise its enforcement powers only when necessary to ensure that the DIFC is operating fairly and transparently and in such a way as to ensure that it has the confidence of the financial services industry and its customers.
- d. In the exercise of its enforcement powers, the DFSA must act fairly, openly and accountably but when faced with conduct which threatens the integrity of the DIFC, will act swiftly and decisively to stop the conduct, minimise the effects and prevent such conduct re-occurring.
- e. In keeping with its fair and transparent approach and to maintain the integrity of the DIFC by deterring contraventions of the law or other misconduct, the DFSA will generally publish details of enforcement action, but will not generally publicise the commencement or conduct of investigations.

2.2 The enforcement process

Guidance

1. In light of the stringent authorisation process and the risk based approach to supervision adopted by the DFSA, instances of misconduct requiring enforcement action should be rare. However, when enforcement action may be required, the DFSA will, unless circumstances prevent it, follow the enforcement process set out diagrammatically in App2. The various steps in that process are described in detail throughout this module but they are described generally in the following paragraphs.

Identification of conduct requiring action

2. The DFSA may identify conduct that may require further investigation or enforcement action through the receipt of complaints of misconduct from market participants or customers, through its own activities, usually as a result of the DFSA's supervision or by referral from other regulatory authorities.
3. In the case of a receipt of a complaint from a market participant or customer, once the matter has been assessed, it will be referred to the Enforcement Decisions Committee.
4. Similarly, matters that have been identified through the DFSA supervision division or by referral from another agency must also be referred to the Enforcement Decisions Committee, but usually without the need for the same level of assessment.

Commencement of investigations

5. At this stage, the role of the Enforcement Decisions Committee is to consider the matter promptly and determine whether to:
 - a. refer the matter to a Financial Services Regulator or law enforcement agency;
 - b. take no further action on the matter; or
 - c. recommend to the Chief Executive Officer (CEO) that an investigation ought to be commenced.
6. Pursuant to Article 78, the DFSA may commence such investigations as the CEO thinks expedient:
 - a. where he has reason to suspect that there is being or may have been committed a contravention of the Regulatory Law 2004, Rules, Regulations or other legislation administered by the DFSA; or
 - b. further to a request for assistance pursuant to Article 39.
7. Whether the CEO has the requisite reason to suspect is a subjective question which the CEO will determine on the facts of the particular matter, as available at the time.
8. In making his decision of expediency, the CEO will take into account certain criteria which are set out under section 3.2 Guidance note 4 and may take into consideration the recommendation of the Enforcement Decisions Committee.
9. The commencement of an investigation carries with it certain consequences, including the fact that the DFSA then has available to it further compulsory powers. Accordingly, it is not a step that is taken lightly and the CEO will take it only when satisfied that an effective and thorough investigation, relying on the exercise of compulsory powers, is necessary in light of the suspicion held. As an alternative, the CEO may determine to deal with it in some other manner, including taking no further action on the matter.

Information gathering powers

10. Should an investigation be commenced, compulsory powers are available to the DFSA. Each of these powers is considered subsequently in this module.
11. In every investigation, the DFSA will have regard to its objectives in undertaking that investigation and the relative effectiveness of the powers available to it in achieving those objectives. In general, the DFSA will use only those powers that allow it to achieve its objectives, whilst causing the least possible interference with the activities of participants in the DIFC. Nonetheless, whenever an investigation is commenced, it will be complete and thorough.
12. At the conclusion of every investigation into a possible contravention, the report of the investigation and any recommendation is referred to the Enforcement Decisions Committee. The role of the Enforcement Decisions Committee at that point is to consider the results of the investigation and determine whether to:
 - a. refer the matter to another Financial Services Regulator or law enforcement agency;
 - b. take no further action; or
 - c. recommend to the CEO that some form of disciplinary or other proceedings be commenced.

Decision making

13. The Regulatory Law 2004 provides a range of actions that may be pursued by the DFSA, during or after investigation, in the pursuit of its objectives.
14. Generally, action will only be taken at the conclusion of an investigation, once the results of the investigation are available and the steps mentioned below have been taken. However, in exceptional circumstances, it may be necessary to commence action during the course of an investigation. Where such urgent action appears necessary, it will only be taken with the approval of the CEO.
15. Remedies that may be sought by the DFSA include:
 - a. injunctions restraining a Person from engaging in conduct in contravention of the Regulatory Law 2004 or requiring that Person to do any act or thing (Article 92);
 - b. orders restraining a Person from disposing of assets, appointing a receiver or trustee or preventing a Person from leaving the jurisdiction (Article 92); or
 - c. the compulsory winding up of an entity where it appears to the DFSA that it is in the interests of the DIFC (Article 93).

16. The DFSA may also:
- a. institute proceedings before the Financial Markets Tribunal where it appears reasonably likely to the CEO that there has been a breach of a provision of the legislation administered by the DFSA. The DFSA may seek any one or more of the following, a fine, censure, restitution, compensation, an account for profits, a cease and desist order, an order requiring the doing of any act or thing, disqualification order or costs (Articles 33 and 34);
 - b. withdraw authorisation in respect of one or more Financial Service (Article 50);
 - c. impose conditions and restrictions on a Licence (Article 49) or on Authorised Individual status (Article 57);
 - d. restrict a Person from performing one or more functions or suspending or withdrawing Authorised Individual status from an Authorised Individual (Article 58);
 - e. revoke a Recognition Notice (Article 61);
 - f. impose a fine (Article 90);
 - g. censure (Article 91); or
 - h. appoint a manager (Article 88).
17. Should the Enforcement Decisions Committee consider that it may be appropriate to recommend that the matter be referred to the Financial Markets Tribunal or Court, proceedings should be commenced or a manager appointed, it will, unless it is not practicable to do so, send a preliminary findings letter to the Person who may be the subject of the enforcement action. Such letter will provide the Person, with an opportunity to comment on the accuracy of the facts and the preliminary view reached. The Enforcement Decisions Committee will take any such comments into account before deciding whether to make a recommendation to the CEO about commencing action.
18. Where it considers that the DFSA should consider withdrawing authorisation in respect of a Financial Service or a Licence, imposing a condition or restriction on a Licence, suspending or withdrawing Authorised Individual status, restricting a Person from performing one or more functions, imposing a condition or restriction on Authorised Individual status, or revoking a Recognition Notice the Enforcement Decisions Committee will refer the matter to a nominated DFSA officer (Decision Maker). The Decision Maker will usually be an individual with no previous direct involvement in the matter and will take the necessary steps in accordance with the relevant section to provide the right to make representations to the relevant Person. The Decision Maker will then exercise the delegated power of the DFSA to make the decision as to whether to withdraw authorisation in respect of a Financial Service, impose a condition or restriction on a Licence or Authorised Individual status, restrict a Person from performing one or more Licensed Functions, suspend or withdraw Authorised Individual status, or revoke a Recognition Notice.

19. Where the DFSA decides to impose a fine pursuant to Article 90 or to censure a Person pursuant to Article 91, it must follow the procedure set out in sections 7.12 or 7.13 which effectively provides for the issuing of an administrative notice of fine or censure. The Person may pay the fine or consent to the censure, file a Notice of Objection or take no step at all. Whether further steps will be taken will be determined in accordance with the procedure in sections 7.12 and 7.13.
20. There are various preconditions set out in the Regulatory Law 2004 which must be met in order to seek or obtain any of the prescribed remedies. They are identified and considered in subsequent sections of the module. However, any decision to commence proceedings or seek redress can have significant consequences for the Person who is the subject of the investigation. Accordingly, the decision to commence any enforcement action will be made at the highest levels within the DFSA, usually by the CEO. This is subject to the right of the Council of the DFSA in Article 33 to instruct that a matter be commenced in the Financial Markets Tribunal.
21. The subsequent chapters of this module provide more detailed information about the DFSA's approach to enforcement.

3 ASSESSMENT OF ALLEGATIONS

3.1 Introduction

Guidance

1. The DFSA may receive allegations of contraventions or other misconduct from DIFC participants or customers, or by referrals from other agencies. It will not be appropriate for the DFSA to commence an investigation in respect of every matter that comes to its attention, often because it lacks jurisdiction or because the allegation does not suggest a contravention of a law or legislation made under a law or failure to observe proper standards of market conduct. Accordingly, the DFSA assesses every matter of which it becomes aware to determine whether it should take further action.
2. Significantly, in keeping with its underlying approach of transparency, the DFSA will, subject to its obligations of confidentiality, endeavour to keep any Person who refers a matter to the DFSA informed of the progress of the assessment and the outcome of the process.

3.2 Assessment process

General

Guidance

1. Every matter of which the DFSA becomes aware involving possible misconduct, regardless of source, will be assessed separately to determine whether an investigation ought to take place.

Initial assessment

2. Upon receipt of information about possible misconduct, the assessment process begins. The precise steps taken in any assessment will be determined by the nature of the matter itself but will generally include an interview with the complainant, a general review of the available facts and applicable law and the undertaking of initial enquiries in order to form a view about whether the matter falls within the jurisdiction of the DFSA. These steps will be undertaken by, or under the control of, senior enforcement executives of the DFSA.
3. Once the matter has been assessed, it may be referred to the Enforcement Decisions Committee. That committee will consider the assessment and determine whether to refer the matter to another Financial Services Regulator, law enforcement agency, take no further action or recommend to the CEO that an investigation be commenced.

4. In determining whether to recommend the commencement of an investigation, the Enforcement Decisions Committee will consider the matter against certain criteria. Criteria include:
 - a. the duration, frequency and age of the alleged misconduct, including an assessment of whether the alleged misconduct is on-going;
 - b. the seriousness of the alleged misconduct, including whether the alleged misconduct affects, or has the potential to affect, the integrity of the DIFC or the legislation applicable in the DIFC;
 - c. whether those involved in any alleged misconduct are likely to co-operate;
 - d. whether it is likely that the alleged misconduct may be proven;
 - e. whether, if proven, a remedy will be available in respect of the misconduct;
 - f. whether another Financial Services Regulator or law enforcement agency may be in a position to take action in respect of the alleged misconduct and, if so, their attitude to taking such action;
 - g. the nature of any request for assistance made by another regulator or body pursuant to Article 39; and
 - h. whether any party who may have suffered some detriment as a result of the alleged misconduct is able to take their own remedial action and, if so, their attitude to commencing such action.
5. Before commencing an investigation on the recommendation of the Enforcement Decisions Committee, the CEO must think it expedient:
 - a. where he has a suspicion that there is being or may have been committed a contravention of the Regulatory Law 2004, Rules or other legislation administered by the DFSA; or
 - b. to further a request for assistance pursuant to Article 39.
6. The DFSA aims to complete the assessment of every matter, including deciding whether to commence an investigation, within 21 days of the date of receipt.

Outcome of assessment

7. At the conclusion of that assessment, the Person who made the allegation will be advised of the outcome, unless the DFSA determines that to do so may adversely affect any investigation that may take place or may otherwise be contrary to the interests of the DIFC generally. Outcomes may include the commencement of an investigation or the taking of no further action.

4 COMMENCEMENT OF INVESTIGATIONS

4.1 Investigations by the DFSA

Guidance

Article 78 provides that the DFSA may commence an investigation if the CEO thinks it expedient and has reason to suspect that there is being or may have been committed a contravention of the Regulatory Law 2004, Rules or any legislation administered by the DFSA. The DFSA may also commence an investigation in relation to a request received from another regulator or body pursuant to Article 39.

4.2 The effect of the commencement of an investigation

Guidance

1. Once an investigation is commenced pursuant to Article 78, the DFSA has certain powers to assist in the course of its information gathering. These powers are primarily contained in Article 80.
2. Parties who are required to comply with a requirement made by the DFSA during the course of an investigation and Persons who are the subject of investigations benefit from certain protections.
3. Article 81 ensures that a Person who is required to comply with a requirement made during the course of an investigation cannot be the subject of any liability or proceeding because of that Person's compliance with the requirement.
4. Article 80(7) provides that where a Person takes part in a compulsory interview any statements made during the interview cannot be disclosed to a law enforcement agency for the purpose of criminal proceedings unless the Person consents to the disclosure or the DIFC is required by law or court order to disclose the statement.
5. Article 38 provides that confidential information provided to the DFSA must not be disclosed except in certain limited circumstances. This ensures that an appropriate level of confidentiality is maintained.
6. The DFSA recognises the importance of these protections in maintaining the integrity of the investigative process and will therefore take steps whenever necessary to ensure that the protections are properly provided and observed.

4.3 Power to control and direct an investigation

Guidance

1. Investigations conducted by the DFSA will generally be carried out by an officer or officers of the DFSA, exercising their delegated powers and functions under the Regulatory Law 2004. Such powers and functions are delegated by the CEO to certain officers and the CEO retains the right to control the exercise or the manner of exercise of those powers.
2. In some circumstances, the DFSA may engage external consultants or experts to provide assistance during the course of an investigation. In those circumstances, the consultant or expert will usually not be delegated powers to exercise compulsory powers but may be present during the exercise of such powers by officers of the DFSA. However, in certain limited circumstances it may be appropriate and necessary to delegate specific powers to the expert or consultant. In such a case, the use of the powers delegated to the expert or consultant must be supervised by an officer of the DFSA.
3. Similarly, from time to time it may be necessary to delegate powers to a representative as expressly stated in Article 40. In such a case, the relevant representative must be supervised in the exercise of the powers by the CEO or delegate.
4. The CEO has the right to control and direct every investigation conducted under his authority and may exercise that right by setting, or resetting during the course of the investigation:
 - a. the scope of the investigation;
 - b. the period during which the investigation will be conducted;
 - c. the manner of conducting the investigation; and
 - d. the reporting of the progress of the investigation.

4.4 Publicity

Guidance

1. The DFSA is conscious of the potential impact of the existence of an investigation becoming publicly known. Accordingly, the DFSA will not generally make public the fact that it is or is not investigating a particular matter or any of the findings or conclusions of an investigation.

