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Consolidated Version of the  
**REGULATORY LAW**  
**DIFC LAW No.1 of 2004**

as amended by  
DIFC Laws Amendment Law,  
DIFC Law No.2 of 2005,  
Regulatory Law Amendment Law,  
DIFC Law No.3 of 2005  
on 19 April 2005 and  
Regulatory Law Amendment Law  
(Collective Investment),  
DIFC Law No.2 of 2006  
on 18 April 2006.

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## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the "Regulatory Law 2004".

### **2. Legislative Authority**

This Law is made by the Ruler of Dubai.

### **3. Application of the Law**

This Law applies in the jurisdiction of the Dubai International Financial Centre.

### **4. Date of Enactment**

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

### **5. Commencement**

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

### **6. Interpretation**

Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in this Law.

## **PART 2: THE DFSA**

### **CHAPTER 1 - THE STRUCTURE OF THE DFSA**

#### **7. The DFSA**

- (1) The DFSA is a body established under Dubai Law.
- (2) The DFSA shall have its own constitutional provisions, which shall incorporate the provisions of Schedule 2, and which shall not be inconsistent with those provisions.
- (3) In exercising its powers and performing its functions the DFSA shall act in an independent manner, notwithstanding that it is an agency of the government of the Emirate of Dubai.

8. **The Powers Functions and Objectives of the DFSA**

- (1) The DFSA has such functions and powers as are conferred, or expressed to be conferred, on it:
  - (a) by or under the Law; and
  - (b) by or under any other law made by the Ruler.
- (2) The DFSA has power to do whatever it deems necessary for or in connection with, or reasonably incidental to performing its functions and exercising its powers conferred in accordance with (1).
- (3) In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:
  - (a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
  - (b) to foster and maintain confidence in the financial services industry in the DIFC;
  - (c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
  - (d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;
  - (e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;
  - (f) to promote public understanding of the regulation of the financial services industry in the DIFC; and
  - (g) to pursue any other objectives as the Ruler may from time to time set under DIFC Law.
- (4) In exercising its powers and performing its functions, the DFSA shall take into consideration the following guiding principles, being the desirability of:
  - (a) pursuing the objectives of the DIFC as set out under Dubai Law in so far as it is appropriate and proper for the DFSA to do so;
  - (b) fostering the development of the DIFC as an internationally respected financial centre;

- (c) co-operating with and providing assistance to regulatory authorities in the United Arab Emirates and other jurisdictions;
- (d) minimising the adverse effects of the activities of the DFSA on competition in the financial services industry;
- (e) using its resources in the most efficient way;
- (f) ensuring the cost of regulation is proportionate to its benefit;
- (g) exercising its powers and performing its functions in a transparent manner; and
- (h) complying with relevant generally accepted principles of good governance.

**9. Structure of the DFSA**

The DFSA shall be made up of:

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

**10. Independent Review of the DFSA**

- (1) The President may appoint an independent person to review and report to the President on any aspect of the efficiency and effectiveness of the DFSA in the use of its resources.
- (2) The President shall meet the reasonable expenses incurred by such person in preparing the report.
- (3) A person appointed under Article 10(1) has a right of access at all reasonable times to all information which is reasonably required by him for the purposes of preparing the report and which is held or controlled by any officer, employee or agent of the DFSA.
- (4) Such person shall be entitled reasonably to require from the officers, employees and agents of the DFSA such information and explanations as he considers necessary for the purpose of preparing the report.



- (5) A person shall not, without reasonable excuse, intentionally engage in conduct that results in the obstruction of a person appointed under Article 10(1) in the exercise of his powers under Article 10.

**11. Reporting by the DFSA to the President**

- (1) The DFSA shall provide the President with a written report on the exercise of its powers, performance of its functions and financial activities.
- (2) Such report shall be prepared and provided as soon as reasonably practicable in each financial year of the DFSA and shall relate to its previous financial year.
- (3) Such report shall be published by the DFSA without undue delay, or within such time period as the President otherwise directs.

**12. Liability**

- (1) Subject to Article 12(2), the DFSA may be sued in its own name.
- (2) Neither the DFSA nor any officer, employee or agent of the DFSA can be held liable for anything done or omitted to be done in the performance or purported performance of the functions or in the exercise or purported exercise of any power of the DFSA.
- (3) Article 12(2) does not apply if the act or omission is shown to have been in bad faith.

**13. Financial Year**

- (1) The financial year of the DFSA commences on 1 January in each calendar year or such other date as the President may specify.
- (2) The first financial year of the DFSA commences on commencement of this Article and ends at the date arrived at under Article 13(1) for the next financial year.

**14. Taxation**

The income of the DFSA shall not be subject to taxation.

**15. Record Keeping**

The DFSA shall make suitable arrangements for keeping appropriate records in relation to the exercise of its powers and the performance of its functions.

**16. Funding and Fees**

- (1) The DFSA may make Rules prescribing the fees payable to the DFSA, including those for applications for licensing, recognition, registration and authorisation, in connection with the performance of its functions and exercise of its powers.

- (2) In respect of each financial year of the DFSA, the President shall provide financial resources to the DFSA to the extent necessary to ensure that it is able adequately to perform its functions and exercise its powers.
- (3) The DFSA may invest its financial resources which are not immediately required in accordance with an investment policy approved in advance by the President.

**17. The Annual Budget of the DFSA**

- (1) The DFSA shall submit to the President for his approval estimates of the annual income and expenditure of the DFSA for the next financial year.
- (2) Such estimates shall include figures relating to levels of remuneration and entitlement to expenses of the officers, employees and agents of the DFSA.
- (3) The DFSA shall submit such estimates to the President for his approval not later than the end of the financial year.
- (4) The President may on reasonable grounds reject such estimates within 30 days of receiving them, such rejection to be addressed in writing with reasons to the DFSA.
- (5) Unless the estimates have been approved by the President under Article 17(3) or rejected under Article 17(4), they shall be deemed to have been approved on expiry of the 30 days.

**18. Accounts**

- (1) The DFSA shall keep proper accounts of its financial activities.
- (2) The DFSA shall, before the end of the first quarter of the financial year, prepare financial statements for the preceding financial year in accordance with the accounting standards specified by the DFSA in its Rules.
- (3) Such financial statements shall in any event give a true and fair view of the financial activities of the DFSA as at the end of the previous financial year and of the results of its operations and cash flows in the financial year.
- (4) Such statements shall be submitted to the DFSA Board of Directors and, where appropriate to do so, approved by the DFSA Board of Directors.
- (5) In this Article 'preceding year' does not include any financial year ending before the end of 2003.

**19. Audit**

- (1) The DFSA Board of Directors shall appoint auditors to conduct an audit in relation to each financial year of the DFSA.

- (2) The DFSA shall, as soon as reasonably practicable after the preparation of its financial statements, provide such statements to the relevant auditors for audit.
- (3) The auditors shall prepare a report on the financial statements and send the report to the DFSA Board of Directors.
- (4) Such report shall, where appropriate, include a statement by the auditors as to whether or not, in their opinion, the financial statements to which the report relates give a true and fair view of the state of the financial activities of the DFSA as at the end of the financial year to which the financial statements relate and of the results of its operations and cash flows in the financial year.
- (5) The auditors shall have a right of access at all reasonable times to all information which is reasonably required by them for the purposes of preparing the report and which is held or controlled by any officer, employee or agent of the DFSA.
- (6) The auditors shall be entitled reasonably to require from the officers, employees and agents of the DFSA such information and explanations they consider necessary for the performance of their duties as auditors.
- (7) A person shall not without reasonable excuse intentionally engage in conduct that results in the obstruction of a person appointed under Article 19(1) in the exercise of his powers under Article 19.

## **CHAPTER 2 - THE DFSA BOARD OF DIRECTORS**

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

- (1) The general powers and functions of the DFSA Board of Directors are to:
  - (a) ensure that the DFSA exercises its statutory powers and performs its statutory functions in accordance with its objectives;
  - (b) make policies relating to the regulation of financial services and related activities;
  - (c) make provision for the consideration of, adjudication on and the application of penalties in relation to disciplinary and other matters concerning Authorised Firms, Authorised Market Institutions, Authorised Individuals and other persons;
  - (d) review the performance of the Chief Executive;
  - (e) give the Chief Executive written directions as to the furtherance of any of the DFSA's objectives or the performance of any of the Chief Executive's statutory functions. Such written directions shall not constitute Rules; and

- (f) arrange for the DFSA to enter into binding and non-binding arrangements, including memoranda of understanding and co-operation with similar bodies provided they do not conflict with the treaties to which the United Arab Emirates is a party.
- (2) The legislative powers and functions of the DFSA Board of Directors are, so far as is reasonably practicable, to:
    - (a) review and, where appropriate, submit draft laws to the President with a recommendation that they be approved and enacted;
    - (b) review and, where appropriate, approve and make Rules;
    - (c) review and, where appropriate, approve and issue standards and codes of practice of the DFSA; and
    - (d) make written submissions to the President in relation to legislative matters outside the scope of its own legislative powers.
  - (3) Except in respect of the powers and functions set out in Article 20(1)(c) and (d) and Article 20(2), the DFSA Board of Directors may delegate to a committee of the DFSA Board of Directors or to the Chief Executive such of its powers or functions as may appropriately and more efficiently and effectively be exercised or performed by such committee or the Chief Executive.
  - (4) The DFSA Board of Directors may act through the Chairman of the DFSA.

**21. Chairman of the DFSA and Membership of the DFSA Board of Directors**

- (1) The President shall appoint a person to be the Chairman of the DFSA for a fixed term.
- (2) The President may reappoint the Chairman for a further fixed term.
- (3) The Chairman may be dismissed only by the President for just cause in accordance with DIFC Law.
- (4) The President shall appoint persons to be members of the DFSA Board of Directors for fixed terms.
- (5) The President may reappoint a Board Member for a further fixed term.
- (6) A Board Member may be dismissed only by the President for just cause in accordance with DIFC Law and only after consulting the Chairman.
- (7) The Chairman of the DFSA shall be a Board Member and Chairman of the Board.

- (8) The Chief Executive shall be a Board Member but shall not be appointed as Chairman of the DFSA.
- (9) No member of the staff of the Chief Executive shall be appointed as a Board Member.
- (10) For the purposes of determining whether a person may be dismissed for just cause under this Article and Article 22, just cause means inability, incapacity or misbehaviour.

**22. The Chief Executive**

- (1) The DFSA Board of Directors, by a majority resolution of two thirds of all members of the DFSA Board of Directors, shall appoint a person to be the Chief Executive of the DFSA for a fixed term and may reappoint the Chief Executive of the DFSA for a further fixed term.
- (2) The DFSA Board of Directors, by a majority resolution of two thirds of all members of the DFSA Board of Directors may dismiss the Chief Executive for just cause in accordance with DIFC Law.
- (3) The DFSA Board of Directors shall consult the President prior to appointing, renewing the appointment of or dismissing the Chief Executive.

**CHAPTER 3 - RULES**

**23. Power to Make Rules**

- (1) The DFSA Board of Directors may make Rules in respect of any matters related to the objectives, powers or functions of the DFSA or which facilitate the administration of, or further the purpose of, any law administered by the DFSA. This power shall be exercised by the DFSA Board of Directors.
- (2) In particular, the DFSA Board of Directors when exercising the power in Article 23(1) may make Rules in respect of:
  - (a) procedures and requirements in relation to licensing, authorisation, registration and recognition;
  - (b) levels and types of financial resources to be maintained by particular persons in the DIFC;
  - (c) standards of practice and business conduct of persons in dealing with their customers and clients and prospective customers and clients;
  - (d) the resolution of disputes;
  - (e) the conduct of particular persons in the DIFC;

- (f) the operation of an Authorised Market Institution in the DIFC, including but not limited to:
    - (i) notification to and approval by the DFSA of any rules or guidance issued by an Authorised Market Institution;
    - (ii) the prescribing of regulatory functions of an Authorised Market Institution; and
    - (iii) the conduct of and supervision of any such regulatory function; and
  - (g) the conduct of the DFSA and its officers, employees and agents in relation to the exercise of powers and performance of functions, including the exercise of discretionary powers and powers to conduct investigations and hearings.
- (3) Where the DFSA Board of Directors issues a standard or code of practice, the DFSA Board of Directors may incorporate such a standard or code into the Rules by reference and in such circumstances, except to the extent that the Rules otherwise provide, a person who is subject to the provisions of any such standard or code must comply with such provisions as if they were provisions of the Rules.
- (4) Where any legislation made under this Law purports to be made in exercise of a particular power or powers, it shall be taken also to be made in the exercise of all powers under which it may be made.

