
REGULATORY LAW AMENDMENT LAW

DIFC LAW NO. 1 of 2011

PART 1: GENERAL

1. **Title**

This Law may be cited as the “Regulatory Law Amendment Law 2011”.

2. **Legislative Authority**

This Law is made by the Ruler of Dubai.

3. **Date of enactment**

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

4. **Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

PART 2: AMENDMENTS

5. Insert a new Article 41A as follows:

41A. Financial Promotions Prohibition

“(1) A person shall not make a Financial Promotion in or from the DIFC except as prescribed by the Rules made pursuant to this Article.

(2) The prohibition in Article 41A(1) is referred to as the “Financial Promotions Prohibition”.

(3) For the purposes of the Financial Promotions Prohibition, a Financial Promotion is any communication, however made, which invites or induces a Person to:

(a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or

(b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product.

(4) For the purposes of the Financial Promotions Prohibition, the DFSA may make Rules as to:

(a) a person or class of persons who may make a Financial Promotion in or from the DIFC and any requirements which apply to such persons when doing so; and

(b) any other definition, requirement or matter which the DFSA considers necessary to give effect to the requirements or intent of the Financial Promotions Prohibition.”

6. In Article 65 insert the underlined text and delete the struck through text as follows:

65. Unenforceable Agreements - Breach by Party to the Agreement

- (1) Subject to Article 65(5), a person who makes an agreement in the course of carrying on a Financial Service in breach of the Financial Services Prohibition or the Collective Investment Prohibitions, or who makes an agreement as a result of the making by himself or another person of a Financial Promotion which is in breach of the Financial Promotions Prohibition shall not be entitled to enforce such agreement against any party (a "relevant party") to the agreement.
- (2) Subject to any agreement that may otherwise be reached between the parties, a relevant party may apply to the Court to recover:
 - (a) any money paid or property transferred by him under the agreement;
 - (b) compensation reflecting any loss sustained by the relevant party as a direct result of such payment or transfer; and
 - (c) compensation for an amount becoming due that is dependent upon a contingency occurring under the relevant agreement, provided that such contingency shall have occurred prior to the relevant party being notified by the other party or by the DFSA that the agreement has been entered into in breach of the Financial Services Prohibition, ~~or~~ the Collective Investment Prohibitions or the Financial Promotions Prohibition.
- (3) If the relevant party chooses not to perform the agreement or, under Article 65(2), recovers money paid or property transferred by him under the agreement, he shall in turn repay any money or property he has received under the agreement.
- (4) The compensation recoverable under Article 65(2)(b) is the amount agreed between the parties to the agreement or, following an application to the Court, the amount determined by the Court.
- (5) If the Court is satisfied that the person:
 - (a) carrying on the Financial Service reasonably believed that he was not in breach of the Financial Services Prohibition, or the Collective Investment Prohibitions by entering into such agreement; ~~or~~
 - (b) who made the Financial Promotion reasonably believed that he was not in breach of the Financial Promotions Prohibition, or

(c) who made an agreement as a result of the making by another person of a Financial Promotion which was in breach of the Financial Promotions Prohibition, did not know that the relevant Financial Promotion was in breach of the Financial Promotions Prohibition,

and that it is fair and just in the circumstances to make such an order, it may make one or more of the following orders:

~~(d)(a)~~ an order that the agreement be enforced between the parties to such extent and under such terms and conditions as the Court sees fit; or

~~(e)(b)~~—an order that money paid or property transferred under the agreement be retained or dealt with in accordance with the agreement or in such manner as the Court deems fit.

(6) Where property transferred under the agreement has been transferred to a third party, a reference in Article 65 to such property shall be interpreted as a reference to the value of the property at the time of the transfer under the agreement.

(7) In Article 65, "agreement" means an agreement, the making or performance of which constitutes, or is part of, the carrying on of a Financial Service or related activity.

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7. In Schedule 1, Interpretation, Defined Terms insert two new definitions as follows:

Term	Definition
Financial Promotion	has the meaning given in Article 41A(3) of this Law.
Financial Promotions Prohibition	the prohibition prescribed under Article 41A(1) of this Law.