2. An announcement of the fact of an investigation may be made in exceptional circumstances, where, for example, the DFSA believes that to do so:
 - a. will assist in maintaining the integrity of and confidence in the DIFC or the DFSA itself;
 - b. will prevent or constrain public speculation or rumour about a possible investigation;
 - c. may prevent widespread malpractice; or
 - d. may assist the investigation itself by, for example, bringing forward witnesses.
3. There may also be circumstances in which disclosure of the existence of an investigation is unavoidable. This may occur simply through investigators speaking to witnesses during the course of an investigation. Nevertheless, in such circumstances the DFSA will endeavour to ensure that confidentiality is maintained.

5 INFORMATION GATHERING AND INVESTIGATION POWERS

5.1 Introduction

Guidance

1. The DFSA will, in every investigation, have regard to its objectives in undertaking that investigation and the relative effectiveness of the powers available to it in achieving those objectives. In general, the DFSA will use only those powers that allow it to achieve its objectives whilst causing the least possible interference with the activities of participants in the DIFC.
2. The specific powers are considered separately below.

5.2 Inspection

Guidance

1. Pursuant to Article 80, the DFSA may enter business premises during the course of an investigation for the purpose of inspecting and copying information or documents. This power may be exercised when the DFSA considers that the Person occupying the premises may be able to give information or produce a document that may be relevant to an investigation.
2. The DFSA is not required to provide notice of the exercise of the power to conduct inspections and generally no such notice will be provided.

5.2.1 When exercising its power to enter premises pursuant to Article 80(1)(a), the DFSA 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 stored in electronic form or microfilm into physical form capable of being copied; and
- (c) use the facilities of the occupier of the premises, free of charge, to make copies.

5.3 Production of documents

Guidance

1. The DFSA may require a Person to produce or procure the production of documents pursuant to Article 80. This power, like all others in Article 80, may be used when an investigation has commenced pursuant to Article 78 and the DFSA considers that the Person to whom the notice is addressed is or may be able to give information or produce documents which are or may be relevant to the investigation.
2. The power under Article 80 enables the DFSA to require the production of original documents and in this respect differs from the power of inspection which allows for the inspection of material and the copying thereof. Whether original or copy documents are required will be determined in each case taking into account the facts of the matter.

5.3.1 (1) The DFSA may retain possession of any documents produced to it pursuant to a requirement made under Article 80 in relation to an investigation into a suspected contravention 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 documents would be relevant should be begun; or
 - (c) for such a proceeding to be begun and carried on.
- (2) No Person is entitled to claim a lien on any documents as a basis for failing to comply with a requirement made by the DFSA but any lien is not otherwise prejudiced.
- (3) Where a Person is unable to produce documents in compliance with a requirement made by the DFSA, the DFSA may require the Person to state, to the best of that Person's knowledge or belief, where the documents may be found and who last had possession, custody or control of those documents.

Guidance

1. The DFSA will allow a reasonable time for compliance with the requirement to produce documents with such time usually not being less than 3 business days. However, in circumstances where the DFSA considers the matter urgent, then the period of time for compliance may be less than 3 business days and in some circumstances, production may be required forthwith. [Amended][VER2/02-07][RM42/07]
2. The notice requiring production of documents will be in accordance with Form 1 in App1.

3. Documents produced to the DFSA may be released to another regulator or agency in accordance with Article 38. When it does so, the DFSA will endeavour to recover the documents from that other regulator or agency as soon as possible after the investigation or proceedings to which the documents relate is completed.

5.4 Production of information

Guidance

1. The DFSA may require a Person to give or procure the giving of information pursuant to Article 80. This power in Article 80 can only be used when an investigation has commenced pursuant to Article 78 and the DFSA considers that the Person to whom the notice is addressed is or may be able to give information which is or may be relevant to the investigation.
2. This power is different to the power to require the production of documents. This power will commonly be used where information is stored in electronic form or where information is not stored in one document and needs to be sorted or assembled before being given to the DFSA. The DFSA may make available an expert to assist in the process of downloading data stored electronically.
3. The DFSA will allow a reasonable time for compliance with the requirement to give information with such time usually not being less than 3 business days. However, in circumstances where the DFSA considers the matter urgent, then the period of time for compliance may be less than 3 business days and in some circumstances, the giving of information may be required forthwith. [Amended][VER2/02-07][RM42/07]
4. The notice requiring the giving of information will be in accordance with Form 2 in App1.

5.5 Compulsory interview

Guidance

1. The DFSA may require a Person to attend before it and answer questions pursuant to Article 80. The process of the Person being asked, and answering questions, under oath or on affirmation is known as a compulsory interview.
2. Not all interviews conducted by the DFSA during the course of an investigation will be conducted under compulsion. The DFSA will, wherever appropriate, conduct voluntary interviews. Compulsory interviews will only be conducted in circumstances where the DFSA considers that it is necessary to obtain information from the Person for the purposes of the investigation but a voluntary interview is not possible or appropriate. Those circumstances may include situations where:

- a. the Person indicates that they are not willing to take part in a voluntary interview;
 - b. the Person indicates that they are prevented from taking part in a voluntary interview because of the existence of some circumstance of confidentiality; or
 - c. there is some doubt over the Person's level of co-operation at a voluntary interview and it is necessary to have that Person answer questions on oath.
3. A notice delivered to a Person requiring that Person to attend and take part in a compulsory interview will be in accordance with Form 3 in App1.
 4. At the outset of every compulsory interview, the interviewer must explain to the interviewee the process of the interview and that Person's right to have a lawyer present. The interviewer will also explain the operation of Article 80(7) and provide the interviewee with an opportunity to read that provision.

5.5.2 The remaining Rules in section 5.5 apply to a person (referred to as 'the interviewee') who attends before another person (referred to as 'the interviewer') for compulsory interview pursuant to a requirement made under Article 80.

Requirements made of interviewee

- 5.5.3** (1) Where interviewer interviews the interviewee under oath or affirmation, the interviewer may, for that purpose, require the interviewee to either swear an oath or make an affirmation to the effect that the answers of the interviewee will be true.
- (2) The interviewer may direct the interviewee to answer any question that is put to the interviewee which is relevant to the investigation referred to in the notice pursuant to which the interviewee has attended.

Interview to take place in private

- 5.5.4** (1) The compulsory interview must take place in private.
- (2) The interviewer may give directions:
- (a) about who may be present during the compulsory interview or any part of it;
 - (b) preventing the interviewee and 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 course of the compulsory interview; and

- (c) in relation to the conduct of any person present including directions as to the manner in which they will participate in the interview.

Guidance

1. The interviewee's lawyers may be present at the compulsory interview and the interviewer may permit them, at the conclusion of the interviewer's questioning, to ask questions of the interviewee.
2. When the DFSA exercises its power to conduct a compulsory interview, the interviewer will generally record the compulsory interview using an audio recording device. At the conclusion of the interview, the interviewer will provide the interviewee with a copy of any recording, subject to any condition that the interviewer may consider necessary to impose to protect the confidentiality of the recording.

5.6 Assistance

Guidance

1. The DFSA may require, pursuant to Article 80, a Person to give assistance in relation to an investigation.
2. The notice delivered requiring a Person to give assistance to the DFSA will be in accordance with Form 4 in App1.
3. The type of assistance that may be required pursuant to this power is not capable of being exhaustively set out. Some examples however include requiring a Person to comment on the accuracy of a document prepared by another or compiling information that had been stored in a different manner.

5.7 Rights of persons subject to investigation who receive notice of use of investigative power

Right to legal representation

Guidance

1. Article 78(2) provides that a Person is entitled to legal representation during the course of an investigation. That representation may be provided by a lawyer qualified to practice in any jurisdiction.

Duty of confidentiality

2. Pursuant to Article 82, the existence of a duty of confidentiality is not of itself an excuse for failing to comply with a requirement made by the DFSA during the course of an investigation.
3. Any information obtained by the DFSA will be dealt with in accordance with the requirements of confidentiality set out in Article 38.
4. Pursuant to Article 81, any Person that complies with a requirement made by the DFSA is not liable to any proceeding or liability because of that Person's compliance.

Claims of privilege and other protections

5. Pursuant to Article 82, a claim by a Person that information is a Privileged Communication is not of itself an excuse for failing to comply with a requirement made by the DFSA during the course of an investigation.
6. Lawyers may refuse to comply with a requirement to provide information where to comply would require the lawyer to disclose a Privileged Communication made by, to or on behalf of the lawyer in their capacity as a lawyer.
7. Should a lawyer refuse to disclose a Privileged Communication, the lawyer must disclose sufficient information to identify the customer and the document which contains the privileged information. In such a case, the DFSA would expect the lawyer to secure those documents, pending the resolution of any claim for privilege.
8. Article 80(7) provides that where a Person takes part in a compulsory interview, any statements made during that interview cannot be disclosed to a law enforcement agency for the purpose of criminal proceedings unless the Person consents to the disclosure or the DIFC is required by law or court order to disclose the statement

5.8 Enforcement of requirement to comply with compulsory process

Introduction

Guidance

1. The DFSA will only achieve its objectives if there is compliance with its powers of compulsion. Accordingly, the DFSA will take steps to enforce compliance with its requirements whenever there is less than full compliance.

Application to the court

2. The DFSA is empowered by Article 84 to seek an injunction enforcing a requirement made during the course of an investigation or inspection.

Search warrant

3. Article 84 enables the DFSA to make application to the Court for the issue of a search warrant in circumstances where:
 - a. information or documents were required to be given or produced by the exercise of a compulsory power;
 - b. the documents or information required to be produced have not been given or produced; and
 - c. the DFSA has reasonable grounds to suspect that within the next 3 business days, the information or those documents are or may be on particular premises. [Amended][VER2/02-07][RM42/07]
4. Should the Court exercise its discretion to issue the search warrant, it must be addressed to a named Dubai police officer with a DFSA officer or officers also named.
5. The DFSA must only exercise its right to make application for a search warrant rather than seeking compliance of its requirement through some other process where it is satisfied that the preconditions for the issue of a warrant are met, there is no legitimate basis on which the Person to whom the requirement was addressed could not comply and in the absence of the execution of a search warrant, the information or documents sought may be removed or destroyed or otherwise not made available.
6. Any material seized by officers of the DFSA pursuant to a search warrant issued under Article 84 must be dealt with by the DFSA as if such material had been produced to it pursuant to a notice to produce documents.

5.9 Co-operation with the DFSA

Guidance

1. Article 67 requires Authorised Firms, Authorised Market Institutions, Ancillary Service Providers or auditors of any of those Persons to disclose to the DFSA any matter which is attributable to the conduct of the relevant Person, its employees which reasonably tends to show one of the following:
 - a. a breach or likely breach of a provision of the Regulatory Law 2004, Rules or other legislation administered by the DFSA;
 - b. a failure or likely failure to comply with any obligation to which a Person is subject under such legislation; or
 - c. any other matters the DFSA may prescribe in the Rules.

2. Article 67 does not apply to the extent that compliance with such a requirement would disclose a Privileged Communication.
3. Authorised Firms, Authorised Market Institutions and Ancillary Service Providers are required to establish and implement appropriate systems and internal procedures to ensure compliance both by it and its auditors with Article 67.
4. There is protection set out in Article 67(6) to the effect that a Person must not be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist another Person or auditor to comply with an obligation under Article 67.
5. Receiving information of the nature envisaged by Article 67 is important if the DFSA is to achieve its statutory objectives as set out in Article 8(3), especially the prevention, detection and restraint of conduct which causes or may cause damage to the reputation of the DIFC and the provision of appropriate protection to users of the DIFC and related Persons, such as customers of such users. Accordingly, should any Person subject another to detriment, loss or damage, because of the Person complying with Article 67, the DFSA must regard it as a serious breach and must take action accordingly.
6. Similarly, Article 68 provides protection to a Person who gives information or produces a document to the DFSA in good faith and believing that it is relevant to the DFSA's function. Such a Person is not liable to a proceeding, nor subject to a liability, regardless of whether the information was given or document produced pursuant to a requirement of this Law.
7. Article 83 provides that a Person must not, without reasonable excuse, engage in conduct that is intended to obstruct the DFSA in the exercise of its investigative powers by means including the following:
 - a. destruction of documents;
 - b. failure to give or produce information or documents specified by the DFSA;
 - c. failure to attend before the DFSA at a specified time and place to answer questions;
 - d. giving of information that is false or misleading; or
 - e. failure to give any assistance in relation to an investigation which the Person is able to give.
8. Again, if the DFSA is to achieve its statutory objectives, it is critical that there be full compliance with those obligations of the Regulatory Law 2004 that allow it to conduct investigations and take action where appropriate. Accordingly, any breach of Article 83 through a Person seeking to obstruct the DFSA in the exercise of its investigative powers will be regarded very seriously by the DFSA and appropriate action will be taken.

5.9.1 Should the DFSA consider 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 not to disclose the receipt of a notice or any information relating to compliance therewith to any other Person other than his legal representative.

Guidance

A direction pursuant to this Rule will only be made in circumstances where the DFSA believes on reasonable grounds that the investigation may be hindered by information in respect of the fact of the notice or compliance with the notice being disclosed. In determining whether it is necessary to issue such a direction, the DFSA shall take into account not only the likelihood of an investigation being hindered but also the nature of the hindrance that may be caused and the impact on the recipient of the notice of such a direction. In particular, the DFSA shall consider whether a recipient of a notice would be effectively prevented from compliance with the notice if they are the subject of a direction under Rule 5.9.1.

6 CONCLUSION OF INVESTIGATIONS

6.1 Review by enforcement decisions committee

Guidance

In the ordinary course at the conclusion of an investigation, the Enforcement Decisions Committee will consider the matter.

6.2 Return of documents and material

Guidance

When documents or other materials are obtained by the DFSA pursuant to Article 80 in relation to an investigation into a suspected contravention, the documents or material will be returned to the Person from whom those documents were received as soon as practicable after the conclusion of the investigation or related proceedings. Where documents or other material has been produced to the DFSA in the course of an investigation to assist another regulator or agency, the DFSA may, pursuant to Article 38, release the documents and materials to that other regulator or agency. The documents or material will be returned to the person from whom the documents were received as soon as practicable after receiving them back from the other regulator or agency.