**24. Publication of Draft Rules**

- (1) The DFSA shall publish draft Rules by means of a notice under Article 24(2).
- (2) The notice of draft Rules must include the following:
  - (a) the draft text of the Rules;
  - (b) a statement of the substance and purpose of the material provisions of the draft Rules; and
  - (c) a summary of the draft Rules.
- (3) Upon publication of a notice under Article 24(2), the DFSA shall invite interested persons to make representations with respect to the draft Rules within a period of at least 30 days after the publication, or within such period as the DFSA Board of Directors may otherwise determine.
- (4) Articles 24(1), (2) and (3) shall not apply if the DFSA Board of Directors concludes that any delay likely to arise under such Articles is prejudicial to the interests of the DIFC.

- (5) Any period of time during which the DFSA invites interested persons to make representations with respect to draft Rules prior to Article 24 coming into effect shall be deemed to count as part or all of the period referred to in Article 24(3).

25. **Waivers and Modification of Rules**

- (1) The DFSA may:
- (a) on the application of a person; or
  - (b) with the consent of a person;
- by means of a written notice provide that one or more provisions of the Rules either:
- (c) shall not apply in relation to such person; or
  - (d) shall apply to such person with such modifications as are set out in the written notice.
- (2) A written notice may be given subject to conditions.
- (3) A person to whom a condition specified in a written notice applies must comply with the condition. In the event of failure to comply with a condition, the DFSA may, without limiting any other powers that the DFSA may have, apply to the Court for an order, including an order that the person must comply with the condition in a specified way.
- (4) Unless the DFSA is satisfied that it is inappropriate or unnecessary to do so, it must publish a written notice in such a way as it considers appropriate for bringing the notice to the attention of:
- (a) those likely to be affected by it; and
  - (b) others who may be likely to become subject to a similar notice.
- (5) The DFSA may:
- (a) on its own initiative or on the application of the person to whom it applies, withdraw a written notice; or
  - (b) on the application of, or with the consent of, the person to whom it applies, vary a written notice.
- (6) The DFSA may make Rules in connection with the provision of a written notice under this Article, including Rules prescribing procedures for the making of applications and providing of consents.

## **CHAPTER 4 - THE REGULATORY APPEALS COMMITTEE OF THE COUNCIL**

### **26. The Regulatory Appeals Committee**

- (1) The DFSA Board of Directors shall form a committee called the Regulatory Appeals Committee.
- (2) The DFSA Board of Directors shall appoint:
  - (a) from among its members, other than the Chairman of the DFSA or the Chief Executive of the DFSA, a Board Member to serve as chairman of the Regulatory Appeals Committee; and
  - (b) a panel of members of the Regulatory Appeals Committee.
- (3) None of the following persons shall be appointed as members of the panel:
  - (a) the Chairman of the DFSA;
  - (b) the Chief Executive of the DFSA; or
  - (c) subject to Article 26(4), any director, officer, employee or agent of the DFSA or of any other agency or body of the DIFC established under Dubai Law.
- (4) Board Members of the DFSA and members of the Financial Markets Tribunal may be appointed as members of the Regulatory Appeals Committee.
- (5) Persons appointed to be members of the panel shall have relevant qualifications, expertise and experience in the regulatory aspects of financial services and related activities.
- (6) The DFSA Board of Directors may reappoint or dismiss the chairman of the Regulatory Appeals Committee.
- (7) The Regulatory Appeals Committee has power to do whatever it deems necessary for or in connection with, or reasonably incidental to, the performance of its functions.

### **27. Jurisdiction of the Regulatory Appeals Committee**

- (1) In Article 27(2):
  - (a) 'applicant' means a person who has applied to the DFSA for a decision; and
  - (b) 'officer, employee or agent' of a person includes a person who proposes to become an officer, employee or agent of a person.



- (2) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where:
- (a) an applicant appeals the decision of the DFSA in relation to an application for a Licence or Recognition Notice or for an extension to the scope of a Licence or Recognition Notice;
  - (b) an applicant, Authorised Firm or Authorised Market Institution, Recognised Body or Recognised Member appeals the decision of the DFSA to impose or vary or withdraw a condition or restriction to its Licence or Recognised Notice;
  - (c) an Authorised Firm, Authorised Market Institution, Recognised Body or Recognised Member appeals a decision of the DFSA in relation to the exercise of its power to withdraw a Licence, revoke a Recognition Notice or to withdraw an authorisation in relation to a Financial Service;
  - (d) an officer, employee or agent of an Authorised Firm appeals a decision of the DFSA in relation to his application for Authorised Individual status or for extension of his status;
  - (e) an Authorised Individual appeals the decision of the DFSA to impose or vary or withdraw a condition or restriction to the grant of Authorised Individual status;
  - (f) a person appeals a decision of the DFSA to:
    - (i) issue a written notice, or vary or withdraw a written notice to which he is subject, under Article 58(1); or
    - (ii) refuse to vary or withdraw a written notice following his request pursuant to Article 58(8);
  - (g) an Authorised Individual appeals a decision of the DFSA to:
    - (i) issue a written notice, or vary or withdraw a written notice to which he is subject, under Article 58(2);
    - (ii) refuse to vary or withdraw a written notice following his request or the request of an Authorised Firm pursuant to Article 58(8); or
    - (iii) suspend or withdraw his Authorised Individual status under Article 58(2), (3) or (5);
  - (h) an Authorised Firm or Authorised Market Institution appeals the decision of the DFSA to issue a notice to it or make a requirement of it under Article 74, 75, 76 or 88;

- (i) a person seeking to acquire or who has acquired control of an Authorised Firm or Authorised Market Institution appeals the decision of the DFSA to notify under Article 64 that a controller is unacceptable;
  - (j) an applicant appeals a decision of the DFSA in relation to an application for registration as an auditor; or
  - (k) an appeal is brought under such other jurisdiction as the DFSA Board of Directors may provide in the Rules or as may be conferred by or under any other DIFC Law.
- (3) Subject to the Law and Rules, the Regulatory Appeals Committee may make rules of procedure governing the commencement, hearing and determination of appeals, including as to:
- (a) the rules as to evidence;
  - (b) the manner in which a power under Article 29 may be exercised;
  - (c) the manner in which conflicts of interest of members of the Regulatory Appeals Committee may be prevented;
  - (d) notification to the Chief Executive of the commencement of an appeal; and
  - (e) the manner in which the Chief Executive may appear and be heard in the appeal.
- (4) Proceedings and decisions of the Regulatory Appeals Committee shall be heard and given in public unless:
- (a) the Regulatory Appeals Committee hearing an appeal orders otherwise; or
  - (b) the rules of procedure of the Regulatory Appeals Committee provide otherwise.
- (5) No person may appeal or review a decision of the Regulatory Appeals Committee other than by way of judicial review proceedings before the Court on a point of law.

## 28. **Commencement of an Appeal**

- (1) A person may appeal to the Regulatory Appeals Committee only in circumstances where the committee has jurisdiction to hear and determine the appeal under Article 27.
- (2) A person shall commence an appeal by giving the Regulatory Appeals Committee a written notice in the form provided for in the rules of procedure of the Regulatory Appeals Committee.

- (3) An appeal shall be commenced:
  - (a) within 30 days of the relevant decision of the DFSA; or
  - (b) within such further period not exceeding 30 days as may be approved by the Regulatory Appeals Committee where it is satisfied that such approval is appropriate in the circumstances.

## 29. **Powers to Hear and Determine an Appeal**

- (1) Upon the chairman of the Regulatory Appeals Committee receiving a notice of an appeal falling within the jurisdiction of the committee, the chairman of the Regulatory Appeals Committee shall without undue delay select a sub-committee of at least three members of the Regulatory Appeals Committee, one of whom may be its chairman, to exercise the powers and perform the functions of the Regulatory Appeals Committee to hear and determine the appeal.
- (2) For the purposes of hearing and determining an appeal, the Regulatory Appeals Committee may:
  - (a) stay the decision of the DFSA to which an appeal relates and any related steps proposed to be taken by the DFSA until the committee has determined the appeal;
  - (b) consider any evidence relating to the decision of the DFSA to which the appeal relates, whether or not such evidence was available to the DFSA at the material time;
  - (c) receive and consider any material by way of oral evidence, written statements or documents, even if such material may not be admissible in evidence in civil or criminal proceedings in a court of law;
  - (d) determine the manner in which such material is received by the committee;
  - (e) by notice in writing require a person to attend before it at any sitting and to give evidence and produce any item, record or document in his possession relating to the subject matter of the appeal;
  - (f) administer oaths;
  - (g) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the committee considers appropriate for the purposes of the proceedings;
  - (h) order a witness to provide evidence in a truthful manner for the purposes of the proceedings by sworn statement;

- (i) order a person not to publish or otherwise disclose any material disclosed by any person to the committee; or
  - (j) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the appeal or the performance of its function.
- (3) At the conclusion of an appeal, the Regulatory Appeals Committee may:
- (a) determine what, if any, is the appropriate action for the DFSA to take;
  - (b) remit the matter to the Chief Executive with such directions, if any, as the committee considers appropriate for giving effect to its determination, save that such directions may not require the DFSA to take any step which it would not otherwise have power to take; and
  - (c) make an order requiring a party to the appeal to pay a specified amount, being all or part of the costs of the appeal, including those of any party to the appeal. 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.
- (4) The Chief Executive must act in accordance with the determination of, and any direction given by, the Regulatory Appeals Committee.
- (5) A certificate that purports to be signed by the chairman or proper officer of the Regulatory Appeals Committee and states that the Regulatory Appeals Committee on a specified day made a specified determination or made a specified finding of fact, is in any proceedings before the Court, where relevant:
- (a) conclusive evidence of the determination of the Regulatory Appeals Committee made on that day; and
  - (b) prima facie evidence of the relevant finding of fact.

### 30. **Enforcement**

- (1) A person commits a contravention if the person, without reasonable excuse:
- (a) fails to comply with an order, notice, prohibition or requirement of the Regulatory Appeals Committee under Article 29;
  - (b) having been required by the Regulatory Appeals Committee under Article 29 to attend before such committee, does not attend or leaves the place where his attendance is so required without the permission of such committee;

- (c) hinders or deters any person from attending before the Regulatory Appeals Committee, giving evidence or producing any item, record or document, for the purposes of any appeal commenced under Article 28;
  - (d) threatens or causes any loss to be suffered by any person who has attended before the Regulatory Appeals Committee, on account of such attendance;
  - (e) threatens or causes any loss to be suffered by any member of the Regulatory Appeals Committee or any person assisting such committee at any time; or
  - (f) engages in conduct, including without limitation the:
    - (i) destruction of documents; or
    - (ii) giving of information that is false or misleading;
 that is intended to obstruct the Regulatory Appeals Committee in the exercise of any of its powers.
- (2) A person who commits a contravention under Article 30(1) is liable to proceedings in the Financial Markets Tribunal for orders including but not limited to the imposition of a fine and censure.
- (3) Where a person fails to comply with an order, notice, prohibition or requirement of the Regulatory Appeals Committee made under Article 29, the Court may, on application of:
- (a) the committee; or
  - (b) the Chief Executive at the request of the committee;
- make any order as it thinks fit to enforce such order, notice, prohibition or requirement.

## **CHAPTER 5 - THE FINANCIAL MARKETS TRIBUNAL**

### **31. The Financial Markets Tribunal**

- (1) The DFSA Board of Directors shall establish a tribunal of the DFSA called the Financial Markets Tribunal.
- (2) The DFSA Board of Directors shall appoint:
  - (a) a person to serve as the president of the Financial Markets Tribunal; and
  - (b) a panel of members of the Financial Markets Tribunal.
- (3) None of the following persons shall be appointed as president or as members of the panel:

- (a) the Chairman of the DFSA;
  - (b) the Chief Executive of the DFSA; or
  - (c) subject to Article 31(4), any director, officer, employee or agent of the DFSA or of any other agency or body of the DIFC established under Dubai Law.
- (4) Board Members of the DFSA and members of the Regulatory Appeals Committee may be appointed as members of the Financial Markets Tribunal.
- (5) Persons appointed as panel members of the Financial Markets Tribunal shall have relevant qualifications, expertise and experience in the regulatory aspects of financial services and related activities.
- (6) The DFSA Board of Directors may reappoint or dismiss the president of the Financial Markets Tribunal.
- (7) The president of the Financial Markets Tribunal has power to do whatever he deems necessary for or in connection with, or reasonably incidental to, the performance of the functions of the Financial Markets Tribunal.