6.3 Costs of investigation

Guidance

1. Where a Person is found by the Financial Markets Tribunal or Court to have contravened a provision of the Regulatory Law 2004, Rules or any legislation administered by the DFSA, the Financial Markets Tribunal or Court may order that Person to reimburse the DFSA in respect of the whole or a specified part of the costs and expenses of the investigation, including the remuneration of an officer involved in the investigation. The power for such an order is contained in Article 79(2).
2. The DFSA will seek the exercise of this power only in exceptional circumstances. Examples of circumstances in which the power may be exercised include the following:
 - a. where the actions of the Person the subject of investigation have unnecessarily prolonged the investigation;
 - b. where the Person, despite the exercise of compulsory powers, has failed to provide information in their possession;
 - c. where the Person knowingly provides false information during the course of a compulsory interview; or
 - d. where the Person has moved information, documents or assets outside the jurisdiction of the DIFC.

7 DECISION MAKING PROCESS

7.1 Decision making process

General approach to determining what action, if any, to take at the conclusion of an investigation

Guidance

1. In light of the DFSA's risk based approach to regulation and its proactive approach to enforcement, the need to take formal action against Persons in the DIFC should rarely arise. However, whenever it is necessary to achieve its stated objectives, the DFSA must act swiftly and decisively but fairly in pursuing an appropriate outcome. This may involve taking action to ensure that similar misconduct cannot or will not occur in the future or to remedy the effects of past misconduct. In determining what action may be necessary, the DFSA must work closely with any Financial Services Regulator in the home jurisdiction of any international firm.
2. The DFSA is conscious of the fact that even the decision to pursue a remedy at the conclusion of an investigation may have an immediate and serious impact on the business of a Person, firm or company.
3. Accordingly, the DFSA has put in place a rigorous and transparent decision making process to ensure that regulatory action is only instituted in the most appropriate circumstances and where the evidence points to breaches of legislation or expected standards of conduct.

Decision making procedure

4. At the conclusion of every investigation, the DFSA follows the decision making procedure set out below. This process is depicted diagrammatically in App2 and is explained in greater detail throughout this chapter.
 - a. The DFSA investigator makes a recommendation to the Enforcement Decisions Committee about whether any proceedings or action arising out of the investigation should be, in the opinion of the investigator, commenced.
 - b. The Enforcement Decisions Committee considers the recommendation and forms a preliminary view as to whether the DFSA should pursue a course of action.
 - c. The course the Enforcement Decisions Committee pursues depends on the nature of the action it considers appropriate:

- i. Should the Enforcement Decisions Committee form a preliminary view that proceedings should be commenced in the Financial Markets Tribunal or the Court, then it must send a Preliminary Findings Letter to the Person, the subject of investigation. Such letter will set out the preliminary view that has been reached in respect of which remedy the DFSA is minded to seek, the general facts upon which the Enforcement Decisions Committee has relied in forming its preliminary view, and will invite the Person concerned to comment and/or make submissions on the accuracy of the facts and the preliminary view reached.
- ii. A Person who is the subject of the investigation will be given 28 days to respond to a Preliminary Findings Letter. The period may be extended or restricted depending on the urgency of the matter. Where allowing an affected Person an opportunity to make submissions prior to making a final decision as to whether to commence proceedings may prejudice the effectiveness of any proceedings, the DFSA may not consult.
- iii. Upon receiving a response to a Preliminary Findings Letter the Enforcement Decisions Committee must take into account any submissions by the affected Person before making a recommendation to the CEO about whether to commence enforcement action.
- iv. If the Enforcement Decisions Committee determines that disciplinary proceedings or Court action ought to be commenced, it must make such a recommendation to the CEO, who makes the final decision whether or not to commence proceedings or action. Only the CEO is able to approve the commencement of disciplinary or Court action. The CEO may put into place appropriate delegations for the approval of urgent proceedings in circumstances where he is absent or otherwise not able to act.
- v. In some circumstances, the Regulatory Law 2004 itself requires a Person to be given an opportunity to make representations before certain steps can be taken by the DFSA. This applies in respect of applying restrictions or conditions to a Licence (Article 49), withdrawing authorisation or a Licence (Articles 50 – 52), applying conditions or restrictions on Authorised Individuals (Article 57), suspending or withdrawing Authorised Individual status or restricting a Person (Article 58) and revoking a Recognition Notice (Article 61). In a case where the Enforcement Decisions Committee forms the view that such action ought to be considered, it will refer the matter to a nominated DFSA officer. That nominated officer will then provide the requisite opportunity to make representations and, at the conclusion of that process, will exercise the DFSA's delegated authority in deciding whether to take action to withdraw authorisation in respect of a Financial Service, impose a condition or restriction on a Licence or restrict a Person from performing one or more Licensed Functions, suspend or withdraw Authorised Individual status, or revoke a Recognition Notice.

- vi. The Enforcement Decisions Committee may alternatively determine that it is appropriate to resolve a matter by the issue a Notice of Administrative Fine, pursuant to Article 90 or by censuring a Person pursuant to Article 91. The circumstances in which such notices will be issued and the procedures for so doing are set out in subsequent sections of this module. However, generally, this power will be exercised in relation to less serious contraventions. Where the Enforcement Decisions Committee determines to issue a Notice of Administrative Fine, it will be issued without a Preliminary Findings Letter being issued. In the event that the recipient of the Notice of Administrative Fine does not pay the fine stipulated or file a Notice of Objection, within the specified time, then the fine imposed will be recovered as a debt due. Where a Notice of Objection is filed, the DFSA must take into account all matters raised in it before making a final determination as to whether to commence disciplinary proceedings. Where the Enforcement Decisions Committee proposes issuing a censure, it must provide the affected Person with notice of the proposed censure and the facts upon which the decision was based. If the recipient of the notice does not object to the censure, the DFSA will proceed to censure the Person. If the recipient files a Notice of Objection in respect of the censure, then the DFSA must take into account all matters raised in it before making a final determination as to whether to proceed to censure the Person.
5. In circumstances of urgency, the CEO may determine, on the advice of the Enforcement Decisions Committee, to commence proceedings during the course of an investigation. This may arise, for example, where it is necessary to preserve assets or documents or prevent documents, assets or people leaving the jurisdiction.

7.2 Range of remedies available to DFSA at end of investigation

Guidance

1. There is a range of remedies in the Regulatory Law 2004 which the DFSA may decide to pursue in the course, or at the conclusion, of an investigation. The DFSA may decide to pursue more than one remedy. The remedies provided in the Regulatory Law 2004, along with an indication of the DFSA's approach to the use of those remedies, are set out in the following sections.
2. It is not possible to list all factors that the Enforcement Decisions Committee will take into account in determining which, if any, remedy to pursue but all relevant surrounding circumstances will be taken into account. However, the following sections do provide guidance in respect of particular factors that may be relevant in respect of specific remedies.

3. The DFSA will not exercise a criminal prosecution function. Should any criminal conduct be identified, then it will be referred to the appropriate law enforcement agency to deal with. Article 38 expressly recognises the right of the DFSA to provide information to law enforcement and other regulatory agencies and therefore to refer matters to them. The DFSA may take disciplinary or administrative action in respect of the criminal conduct.

7.3 The institution of proceedings before the financial markets tribunal

Introduction

Guidance

1. The ability to seek disciplinary orders is an important part of the DFSA's enforcement approach. The imposition of disciplinary orders, whether they involve fines, censures, restitution, compensation, disgorgement, cease and desist orders, disqualification orders and /or costs shows that regulatory standards are being upheld and assists in maintaining the integrity of the DIFC.
2. Article 33 allows the CEO to institute proceedings before the Financial Markets Tribunal where it appears reasonably likely to the CEO that there has been a breach of the Regulatory Law 2004, Rules or any legislation administered by the DFSA.
3. Article 34 sets out the orders that the Financial Markets Tribunal may make if it is satisfied that the alleged breach is proven. The Financial Markets Tribunal may:
 - a. impose on the respondent a fine;
 - b. censure the respondent, including by means of publishing a written Notice of Administrative Censure;
 - c. make an order requiring the respondent to effect restitution or compensate any Person for such period and on such terms as the Financial Markets Tribunal may direct;
 - d. make an order requiring the respondent to account for in such form and on such terms as the Financial Markets Tribunal may direct such amounts as the Financial Markets Tribunal determines to be profits arising from wrongdoing or any other form of unjust enrichment as determined by the Financial Markets Tribunal;
 - e. make an order requiring the respondent to cease and desist from such activity as the Financial Markets Tribunal may stipulate;
 - f. make an order requiring the respondent to do any act or thing;

- g. make an order disqualifying the respondent from holding office at any body corporate conducting business in the DIFC; or
- h. 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 to the proceedings. 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 costs.

Policy on taking disciplinary action

- 4. The CEO must consider the full circumstances of each case in determining whether to take disciplinary action in respect of conduct which appears reasonably likely to be a breach of the legislation applicable in the DIFC.
- 5. A number of factors may be relevant for this purpose and it is not possible to exhaustively list all of the relevant factors, however, the following are some of the issues that may be relevant:
 - a. the nature and seriousness of the suspected breach;
 - b. the conduct of the Person after the breach, including action taken by the Person to minimise the effect of the breach and to bring the issue to the attention of the DFSA;
 - c. the previous regulatory record of the Person in the DIFC and any other jurisdiction in which the Person has operated;
 - d. guidance given by the DFSA, recognising that compliance with Guidance does not offer a safe harbour;
 - e. action taken by the DFSA in previous similar cases; and
 - f. action taken by a Financial Services Regulator in respect of the conduct of the Person giving rise to the breach or any related conduct.

7.4 Injunctions and orders

Introduction

Guidance

- 1. Article 92(2) provides that where a Person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention, the Court may make one or more of the following orders:
 - a. an order restraining the Person from engaging in the conduct;

- b. an order requiring the Person to do any act or thing; or
 - c. any other order as the Court sees fit.
2. Article 92(3) enables the DFSA to seek orders restraining the transfer of assets and/or the movement of individuals out of the jurisdiction of the Court.
3. Should a Person fail to comply with such an order, they may be held in contempt by the Court.

The article 92 power

4. An injunction pursuant to Article 92(2) may be awarded by the Court where the Court is satisfied that a Person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention of a relevant requirement, that is a requirement, duty or obligation imposed under the Regulatory Law 2004, Rules or legislation administered by the DFSA. In those circumstances, the Court may make an order, on such terms as it thinks appropriate:
 - a. restraining the Person from engaging in the conduct;
 - b. requiring that Person to do any act or thing including acts or things to remedy the contravention or minimise the loss or damage; or
 - c. any other order as the Court sees fit.
5. The DFSA may apply for orders under Article 92(3) where:
 - a. it is conducting or has conducted an investigation into the acts or omissions of a Person which may contravene or which may have contravened a relevant requirement; or
 - b. a civil or regulatory proceeding has been instituted by the DFSA against the Person in respect of an alleged contravention of a relevant requirement.
6. Should the Court be so satisfied, it may make any of the following orders:
 - a. an order restraining the relevant Person from paying, transferring, disposing of, or otherwise dealing with, any assets of his which he is reasonably likely to dispose of or otherwise deal with;
 - b. an order restraining any other Person holding assets on behalf of the relevant Person from paying, transferring, disposing of, or otherwise dealing with, any assets of the relevant Person which are reasonably likely to be disposed of or otherwise dealt with;
 - c. 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 any assets of the relevant Person or held on his behalf;

- d. 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;
- e. 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 orders, of the property or any of the property of the relevant Person;
- f. in the event that the relevant Person is an individual, an order requiring him to deliver up to the Court his passport and such other documents as the Court thinks fit; or
- g. in the event that the relevant Person is an individual, an order prohibiting him from leaving the jurisdiction of the Court or of the United Arab Emirates without the consent of the Court.

Policy on applications for injunctions and freezing orders

- 7. Article 92 gives the DFSA a broad power to make application for injunctions and orders. The DFSA will exercise this power in circumstances where it considers that such orders are necessary to:
 - a. prevent contraventions of relevant requirements;
 - b. redress the effect of such contraventions; or
 - c. ensure that the position of Persons affected by contraventions will not be further adversely affected during the course of any investigation or litigation.
- 8. The DFSA recognises that injunctions or orders under Article 92 may have serious consequences for those concerned. Accordingly, the DFSA will only seek such injunctions or orders where such a course is the most appropriate way in the circumstances of achieving the ends referred to in the previous paragraph.
- 9. In deciding whether an application for an injunction is appropriate in a given case, the DFSA will consider all relevant factors. The following list of factors is not exhaustive as not every set of circumstances can be anticipated:
 - a. the nature and seriousness of a contravention or anticipated contravention of a relevant requirement;
 - b. whether the conduct giving rise to the contravention has ceased;
 - c. whether there are steps a Person could take or orders a Court could make to remedy a contravention;
 - d. whether there is a danger of assets being dissipated or removed from the jurisdiction of the Court;

- e. whether there is a danger that an individual will leave the jurisdiction, and if so, the effect that Person's absence may have on the effectiveness of the Court's orders;
 - f. the costs the DFSA would incur in applying for and enforcing an injunction and the likely effectiveness of such an injunction;
 - g. the general compliance history of the Person who is the subject of the possible application;
 - h. whether the conduct in question can be adequately addressed by the use of other regulatory powers;
 - i. the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter; and
 - j. whether there is information to suggest that the Person who is the subject of the possible application is involved in money laundering or other form of financial crime.
10. Further, not all of the factors will be relevant in a particular case and there may be other factors that are relevant.

7.5 The compulsory winding up of a regulated entity

Introduction

Guidance

1. The DFSA may apply to the Court pursuant to Article 93 for the winding up of a company which is or has been an Authorised Firm, an Authorised Market Institution or operating in breach of the Financial Services prohibition (Article 41) where it considers it to be in the interests of the DIFC.

Policy on winding up applications

2. The power to seek winding up of a company is a very powerful remedy and will not be used by the DFSA unless there is no other reasonable means of achieving its objectives.
3. The precondition to an application being made is therefore that the DFSA considers it to be in the interests of the DIFC that the company be wound up. This is a very wide basis for such an application and therefore the factors that the DFSA may take into account in determining whether to petition the Court are numerous and will vary from case to case. The following factors that the DFSA may take into account are not exhaustive and they will not all be relevant in every case.