**32. Jurisdiction of the Financial Markets Tribunal**

- (1) The Financial Markets Tribunal has jurisdiction to hear and determine proceedings which:
- (a) are commenced under Article 33 and relate to an alleged breach of any provision of the Law or of the Rules or of any other legislation administered by the DFSA; or
  - (b) relate to such other matters as may be prescribed in the Rules or provided for under any other law.
- (2) Subject to the Law and the Rules, the Financial Markets Tribunal may make rules of procedure governing the commencement, hearing and determination of proceedings, including as to:
- (a) the rules as to evidence;
  - (b) the manner in which the powers under Article 34 may be exercised; and
  - (c) the manner in which conflicts of interest of members of the Financial Markets Tribunal constituted under Article 34 may be prevented.
- (3) Proceedings and decisions of the Financial Markets Tribunal shall be heard and given in public unless:

- (a) the Financial Markets Tribunal hearing a matter orders otherwise; or
  - (b) the rules of procedure of the Financial Markets Tribunal provide otherwise.
- (4) Proceedings before the Financial Markets Tribunal shall be determined on a balance of probabilities.
- (5) An appeal from a determination of the Financial Markets Tribunal may be made to the Court.

**33. Commencing Proceedings**

If it appears reasonably likely to the Chief Executive or the DFSA Board of Directors that there has been a breach of any provision of the Law or of any Rules or of any other legislation administered by the DFSA, the Chief Executive may (and shall, if instructed by the DFSA Board of Directors) by notice commence proceedings before the Financial Markets Tribunal in relation to such breach.

**34. Powers to Hear and Determine Proceedings**

- (1) For the purposes of any proceedings before it, the Financial Markets Tribunal shall consist of at least three members of the Financial Markets Tribunal, one of whom may be its president.
- (2) On the commencement of proceedings under Article 33, the president of the Financial Markets Tribunal shall without undue delay, select the hearing panel and appoint its chairman.
- (3) The Financial Markets Tribunal may, for the purposes of any proceedings commenced under Article 33, on its own motion or that of any party to the proceedings:
  - (a) receive and consider any material by way of oral evidence, written statements or documents, even if such material may not be admissible in evidence in civil or criminal proceedings in a court of law;
  - (b) by notice in writing require a person to attend before it at any sitting and to give evidence and produce any item, record or document in his possession relating to the subject matter of the proceedings;
  - (c) administer oaths;
  - (d) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Financial Markets Tribunal considers appropriate for the purposes of the proceedings;

- (e) order a witness to provide evidence in a truthful manner for the purposes of the proceedings by sworn statement;
  - (f) order a person not to publish or otherwise disclose any material disclosed by any person to the Financial Markets Tribunal;
  - (g) stay the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice; and
  - (h) exercise such other powers or make such other orders as the Financial Markets Tribunal considers necessary for or ancillary to the conduct of the proceedings or the performance of its function.
- (4) At the conclusion of any proceedings commenced under Article 33 in which an alleged breach is proven to the satisfaction of the Financial Markets Tribunal, it may by written notice to the Respondent declare that the Respondent has committed a contravention of a specified provision and do one or more of the following:
- (a) impose a fine on the Respondent;
  - (b) censure the Respondent, including by means of publishing a written notice of 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 an act or thing;
  - (g) make an order prohibiting the Respondent from holding office at any body corporate carrying on 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.



- (5) Where the Financial Markets Tribunal imposes a fine or censure or makes a declaration or an order in relation to a person under Article 34(4), the DFSA may, without limiting other powers it may have, exercise and perform its functions and powers under Chapters 4, 7 or 8 of Part 3 of the Law in relation to the person's Licence, Authorised Individual status or registration.
- (6) A certificate that purports to be signed by the president or proper officer of the Financial Markets Tribunal and states that the Financial Markets Tribunal on a specified day made a finding that a specified person has committed a contravention of a specified provision of the Law or of the Rules or of any other legislation administered by the DFSA or made a specified finding of fact, is in any proceedings before the Court, where relevant:
  - (a) conclusive evidence that the person was found by the Financial Markets Tribunal on that day to have contravened the relevant provision;
  - (b) prima facie evidence that the person contravened that provision; and
  - (c) prima facie evidence of the relevant fact.

### 35. **Enforcement**

- (1) A person commits a contravention if he, without reasonable excuse:
  - (a) fails to comply with an order, notice, prohibition or requirement of the Financial Markets Tribunal under Article 34;
  - (b) having been required by the Financial Markets Tribunal under Article 34 to attend before such tribunal, leaves the place where his attendance is so required without the permission of such tribunal;
  - (c) hinders or deters any person from attending before the Financial Markets Tribunal, giving evidence or producing any item, record or document, for the purposes of any proceedings commenced under Article 33;
  - (d) threatens or causes any loss to be suffered by any person who has attended before the Financial Markets Tribunal, on account of such attendance;
  - (e) threatens or causes any loss to be suffered by any member of a Financial Markets Tribunal or any person assisting such tribunal at any time on account of the performance of his functions in that capacity;
  - (f) engages in conduct, including without limitation the:
    - (i) destruction of documents; or
    - (ii) giving of information that is false or misleading;

that is intended to obstruct the Financial Markets Tribunal in the exercise of any of its powers; or

- (g) fails to pay a fine imposed under Article 34(4)(a).
- (2) A person who commits a contravention under Article 35(1) is liable to a fine and may be subject to censure of the Financial Markets Tribunal, including by means of publication of a written notice of censure.
- (3) Where a person fails to comply with an order, notice, prohibition or requirement of a Financial Markets Tribunal made under Article 34, the Court may, on application of:
  - (a) the Financial Markets Tribunal; or
  - (b) the Chief Executive at the request of the Financial Markets Tribunal;make any order as it thinks fit to enforce such order, notice, prohibition or requirement.

## **CHAPTER 6 - THE CHIEF EXECUTIVE OF THE DFSA**

### **36. The Powers and Functions of the Chief Executive**

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

- (a) exercise the executive power of the DFSA by taking such steps as are reasonable and which he considers appropriate to meet the objectives of the DFSA;
- (b) license, authorise, register, recognise, regulate and supervise the conduct of activities required to be regulated under the Law or under any other legislation administered by the DFSA carried on by Authorised Firms, Authorised Market Institutions, Ancillary Service Providers, Authorised Individuals, Recognised Bodies and Recognised Members;
- (c) prepare or cause to be prepared in a timely and efficient manner:
  - (i) draft Rules;
  - (ii) draft standards or codes of practice; and
  - (iii) Guidance;reasonably required to enable the DFSA to perform its statutory functions;
- (d) submit such draft Rules, draft standards, and draft codes of practice to the DFSA Board of Directors and advise it of such Guidance;
- (e) grant waivers and modifications to the Rules;

- (f) investigate or cause to be investigated matters capable of investigation under the Law and, where appropriate, commence proceedings before the Financial Markets Tribunal and any other tribunals or courts of appropriate jurisdiction;
- (g) where appropriate to do so, delegate such of his functions and powers as may more efficiently and effectively be performed by officers or employees of the DFSA and, with the approval of the DFSA Board of Directors either generally or in relation to any particular matter, by any other person; and
- (h) exercise and perform such other powers and functions as may be delegated to the Chief Executive by the DFSA Board of Directors from time to time.

## **CHAPTER 7 – CONFLICTS OF INTEREST AND USE OF INFORMATION**

### **37. Conflicts of Interest**

- (1) Officers, employees and agents of the DFSA shall disclose material conflicts of interest to which they are subject in performing their functions. Such disclosure shall be made without undue delay to the person to whom such officer, employee or agent reports.
- (2) Officers, employees and agents of the DFSA shall not participate in the making of decisions on matters in relation to which they are subject to a material conflict of interest, save that breach of Article 37(2) shall not result in such decision being invalid.

### **38. Confidential Information**

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

- (b) is permitted or required by any other law;
- (c) is made to:
  - (i) the Companies Registrar;
  - (ii) a Financial Services Regulator;
  - (iii) a governmental or regulatory authority in the United Arab Emirates or elsewhere exercising powers and performing functions relating to anti-money laundering;
  - (iv) a self-regulatory body or organization exercising and performing powers and functions in relation to financial services; or
  - (v) a civil or criminal law enforcement agency, in the United Arab Emirates or elsewhere;

for the purpose of assisting the performance by any such person of its regulatory functions; or
- (d) is made in good faith for the purposes of performance and exercise of the functions and powers of the DFSA.

## **CHAPTER 8 – OTHER REGULATORS**

### **39. Exercise of Powers on Behalf of Other Regulators**

At the request of:

- (a) the Companies Registrar;
- (b) a Financial Services Regulator;
- (c) a governmental or regulatory authority in the United Arab Emirates or elsewhere exercising powers and performing functions relating to anti-money laundering;
- (d) a self-regulatory body or organization exercising and performing powers and functions in relation to financial services; or
- (e) a civil or criminal law enforcement agency, in the United Arab Emirates or elsewhere;

the DFSA may, where it considers appropriate, exercise its powers under the Law or under any other legislation administered by the DFSA for the purpose of assisting the performance by such person of its regulatory functions.

### **40. Delegation of Functions and Powers to Other Regulators**

Without limiting in any way the generality of any other provisions of the Law, including Article 36, the DFSA may delegate functions and powers to a representative of:

- (a) a Financial Services Regulator;
- (b) a governmental or regulatory authority in the United Arab Emirates or elsewhere exercising powers and performing functions relating to anti-money laundering; or
- (c) a civil or criminal law enforcement agency of the United Arab Emirates;

for the purpose of exercising the powers of the DFSA under Chapters 1 and 2 of Part 5, save that such representative shall be supervised in the exercise of his powers by the Chief Executive or his delegated officer.

## **PART 3: LICENCES, AUTHORISATION, REGISTRATION AND RECOGNITION**

### **CHAPTER 1 - THE FRAMEWORK OF REGULATION**

#### **41. The Financial Services Prohibition**

- (1) Subject to Article 41 (6), (7) and (9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC.
- (2) The DFSA shall make Rules prescribing the activities which constitute a Financial Service.
- (3) The prohibition in Article 41(1) is referred to in the Law as the "Financial Services Prohibition".
- (4) The DFSA may make Rules adding to, removing activities from, or otherwise modifying the list of Financial Services made under Article 41(2).
- (5) A person shall, in engaging in activity constituting a Financial Service, or in engaging in any like activity that may constitute a Financial Service except for the form and manner in which the activity is carried out, comply with Federal Law to the extent that such law applies in the DIFC.
- (6) A Recognised Body is exempt from the Financial Services Prohibition with respect to any Financial Service specified in its Recognition Notice:
  - (a) which is carried on as a part of the Recognised Body's business as an investment exchange; or
  - (b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the Recognised Body.
- (7) A Recognised Member is exempt from the Financial Services Prohibition with respect to any Financial Service which is carried on for the purposes of, or in connection with, trading on or using the facilities of an Authorised Market Institution of which it is a remote member.
- (8) A Recognised Body or Recognised Member shall:
  - (a) act within the scope of its authority under its Recognition Notice; and
  - (b) comply with any condition or restriction applicable to its Recognition Notice.

- (9) A Fund is exempt from the Financial Services Prohibition with respect to any Financial Service which is carried on for the purposes of, or in connection with, the Fund if the Fund has an Operator and he is a person within Article 42(3). This exemption applies to a Fund even where it does not have legal personality.

**42. Authorised Firms, Authorised Market Institutions and Financial Services**

- (1) The DFSA shall make Rules prescribing which kinds of Financial Services, with such modifications or limitations as may be specified may be carried on by:
- (a) an Authorised Firm; and
  - (b) an Authorised Market Institution.
- (2) The DFSA may make Rules adding to, removing activities from, or otherwise modifying the lists of Financial Services prescribed under Article 42(1).
- (3) A person may carry on one or more Financial Services in or from the DIFC if such person is:
- (a) an Authorised Firm whose Licence authorises it to carry on the relevant Financial Services; or
  - (b) an Authorised Market Institution whose Licence authorises it to carry on the relevant Financial Services.
- (4) An Authorised Firm or Authorised Market Institution shall:
- (a) act within the scope of its authority under its Licence; and
  - (b) comply with any condition or restriction applicable to its Licence.
- (5) A person who is not an Authorised Firm or Authorised Market Institution shall not represent that he is such a person.