4. The factors include:
 - a. whether the company has operated in accordance with the laws of the DIFC;
 - b. whether the needs of those operating in the DIFC and the interests of the DIFC generally require the company to cease to operate;
 - c. the need to protect the claims of those who have an interest in the company;
 - d. whether the relevant objectives can be met by using any of the DFSA's other powers;
 - e. in the case of an Authorised Firm, where the DFSA considers that its Licence should be withdrawn or where it has been withdrawn, the extent to which there is other business that the firm can carry on without authorisation;
 - f. in the case of a company operating in contravention of the Financial Services prohibition as part of a larger enterprise, the scale and importance of the unauthorised activity;
 - g. whether there is reason to believe that an injunction to restrain the carrying on of an unauthorised activity would be ineffective or inappropriate in the circumstances;
 - h. whether the company appears to be or have been involved in or used for financial crime or other criminal conduct;
 - i. where there is a significant cross border or international element to the business being carried on by the company, the impact on the business in other jurisdictions and whether action by any home state regulator may address the concerns of the DFSA;
 - j. the extent to which the company's management has cooperated, and is likely to continue to co-operate, with the DFSA; and
 - k. the involvement of the officers of a company in the foregoing and whether this suggests a systemic failure within the company.

7.6 Withdrawal of authorisation in respect of one or more financial services

Introduction

Guidance

1. The DFSA has power to withdraw authorisation in relation to one or more Financial Services for which an Authorised Firm or Authorised Market Institution is authorised under a Licence under Article 50 on its own initiative. This section will consider:

- a. the DFSA's own initiative power to withdraw authorisation under the Regulatory Law 2004;
- b. the DFSA's own initiative power to withdraw a Licence under the Regulatory Law 2004;
- c. the DFSA's policy in relation to the exercise of the power; and
- d. the procedure for withdrawing authorisation or Licence.

Power to withdraw authorisation

2. The DFSA may, under Article 50, withdraw authorisation in relation to one or more Financial Services for which an Authorised Firm or Authorised Market Institution is authorised.
3. The general statutory grounds for exercising those powers are contained in Article 50(3) of the Regulatory Law 2004 and include circumstances where:
 - a. the Authorised Firm or Authorised Market Institution is or has been in breach of one or more restrictions or conditions applied to its Licence;
 - b. the Authorised Firm or Authorised Market Institution is in breach of the Regulatory Law 2004, Rules or other legislation administered by the DFSA;
 - c. the Authorised Firm or Authorised Market Institution is no longer fit and proper to carry on a Financial Service;
 - d. the Authorised Firm 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;
 - e. the Authorised Firm or Authorised Market Institution requests the withdrawal; and
 - f. the DFSA considers that the exercise of the power is necessary or desirable in the pursuit of its objectives.

Power to withdraw a licence

4. The DFSA may, under Article 51, withdraw a Licence of an Authorised Firm or Authorised Market Institution.
5. Article 51(2) provides that a Licence may be withdrawn where:
 - a. as a consequence of withdrawal of authorisation in relation to one or more Financial Services under Article 50, the Authorised Firm or Authorised Market Institution is no longer authorised to carry on a Financial Service;

- b. the Authorised Firm or Authorised Market Institution is no longer fit and proper to hold a Licence;
- c. the Authorised Firm or Authorised Market Institution has failed to remove a Controller when required pursuant to Article 64; or
- d. the Authorised Firm or Authorised Market Institution requests withdrawal.

Policy for the DFSA exercising its power to withdraw authorisation or a licence

- 6. In determining whether to withdraw an authorisation or Licence on its own initiative, the DFSA must take into account all relevant factors. However, without limiting the generality of the matters which may be taken into account, the DFSA will consider exercising its powers in the following circumstances:
 - a. where the DFSA has serious concerns about the way the business of the Authorised Firm or Authorised Market Institution has been conducted;
 - b. where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;
 - c. to ensure the integrity of the market and its participants;
 - d. where there has been a contravention of the Regulatory Law 2004, Rules or legislation administered by the DFSA;
 - e. to ensure commercial certainty;
 - f. when the Authorised Firm or Authorised Market Institution no longer satisfies the criteria set out in AUT in respect of fitness and propriety;
 - g. where the activities of the Authorised Firm or Authorised Market Institution have ceased; or
 - h. where the Authorised Firm's or Authorised Market Institution's resources seem inadequate for the scale or type of activity which the firm is authorised to undertake.

Procedure to withdraw authorisation or a licence

- 7. Generally, the DFSA will only consider exercising this power after a thorough investigation. The power may also be exercised when the Authorised Firm or Authorised Market Institution has been the subject of consideration during the exercise of the DFSA's supervision powers.

8. If, having considered the results of the investigation, the Enforcement Decisions Committee considers that it may be necessary to withdraw an authorisation or Licence under the Regulatory Law 2004, it will refer the matter to a nominated DFSA officer, referred to in this part as the 'Decision Maker'. The Decision Maker must consider the matter impartially.
9. The Decision Maker will follow the procedure set out in App3.

7.7 Imposition of conditions and restrictions on a licence

Introduction

Guidance

1. Article 49 enables the DFSA, at any time by written notice to an Authorised Firm or Authorised Market Institution, to:
 - a. impose conditions and restrictions or additional conditions and restrictions on a Licence; and
 - b. vary or withdraw conditions and restrictions imposed on a Licence.
2. This sets out the circumstances in which the power may be exercised, the DFSA's policy on the use of the power and the process that will be adopted by the DFSA when it exercises the power.

Power to impose, vary or withdraw conditions and restrictions

3. The power of the DFSA to impose, vary or withdraw conditions or restrictions on a Licence may be exercised on its own initiative or at the request of an Authorised Firm or Authorised Market Institution. This power may only be exercised where the Authorised Firm or Authorised Market Institution has been given a suitable opportunity to make representations in Person and/or in writing in relation to the proposed changes unless:
 - a. the imposition of conditions or restrictions occurs when the Licence is initially granted or extended;
 - b. the Authorised Firm or Authorised Market Institution has requested the imposition, variation or withdrawal or;
 - c. the DFSA concludes that any delay that may arise from allowing the opportunity is prejudicial to the interests of the DIFC.

Policy on imposing, varying or revoking conditions or restrictions

4. Article 49, which allows for the imposing, varying or of withdrawing conditions or restrictions does not identify any preconditions that must be met prior to such steps being taken. It follows that the DFSA has a wide discretion in respect of when it will exercise this power. Without limiting that discretion, generally the DFSA will exercise this power at its own initiative in support of its enforcement function when it has serious concerns about an Authorised Firm or Authorised Market Institution or about the way its business has been or is being conducted but the concerns are not such as to warrant, in the view of the DFSA, the withdrawal of authorisation. Circumstances when this power may be exercised include the following:
 - a. where the Authorised Firm's or Authorised Market Institution's resources seem inadequate for the scale or type of activity which the firm is authorised to undertake;
 - b. where the Authorised Firm or Authorised Market Institution has not conducted its business in compliance with the expected standards;
 - c. where the Authorised Firm or Authorised Market Institution has conducted its business in such a way that it has put itself at risk of being used for the purpose of money laundering or other misconduct; or
 - d. where the Authorised Firm or Authorised Market Institution has not been managed effectively and responsibly and has not exercised the expected level of skill, care and diligence in carrying out its business.

Procedure for imposing, varying or revoking conditions or restrictions

5. Generally, the DFSA will consider exercising this power on its own initiative after making appropriate inquiries or investigation. The power may also be exercised when the Authorised Firm or Authorised Market Institution has been the subject of consideration during the exercise of the DFSA's supervision role.
6. If, having considered the results of the investigation, the Enforcement Decisions Committee considers that it may be appropriate to impose, vary or withdraw conditions or restrictions on a Licence, it will refer the matter to a nominated DFSA officer, referred to in this part as the 'Decision Maker'. The Decision Maker must consider the matter impartially.
7. The Decision Maker will then follow the procedure set out in App3.

7.8 Restriction, suspension and withdrawal of Authorised Individual status

Introduction

Guidance

1. The DFSA has power on its own initiative to restrict a Person from performing Licensed Functions or to suspend or withdraw Authorised Individual status. This part will consider:
 - a. the DFSA's power to restrict a Person from performing Licensed Functions or to withdraw or suspend Authorised Individual status;
 - b. the DFSA's policy in relation to the exercise of this power; and
 - c. the procedure for restricting a Person from performing Licensed Functions or withdrawing or suspending Authorised Individual status.

The power to restrict, suspend or withdraw Authorised Individuals

2. Article 58(2) allows the DFSA to restrict a Person from performing Licensed Functions or to withdraw or suspend Authorised Individual status if it reasonably concludes that:
 - a. an Authorised Individual is in breach or has been in breach of an obligation that applies as a result of such Person's Authorised Individual status; or
 - b. a Person is no longer fit and proper to perform a role in respect of which he is an Authorised Individual.
3. The DFSA may also withdraw the Authorised Individual status of a Person pursuant to Article 58(3) if:
 - a. the Person becomes bankrupt;
 - b. the Person is convicted of a serious criminal offence;
 - c. the Person becomes incapable, through mental or physical incapacity of managing his affairs;
 - d. the Person or the relevant Authorised Firm asks the DFSA to withdraw the status; or
 - e. the Licence of the relevant Authorised Firm is withdrawn.
4. The DFSA may withdraw authorisation in relation to a Licensed Function on the request of an Authorised Individual or Authorised Firm.

5. In relation to the powers of the DFSA in paragraphs 3 and 4 above, the DFSA is not required to provide an opportunity to make representations pursuant to Article 59(2).
 6. Also pursuant to Article 58, where the DFSA is conducting an investigation and in the case of that investigation suspects that a Person has engaged in conduct that may form grounds for the withdrawal of Authorised Individual status, it may suspend that Person's Authorised Individual status for the duration of the investigation or related proceedings.
- 7.8.1** For the purposes of Article 58(3)(b), the DFSA may determine that a person has been convicted of a serious offence if that person has been convicted of any offence in respect of which the maximum penalty includes imprisonment.

Policy on restricting, withdrawing or suspending Authorised Individuals

Guidance

1. The DFSA is conscious of the potential impact of deciding to restrict an individual or to suspend or withdraw Authorised Individual status. Such a decision will not be made lightly and in forming a view, the DFSA will consider all circumstances including the following:
 - a. the criteria for assessing the fitness and propriety of Authorised Individuals as set out in AUT;
 - b. whether, and to what extent, the Person has contravened, or been knowingly concerned in a contravention of the Regulatory Law 2004, Rules or any legislation administered by the DFSA;
 - c. the length of time since the occurrence of any matters indicating unfitness;
 - d. the risk which the Person poses to regulated entities and customers in the DIFC; and
 - e. the previous disciplinary record and general compliance history of the Person including whether the DFSA has previously imposed a disciplinary sanction on the Person.
2. The DFSA may have regard to the cumulative effect of a number of factors which, when considered on their own, may not be sufficient to show that the Person is not fit and proper to continue to carry out a particular function. It may also take account of the particular functions which the Person is carrying out within a firm and the nature and activities of the firm concerned. It is impossible to produce a definitive list of matters which the DFSA might take into account when considering whether a Person is not a fit and proper Person to continue to carry out a particular licensed function in a particular Authorised Firm, but some guidance is provided in AUT.

Procedure for restricting, suspending and withdrawing Authorised Individuals

3. Generally, the DFSA will consider exercising this power on its own initiative after making appropriate inquiries or investigation. The DFSA may exercise its power to suspend during the course of an investigation or related proceeding. The power may also be exercised when the Person has been the subject of consideration during the exercise of the DFSA's supervision powers.
4. If the Enforcement Decisions Committee considers that it may be appropriate to restrict a Person from performing Licensed Functions or to withdraw or suspend Authorised Individual status under the Regulatory Law 2004, it will refer the matter to a nominated DFSA officer, referred to in this part as the 'Decision Maker'. The Decision Maker must consider the matter impartially.
5. The Decision Maker will then follow the procedure set out in App3.

7.9 Application of conditions and restrictions to Authorised Individual status

Introduction

Guidance

1. Article 57 enables the DFSA at any time by a written notice to an Authorised Individual and the Authorised Firm in relation to which the Authorised Individual is an officer, employee or agent, to:
 - 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. This part sets out the circumstances, in which the power may be exercised, the process that will be adopted by the DFSA when it exercises the power on its own initiative and the DFSA policy on the use of the power.

Power to impose conditions and restrictions or vary or withdraw conditions and restrictions on Authorised Individuals

3. The power of the DFSA to impose, vary or withdraw conditions and restrictions on Authorised Individual status may be exercised by the DFSA on its own initiative or at the request of the Authorised Individual or the Authorised Firm in relation to which the Authorised Individual is an officer, employee or agent. The power may only be exercised, pursuant to Article 57(3), when the DFSA has given the relevant Authorised Individual and the Authorised Firm a suitable opportunity to make representations in Person and in writing to the DFSA in relation to the proposed changes unless:

- a. the imposition of conditions and restrictions occurs when Authorised Individual status is originally granted;
- b. the relevant Person has requested the imposition, variation or withdrawal of conditions and restrictions; or
- c. the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC.

Policy on imposing, adding, varying or withdrawing conditions or restrictions

4. Article 57, which allows for the imposing, varying or withdrawing of conditions or restrictions, does not identify any pre-conditions that must be met prior to such steps being taken. It follows that there is a wide discretion in the DFSA in respect of when it will exercise the power. Without limiting that discretion, generally the DFSA will exercise the power in support of its enforcement function when it has serious concerns about an Authorised Individual, that the concerns are not such as to warrant, in the view of the DFSA, the withdrawal or suspension of Authorised Individual status. Circumstances when this power may be exercised include the following:
 - a. where the Authorised Individual has not acted effectively and responsibly and has not exercised the expected level of skill, care and diligence in carrying out Licensed Function;
 - b. where the conduct of the Authorised Individual falls below the standards expected, but that the interests of the DIFC, other regulated entities and customers may properly be protected by imposing or varying conditions or restrictions on the Authorised Individual status of the Person; or
 - c. where the DFSA has some concern about the fitness and propriety (including the financial soundness or educational qualifications) of the Authorised Individual, but not such as to warrant revocation or suspension of Authorised Individual status.