**43. Authorised Individuals and Licensed Functions**

- (1) The DFSA shall make Rules prescribing Licensed Functions which may include the functions of senior officers or employees with material responsibility for both or either:
- (a) managing an Authorised Firm; and
  - (b) the carrying on by an Authorised Firm of its Financial Services.
- (2) The Licensed Functions of an Authorised Firm shall be carried out by its Authorised Individuals.

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

#### **44. The Ancillary Services Prohibition and Ancillary Service Providers**

- (1) Subject to Article 44(5), a person shall not carry on an Ancillary Service in or from the DIFC.
- (2) The DFSA shall make Rules prescribing the activities which constitute an Ancillary Service.
- (3) The prohibition in Article 44(1) is referred to in the Law as the "Ancillary Services Prohibition".
- (4) The DFSA may make Rules adding to, removing activities from, or otherwise modifying the list of Ancillary Services made under Article 44(2).
- (5) A person may carry on an Ancillary Service in or from the DIFC if such person is registered as an Ancillary Service Provider.
- (6) An Ancillary Service Provider shall:
  - (a) act within the scope of its authority under its registration; and
  - (b) comply with any terms of its registration.
- (7) A person who is not an Ancillary Service Provider shall not represent that he is such a person.



## CHAPTER 2 – APPLICATIONS FOR A LICENCE

### 45. Application for a Licence or for Extension to a Licence

- (1) An application for a Licence authorising an Authorised Firm or an Authorised Market Institution to carry on one or more Financial Services may be made to the DFSA by any:
  - (a) body corporate;
  - (b) partnership; or
  - (c) unincorporated association.
- (2) An Authorised Firm or Authorised Market Institution may apply to the DFSA to extend its Licence to Financial Services other than those in respect of which it already has a Licence.
- (3) The DFSA may make Rules providing that certain persons or types of person may not be granted a Licence in relation to particular Financial Services.
- (4) The DFSA shall make Rules containing a set of requirements which an application for a Licence, or for extension of a Licence to other Financial Services, must meet before such application can be accepted and a Licence or extension be granted by the DFSA. Such Rules shall include requirements relating to the fitness and propriety of applicants.
- (5) The DFSA may make Rules providing for such requirements referred to in Article 45(4) to be varied in cases where an application is made by a person which is, at the time of application, regulated in a jurisdiction other than the DIFC.
- (6) The DFSA may make Rules:
  - (a) prescribing the requirements an applicant applying for a Licence must meet before authorisation can be granted by the DFSA. Such Rules may include requirements relating to the legal form an applicant must adopt;
  - (b) prescribing certain persons or categories of person to be exempted from the requirements referred to in Article 45(4); and
  - (c) providing for any such exemptions to be:
    - (i) limited to certain Financial Services or specified circumstances; or
    - (ii) subject to certain conditions and restrictions.
- (7) (a) If an Authorised Firm or Authorised Market Institution is:

- (i) a partnership; or
- (ii) an unincorporated association;

it does not need to reapply for a Licence by reason only of a change to its membership.

- (b) Article 45 (7) (a) applies subject to the effect of Article 64.

#### 46. **Providing Information in relation to the Application**

- (1) The DFSA may require the applicant to provide additional information reasonably required for the DFSA to be able to decide the application.
- (2) If at any time between the filing of an application and the grant of a Licence or the grant of an extension to a Licence the applicant becomes aware of a material change reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.

#### 47. **Rejection of an Application**

- (1) The DFSA may in its absolute discretion refuse to grant an application for a Licence or for an extension to a Licence.
- (2) Upon refusing to grant a Licence or an extension to a Licence, the DFSA shall without undue delay inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal.

#### 48. **Granting a Licence or Extension to a Licence**

- (1) The DFSA may grant an application for a Licence or for an extension to a Licence with or without conditions and restrictions.
- (2) Upon deciding to grant a Licence or an extension to a Licence, the DFSA shall without undue delay inform the relevant applicant in writing of:
  - (a) such decision;
  - (b) the date on which the Licence or extension shall be deemed to take effect;
  - (c) the Financial Service or Financial Services that the applicant is authorised to carry on; and
  - (d) any conditions and restrictions applicable to the Licence or the newly extended Licence.

## CHAPTER 3 – CONDITIONS AND RESTRICTIONS ON A LICENCE

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

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

## **CHAPTER 4 –WITHDRAWAL OF A LICENCE OR AN AUTHORISATION UNDER A LICENCE**

### **50. Withdrawing an Authorisation under a Licence**

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

### **51. Withdrawing a Licence**

The DFSA may withdraw a Licence of an Authorised Firm or Authorised Market Institution where:

- (a) as a consequence of withdrawal of authorisation in relation to one or more Financial Services under Article 50, the person is no longer authorised to carry on any Financial Service;
- (b) the person is no longer fit and proper to hold a Licence;

- (c) the person has failed to remove a controller in the circumstances described in Article 64; or
- (d) the person asks the DFSA to withdraw the Licence.

**52. Procedure for Withdrawal**

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

## CHAPTER 5 - AUTHORISED INDIVIDUAL STATUS

### 53. Applications for Authorised Individual status or for Extension of status

- (1) In this Chapter:
  - (a) "Authorised Firm" includes a person whose application for a Licence or application for extension of a Licence is being considered by the DFSA; and
  - (b) "director, officer, employee or agent" of a person includes a person who proposes to become a director, officer, employee or agent of a person.
- (2) An application for Authorised Individual status of a director, officer, employee or agent of an Authorised Firm shall be made by:
  - (a) such director, officer, employee or agent; and
  - (b) the Authorised Firm for which the Licensed Function is to be performed under the terms of office, employment or agency between such Authorised Firm and such director, officer, employee or agent.
- (3) Where a person holds Authorised Individual status in relation to Licensed Functions of an Authorised Firm, such Authorised Individual and Authorised Firm may apply to the DFSA to extend the scope of the Authorised Individual status to Licensed Functions other than those in respect of which the Authorised Individual already holds status.
- (4) The DFSA shall make Rules containing the requirements which an application for Authorised Individual status must meet before such application can be accepted and authorisation granted by the DFSA. Such Rules shall include requirements relating to the fitness and propriety of applicants.
- (5) The DFSA may make Rules providing for such requirements to be varied in cases where:
  - (a) an application is made to extend the scope of Authorised Individual status to Licensed Functions other than those in respect of which he already holds such status; or
  - (b) an application is made for grant of Authorised Individual status by and for an officer, employee or agent who is, at the time of application, regulated in a jurisdiction other than the DIFC to perform a role which is substantially similar to the Licensed Function in relation to which the application is made.

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

**54. Providing Information in relation to the Application**

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

**55. Rejecting an Application**

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

**56. Granting an Application**

- (1) The DFSA may grant Authorised Individual status or an extension to status with or without conditions and restrictions.
- (2) Upon deciding to authorise a director, officer, employee or agent of an Authorised Firm as an Authorised Individual, or to extend the scope of Authorised Individual

status to other Licensed Functions, the DFSA shall without undue delay inform the relevant director, officer, employee or agent and the Authorised Firm in writing of:

- (a) such decision;
- (b) the date on which the authorisation or extension shall be deemed to take effect;
- (c) the Licensed Functions to which the authorisation relates; and
- (d) any conditions and restrictions applicable to the Authorised Individual status or extended status.

## **CHAPTER 6 – CONDITIONS AND RESTRICTIONS ON AUTHORISED INDIVIDUAL STATUS**

### **57. Applying Conditions and Restrictions to Authorised Individual Status**

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



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

## **CHAPTER 7 – RESTRICTION, SUSPENSION AND WITHDRAWAL OF AUTHORISED INDIVIDUAL STATUS**

### **58. Restricting Persons or Suspending or Withdrawing Authorisations**

- (1) If the DFSA reasonably concludes that a person is not a fit and proper person to perform any functions in or in connection with the provision of Financial Services or Ancillary Services in the DIFC, whether or not they are Licensed Functions, it may by means of written notice restrict such person from performing any or all such functions.
- (2) If the DFSA reasonably concludes that:
- (a) an Authorised Individual is in breach of 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;
- it may:
- (c) by means of a written notice restrict the person from performing one or more Licensed Functions; or
  - (d) suspend or withdraw Authorised Individual status from such person.
- (3) The DFSA may withdraw the Authorised Individual status of a person 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 one or more Licensed Functions of an Authorised Individual if the Authorised Individual or relevant Authorised Firm asks the DFSA to withdraw such authorisation.
- (5) Where the DFSA:
- (a) is conducting an investigation under Article 78; and
  - (b) in the course of such investigation suspects that a person has engaged in conduct that may form grounds for the withdrawal of the person's Authorised Individual status;
- it may suspend the Authorised Individual status of such person for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the person.
- (6) A person who:
- (a) performs a function in breach of Article 58(1); or
  - (b) performs a Licensed Function:
    - (i) in breach of the Rules;
    - (ii) contrary to a written notice issued under Article 58(2); or
    - (iii) where his Authorised Individual status has been suspended or withdrawn under Article 58(2), (3), (4) or (5);
- commits a contravention.
- (7) The DFSA may vary or withdraw a written notice issued under Article 58(1) or (2) where it is reasonable to do so.
- (8) The DFSA may act under Article 58(7) on its own initiative or at the request of the relevant person or Authorised Firm.

**59. Procedure for Restricting Persons or Suspending or Withdrawing an Authority**

- (1) Subject to Articles 59(2) and (3), the DFSA may only exercise its power to:
- (a) issue or vary a written notice; or

- (b) suspend or withdraw Authorised Individual status;

under Article 58 if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed written notice or variation of notice or suspension or withdrawal.

- (2) The restriction imposed on the DFSA under Article 59(1) shall not apply where:
  - (a) the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC;
  - (b) the DFSA proposes to withdraw Authorised Individual status under Article 58(3); or
  - (c) the Authorised Individual has requested the issue or variation of a written notice or the suspension of his status.
- (3) Where the DFSA takes steps to exercise its powers under Article 58 in relation to an Authorised Individual following a determination by the Regulatory Appeals Committee or the Financial Markets Tribunal or a decision of the Court relating to the conduct of such person, the obligation upon the DFSA to afford the person an opportunity to make representations to the DFSA shall not apply in relation to findings of fact of that tribunal or committee or the Court as the case may be.
- (4) Where the DFSA has received a representation from a person under this Article, the DFSA shall without undue delay inform such person in writing of its response to such representation.
- (5) Upon deciding under Article 58 to:
  - (a) issue, vary or withdraw a written notice; or
  - (b) suspend or withdraw Authorised Individual status;

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

- (c) such decision;
- (d) the date on which the issue, variation or withdrawal of the written notice or suspension or withdrawal of Authorised Individual status shall be deemed to take effect; and
- (e) the Licensed Functions or other functions to which such issue, variation or withdrawal of the written notice or suspension or withdrawal of Authorised Individual status may relate.

## **CHAPTER 8 – REGISTRATION OF ANCILLARY SERVICE PROVIDERS**

### **60. Registration of Ancillary Service Providers**

- (1) An application for registration of an Ancillary Service Provider to carry on one or more Ancillary Services may be made to the DFSA by any:
  - (a) body corporate;
  - (b) partnership; or
  - (c) unincorporated association.
- (2) The DFSA shall make Rules containing a set of requirements which an application for registration must meet before such application can be accepted and registration granted by the DFSA.
- (3) The DFSA may in its absolute discretion grant or refuse to grant an application for registration.
- (4) The DFSA may make Rules setting out the grounds on which and manner in which registration may be suspended, varied or withdrawn by the DFSA.
- (5)
  - (a) If an Ancillary Service Provider is:
    - (i) a partnership; or
    - (ii) an unincorporated association;it does not need to reapply for registration by reason only of a change to its membership.
  - (b) Article 60 (5) (a) applies subject to the effect of Article 64.