Procedure for imposing, adding, varying or withdrawing conditions and restrictions in respect of Authorised Individual status

5. Generally, the DFSA will consider exercising this power on its own initiative after making appropriate inquiries or investigation. The power may also be exercised when the Person has been the subject of consideration during the exercise of the DFSA's supervision role.
6. If, after having considered the results of the investigation, the Enforcement Decisions Committee considers that it may be appropriate to impose, add, vary or withdraw conditions and restrictions, it will refer the matter to a nominated DFSA officer, referred to in this part as the Decision Maker. The Decision Maker must exercise consider the matter impartially.
7. The Decision Maker will then follow the procedures in App3.

7.10 Restrictions on individuals

Introduction

Guidance

1. Article 58(1) provides that where the DFSA reasonably concludes that a Person is not a fit and proper Person to perform any functions in or in connection with the provisions of financial services or ancillary services in the DIFC (whether or not they are Licensed Functions) it may restrict such Person from performing any or all of such functions.
2. This part sets out the circumstances in which the power may be exercised, the process that will be adopted by the DFSA when it exercises the power and the DFSA's policy on the use of the power.

Power to impose a restriction on a person

3. The power of the DFSA to restrict a Person from performing particular or all functions may be exercised when the DFSA reasonably concludes that a Person is not fit and proper to perform functions in or in connection with the provision of Financial Services or Ancillary Services in the DIFC. The power is, therefore, premised on a finding by the DFSA that the Person is not fit and proper to perform functions. The fitness and propriety of a Person will be determined taking into account all circumstances of the matter under consideration in light of the criteria for determining fitness and propriety as set out in AUT.
4. The DFSA considers this power as particularly important to ensure the integrity of the DIFC and to maintain the confidence of the regulated entities and their customers.
5. Article 58(1) enables the DFSA to impose a restriction in respect of all functions or in respect of specific functions. Whether a general restriction or a more specific restriction is imposed in a case, will be determined on the facts of the matter, including the concerns upon which the DFSA determines that a Person is not fit and proper as well as the need to protect the integrity of the DIFC and ensure the confidence of participants in the market.
6. Pursuant to Article 58(6) a Person who performs a function in breach of a restriction imposed under Article 58(1) commits a contravention.
7. Pursuant to Article 58(7) the DFSA may vary or withdraw a notice of restriction where it is reasonable to do so.
8. Pursuant to Article 59 and subject to some exceptions, the DFSA may only exercise its power under Article 58(1) to issue a restriction in respect of a Person performing functions if it has given the relevant Person an opportunity to make representations in Person and in writing to the DFSA.

Policy on the imposition of restrictions on a person

9. The DFSA has the power to impose a range of restrictions. The nature of the restrictions will depend on the circumstances of each case. In particular, depending on the facts of the particular case, the DFSA may prohibit individuals from performing any functions in or in connection with the provision of Financial Services or Ancillary Services whether or not they are Licensed Functions. Alternatively, the DFSA may restrict the individual from performing specific functions. The power may also be exercised when the Person has been the subject of consideration during the exercise of the DFSA's supervision powers.
10. The DFSA recognises that the decision to impose a restriction on an individual will have a significant effect on the individual and possibly on an Authorised Firm, Authorised Market Institution, or Ancillary Service Provider. Accordingly, in deciding whether to impose the restriction, the DFSA will consider all relevant circumstances, including the representations made by an individual and whether any other form of enforcement action is available.
11. The imposition of a restriction is potentially of greater effect than the withdrawal of approval, because the restriction may be much wider in its application. Accordingly, in most cases, the DFSA will consider whether its concerns in respect of the individual can be adequately addressed and the integrity of the DIFC maintained by withdrawing the Authorised Individual status or by some other disciplinary sanction without the need to impose a restriction. Obviously, where the individual concerned is not an Authorised Individual, the DFSA will not have the option of withdrawing Authorised Individual status.
12. In light of the foregoing, it is clear that it is not possible to set out every matter which the DFSA will take into account in determining whether to impose a restriction on a Person. However, some of those factors that will be taken into account by the DFSA in determining whether to impose a restriction, and if so, the nature of the restriction are set out below:
 - a. the issues giving rise to concerns about the fitness and propriety of the individual and, in particular, whether those concerns are such as to affect all possible functions a Person may perform or whether they are restricted to particular functions. In determining fitness and propriety, the DFSA will have particular reference to the criteria set out in AUT, which include integrity, competence and financial soundness;
 - b. whether the individual has contravened or been knowingly concerned in a contravention of the Regulatory Law 2004, Rules or legislation administered by the DFSA;
 - c. the materiality and the length of time since the occurrence of any issue giving rise to concerns of the fitness and propriety;
 - d. the nature of the functions the individual is performing or proposing to perform and the nature of the Authorised Firm or Ancillary Service Provider concerned;
 - e. the level of risk which the individual proposes to regulated entities, customers and the integrity of the DIFC; and

- f. the regulatory history of the individual concerned.

Procedure for imposing a restriction on a person

13. The DFSA will often use this power at the conclusion of an investigation but it may also use the power where the background and circumstances of a Person are such as to require the Person to be restricted from conducting any functions immediately.
14. In any event, a decision to consider imposing a restriction will be made by the Enforcement Decisions Committee. Where the Enforcement Decisions Committee considers that it may be appropriate to impose a restriction on an individual, it will refer the matter to a nominated DFSA officer, referred to in this part as the Decision Maker. The Decision Maker must be Person who considers the matter impartially.
15. The Decision Maker will then follow the procedures in App3.

7.11 Powers of intervention in respect of Authorised Firms

Guidance

Articles 75 to 77 provide a series of restrictions that can be imposed on Authorised Firms and Authorised Market Institutions by the DFSA. Guidance in respect of the manner in which these powers will be exercised can be found SUP.

7.12 Imposition of a fine

Introduction

Guidance

1. The DFSA may use the power to administratively impose fines to assist it in achieving its objectives. The main purposes of such a remedy are to minimise or offset any benefit a Person may obtain from non-compliance with the Regulatory Law 2004 or Rules or other legislation administered by the DFSA and to promote high standards of conduct and a culture of compliance by deterring firms and individuals from committing contraventions. This latter purpose will only be achieved where the imposition of fines is appropriately publicised.

Procedure in respect of the imposition of a fine

2. When considering the imposition of a fine, the DFSA will follow the process set out below and which is set out diagrammatically in App4.

Notice of administrative fine

7.12.1 For the purposes of Article 90(1)(a), Article 90 applies to the following provisions:

- (a) every Rule made by the DFSA except for the Principles for Authorised Firms and the Principles for Authorised Individuals;
- (b) every provision of the Regulatory Law 2004 except for the following:
 - (i) Article 30;
 - (ii) Article 35;
 - (iii) Article 41(1);
 - (iv) Article 42(4);
 - (v) Article 42(5);
 - (vi) Article 43(2);
 - (vii) Article 43(3);
 - (viii) Article 43(4);
 - (ix) Article 44(1);
 - (x) Article 44(6);
 - (xi) Article 70(3);
 - (xii) Article 75;
 - (xiii) Article 76;
 - (xiv) Article 82(3); and
- (c) every other provision contained in any legislation administered by the DFSA.

7.12.2 Where the DFSA considers that a Person has committed a contravention of any provision referred to in Rule 7.12.1 and decides to impose a fine pursuant to Article 90, the DFSA will give the Person a written notice in accordance with form 5 in App1:

- (a) alleging that the Person has committed the contravention and giving particulars of the facts alleged by the DFSA to constitute the contravention;
 - (b) setting out the fine imposed by the DFSA in respect of the contravention;
 - (c) specifying the period during which the fine may be paid; and
-

(d) providing an address for filing of a Notice of Objection.

7.12.3 Where a fine is imposed under Article 90(2) on a Person and the Person pays the fine within the period specified, no proceedings may be commenced by the DFSA in respect of the relevant contravention but the DFSA may take further action in relation to any continuing obligation that remains outstanding.

7.12.4 Where a fine is imposed under Article 90(2) and the Person files a Notice of Objection with the DFSA within the period specified, the DFSA may not recover the fine as a debt due, but may commence proceedings in the Financial Markets Tribunal in respect of the contravention.

7.12.5 A Notice of Objection must be in accordance with form 6 of App1 and must set out every matter which the Person believes ought to be taken into account by the DFSA in determining whether to commence further proceedings in the Financial Markets Tribunal.

7.12.6 Where the DFSA commences proceedings in the Financial Markets Tribunal, it may seek any order which the Financial Markets Tribunal has power to grant and is not limited to seeking the imposition of a fine.

7.12.7 In the event that the Financial Markets Tribunal determines to impose a fine, it need not consider the amount of the fine initially imposed by the DFSA.

7.12.8 If, at the end of the period for payment specified in the notice imposing the fine, the Person has not paid the full amount of the fine and has not filed a Notice of Objection, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs.

7.12.9 The DFSA may withdraw a notice imposing a fine whenever it considers it appropriate.

Guidance

1. Where a Person receives a notice imposing a fine and pays the fine then no further action will be taken in respect of the past breach by virtue of Article 90(3). However, if the contravention arises out of a failure to do an act or thing and the act or thing is not done, then the obligation remains. Similarly, if the contravention arises out of continuing to do some act or thing, then the obligation to cease doing the act or thing continues. In both cases, the DFSA may take further action in relation to the contravention as it continues after the payment of the fine.
2. In most cases, if the contravention is continuing, the DFSA will not impose a fine but will instead institute proceedings before the Financial Markets Tribunal seeking additional orders to remedy the continuing breach.

3. If the Person who receives the notice of fine files a Notice of Objection within the time specified in the notice imposing the fine, then the DFSA will consider all matters raised by the Person before determining whether to commence proceedings in the Financial Markets Tribunal. It will do so by placing the matter before the Enforcement Decisions Committee for a final decision to be made as to whether to recommend to the CEO that the proceedings be commenced. The CEO, or his delegate for this purpose, is the final decision maker.
4. Where the DFSA does decide to commence proceedings in the Financial Markets Tribunal, it will give prior notice to the relevant Person and allow that person the opportunity to pay the fine. If the person does not pay the fine, the DFSA may seek orders other than the imposition of a fine. Further, if it does seek the imposition of a fine, the Financial Markets Tribunal may impose a fine in any amount it considers appropriate and need not take into account the amount of the fine initially imposed by the DFSA.
5. If the Person who receives a notice imposing a fine does not pay the fine nor file a Notice of Objection, the DFSA may recover the fine as a debt due, together with costs incurred by the DFSA in taking this action.

Policy on imposition of a fine

6. In determining whether to impose an administrative fine and if so, the quantum of the fine, the DFSA will take into account all of the circumstances of the particular case. It follows that there will not be a standard fine for a particular contravention as the surrounding circumstances of each may vary. The DFSA will exercise its powers to impose fines in a manner that is proportionate and transparent so as to take full advantage of the flexibility of the remedy.
7. Should the DFSA determine to impose a fine, the maximum fine that can be imposed is set out in Article 90(2) and is \$5,000 in respect of a natural Person and \$25,000 in respect of a body corporate.
8. The circumstances and factors that the DFSA will take into account in determining whether to impose an administrative fine and, if so, the quantum of the fine, may include the following:
 - a. the seriousness and the potential impact of the contravention;
 - b. the extent to which the contravention was deliberate or reckless or otherwise;
 - c. whether the entity on whom the penalty is to be imposed is an individual, and the size, financial resources and other circumstances of the Person;
 - d. the amount of profits accrued or loss avoided;
 - e. the conduct of the Person following the contravention;
 - f. whether the contravention is continuing or otherwise;
 - g. the disciplinary record and compliance history of the Person; and

- h. action taken by law enforcement or other regulatory authorities including regulators from foreign jurisdictions.

Recovery of fines

- 9. The imposition of fines will only assist the DFSA achieve its objectives if the imposition is enforced and the fines recovered. The DFSA must therefore endeavour to recover the levied fines in every case.

7.13 Administrative censures

Introduction

Guidance

The DFSA may censure a Person by means of publishing a written Notice of Administrative Censure, or by other means, where the DFSA considers that the Person has contravened a provision of the legislation prescribed in these Rules.

Power to censure

Administrative censure

7.13.1 For the purposes of Article 91(1)(a), Article 91 applies to the following provisions:

- (a) every Rule made by the DFSA except for the Principles for Authorised Firms and the Principles for Authorised Individuals;
- (b) every provision of the Regulatory Law 2004 except for the following:
 - (i) Article 30;
 - (ii) Article 35;
 - (iii) Article 41(1);
 - (iv) Article 42(4);
 - (v) Article 42(5);
 - (vi) Article 43(2);
 - (vii) Article 43(3);
 - (viii) Article 43(4);
 - (ix) Article 44(1);
 - (x) Article 44(6);
 - (xi) Article 70(3);

- (xii) Article 75;
 - (xiii) Article 76;
 - (xiv) Article 82(3); and
- (c) every provision contained in any other legislation administered by the DFSA.

Guidance

1. The DFSA may censure a Person where it considers that the Person has contravened a provision of the Regulatory Law 2004 or Rules or any other legislation administered by the DFSA set out in Rule 7.13.1.
2. This power may only be exercised by the DFSA if the Person has not objected to the censure and has been given an opportunity to make representations in Person and in writing in relation to the censure. Accordingly, when a censure is proposed, the Person affected has three options; he may object to the censure, in which case the censure will not occur; he may indicate that he wishes to make representations, in which case those representations will be received and considered before a final decision as to whether to censure is made; or he may do nothing, in which case he will be censured.

Procedure for Imposing a Censure

3. Generally, the DFSA will only consider exercising this power after an investigation.
4. If, having considered the results of the investigation, the Enforcement Decisions Committee considers that it may be appropriate to censure a Person, it must follow the procedure set out in this section.

7.13.2 Where the DFSA considers that a Person has contravened a provision referred to in Rule 7.13.1, and decides to censure the Person pursuant to Article 91, the DFSA will give the Person a written notice in accordance with Form 7 in App1:

- (a) alleging that the Person has committed the contravention and giving particulars of the facts alleged by the DFSA to constitute the contravention;
- (b) setting out the general effect of the censure to be published by the DFSA in respect of the contravention;
- (c) specifying the manner in which the DFSA proposes to publish the censure;
- (d) offering the Person an opportunity to make representations in Person and in writing in relation to the proposed censure; and

(e) providing an address for filing of a Notice of Objection.