## **CHAPTER 9 – RECOGNISED STATUS**

### **61. Applications and other matters in relation to recognised status**

- (1) Any body corporate, partnership or unincorporated association may apply to the DFSA for a notice (a ‘Recognition Notice’) declaring it to be:
  - (a) a Recognised Body; or
  - (b) a Recognised Member.
- (2) A Recognised Body may apply to the DFSA to extend the scope of its Recognition Notice to Financial Services other than those in respect of which the Recognised Body is already Recognised.

- (3) The DFSA shall make Rules setting out the recognition criteria:
  - (a) an applicant must satisfy to obtain a Recognition Notice from the DFSA under this Part; and
  - (b) which it must continue to satisfy if it is to remain a Recognised Body or Recognised Member.
- (4) The DFSA may make Rules requiring a Recognised Body or Recognised Member to give it notice of, and information about, such events as may be specified where such notice or information is reasonably required for the exercise of the DFSA's functions under this Law.
- (5) At any time after receiving an application and before determining it, the DFSA may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
- (6) If at any time between the filing of an application and the issue of a Recognition Notice the applicant becomes aware of a material change reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.
- (7) The DFSA may in its absolute discretion refuse to grant an application for a Recognition Notice or for an extension to the scope of a Recognition Notice. Upon refusing such an application, the DFSA shall without undue delay, inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal.
- (8) The DFSA may grant an application for a Recognition Notice or for an extension to the scope of a Recognition Notice with or without conditions and restrictions. The DFSA shall without undue delay inform the relevant applicant in writing of:
  - (a) such decision;
  - (b) the date on which the Recognition Notice or for an extension to the scope of a Recognition Notice shall be deemed to take effect; and
  - (c) any conditions and restrictions applicable to the Recognition Notice.
- (9) The DFSA may revoke a Recognition Notice by a notice (a "Revocation Notice") issued on its own initiative or at the request of a Recognised Body or Recognised Member.
- (10) The DFSA may exercise its power under Article 61 (9) in the following circumstances:

- (a) the Recognised Body or Recognised Member is in breach of, or has been in breach of, one or more restrictions or conditions applicable to its Recognition Notice;
  - (b) the Recognised Body or Recognised Member is otherwise in breach of, or has otherwise been in breach of, the Law or Rules or other legislation administered by the DFSA;
  - (c) the Recognised Body or Recognised Member is no longer fit and proper;
  - (d) the Recognised Body or Recognised Member is failing, or has failed, to satisfy the recognition criteria;
  - (e) the Recognised Body or Recognised Member requests the Revocation Notice; or
  - (f) the DFSA considers that the exercise of the power is necessary or desirable in the pursuit of its objectives.
- (11) Subject to Articles 61(11) and (12), the DFSA may only exercise its power under Article 61(9) if it has given the relevant recognised undertaking a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed revocation.
- (12) The restriction imposed on the DFSA under Article 61(11) shall not apply if:
- (a) the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC; or
  - (b) the Recognised Body or Recognised Member requests the DFSA to revoke its Recognition Notice.
- (13) Where the DFSA takes steps to exercise its powers under Articles 61(8) in relation to a Recognised Body or Recognised Member following a determination of the Financial Markets Tribunal or a decision of the Court in relation to the conduct of such recognised undertaking, the obligation upon the DFSA to afford that recognised undertaking an opportunity to make representations to the DFSA shall not apply in relation to findings of fact of that tribunal or the Court as the case may be.
- (14) Where the DFSA has received a representation from a Recognised Body or Recognised Member under this Article, the DFSA shall without undue delay inform such Recognised Body or Recognised Member in writing of its response to such representation.
- (15) Upon deciding to issue a revocation notice, the DFSA shall without undue delay inform the relevant Recognised Body or Recognised Member in writing of:

- (a) such decision; and
- (b) the date on which such revocation shall be deemed to take effect.

## **CHAPTER 10 - OTHER MATTERS RELATING TO LICENSING**

### **62. Public Registers**

- (1) The DFSA shall publish and maintain a register of current and past grants, withdrawals and suspensions of Licenses and authorisations of all Authorised Firms, Authorised Market Institutions and Authorised Individuals in such manner as may be prescribed in the Rules.
- (2) The DFSA shall publish and maintain a register of current and past grants and withdrawals of registration of all Ancillary Service Providers in such manner as may be prescribed in the Rules.
- (3) The DFSA shall publish and maintain registers of:
  - (a) all persons in relation to whom written notices have been issued under Article 58(1); and
  - (b) all persons in relation to whom written notices have been issued under Article 58(2);indicating whether any such notice is of past effect or current, in such manner as may be prescribed in the Rules.
- (4) The DFSA shall publish and maintain a register of current and past grants and revocations of recognition of all Recognised Bodies and Recognised Members, in such manner as may be prescribed in the Rules.
- (5) The DFSA shall publish and maintain a register of current and past registrations of auditors in such manner as may be prescribed in the Rules.
- (6) The DFSA shall publish and maintain a register of all Funds which are currently registered and of all Funds where such registration has been withdrawn, in such manner as may be prescribed in the Rules.
- (7) The DFSA shall make a reasonably current version of any registers maintained under Article 62(1), (2), (3), (4), (5) and (6) readily available for viewing by the public during the normal business hours of the DFSA.

### **63. Extended jurisdiction**

- (1) Any power which the DFSA may exercise in relation to an Authorised Firm, Authorised Market Institution, Ancillary Service Provider, Authorised Individual,

Recognised Body, Recognised Member or Domestic Fund under the Law or Rules or other legislation administered by the DFSA 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;
- (b) the registration of an Ancillary Service Provider;
- (c) the Authorised Individual status of such Authorised Individual;
- (d) the Recognition Notice for the Recognised Body or Recognised Member; or
- (e) the registration of a Domestic Fund;

is withdrawn by the DFSA under the Law or other legislation administered by the DFSA.

- (2) If, pursuant to the Law, proceedings are commenced before a Financial Markets Tribunal or the Regulatory Appeals Committee before the expiry of the period of two years referred to in Article 63(1) then the provisions of Article 63(1) shall remain in force until such time as the proceedings and any related appeals and proceedings are completed.

## **PART 4: GENERAL REGULATION OF FINANCIAL SERVICES**

### **CHAPTER 1 – GENERAL PROVISIONS**

#### **64. Provisions Governing Change of Control**

- (1) The DFSA may make Rules in connection with the change of control of Authorised Firms, Authorised Market Institutions and Ancillary Service Providers, including Rules as to:
  - (a) the circumstances in which a person becomes or ceases to be a controller;
  - (b) the circumstances in which a change in a measure of control requires notice to be given to the DFSA;
  - (c) the manner in which and by whom such notification is to be given;
  - (d) in relation to the Authorised Firms and Authorised Market Institutions, the circumstances in which approval of the DFSA may be required prior to a change in control; and
  - (e) the manner by which and circumstances in which the DFSA will notify an Authorised Firm or Authorised Market Institution that a controller is unacceptable to the DFSA.



- (2) Where:
- (a) the DFSA notifies an Authorised Firm or Authorised Market Institution that a controller is unacceptable to the DFSA; and
  - (b) such Authorised Firm or Authorised Market Institution fails to remove the controller without undue delay or take other action to the satisfaction of the DFSA;

the DFSA may exercise its powers under Article 51 to withdraw the Licence of the Authorised Firm or Authorised Market Institution.

- (3) Nothing in Article 64(2) affects the powers and liabilities that the DFSA or a person may have apart from this Article.

**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 shall not be entitled to enforce such agreement against any party (a "relevant party") to the agreement.
- (2) Subject to 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.
- (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 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, 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:
- (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
  - (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.

**66. False or Misleading Information**

A person shall not:

- (a) provide information which is false, misleading or deceptive to the DFSA; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

**67. Obligations of Disclosure to the DFSA**

(1) Subject to Article 67(2), any of the following persons:

- (a) an Authorised Firm, Authorised Market Institution or Ancillary Service Provider; or
- (b) an auditor of any person in (a);

shall disclose to the DFSA any matter which reasonably tends to show one of the following:

- (c) a breach, or likely breach of a provision of the Law or Rules or other legislation administered by the DFSA;
- (d) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or

(e) any other matter as the DFSA may prescribe in Rules;

which may be attributable to the conduct of the relevant Authorised Firm, Authorised Market Institution or Ancillary Service Provider or of its directors, officers, employees or agents.

(2) Article 67(1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.

(3) An Authorised Firm, Authorised Market Institution or Ancillary Service Provider shall establish and implement appropriate systems and internal procedures to enable its compliance, and compliance by its auditor, with Article 67(1).

(4) Any provision in an agreement between an Authorised Firm, Authorised Market Institution or Ancillary Service Provider and a director, officer, employee, agent or auditor is void in so far as it purports to hinder any person from causing or assisting an Authorised Firm, Authorised Market Institution or Ancillary Service Provider or auditor to comply with an obligation under Article 67(1).

(5) Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the DFSA:

(a) a notification as required under this Article; or

(b) any other information or opinion in relation to any such matter;

if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.

(6) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an Authorised Firm, Authorised Market Institution, Ancillary Service Provider or auditor to comply with an obligation under Article 67(1).

(7) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 67(5).

## 68. **Disclosures to the DFSA**

A person is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of the giving of information or production of a document by the person to the DFSA:

(a) in good faith; and

- (b) in reasonable belief that the information or document is relevant to any functions of the DFSA;

whether such information or document is given or produced pursuant to a requirement at law or otherwise.

**69. Compliance with an order or requirement of the DFSA**

Where the DFSA makes an order, issues a direction or prohibition, or makes any requirement in relation to a person pursuant to a provision of this Law or Rules or legislation administered by the DFSA, such person must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

**CHAPTER 2 – ANTI-MONEY LAUNDERING COMPLIANCE**

**70. Operation of Federal Law**

- (1) Chapter 2 of Part 4 of the Law is made in recognition of the obligations upon the DFSA under Federal Law No. 4 of 2002 ‘Criminalisation of Money Laundering’ of the United Arab Emirates.
- (2) Nothing in the Law affects the operation of:
  - (a) Federal Law No. 4 of 2002 of the United Arab Emirates;
  - (b) the Penal Code of the United Arab Emirates; or
  - (c) any other Federal Law of the United Arab Emirates as applicable in the DIFC in relation to anti-money laundering compliance.
- (3) An Authorised Firm, Authorised Market Institution, Ancillary Service Provider, Authorised Individual and a Fund, even where it does not have legal personality shall comply with any provision of the Federal Law No. 4 of 2002 of the United Arab Emirates as it applies to such person in the DIFC.

**71. Reporting by the DFSA of Suspicious Activity**

Where the DFSA detects conduct which it suspects may relate to money laundering, it shall advise the relevant authority exercising powers and performing functions under Federal Law No. 4 of 2002 of the United Arab Emirates without undue delay.

**72. Provisions governing Anti-Money Laundering Measures**

- (1) The DFSA shall make Rules in connection with the creation and implementation of anti-money laundering measures, policies and procedures, including Rules as to:

- (a) the persons or classes of persons who shall be subject to any such measures, policies and procedures;
  - (b) the nature and extent of any duty, requirement, prohibition, obligation or responsibility applicable to such persons.
- (2) An Authorised Firm, Authorised Market Institution, Ancillary Service Provider, Authorised Individual and a Fund, even where it does not have legal personality shall comply with any duty, requirement, prohibition, obligation or responsibility to which that person is subject under the Rules.

## **PART 5: POWERS OF SUPERVISION AND INVESTIGATION**

### **CHAPTER 1 – POWERS OF SUPERVISION**

#### **73. Powers to Obtain Information**

- (1) The DFSA may require an Authorised Firm, Authorised Market Institution, Ancillary Service Provider, Fund, auditor or any director, officer, employee or agent of such person by written notice to:
- (a) give, or procure the giving of, such specified information; or
  - (b) produce, or procure the production of, such specified documents;
- to the DFSA as the DFSA considers necessary or desirable to meet the objectives of the DFSA.
- (2) The DFSA may enter the premises of any Authorised Firm, Authorised Market Institution, Ancillary Service Provider or Fund during normal business hours or at any other time as may be agreed for the purpose of inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.
- (3) The DFSA may exercise its powers under Article 73 (1) in respect of any person within, or outside of, the DIFC.
- (4) The Court may on application by the DFSA order that: the DFSA may make a requirement under Article 73(1) outside of the jurisdiction of the DIFC in respect of a person to whom Article 73(1) applies other than an Authorised Firm, Authorised Market Institution or Ancillary Service Provider.
- (5) Information given or a document produced as a result of the exercise by the DFSA of powers under Article 73 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.

**74. Requirement to Provide a Report**

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

**75. Imposing Restrictions on Business**

- (1) Subject to Article 77, the DFSA may by written notice:
  - (a) prohibit an Authorised Firm or Authorised Market Institution from:
    - (i) entering into certain specified transactions or types of transaction;
    - (ii) soliciting business from certain specified persons or types of person;
    - (iii) carrying on business in a specified manner or other than in a specified manner; or
    - (iv) using a particular name for a Fund or a sub-fund of a Fund; or
  - (b) require an Authorised Firm or Authorised Market Institution to carry on business in, and only in, a specified manner.
- (2) The prohibitions or requirement in Article 75(1) may be imposed on the Operator of a Fund in relation to the operation of a Fund or on the Fund itself, even where the Fund has no legal personality.

**76. Restriction on Dealing with Property**

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

- (b) require an Authorised Firm or Authorised Market Institution to deal with any relevant property in a specified manner.
- (c) require an Authorised Firm or Authorised Market Institution to deal with any relevant property such that:
  - (i) the property remains of the value and of the description that appear to the DFSA to be desirable with a view to ensuring that the person will be able to meet its liabilities in relation to the business which constitutes a Financial Service for which it holds a Licence; and
  - (ii) the person is able at any time readily to transfer or dispose or otherwise deal with of the property when instructed to do so by the DFSA.
- (3) The DFSA may in any requirement imposed under Article 76(2) direct that, for the purposes of such requirement, property of a specified description shall or shall not be taken into account.

**77. Imposition of a prohibition or requirement**

- (1) The DFSA may impose a prohibition or requirement under Article 75 or 76 in the circumstances prescribed in the Rules.
- (2) Where a prohibition or requirement imposed under Article 75 or 76 is in force, the DFSA may by written notice to the person on whom the prohibition or requirement is imposed:
  - (a) withdraw the prohibition or requirement; or
  - (b) substitute another prohibition or requirement for, or vary, the prohibition or requirement.
- (3) Articles 75 and 76 and the imposition, withdrawal, substitution or variation of a prohibition or requirement under such Articles do not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published in relation to such imposition, withdrawal, substitution or variation.
- (4) The withdrawal of a Licence under Chapter 4 of Part 3 of the Law does not affect the validity of a current prohibition or requirement made under Articles 75 or 76.

**CHAPTER 2 - THE CONDUCT OF INVESTIGATIONS**

**78. Power of the DFSA to conduct an investigation**

- (1) The DFSA may conduct such investigation as the Chief Executive considers expedient under Chapter 2 of Part 5:



- (a) where he has reason to suspect that a contravention of the Law or of the Rules or of any other legislation administered by the DFSA is being or may have been committed; or
  - (b) further to a request made under Article 39.
- (2) A person is entitled to legal representation during the course of an investigation.

**79. Costs of an Investigation**

- (1) Subject to Article 79(2), the DFSA shall pay the costs and expenses of an investigation.
- (2) Where, as a result of an investigation under Chapter 2 of Part 5, a person is found in the Financial Markets Tribunal or in any court of law exercising civil or criminal jurisdiction to have contravened a provision of the Law or of the Rules or of any other legislation administered by the DFSA, the Financial Markets Tribunal or the Court may order, on application brought by the DFSA, that the person pay or reimburse the DFSA in respect of the whole, or a specified part of, the costs and expenses of the investigation, including the remuneration of any officer involved in the investigation.

**80. Powers to Obtain Information for Investigation**

- (1) Where the DFSA considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:
  - (a) enter the business premises of such person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
  - (b) require such person to give, or procure the giving of, specified information in such form as it may reasonably require;
  - (c) require such person to produce, or procure the production of, specified documents;
  - (d) require such person to attend before it at a specified time and place to answer questions, including under oath or affirmation administered by an officer of the DFSA that the statements that the person will make will be true; or
  - (e) require such person to give it any assistance in relation to the investigation which the person is able to give.
- (2) A requirement made under Article 80 (1) (b),(c), (d), and (e) shall be stated in writing.
- (3) The DFSA may require the relevant person to give such information or produce such documents by the end of a reasonable period and at a place specified in the notice.

- (4) The DFSA may exercise its powers under Article 80 (1) in respect of any person within, or outside of, the DIFC.
- (5) In exercising its powers under Article 80(1) outside of the DIFC, the DFSA shall comply with local requirements relevant to the exercise of those powers including, where appropriate, informing or proceeding in collaboration with a local regulator.
- (6) Subject to Article 80(7), information given or documents produced as a result of the exercise by the DFSA of powers under Article 80 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (7) The DFSA shall not disclose a statement made by a person in answer to any question asked pursuant to a requirement made of the person under Article 80(1)(d) to any law enforcement agency for the purpose of criminal proceedings against the person unless:
  - (a) the person consents to the disclosure; or
  - (b) the DFSA is required by law or court order to disclose the statement.

### **CHAPTER 3 – COMPLIANCE WITH REQUIREMENTS OF THE DFSA**

#### **81. Liabilities for Provision of Information or Documents to the DFSA**

Without limiting the generality of any provision of Articles 67 and 68, a person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made, or purporting to have been made, under any provision of this Part for inspection of, copying of, giving of or production of, information or documents.

#### **82. Self-Incrimination and Privileges**

- (1) Subject to Article 82(2), it is not a reasonable excuse for a person to refuse or fail to:
  - (a) permit inspection and copying of any information or document;
  - (b) give or produce, or procure the giving or production of, any information or document; or
  - (c) answer questions;

pursuant to any requirement under Articles 73, 74 or 80 of this Law or Article 69 of the Collective Investment Law 2006 on the grounds that any such information or document or answer, as the case may be:

  - (d) might tend to incriminate the person or make the person liable to a penalty;

- (e) is, or contains, or might reveal a Privileged Communication; or
  - (f) is, or contains, or might reveal a communication made in confidence.
- (2) Where the DFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a Privileged Communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless:
- (a) where the person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or
  - (b) otherwise, the person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.
- (3) Where a lawyer so refuses to comply with a requirement, he shall, as soon as practicable, give to the DFSA a written notice setting out:
- (a) where the lawyer knows the name and address of the person to whom, or by whom, or on behalf of whom, the communication was made, then that name and address; and
  - (b) where the requirement to give information or produce a document relates to a communication which was made in writing, then sufficient particulars to identify the document containing the communication.

**83. Obstruction of the DFSA**

A person shall not without reasonable excuse engage in conduct, including without limitation the:

- (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; and
- (e) failure to give any assistance in relation to an investigation which the person is able to give;

that is intended to obstruct the DFSA in the exercise of any powers under Chapters 1 and 2 of Part 5 or under any Law administered by the DFSA.

**84. Enforcement of Compliance by Injunction or Search Warrant**

- (1) A requirement imposed on a person as a result of the exercise by the DFSA of powers under Articles 73, 74 or 80 may be enforceable by injunction on the application of the DFSA to the Court.
- (2) Where the DFSA has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, information or documents which were required to be given or produced to the DFSA as a result of the exercise of powers under Article 73 or Article 80 and that have not been given or produced in compliance with any such requirement, the DFSA may, in addition to or as an alternative to seeking an injunction under Article 84(1), lay before the Court an information on oath setting out those grounds and apply for the issue of a warrant to search the premises for that information or those documents.
- (3) On considering such application and information on oath referred to in Article 84(2), the Court may issue a warrant authorising a named Dubai Police Officer, together with any other person so named in the warrant whether of the DFSA or otherwise, with such assistance and by such force as is necessary and reasonable, to enter into the premises, to search the premises, to break open and search anything (whether a fixture or not) in or on the premises, and to take possession of or secure information or documents that appear to be any or all of the information or documents not given or produced pursuant to the requirement of the DFSA.
- (4) A warrant issued under Article 84(3) must specify the premises and information or documents referred to in Article 84(2), and state whether entry is authorised to be made at any time of the day or night or only during specified hours, and state that the warrant ceases to have effect on a specified day that is not more than 7 days after the date of the issue of the warrant.

## **PART 6: CONTRAVENTIONS AND FINES**

### **85. General Contravention Provision**

- (1) A person who:
  - (a) does an act or thing that the person is prohibited from doing by or under the Law or Rules or any other legislation administered by the DFSA;
  - (b) does not do an act or thing that the person is required or directed to do by or under such Law, Rules or other legislation;
  - (c) otherwise contravenes a provision of such Law, Rules or other legislation;

commits a contravention of such Law, Rules or other legislation, as the case may be, by virtue of Article 85 unless another provision of such Law, Rules or other legislation provides that the person commits, or does not commit, a contravention.
- (2) In Article 85, 'person' does not include the DFSA or President.

### **86. Involvement in contraventions**

- (1) If a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (2) If an officer of a body corporate is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a body corporate are managed by its members, Article 86(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If a partner (or a person purporting to act as a partner) is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a partnership or by all or some of its constituent partners, he as well as the partnership or its constituent partners as the case may be commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (5) If an officer of an unincorporated association (other than a partnership) or a member of its governing body is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by the association, that officer

or member as well as the association commits a contravention and is liable to be proceeded against and dealt with accordingly.

- (6) For the purposes of Article 86, "officer" means a director, member of a committee of management, chief executive, manager, secretary or other similar officer of the body corporate or association, or a person purporting to act in such capacity, and an individual who is a controller of the body.
- (7) For the purposes of Article 86, a person is 'knowingly concerned' in a contravention if, and only if, the person
  - (a) has aided, abetted, counselled or procured the contravention;
  - (b) has induced, whether by threats or promises or otherwise, the contravention;
  - (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
  - (d) has conspired with another or others to effect the contravention.
- (8) In Article 86, 'person' does not include the DFSA or President.

## 87. **Fines**

- (1) Except as provided in Article 90, a fine in relation to a contravention may be imposed either by the Financial Markets Tribunal under Article 34 or by the DFSA under Article 90 but not by both in relation to the same contravention.
- (2) Subject to Article 87(3) and Article 90(1), the Law sets no limit on a fine that may be imposed in relation to a contravention.
- (3) The President may by means of regulations set or revise a maximum amount of fine applicable in respect of a contravention.
- (4) Any fine that is imposed on a person by the Financial Markets Tribunal or by the Chief Executive is payable to the DFSA within:
  - (a) the time period ordered or directed for payment; or
  - (b) otherwise, within 30 days of the date of imposition of the fine;unless the person takes such action as may be prescribed in the Law or Rules to remove his liability to pay the fine.
- (5) The Court may order, on application of the DFSA, the recovery as a debt due so much of a fine as is not paid in accordance with Article 87(4).

- (6) The DFSA may make Rules in connection with the payment and recovery of fines under this Article.
- (7) Nothing in Article 87 affects the powers that the DFSA may have apart from this Article.

## **PART 7: ENFORCEMENT**

### **88. Appointment of Managers**

- (1) The DFSA may by written notice require an Authorised 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 in its written notice. Such terms may be varied from time to time by notice in writing given by the DFSA to the person.
- (2) The individual or individuals appointed to act as managers of the business under Article 88(1) must be nominated or approved by the DFSA.
- (3) The DFSA may impose a requirement under Article 88(1) in the circumstances prescribed in the Rules.

### **89. Enforceable Undertakings**

- (1) The DFSA may accept a written undertaking given by a person which the DFSA considers necessary or desirable in the pursuit of its objectives.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the DFSA.
- (3) If the DFSA considers that the person who gave the undertaking has been in breach of any of its terms, it may apply to the Court for an order under Article 89(4).
- (4) If the Court is satisfied that the person has been in breach of a term of the undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to 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) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
  - (d) any other order that the Court considers appropriate.