7.13.3 Where a notice is issued under Rule 7.13.2 of these Rules in respect of a Person and the Person files a Notice of Objection with the DFSA within the period specified, then the DFSA may not censure the Person, but may commence proceedings in the Financial Markets Tribunal in respect of the contravention.

7.13.4 A Notice of Objection must be in accordance with form 6 of App1 and should set out every matter which the Person believes ought to be taken into account by the DFSA in determining whether to commence further proceedings in the Financial Markets Tribunal.

7.13.5 Where the DFSA commences proceedings in the Financial Markets Tribunal in accordance with the foregoing Rules, it may seek any order which the Financial Markets Tribunal has power to grant and is not limited to seeking a censure.

7.13.6 If, at the conclusion of the period specified in the notice provided under Rule 7.13.2, the Person has not filed a Notice of Objection nor indicated that it seeks to make representations, then the DFSA may proceed to censure a Person in the manner set out in the Notice of Administrative Censure.

7.13.7 If the Person indicates within the time specified in the Notice of Administrative Censure that he wishes to make representations, then the DFSA must not censure the Person until the opportunity to make representations has been provided.

Guidance

Where a Person has indicated that he wishes to make representations then the Enforcement Decisions Committee must refer the matter to a nominated DFSA officer, referred to as the Decision Maker. The Decision Maker will insofar as is applicable follow the procedure set out in App3.

7.13.8 Where the DFSA censures a Person, no further action will be taken in respect of the contravention to which the censure relates. However, if the contravention arises out of the failure to do an act or thing, and the act or thing is not done, then the obligation remains. Similarly, if the contravention arises out of continuing to do some act or thing, then the obligation to cease doing the act or thing continues. In both cases, the DFSA may take further action in relation to the contravention as it continues after the censure.

Guidance

1. In most cases, if the contravention is continuing, the DFSA will not impose a censure, but will instead institute proceedings before the Financial Markets Tribunal, seeking additional orders to remedy the breach.
2. Where a Notice of Administrative Censure is issued and a Notice of Objection filed, the matter will be placed before the Enforcement Decisions Committee for a final decision to be made on whether to recommend to the CEO that proceedings be commenced in the Financial Markets Tribunal. The CEO, or his delegate for this purpose, is the final Decision Maker.

Policy on administrative censures

3. The DFSA will take all of the surrounding circumstances into account in determining whether to issue a public censure. It is not possible to list every factor that might be relevant, as they will vary from case to case. Generally, however, the DFSA will impose a censure in circumstances where it considers that its concerns must be publicly expressed, but that other disciplinary action is not warranted, or may not be effective in addressing the conduct. Censures will only be used where the DFSA is satisfied that this will assist in greater understanding of its approach to particular issues and, therefore, greater compliance with requirements.
4. Whilst it is not possible to list every factor, the DFSA will take into account the following factors as relevant in particular cases:
 - a. if the Person has made a profit or avoided a loss as a result of the conduct constituting the contravention. If so, then the DFSA is more likely to seek orders for the disgorgement of any financial benefit;
 - b. the seriousness of the conduct taking into account the nature and effect of the contraventions;
 - c. the conduct of the Person following the contravention, and in particular, whether the Person has brought the contravention to the attention of the DFSA and has subsequently co-operated with the DFSA;
 - d. the regulatory history of the Person; and
 - e. the ability of the Person to satisfy any other form of regulatory action, whether it be payment of a financial penalty, or compliance with some form of injunction.

7.14 Orders in the interests of the DIFC

Introduction

Guidance

1. Article 54 of the Markets Law 2004 provides that the Court or Financial Markets Tribunal may make one of a range of orders in relation to a Person, regardless of whether a contravention of the Regulatory Law 2004 has occurred, if it is in the interests of the DIFC for such an order to be made. Such an order may only be made on the application of the DFSA. The orders are intended to be flexible and responsive to circumstances that will ensure preservation of interests, compliance with the Regulatory Law 2004 or Rules, or even reprimanding and penalising individuals or companies for conduct affecting the integrity of the DIFC or its participants.

Power to obtain orders in the interests of the DIFC

2. Article 54 of the Markets Law 2004 provides that one or more of a range of orders may be made by the Court or Financial Markets Tribunal on the application of the DFSA if, in the opinion of the Court or Financial Markets Tribunal, it is in the interests of the DIFC for such orders to be made. It is not necessary that a contravention be established.
3. The orders that may be made by the Financial Markets Tribunal pursuant to Article 54 of the Markets Law 2004 are as follows:
 - a. an order restricting any conduct on such conditions or terms as the Court or tribunal thinks fit;
 - b. an order that trading in any Investments cease permanently or for such period as is specified in the order;
 - c. an order that any exemptions contained in the Markets Law 2004 or the Rules made thereunder, do not apply permanently or for such period as is specified in the order;
 - d. an order that a Person submit to a review by the DFSA of his practices and procedures and institute such changes as may be directed by the DFSA;
 - e. orders in relation to activities relating to takeovers, mergers or acquisitions of shares within the DIFC;
 - f. an order that a disclosure be made to the market;
 - g. an order reprimanding a Person described in the order;
 - h. an order that a Person resign one or more positions that the Person holds as a director or officer of a Company;

- i. an order that a Person is prohibited from becoming or acting as a director or officer of any Company;
 - j. an order that a Person is prohibited from making offers of securities within the DIFC;
 - k. an order that a Person is prohibited from being involved in listing companies within the DIFC;
 - l. an order requiring a Person to disgorge to the DFSA any amounts obtained as a result of the non-compliance with the Markets Law 2004 or the Rules;
 - m. an order that a release, report, prospectus, supplementary prospectus, return, financial statement or any other document described in the order:
 - i. be provided by a Person described in the order,
 - ii. not be provided by a market participant described in the order; or
 - iii. be amended by a market participant to the extent that amendment is practicable.
 - n. an order that a Person pay a fine; and
 - o. any order that the Court or Financial Markets Tribunal thinks fit, in order to maintain the integrity of the DIFC and ensure an efficient, honest, fair and transparent market.
4. By virtue of Article 54(2) of the Markets Law 2004, the Court or Financial Markets Tribunal, on the application of the DFSA, may make interim and ex parte orders.

The procedure for obtaining orders in the interests of the DIFC

- 5. An application to the Financial Markets Tribunal, or the Court, pursuant to Article 54(1) the Markets Law 2004 may only be made by the DFSA.
- 6. Before making an application for such an order (whether interim, ex parte or final), the DFSA must be satisfied that such an order would be in the interests of the DIFC. In making the application, the DFSA will comply with the general requirements in respect of applications to the Financial Markets Tribunal or, in the case of an application to the court, requirements of the DIFC Commercial Court Rules.

Policy on obtaining orders in the interest of the DIFC

- 7. There are a range of orders that may be made by the Court or the Financial Markets Tribunal contained in Article 54 of the Markets Law 2004. Before making application for one of those orders, the DFSA will ensure that the order sought is that which will best assist the DFSA in achieving its objectives.

8. The fact that such orders may be made, regardless of whether a contravention of the law has occurred, means that there is an additional burden placed upon the DFSA to ensure that applications are only made in those cases where such relief is necessary in the interests of the DIFC. In determining whether to make an application for an order in the interests of the DIFC, the DFSA will take into account all relevant surrounding circumstances, including, but not limited to, the following:
 - a. the nature and extent of the conduct in question;
 - b. the effect of the trading on the market;
 - c. whether the market is currently informed of all material information;
 - d. what steps the relevant Person has taken in respect of the conduct being considered;
 - e. whether any other form of relief is available to the DFSA or appropriate in the circumstances;
 - f. whether the relevant conduct could have a significant impact on the integrity of the DIFC market or the confidence in that market; and
 - g. the effect of interests of participants in the DIFC.

7.15 Appointment of managers

Introduction

Guidance

1. Article 88 provides that the DFSA may require an Authorised 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 stipulate.
2. This part sets out the circumstances in which the power may be exercised, the DFSA's policy on the use of the power and the policy that will be adopted.

Power to require an Authorised Firm or Authorised Market Institution to appoint a manager

3. The power to require the appointment of a manager is not restricted to certain circumstances by the operation of Article 88 itself. It is, therefore, a very wide power. Article 88(3) enables the DFSA to impose the requirement in those circumstances which are prescribed in the Rules.

7.15.1 The DFSA may impose a requirement under Article 88(1) in circumstances where:

- (a) it has concerns about the solvency or the level of compliance with prudential requirements of the Authorised Firm or Authorised Market Institution and that the appointment of a manager may be desirable in the view of the DFSA in addressing the concerns or otherwise determining whether there are such problems;
- (b) it believes that the appointment of a manager is necessary or desirable for the orderly transition of the Authorised Firm or Authorised Market Institution from one set of owners or controllers to a new set of owners or controllers;
- (c) it considers that a manager must be in place to wind down the operations of the Authorised Firm or Authorised Market Institution and that such appointment is necessary or desirable for the protection of customers of the Authorised Firm or Authorised Market Institution; or
- (d) the DFSA has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Firm or Authorised Market Institution and that the appointment of a manager is necessary or desirable to ensure that customers or regulated entities are not adversely affected or to maintain the integrity of the DIFC.

Procedure to require the appointment of a manager

Guidance

1. Imposing a requirement to appoint a manager will only occur in exceptional circumstances and where it is necessary to uphold the integrity of the DIFC in circumstances of urgency.
2. An Authorised Firm or Authorised Market Institution will generally receive an opportunity to make representations prior to being required to appoint a manager in accordance with the procedures set out in App3. However, in circumstances of urgency or where it is not possible, the DFSA will not give advance notice of the proposed requirement and will not receive any comments from the Authorised Firm or Authorised Market Institution prior to finally making the requirement.
3. An Authorised Firm or Authorised Market Institution may appeal to the Regulatory Appeals Committee in respect of a requirement to appoint a manager.
4. When the DFSA does require an Authorised Firm or an Authorised Market Institution to appoint a manager, it must do so in writing, setting out:
 - a. that the Authorised Firm or Authorised Market Institution is required to appoint a manager;

- b. the time by which such manager must be appointed;
- c. the reason for the Authorised Firm or Authorised Market Institution being required to appoint a manager;
- d. the individual nominated by the DFSA to be the manager or the process by which approval may be given by the DFSA; and
- e. the fact that the Authorised Firm or Authorised Market Institution may appeal to the Regulatory Appeals Committee in respect of the decision.

Policy on the requirement to appoint a manager

- 5. The DFSA is conscious that the decision to require the appointment of a manager to an Authorised Firm or Authorised Market Institution will have a very significant impact on the Authorised Firm or Authorised Market Institution and, accordingly, will only exercise its power in exceptional circumstances.
- 6. In general, the power will only be exercised where the DFSA is satisfied that it is necessary to do so for the protection of the customers of the Authorised Firm or Authorised Market Institution or other regulated entities in the DIFC, or otherwise to maintain the integrity of the DIFC. In determining whether to proceed to require the appointment of a manager, all of the surrounding circumstances will be considered and the following factors may be taken into account:
 - a. the nature and extent of the business of the Authorised Firm or Authorised Market Institution;
 - b. the nature of concerns of the DFSA, and in particular, whether those concerns may be addressed by the appointment of a manager;
 - c. whether an appropriately qualified manager will be available and willing to undertake the appointment; and
 - d. the likely duration of appointment.

7.16 Civil proceedings

Introduction

Guidance

- 1. Article 94 provides that where a Person has:
 - a. intentionally, recklessly or negligently committed a breach of duty, requirement, prohibition, obligation or responsibility imposed under the Regulatory Law 2004, Rules or other legislation administered by the DFSA; or

- b. committed fraud or other dishonest conduct in connection with the matter arising under the Regulatory Law 2004, Rules or legislation;

the Person is liable to compensate any other Person for any loss or damage caused to that other Person as a result of such conduct.

- 2. Article 94(2) provides that the Court may, on application of the DFSA, or of a Person who has suffered the loss or damage, make orders for the recovery of damages or for compensation or for the recovery of property or other order as the Court sees fit, except where such liability is excluded under the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

The article 94 power

- 3. The power of the Court to make an order for the recovery of damages, compensation, recovery of property or other order is premised on the applicant establishing that the Person either:
 - a. intentionally, recklessly or negligently committed a breach of duty requirement, prohibition, obligation or responsibility imposed under the Regulatory Law 2004 or Rules or other legislation administered by the DFSA; or
 - b. committed a fraud or other dishonest conduct in connection with the matter arising under the Regulatory Law 2004, Rules or legislation.
- 4. Accordingly, the power is expressed broadly and may be used by the DFSA or an aggrieved Person to recover loss or damage in a variety of circumstances.

Policy on civil proceedings

- 5. Article 94 gives the DFSA, and aggrieved Persons, broad powers to make application for recovery of damages and other orders where there has been an identified breach of the Regulatory Law 2004, Rules or other legislation administered by the DFSA.
- 6. The DFSA will not commence proceedings in every case where there may have been a relevant breach of the Regulatory Law 2004. In fact, it will only do so in the most exceptional of cases. In most cases, it will be more appropriate for the party who has suffered loss or damage to commence their own proceedings in the Court for recovery.
- 7. In determining whether to commence proceedings, the DFSA will take into account all surrounding circumstances in relation to the matter at hand. It is not possible to provide an exhaustive list of the circumstances that will be taken into account, as they will depend on the facts of the particular matter. However, the following list indicates some of those matters that will be considered:
 - a. the nature and seriousness of the conduct and contravention;
 - b. whether the Person who has suffered the loss or damage is in a position to commence proceedings to recover damages or other orders themselves;

- c. in circumstances where more than one Person has suffered loss or damage, the number of those that have suffered loss or damage and the amount of loss or damage involved;
- d. in circumstances where more than one Person has suffered loss or damage, whether it is convenient or possible for a class to run a proceeding;
- e. whether the conduct is alleged to have incurred intentionally, recklessly or negligently;
- f. the cost that the DFSA would incur in applying for or enforcing any order that it is successful in obtaining;
- g. whether the conduct in question can be adequately addressed by the use of other regulatory powers;
- h. whether there is information to suggest that the Person who may be the subject of the possible application is involved in money laundering or any other form of financial crime; and
- i. whether the alleged conduct has had a significant impact on the integrity of the DIFC or the confidence of those within the DIFC.