90. **Administrative Notice of Imposition of Fine**

- (1) The DFSA shall prescribe in Rules:
  - (a) which of the provisions of the Law or Rules or other legislation administered by the DFSA are provisions to which this Article applies; and
  - (b) procedures in relation to the imposition and recovery of fines under this Article.
- (2) Where the DFSA considers that a person has contravened a provision of the legislation prescribed under Article 90(1)(a), it may impose by written notice given to the person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding:
  - (a) \$5,000 in the case of a natural person; or
  - (b) \$25,000 in the case of a body corporate;in respect of each contravention.
- (3) If, within the period specified in the notice:
  - (a) the person pays the prescribed fine to the DFSA, then no proceedings may be commenced by the DFSA against the person in respect of the relevant contravention;
  - (b) the person has not paid the prescribed fine to the DFSA, and has taken such action as is prescribed in the Rules to object to the imposition of the fine, then proceedings may be commenced by the DFSA against the person in respect of the relevant contravention; or
  - (c) the person has not paid the prescribed fine to the DFSA, and has not taken such action as is prescribed in the Rules to object to the imposition of the fine, then the DFSA may apply to the Court for recovery as a debt due so much of a fine as is not paid.

91. **Administrative Censures**

- (1) The DFSA shall prescribe in Rules:
  - (a) which of the provisions of the Law or Rules or other legislation administered by the DFSA are provisions to which this Article applies; and
  - (b) procedures in relation to the imposition of a censure under this Article.



- (2) Where the DFSA considers that a person has contravened a provision of the legislation prescribed under Article 91(1)(a) the DFSA may censure the person, including by means of publishing a written notice of censure.
- (3) The DFSA may only exercise its power under Article 91(2) if:
  - (a) it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed censure; and
  - (b) the person has not taken such action as is prescribed in the Rules to object to the imposition of the censure.

92. **Injunctions and Orders**

- (1) In this Article, “relevant requirement” in relation to an application by the DFSA, means a requirement, duty, prohibition, responsibility or obligation which is imposed by or under the Law or Rules or other legislation administered by the DFSA.
- (2) Where 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, the Court may, on application of the DFSA or any aggrieved person, make one or more of the following orders:
  - (a) an order restraining the person from engaging in the conduct including, but not limited to, engaging in conduct that may constitute a contravention of a DIFC Law or of a Federal Law to the extent that such law may apply to such person in the DIFC;
  - (b) an order requiring that person to do any act or thing including, but not limited to, acts or things to remedy the contravention or to minimise loss or damage; or
  - (c) any other order as the Court sees fit.
- (3) Where:
  - (a) the DFSA is conducting or has conducted an investigation into the acts or omissions of a person (the ‘relevant 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 or otherwise, against a relevant person in relation to an alleged contravention of a relevant requirement,

the Court may, on application of the DFSA or any aggrieved person, make one or more of the following orders:

- (c) 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;
  - (d) 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;
  - (e) an order prohibiting the relevant person or any other person from taking or sending out of the jurisdiction of the Court or out of the United Arab Emirates any assets of the relevant person or held on his behalf;
  - (f) in the event that the relevant person is a natural person, an order appointing a receiver or trustee, having such powers as the Court may see fit, of the property or any of the property of the relevant person;
  - (g) in the event that the relevant person is a body corporate, an order appointing a receiver or receiver and manager, having such powers as the Court may see fit, of the property or any of the property of the relevant person;
  - (h) in the event that the relevant person is a natural person, an order requiring him to deliver up to the Court his passport and such other documents as the Court sees fit; or
  - (i) in the event that the relevant person is a natural person, an order prohibiting him from leaving the jurisdiction of the Court or of the United Arab Emirates without the consent of the Court.
- (4) Nothing in Article 92 affects the powers that any person or the Court may have apart from this Article.

**93. Compulsory Winding up**

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

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

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

94. **Civil Proceedings**

- (1) Where a person:
  - (a) intentionally, recklessly or negligently commits a breach of duty, requirement, prohibition, obligation or responsibility imposed under the Law or Rules or other legislation administered by the DFSA; or
  - (b) commits fraud or other dishonest conduct in connection with a matter arising under such Law, 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, and otherwise is liable to restore such other person to the position they were in prior to such conduct.

- (2) The Court may, on application of the DFSA or of a person who has suffered loss or damage caused as a result of conduct described in Article 94(1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the Court sees fit, except where such liability is excluded under the Law or Rules or other legislation administered by the DFSA.
- (3) Nothing in Article 94 affects the powers that any person or the Court may have apart from this Article.

95. **Power of DFSA to Intervene in any Proceedings**

- (1) The DFSA may intervene as a party in any proceedings in the Court where it considers such intervention appropriate to meet the objectives of the DFSA.
- (2) Where the DFSA so intervenes, it shall, subject to any other law, have all the rights, duties and liabilities of such a party.

96. **Effect of Provisions**

For the avoidance of doubt, nothing in any Article in Part 7 limits the generality of any other Article in Part 7, or the generality of any other provision in the Law or Rules or other legislation administered by the DFSA, which may provide for administrative remedies or the commencement of proceedings in the Court.

## **PART 8: AUDITORS**

### **97. Qualification and application**

- (1) In this Part, unless expressed otherwise, an auditor means:
  - (a) in relation to an Authorised Firm incorporated or formed in the DIFC, an auditor who is registered under this Law; or
  - (b) in relation to an Authorised Firm incorporated or formed in a jurisdiction other than the DIFC, an auditor appointed by the Authorised Firm.
- (2) The DFSA shall make Rules setting out the requirements an auditor must meet to become registered by the DFSA. Such Rules may include requirements relating to the qualifications, experience and fitness and propriety of applicants.
- (3) The DFSA may make Rules providing for a variation of the requirements referred to in Article 97(2) where an application is made by a firm that is, at the time of application, regulated in a jurisdiction other than the DIFC.

### **98. Registration and cancellation of registration**

- (1) The DFSA may in its absolute discretion grant or refuse to grant an application for registration.
- (2) Upon refusing to grant an application for registration, the DFSA shall without undue delay, inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal.
- (3) The DFSA may cancel the registration of an auditor on that firm's request or pursuant to a Court order under Article 105.

### **99. Appointment and removal of auditors**

- (1) The appointment of a firm as an auditor of an Authorised Firm or an Authorised Market Institution is taken to be an appointment of all persons who are partners of the firm.
- (2) An Authorised Firm or an Authorised Market Institution shall:
  - (a) at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting; or
  - (b) at the beginning of each financial year appoint an auditor to hold office until the beginning of the next financial year.

- (3) An Authorised Firm or an Authorised Market Institution which is granted a License after the beginning of a financial year must appoint an auditor who shall hold office to the conclusion of that financial year.
- (4) An Authorised Firm or the Authorised Market Institution may fill any casual vacancy in the office of auditor and fix the auditor's remuneration.
- (5) An Authorised Firm or the Authorised Market Institution shall not appoint an auditor under this Article unless:
  - (a) the auditor has, prior to the appointment, consented in writing to the Authorised Firm or the Authorised Market Institution; and
  - (b) the Authorised Firm or the Authorised Market Institution is not, on reasonable inquiry, aware of any matter which should preclude the auditor from giving his consent under Article 99(6).
- (6) An auditor shall not consent to an appointment as an auditor of an Authorised Firm or an Authorised Market Institution if:
  - (a) the auditor has, or may reasonably be perceived to have, a conflict of interest of a nature prescribed in the Rules;
  - (b) the auditor does not have, or may reasonably be perceived not to have, a requisite degree of independence from the Authorised Firm or the Authorised Market Institution as prescribed in the Rules; or
  - (c) the auditor or any associate of the auditor in a firm or business undertaking has acted as an auditor of the Authorised Firm or the Authorised Market Institution within such earlier period or frequency as prescribed in the Rules.
- (7) An Authorised Firm or an Authorised Market Institution may at any time remove an auditor notwithstanding anything in any agreement between it and the auditor.
- (8) The Court may, on application made by the DFSA, order the removal of an auditor from an Authorised Firm or an Authorised Market Institution.
- (9) Nothing in this Article is to be taken as depriving an auditor removed under it of compensation or damages payable to the auditor in respect of the termination of appointment as auditor.

#### 100. **Auditor's report to the Authorised Firm or the Authorised Market Institution**

The DFSA may make Rules in relation to:

- (a) the functions to be carried out by an auditor when auditing an Authorised Firm or Authorised Market Institution's accounts;
- (b) the scope of the auditor's report; and

- (c) the scope of ad-hoc reports of the auditor.

#### 101. **Auditors' duties**

- (1) An Authorised Firm or an Authorised Market Institution auditor shall, in preparing the report in relation to accounts of an Authorised Firm or an Authorised Market Institution, carry out such investigations as will enable the auditor to form an opinion as to the following matters:
  - (a) whether proper accounting records have been kept by the Authorised Firm or the Authorised Market Institution and proper returns adequate for the audit have been received from branches not visited by the auditor;
  - (b) whether the Authorised Firm or the Authorised Market Institution accounts are in agreement with the accounting records and returns;
  - (c) whether the Authorised Firm or the Authorised Market Institution accounts have been prepared in compliance with the applicable accounting standards; and
  - (d) whether the accounts of the Authorised Firm or the Authorised Market Institution represent a true and fair view of the state and affairs of the Authorised Firm or the Authorised Market Institution.
- (2) If the auditor is of the opinion that proper accounting records have not been kept, or that proper returns adequate for the audit have not been received from branches not visited by the auditor, or if the accounts are not in agreement with the accounting records and returns, or that the accounts do not comply with accounting standards, the auditor shall state that fact in the report.
- (3) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief are necessary for the purposes of the audit, the auditor shall state that fact in the report.

#### 102. **Resignation of an auditor**

- (1) An auditor of an Authorised Firm or an Authorised Market Institution may resign from office by depositing a notice in writing to that effect together with a statement under Article 102(2) at the Authorised Firm or the Authorised Market Institution's registered office; and any such notice operates to bring its term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.
- (2) When an auditor ceases for any reason to hold office the auditor shall deposit at the Authorised Firm or the Authorised Market Institution's registered office:

- (a) a statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the notice of the members or creditors of the Authorised Firm or the Authorised Market Institution; or
  - (b) a statement of any circumstances as are mentioned above.
- (3) Where a statement under Article 102(2) falls within sub-paragraph (b) of that Article, the Authorised Firm or the Authorised Market Institution shall send a copy of the statement to the DFSA.

### 103. **Co-operation with auditors**

- (1) An Authorised Firm or an Authorised Market Institution, and any director, officer or employee of an Authorised Firm or an Authorised Market Institution, shall not knowingly or recklessly make to the Authorised Firm or an Authorised Market Institution's auditor a statement (whether written or oral) which:
- (a) conveys or purports to convey any information or explanation which the auditor requires, or is entitled to require, as auditor of the Authorised Firm or the Authorised Market Institution; and
  - (b) is either or both:
    - (i) false, misleading or deceptive in a material particular; or
    - (ii) is such that it omits information where the omission of such information is likely to mislead or deceive the auditor.
- (2) An Authorised Firm or an Authorised Market Institution, or any director, officer or employee of an Authorised Firm or an Authorised Market Institution, or any person acting under the direction or authority of such an Authorised Firm or an Authorised Market Institution or director, officer or employee, shall not without reasonable excuse engage in conduct, including without limitation the:
- (a) destruction or concealment of documents;
  - (b) coercion, manipulation, misleading, or influencing of the auditor;
  - (c) failure to provide access to information or documents specified by the auditor;  
or
  - (d) failure to give any information or explanation which the person is able to give;

where the Authorised Firm or the Authorised Market Institution, director, officer, employee or other person knows or ought to know that such conduct could, if successful:

- (e) obstruct the auditor in the performance of his duties under this Chapter; or
- (f) result in the rendering of the accounts of the Authorised Firm or the Authorised Market Institution or the auditor's report materially misleading.

#### 104. **Obligation of Disclosure to the DFSA**

- (1) An auditor is subject to the obligations of disclosure under Article 104(3).
- (2) Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the DFSA:

- (a) a notification as required under Article 104; or
- (b) any other information or opinion in relation to any such matter;

if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.

- (3) Subject to Article 104(4), an auditor shall disclose to the DFSA any matter which reasonably tends to show one of the following:
  - (a) a breach, or likely breach of a provision of the Law 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 matter as the DFSA may prescribe in Rules;

which may be attributable to the conduct of the relevant Authorised Firm or an Authorised Market Institution or of its directors, officers, employees or agents.

- (4) Article 104(3) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (5) An Authorised Firm or an Authorised Market Institution shall establish and implement appropriate systems and internal procedures to enable it and its auditor to comply with Article 104(3).
- (6) Any provision in an agreement between an Authorised Firm or an Authorised Market Institution and a director, officer, employee, agent or auditor is void in so far as it



purports to hinder any person from causing or assisting the auditor to comply with an obligation under Article 104(3).