7.17 Intervention power

Guidance

1. Article 95 enables the DFSA to intervene in any proceeding in the Court where it considers such intervention necessary to meet the regulatory objectives of the DFSA.
2. This is not necessarily a remedial power that will be exercised by the DFSA at the conclusion of a proceeding. It is a power that is likely to be used by the DFSA sparingly and only when it is in the interests of the DIFC for the DFSA to intervene in proceedings.
3. This provision does not affect the ability of the DFSA to seek leave to appear in proceedings as amicus curiae to make submissions on an issue of significance to the DIFC or to place material before the Court that may otherwise not be available. Intervening in the proceeding however means that the DFSA enjoys the privileges and incurs the responsibilities of being a party to the proceeding.
4. The DFSA will only exercise this right of intervention where it forms the view that the interests of the DIFC will not be served by the DFSA simply appearing as amicus curiae and that to fully serve the interest of the DIFC it is necessary to join the proceeding as a party and stay involved in the matter throughout.

7.18 Costs

Guidance

The DFSA will generally seek litigation costs orders from the Court and the Financial Markets Tribunal capable of making such orders, where it has commenced a proceeding and been successful in achieving the outcome sought.

7.19 Enforcement of orders

Guidance

1. The DFSA will do all things necessary, and where appropriate, commence relevant actions to ensure full compliance of any orders of the Financial Markets Tribunal or of the Court which arose out of an investigation.
2. In particular, Article 87(5) provides that the DFSA may apply to the Court for recovery, as a debt due, of so much of a fine as is not paid by the party, together with costs. Further, in appropriate circumstances, the DFSA may apply to the Court for the winding up of the body corporate.

7.20 Publicity

Guidance

1. Generally, the DFSA will publish the results of enforcement action that it undertakes. It will do so in the pursuit of its objectives of maintaining confidence and the integrity of the DIFC and to prevent or reduce, through better understanding and deterrence, conduct that may damage the DIFC. Further, the publication of its enforcement results is in keeping with the DFSA's open and transparent approach.
2. However, the DFSA will consider the question of publicity on a case-by-case basis. In deciding whether publication is appropriate, the DFSA will always consider its objectives, the circumstances of the case and the nature of the outcome having regard to the commercial interests of the DIFC and the reputation of the relevant regulated entity.
3. The foregoing paragraphs are subject to the obligation of the DFSA, by virtue of the operation of Article 62, to maintain public registers of, inter alia:
 - a. withdrawals and suspensions of Licences and authorisations of Authorised Firms, Authorised Market Institutions and Authorised Individuals;
 - b. withdrawal of registration of Ancillary Service Providers;



- c. Persons to whom written notices have been issued under Article 58(1); and
- d. Authorised Firms and Authorised Individuals in relation to whom notices have been issued under Article 58(2).

8 ENFORCEABLE UNDERTAKINGS

8.1 Introduction

Guidance

Article 89 provides the DFSA with power to accept a written Enforceable Undertaking which it considers necessary or desirable in the pursuit of its objectives.

8.2 Nature of an enforceable undertaking

Guidance

1. An Enforceable Undertaking is a promise in writing made by a Person to do or refrain from doing specified acts which, if not fully delivered, may be enforced by Court order without the need to prove any breach of the law.
2. Pursuant to Article 89(4), if the Court is satisfied that the Person has been in breach of a term of the undertaking, it may order that the Person to:
 - a. comply with that term of the undertaking;
 - b. pay to any Person or to the DFSA an amount up to the amount of any financial benefit that the Person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - c. compensate another Person who has suffered loss or damage; and
 - d. comply with any other order the court considers appropriate.
3. It is a versatile remedy that allows matters that may otherwise result in litigation to be settled between the DFSA and the Person. The remedy is intended to be time and cost effective for all concerned, allowing flexible regulatory solutions without the need to resort to litigation.

8.3 Offers of enforceable undertakings

Guidance

Enforceable Undertakings can be offered by Persons at any time. They may be offered before, during or after investigations and before or during litigation. In the first instance, an offer of an Enforceable Undertaking should be made to the DFSA investigator if there is an investigation in progress or to the DFSA lawyer if litigation is in progress.

8.4 Accepting enforceable undertakings

Guidance

1. The DFSA has discretion as to whether to accept an Enforceable Undertaking and will consider every offer on its merits. Only the CEO or a managing director of the DFSA has the internal authority to accept Enforceable Undertakings on behalf of the DFSA. In deciding whether to accept an Enforceable Undertaking, the DFSA will take into account the nature of the undertakings contained in light of the significance and seriousness of the issues concerned.
2. The DFSA will generally only accept an Enforceable Undertaking under Article 89 when it has seriously considered taking some form of enforcement action in respect of the relevant conduct.
3. The DFSA, in determining whether to accept an Enforceable Undertaking, will also take into account the likelihood of compliance by the promisor with the terms of the undertaking, the availability of alternative outcomes and the additional time required to resolve the matters if the undertaking was not accepted.

8.5 Terms of enforceable undertakings

Guidance

1. The DFSA will only accept an Enforceable Undertaking relating to contraventions of the Regulatory Law 2004, Rules or other legislation administered by the DFSA where the undertaking contains terms making a commitment to stop the particular conduct, not recommence it and to take steps to rectify any consequences of the conduct. The undertaking must also set out how these objectives must be achieved.
 2. In particular, the undertaking must include details of the process by which the promisor must ensure that the misconduct does not recur.
 3. The DFSA may require the promisor to undertake to pay any costs associated with the acceptance of the undertaking and/or the investigation resulting in the undertaking.
-

8.6 Publicity

Guidance

1. The DFSA is committed to open and transparent enforcement processes and accordingly will ensure the publication of all enforcement outcomes. This includes the acceptance of Enforceable Undertakings and the terms of those undertakings.
2. The DFSA therefore expects all undertakings to contain a term to the effect that the promisor acknowledges that the DFSA will make the fact of, and details of, the Enforceable Undertaking public so as to ensure transparency and market integrity.
3. However, the DFSA will refrain from publishing all details of an Enforceable Undertaking if to do so would publish information that is commercially confidential or contrary to the public interest.

8.7 Compliance with enforceable undertakings

Guidance

If the DFSA considers that a promisor has not complied with all terms of an Enforceable Undertaking, it may apply to the Court for remedial orders. Should it do so, the fact of the application will be made public and costs will be sought. Any consequent orders must also be publicised.

8.8 Varying or withdrawing enforceable undertakings

Guidance

1. Once an Enforceable Undertaking has been accepted, it may only be withdrawn or varied with the consent of the DFSA.
2. The DFSA will only grant consent to vary an undertaking in circumstances where the variation does not change the original meaning and/or where there has been a material change in circumstances.

9 SETTLEMENT

9.1 Introduction

Guidance

A Person who is or may be the subject of any form of action arising out of or during the course of an investigation may discuss the proposed action with DFSA staff through settlement discussions. This part sets out the principles relevant to any settlement discussions that may take place.

9.2 General principles

Guidance

1. A Person who is or may be the subject of any form of action arising out of or during the course of an investigation may enter into settlement discussions with the DFSA at any time, before or after any form of action has commenced. However, such discussions will generally be more productive if they are held after the Person has received, from the DFSA, a preliminary findings letter, a notice offering an opportunity to make representations or some other form of process that outlines the concerns of the DFSA and the form of proposed action.
2. Should meaningful settlement discussions commence, then the DFSA may extend at its sole discretion any relevant time period for the making of representations to allow the settlement discussions to conclude.
3. At the outset of the settlement discussions, the DFSA and the Person concerned should agree that neither party may subsequently rely upon any admissions or statements made during the course of the settlement discussions or upon any document created recording the discussions. This agreement should be reduced to writing. Such a step is aimed at ensuring that there are full and frank settlement discussions with the greatest chance of resolution of the matter.
4. Only the CEO or his delegate has the authority to settle matters between the DFSA and a Person that has been or is the subject of an investigation. Accordingly, should the Person and the DFSA officer attending the settlement discussions reach agreement, the matter will then be put before the CEO or his delegate, for final determination. For the CEO to finally determine a matter, the DFSA officer will prepare a statement of facts and a statement of the proposed terms of settlement, as approved by the Person concerned as an offer for settlement. The CEO or his delegate may decide to seek further information from the Person before finally deciding whether to settle the matter on the terms proposed.



5. Should the CEO, or his delegate, agree to settle the matter, it may be formally settled by the use of an Enforceable Undertaking, by consent order before the Court or by any other mechanism considered appropriate.
6. Should the matter not be settled, then the DFSA will continue with its course of action.

App1 FORMS**A1.1 Contents**

Form 1	Notice requiring the production of documents
Form 2	Notice requiring the giving of information
Form 3	Notice requiring attendance to answer questions
Form 4	Notice requiring the giving of assistance
Form 5	Notice of administrative fine pursuant to Article 90 of the Regulatory Law 2004
Form 6	Notice of objection
Form 7	Notice of administrative censure pursuant to Article 91 of the Regulatory Law 2004



FORM 1

DFSA

NOTICE REQUIRING THE PRODUCTION OF DOCUMENTS

To: *Full name and address of Person receiving notice*

The DFSA considers that you are, or may be, able to give information or produce a document which is or may be relevant to an investigation in relation to *{general nature of investigation}*.

In accordance with the requirements of Article 80 of the Regulatory Law 2004, you are hereby required to produce, or procure the production of, the specified documents set out hereunder to the DFSA by delivering such documents to *{officer/s of the DFSA}* at *{Level 49, Emirates Towers Dubai or another nominated address}* at *{time}* on *{date at end of a reasonable period}*:

{List of specified documents}

{If appropriate:

The DFSA considers that, if disclosed, the fact of the issuing of this notice may hinder the investigation to which it relates. Accordingly, in accordance with ENF Rule 5.9.1 you are directed not to disclose the receipt of this notice or any information relating to the notice or compliance therewith to any person other than your lawyer. Failure to comply with this direction is a contravention of the Rules.}

.....

.....

Name: *{DFSA officer}*

Date

Delegate of the DFSA



FORM 2

DFSA

NOTICE REQUIRING THE GIVING OF INFORMATION

To: *Full name and address of Person receiving notice*

The DFSA considers that you are, or may be, able to give information or produce a document which is or may be relevant to an investigation in relation to *{general nature of investigation}*.

In accordance with the requirements of Article 80 of the Regulatory Law 2004, you are hereby required to give, or procure the giving of, the specified information set out hereunder to the DFSA by delivering such information to *{officer/s of the DFSA}* at *{Level 49, Emirates Towers Dubai or another nominated address}* at *{time}* on *{date at end of a reasonable period}*:

{Specified information}

{If appropriate:

The DFSA considers that, if disclosed, the fact of the issuing of this notice may hinder the investigation to which it relates. Accordingly, in accordance with ENF Rule 5.9.1 you are directed not to disclose the receipt of this notice or any information relating to the notice or compliance therewith to any person other than your lawyer. Failure to comply with this direction is a contravention of the Rules.}

.....

.....

Name: *{DFSA officer}*

Date

Delegate of the DFSA



FORM 3

DFSA

NOTICE REQUIRING ATTENDANCE TO ANSWER QUESTIONS

To: *Full name and address of Person receiving notice*

The DFSA considers that you are, or may be, able to give information or produce a document which is or may be relevant to an investigation in relation to *{general nature of investigation}*.

In accordance with the requirements of Article 80 of the Regulatory Law 2004, you are hereby required to attend at *{time}* on *{date}* at *{place at which compulsory interview must take place}* before *{officer or other Person exercising the delegated authority of the DFSA}*, as delegate of the DFSA, to answer questions under oath or affirmation in relation to matters relevant to the investigation.

{If appropriate:

The DFSA considers that, if disclosed, the fact of the issuing of this notice may hinder the investigation to which it relates. Accordingly, in accordance with ENF Rule 5.9.1 you are directed not to disclose the receipt of this notice or any information relating to the notice or compliance therewith to any person other than your lawyer. Failure to comply with this direction is a contravention of the Rules.}

.....

.....

Name: *{DFSA officer}*

Date

Delegate of the DFSA



FORM 4

Dubai International Financial Centre

DFSA

NOTICE REQUIRING THE GIVING OF ASSISTANCE

To: *Full name and address of Person receiving notice*

The DFSA considers that you are, or may be, able to give information or produce a document which is or may be relevant to an investigation in relation to *{general nature of investigation}*.

In accordance with the requirements of Article 80 of the Regulatory Law 2004, you are hereby required to give the assistance set out hereunder to the DFSA by *{time}* on *{date at end of a reasonable period}*:

{Assistance required}

{If appropriate:

The DFSA considers that, if disclosed, the fact of the issuing of this notice may hinder the investigation to which it relates. Accordingly, in accordance with ENF Rule 5.9.1 you are directed not to disclose the receipt of this notice or any information relating to the notice or compliance therewith to any person other than your lawyer. Failure to comply with this direction is a contravention of the Rules.}

.....

.....

Name: *{DFSA officer}*

Date

Delegate of the DFSA

FORM 5DFSANOTICE OF ADMINISTRATIVE FINE PURSUANT TO ARTICLE 90 OF THE REGULATORY LAW
2004

To: *Full name and address of Person receiving notice*

1. The DFSA considers that you have contravened *{provisions alleged to have been contravened}*.
2. The particulars of the facts giving rise to this contravention/these contraventions are as follows:
{statement of the facts constituting the contravention}.
3. The main purposes of the imposition of an administrative fine is to minimise or offset any benefit a Person may obtain from non-compliance with the Regulatory Law 2004, Rules or legislation administered by the DFSA and to promote high standards of conduct and a culture of compliance by deterring Persons from committing contraventions. Taking into account these purposes, the facts set out in paragraph 2 of this notice and the general circumstances of this matter including those factors set out in section 7.12 of the Enforcement module of the DFSA Rulebook, the following fine is imposed:
{statement of each contravention and fine imposed}.
4. This fine may be paid at any time before 5pm on *{date}* by forwarding payment to *{address}*.
5. Should you pay this fine prior to 5pm on *{date}*, then no proceedings will be commenced by the DFSA against you in respect of the contraventions the subject of this notice. However, should you continue to be in contravention of the Regulatory Law 2004, Rules or legislation administered by the DFSA, the DFSA may take action in respect of any obligation to do or refrain from doing any act or thing.
6. If you object to the imposition of this fine, you may file a Notice of Objection by sending or delivering such a notice in the form attached, to the following address:

{address}

The Notice of Objection must contain every matter you wish the DFSA to take into account in determining whether to commence proceedings in the Financial Markets Tribunal. The Notice of Objection must be received by the DFSA before 5pm on *{date}*. Should you file a Notice of Objection the DFSA will take steps with a view to immediately determining whether to commence proceedings against you in respect of the contravention.

7. Should you neither pay the full amount of the fine, nor file a Notice of Objection before 5pm on *{date}*, then the DFSA may apply to the Court for recovery of as much of the fine as remains unpaid as a debt due to the DFSA, together with costs.



8. Should no Notice of Objection be filed in respect of the imposition of this fine, then the DFSA may publish details of the matter to which this Notice of Administrative Fine relates.

.....

.....

Name: *{DFSA officer}*

Date

Delegate of the DFSA



FORM 6

NOTICE OF OBJECTION

To: DFSA
PO Box 75850
Dubai
United Arab Emirates

1. I refer to the Notice of Administrative Fine/Censure, the details of which are as follows:

{Date of Notice of Administrative Fine/Censure}

{Person to whom such Notice was addressed}

{Date for lodgment of Notice of Objection as stated in Notice of Administrative Fine/Censure}

2. I object to the imposition of the fine or so much of the fine that relates to *{the details of aspects disputed}*.

3. {If the Person to whom Notice of Administrative Fine is addressed is not a natural Person: I hold the position of *{position}* within *{Person to whom Notice of Administrative Fine is addressed}* and I am authorised on its behalf to file this Notice of Objection.

4. In determining whether to *{commence proceedings in the Financial Markets Tribunal/censure}* I believe that the DFSA ought to take into account the following matters:

{detailed statement of relevant matters}

.....

.....

Name:

Date



FORM 7

DFSA

NOTICE OF ADMINISTRATIVE CENSURE PURSUANT TO ARTICLE 91 OF THE REGULATORY
LAW 2004

To: *Full name and address of Person receiving notice*

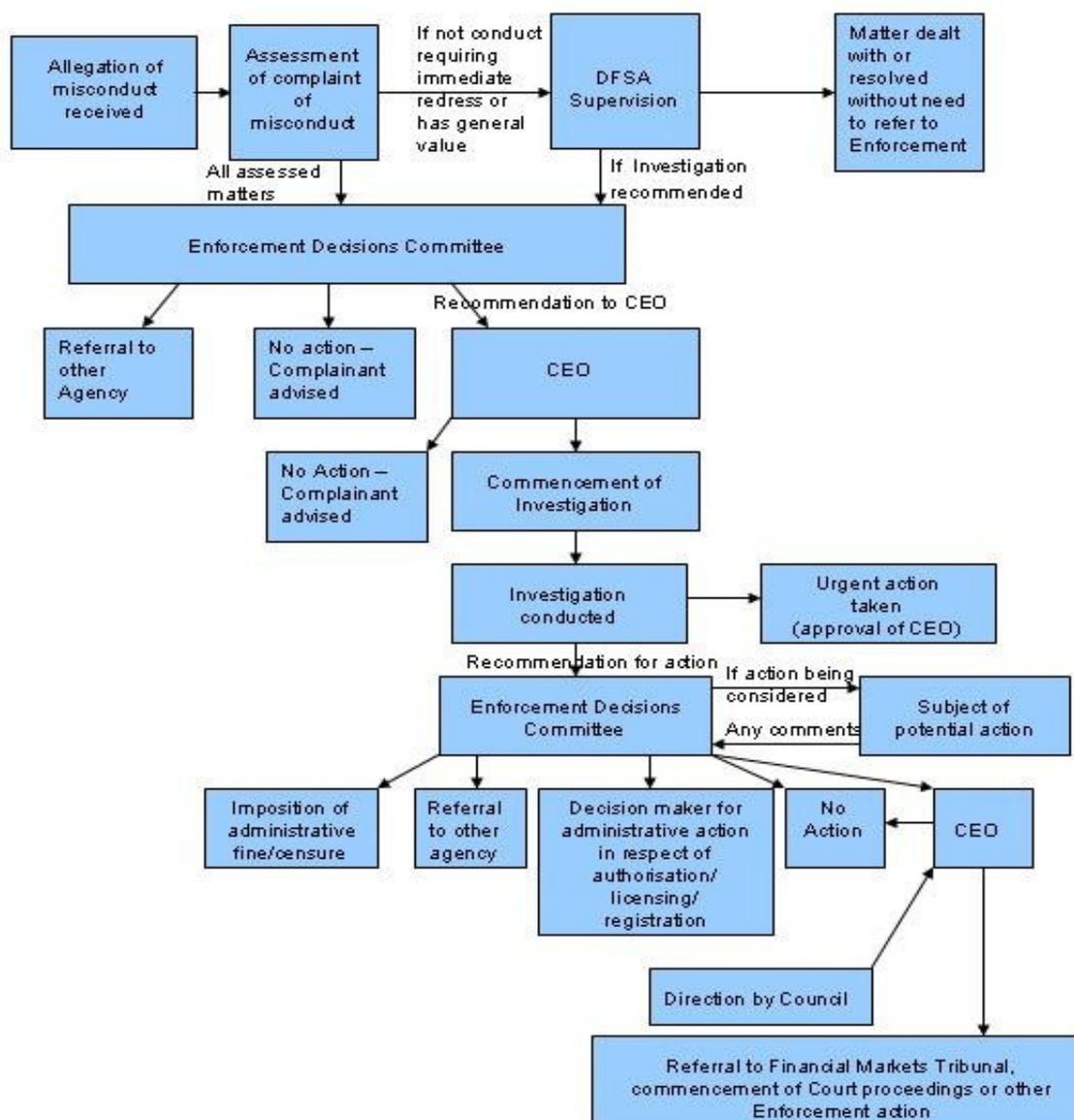
1. The DFSA considers that you have contravened *{provisions alleged to have been contravened}*.
2. The particulars of the facts giving rise to this contravention/these contraventions are as follows:
{statement of the facts constituting the contravention}.
3. Taking into account the facts set out in paragraph 2 of this notice and the general circumstances of this matter including those factors set out in section 7.13 of the Enforcement module of the DFSA Rulebook, the DFSA proposes publishing a censure to the following effect:
{general effect of censure}
in the following manner:
{proposed manner of censure}.
4. If you object to this censure, you may file a Notice of Objection by sending or delivering such a notice in the form attached, to the following address:
{address}
5. The Notice of Objection must be received by the DFSA before 5pm on *{date}*.
6. The Notice of Objection, must contain every matter you wish the DFSA to take into account in determining whether to commence proceedings in the Financial Markets Tribunal. Should you file a Notice of Objection the DFSA must take steps with a view to immediately making a decision as to whether to commence proceedings in the Financial Markets Tribunal.
7. You have the right to make representations in Person and/or in writing in relation to the imposition of this censure. Should you wish to make such representations, you should inform *{Decision Maker}* before 5pm on *{date}*.
9. Should no Notice of Objection be filed and you do not indicate that you wish to make representations then the DFSA will proceed to publish the censure.

.....
Name: *{DFSA officer}*
Delegate of the DFSA

.....
Date

App2 ENFORCEMENT PROCESS

A2.1 Enforcement process diagram



App3 PROCEDURE FOR RECEIVING REPRESENTATIONS

A3.1 The DFSA's procedure for receiving representations and making decisions

Introduction

Guidance

1. This appendix sets out the procedures of the DFSA that are followed when the DFSA is making a decision in relation to which the Regulatory Law 2004 usually requires a Person to be given a prior right to make representations.
2. In particular, it will apply whenever the DFSA is considering taking the following steps:
 - a. withdrawing authorisation in relation to one or more Financial Services for which an Authorised Firm or Authorised Market Institution is authorised under a Licence (Article 50); and
 - b. withdrawing a Licence of an Authorised Firm or Authorised Market Institution (Article 51);
 - c. imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions imposed on a Licence of an Authorised Firm or Authorised Market Institution (Article 49);
 - d. restricting a Person from performing one or more Licensed Functions or suspending or withdrawing Authorised Individual status from such Person (Article 58(2));
 - e. imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions on Authorised Individual status (Article 57);
 - f. restricting Persons from performing functions (Article 58(1));
 - g. revoking a Recognition Notice (Article 61(9));
 - h. imposing an administrative censure (Article 91); and
 - i. any other step that the DFSA is able to take and which the Regulatory Law 2004 or any other legislation administered by the DFSA requires a Person to be given an opportunity to make representations prior to such decision being made.

The decision maker

3. The first step a Decision Maker will take is to determine whether an opportunity to make representations by an affected Person must be afforded in the particular circumstances.

4. Generally, where any of the steps set out in paragraph 2 of this appendix are to be taken, the affected Person must be given an opportunity to make representations. However, the DFSA is not obliged to provide an opportunity to make representations to a Person in relation to the steps set out below where the DFSA is of the view that any delay in taking the step is likely to be prejudicial to the interests of the DIFC:
 - a. withdrawing authorisation in relation to one or more Financial Services for which an Authorised Firm or Authorised Market Institution is authorised under a Licence (Article 50);
 - b. withdrawing a Licence of an Authorised Firm or Authorised Market Institution (Article 51);
 - c. imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions imposed on a Licence of an Authorised Firm or Authorised Market Institution (Article 49);
 - d. restricting a Person from performing one or more Licensed Functions or suspending or withdrawing Authorised Individual status from such Person (Article 58(2));
 - e. imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions on Authorised Individual status (Article 57);
 - f. restricting Persons from performing functions (Article 58(1)); and
 - g. revoking a Recognition Notice (Article 61(9)).

5. Determining that any delay is prejudicial to the interest of the DIFC must only occur in exceptional circumstances and in deciding whether such circumstances exist, the DFSA will take into account factors such as the following:
 - a. the extent of any loss, or risk of loss, or other adverse effect on DIFC regulated entities or customers;
 - b. the extent to which assets appear to be at risk;
 - c. the nature and extent of any false or inaccurate information provided by the Person to the DFSA;
 - d. the seriousness of any suspected breach of the requirements of the Regulatory Law 2004, Rules or other legislation administered by the DFSA and the steps that need to be taken to correct that breach;
 - e. the risk that the Person or the Person's business may be used or has been used to facilitate money laundering or other financial crime;
 - f. the Person's conduct in identifying the conduct and taking action in respect thereto; and

- g. the impact that use of the DFSA's powers will have on the Person's business or on its customers.
6. Where the step being considered involves:
- a. imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions imposed on a Licence of an Authorised Firm or Authorised Market Institution (Article 49); or
 - b. imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions on Authorised Individual status (Article 57);

and a decision is made without providing the opportunity to make representations because the DFSA concluded that any delay would be prejudicial to the interests of the DIFC, then the Decision Maker will allow the Person the opportunity to make representations within fourteen days (or such longer period as may be agreed) from the date of the decision. The remaining sections of this appendix will then be applied as if those representations had been made prior to the decision. This procedure gives effect to the requirements of Articles 49(5) and 57(5).

7. Where the DFSA is considering taking steps involving:
- a. withdrawing authorisation in relation to one or more Financial Services for which an Authorised Firm or Authorised Market Institution is authorised under a Licence (Article 50);
 - b. withdrawing a Licence of an Authorised Firm or Authorised Market Institution (Article 51);
 - c. restricting a Person from performing one or more Licensed Functions or suspending or withdrawing Authorised Individual status from such Person (Article 58(2));
 - d. restricting Persons from performing functions (Article 58(1)); or
 - e. revoking a Recognition Notice (Article 61(9)).

following a determination of the Regulatory Appeals Committee or Financial Markets Tribunal or a decision of the Court, the DFSA must not provide an opportunity to make representations in respect of the findings of fact of that Committee, Tribunal or Court. The Decision Maker will provide an opportunity to make representations in respect of whether the proposed administrative action based, in whole or in part, on those facts should be taken.

Representations

8. Where an opportunity to make representations is afforded, in order to enable a Person to make representations, the Decision Maker will provide the affected Person with a notice setting out the following information:

- a. details of the action being considered;
 - b. the DFSA's reasons for considering the action;
 - c. that the Person may make representations in Person and/or in writing within the period set out in the notice; and
 - d. the name and contact details of the Decision Maker exercising the delegated authority of the DFSA in making the decision as to whether to take the action.
9. If the Person receiving such a notice decides to make no representations or to make representations in writing, then the Decision Maker must exercise the delegated power of the DFSA in deciding whether to take the action on the basis of the material then available, subject to seeking clarification of any issues that arise from the written submissions.
10. Should the Person wish to make representations in Person, it should notify the Decision Maker as soon as possible and within the timeframe provided for making representations. The notification should specify matters on which the Person wishes to make oral representations, how long the Person expects the representations to take and provide the names of any representatives appointed to attend the meeting at which the representations will be made.
11. If after notifying the DFSA of its intention to make representations in Person, the Person chooses not to make those representations, the Decision Maker will nevertheless decide the matter.
12. A Person may appoint one or more representatives of its choice (who may be legally qualified) to attend the meeting at which representations will be made. The representatives may make or assist in making the representations.
13. The Decision Maker will specify a time as soon as is reasonably possible after receiving the notification for the meeting to take place. The Decision Maker may specify the place the meeting will take place and may specify that it will take place in private. The Decision Maker may limit the type, length and content of any representations. The Decision Maker may ask the Person or the Person's representative at the meeting to clarify any issue arising out of the representations.

The decision

14. In the exercise of delegated authority, should the Decision Maker decide to take the action after receiving written submissions or a conclusion of a meeting, the Decision Maker must inform the relevant Person without undue delay of:
- a. the decision;
 - b. any information required to be provided by the Article empowering the action;
 - c. in the case of a censure, the form of the censure;



- d. except in the case of a censure, the date of effect of the decision; and
- e. the fact that the firm has the right to appeal the decision to the Regulatory Appeals Committee.

App4 FINES

A4.1 Diagram of process followed by the DFSA when considering the imposition of a fine