- (7) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an auditor to comply with an obligation under Article 104(3).
- (8) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 104(7).

#### 105. **Supervision of auditors**

- (1) The Court may, on application of the DFSA, and upon being satisfied that a current or past auditor:
  - (a) has contravened a provision of the Law, Rules, or other legislation administered by the DFSA; or
  - (b) has failed, whether within or outside the DIFC, to carry out or perform duties or functions adequately or properly; or
  - (c) is otherwise not a fit and proper person to remain registered as an auditor;make one or more of the following orders:
  - (d) an order that the DFSA may cancel, or suspend for a specified period, the registration of the auditor;
  - (e) an order imposing conditions or restrictions on the future conduct of the auditor;
  - (f) an order requiring the auditor to do, or refrain from doing, any act or thing; or
  - (g) any other order as the Court sees fit.
- (2) Nothing in this Article affects the powers that any person or the Court may have apart from this Article.

### **PART 9: CONTROL OF FINANCIAL SERVICES TRANSFERS**

#### 106. **Financial services business transfer schemes**

No financial services business transfer scheme (“transfer scheme”) is to have effect unless an order has been made in relation to it under Article 108.

107. **Definition**

A scheme is a transfer scheme if:

- (a) the whole or part of the business carried on through an establishment in the DIFC by an Authorised Firm (“the firm concerned”) is to be transferred to another body (“the transferee”) and the business to be transferred consists in whole or in part of financial services business; or
- (b) the Fund Property of a Fund, or of a sub-fund of an Umbrella Fund (“the Fund concerned”), is to be transferred to another Fund (“the transferee”).

108. **Application for an order sanctioning a scheme**

- (1) An application in relation to a firm may be made to the Court for an order sanctioning a transfer scheme. An application may be made by:
  - (a) the firm concerned;
  - (b) the transferee; or
  - (c) both.
- (2) An application in relation to a Fund may be made to the Court for an order sanctioning a transfer scheme. An application may be made by:
  - (a) the Fund concerned;
  - (b) the Operator or auditor of the Fund concerned; or
  - (c) the transferee.
- (3) The Court may grant such orders if it considers that, in all the circumstances of the case, it is appropriate to sanction the transfer scheme.

109. **Rights to be heard**

On an application under Article 108, the following are entitled to be heard:

- (a) any person who alleges that he would be adversely affected by the carrying out of the scheme; and
- (b) the DFSA.

110. **Powers of the Court in relation to a transfer scheme**

- (1) If the Court makes an order sanctioning a transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit:
  - (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the firm concerned;
  - (b) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the firm concerned;

- (c) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out;
  - (d) for dealing with the interests of any person who, within such time and in such manner as the Court may direct, objects to the scheme;
  - (e) for the dissolution, without winding up, of any firm concerned; or
  - (f) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under:
    - (i) any insurance policy, or
    - (ii) insurance policies generally, entered into by the firm concerned and transferred as a result of the transfer scheme.
- (2) An order may:
- (a) transfer property or liabilities whether or not the firm concerned otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to property which was held by the firm concerned as trustee; or
  - (c) make provision as to future or contingent rights or liabilities of the firm concerned, including provision as to the construction of instruments under which such rights or liabilities may arise.
- (3) If an order makes provision for the transfer of property or liabilities:
- (a) the property is transferred to and vests in, and
  - (b) the liabilities are transferred to and become liabilities of,
- the transferee as a result of the order.
- (4) If any property or liability included in the order is governed by the law of any jurisdiction other than the DIFC, the order may require the firm concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (5) Property transferred as the result of an order under this Article may, if the Court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.
- (6) An order under this Article which provides for the transfer of property is to be treated as an instrument of transfer for the purposes of any DIFC Law requiring the delivery of an instrument of transfer to register property.

**111. Requirements of a scheme**

- (1) Subject to Article 112(4), an application under Article 108 in respect of a scheme must be accompanied by a report on the terms of the transfer scheme ("a scheme report").
- (2) A scheme report may be made only by a person:
  - (a) appearing to the DFSA to have the skills necessary to enable him to make a proper report; and
  - (b) nominated or approved for the purpose by the DFSA.
- (3) A scheme report must be made in a form approved by the DFSA.
- (4) The DFSA may, by written notice to the firm concerned, direct that a scheme report need not be provided, if it appears to the DFSA that, by reason of urgency, it is in the interests of the DIFC so to do.
- (5) The firm concerned must give written notice of the proposed transfer to all interested parties, such parties to be determined by the DFSA, to their last known mailing address.
- (6) The firm concerned must advise of the proposed transfer by way of a notice published in an appointed newspaper. An appointed newspaper is a publication best suited to bring the proposed transfer of business to the attention of any persons who may be affected by the transfer.
- (7) The DFSA may, by written notice to the firm concerned, direct that written notice as prescribed in Article 112(6) and (7) need not be provided, if it appears to the DFSA that, by reason of urgency, it is in the interests of the DIFC so to do.
- (8) The Court may not determine an application under Article 108 if the applicant or the firm concerned have failed to comply with the requirements in Article 112.

**112. Conditions for sanctioning a transfer scheme**

Before the Court may make an order for a transfer scheme, it must be satisfied that, before the transfer scheme takes effect, the transferee:

- (a) will have the authorisation required (if any) to enable the business which is to be transferred to be carried on in the place to which it is to be transferred; and
- (b) will possess adequate financial resources to carry on the business concerned in accordance with the legislation applicable in the place to which it is to be transferred.

**113. Modifications**

The DFSA Board of Directors may make Rules providing for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed.

## **PART 10: MISCELLANEOUS**

### **114. Irregularities**

- (1) In this Article:
  - (a) “procedure” is a reference to any procedure including but not limited to the making of a decision, the conduct of a hearing, the giving of a notice, and any proceeding whether a legal proceeding or not; and
  - (b) “procedural irregularity” includes a reference to a defect, irregularity or deficiency of notice or time.
- (2) A procedure under the Law or the Rules or any other legislation administered by the DFSA is not invalidated because of any procedural irregularity unless the Court declares the procedure to be invalid.
- (3) A person may apply to the Court for an order:
  - (a) declaring that:
    - (i) any act or thing purporting to have been done; or
    - (ii) any procedure purporting to have been commenced or undertaken, under the Law or the Rules or any other legislation administered by the DFSA is not invalid by reason of any contravention of a provision of such Law, Rules or other legislation; or
  - (b) extending or abridging the period for doing any act, matter or thing or commencing or undertaking any procedure under the Law or the Rules or any other legislation administered by the DFSA;

where any such act or thing, or procedure, is essentially of a procedural nature.

### **115. Filing of Material with the DFSA**

The DFSA may by means of Rules:

- (a) require the filing of certain material with the DFSA, including without limitation in relation to applications for Licences, authorisations and registration;
- (b) prescribe the manner in which such material shall be filed;
- (c) prescribe which material, or parts of the material, shall be made available for viewing by the public during the normal business hours of the DFSA;
- (d) permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of, documents or information required under or governed by the

Law and Rules or other legislation administered by the DFSA, and any ancillary documents; and

- (e) prescribe the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose under the Law.

**116. Publication by the DFSA**

- (1) The DFSA shall make available to the public without undue delay after their making or issuing:
  - (a) Rules made by the DFSA Board of Directors;
  - (b) Guidance in the form of:
    - (i) guidance made and issued by the Chief Executive under the Law; and
    - (ii) a standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules.
- (2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.
- (3) Publications made under this Article may be provided with or without charge as the DFSA Board of Directors may determine.

**117. Language**

The DFSA may require communication to which it is a party to be conducted in English.

**SCHEDULE 1**  
**INTERPRETATION**

**1. Rules of interpretation**

- (1) In the Law, unless the contrary intention appears, a reference to:
  - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
  - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
  - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
  - (d) a day shall refer to a business day, being a normal working day in the DIFC;
  - (e) a calendar year shall mean a year of the Gregorian calendar;
  - (f) a reference to the masculine gender includes the feminine; and
  - (g) any reference to 'dollars' or '\$' is a reference to United States Dollars.
- (2) The headings in the Law shall not affect its interpretation.

**2. Legislation in the DIFC**

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

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

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

### 3. Defined Terms

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

<b>Term</b>	<b>Definition</b>
Ancillary Service	is an activity prescribed in the Rules made under Article 44(2).
Ancillary Services Prohibition	has the meaning given in Article 44(3).
Ancillary Service Provider	a person who is registered by the DFSA in relation to the carrying on of one or more Ancillary Services.
Authorised Firm	a person who holds a Licence to carry on one or more Financial Services prescribed pursuant to Article 42(1).
Authorised Individual	a natural person who has been authorised by the DFSA to perform one or more Licensed Functions.
Authorised Market Institution	a person who is licensed by the DFSA in relation to the carrying on of one or more Financial Services prescribed pursuant to Article 42(1).
Chairman of the DFSA	the person appointed to the office of chairman of the DFSA, a Board Member and chairman of the DFSA Board of Directors, by the President.
Chief Executive	the person appointed to the office of Chief Executive by the DFSA Board of Directors.
Companies Law	DIFC law relating to the incorporation of Companies.
Companies Registrar	the person appointed to the office of Registrar under the DIFC Companies Law 2004.



<b>Term</b>	<b>Definition</b>
Board Member	a person appointed to the office of member of the DFSA Board of Directors.
Collective Investment Prohibitions	the operating and marketing prohibitions prescribed under Articles 17 and 18 of the Collective Investment Law 2006.
Court	the DIFC Court as established under Dubai Law.
director	a director or equivalent member of an entity's governing body.
DFSA	the Dubai Financial Services Authority.
DIFC	the Dubai International Financial Centre.
DIFC Authority	the executive body of the DIFC, established under Dubai Law.
Dubai Law	has the meaning given in Article 2 of Schedule 1 to the Law.
Financial Markets Tribunal	the Financial Markets Tribunal established pursuant to Article 31 of the Law.
Financial Services Prohibition	the prohibition prescribed under Article 41 of this Law.
Financial Services Regulator	a regulator of financial services activities established in a jurisdiction other than the DIFC.
Fund	has the meaning given in Article 2 of Schedule 1 to the Collective Investment Law 2006.
Guidance	has the meaning given in Article 2 of Schedule 1 to the Law.
Law	the Regulatory Law 2004.
legislation	includes rules or regulations made under legislation.
Licence	a licence granted by the DFSA under Chapter 2 of Part 3 .
Licensed Function	a function prescribed pursuant to Article 43(1).

<b>Term</b>	<b>Definition</b>
Operator	has the meaning given in Article 2 of Schedule 1 to the Collective Investment Law 2006.
person	has the meaning given in Article 1 of Schedule 1 to the Law.
President	the president of the DIFC, appointed by a decree of the Ruler pursuant to Dubai Law.
Privileged Communication	a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality.
Recognised Body	a person who holds a Recognition Notice, issued to it pursuant to Article 61 of the Law, recognising it as a Recognised Body.
Recognised Member	a person who holds a Recognition Notice, issued to that person pursuant to Article 61 of the Law, recognising it as a Recognised Member.
Recognition Notice	a notice issued by the DFSA pursuant to Article 61 of the Law.
Regulatory Appeals Committee	a standing committee of the DFSA Board of Directors, established under and governed by Chapter 4 of Part 2 of the Law and includes a sub-committee constituted under Article 29 of this Law.
Respondent	a person who is the subject of a matter before a Financial Markets Tribunal or the Court .
Revocation Notice	a notice issued by the DFSA pursuant to Article 61(8) of the Law.
Ruler	the ruler of the Emirate of Dubai.
Rules	has the meaning given in Article 2 of Schedule 1 to the Law.
Schedule	a schedule to the Law.

<b>Term</b>	<b>Definition</b>
Special Resolution	has the meaning given in Article 2 of Schedule 1 to the Collective Investment Law 2006.
Unitholder	has the meaning given in Article 2 of Schedule 1 to the Collective Investment Law 2006.

**SCHEDULE 2**  
**THE DFSA**

**The constitutional terms of the DFSA**

The DFSA is a body corporate established under Dubai Law.

The DFSA shall have its own constitutional provisions, which shall incorporate the following provisions of Schedule 2, and which shall not be inconsistent with these provisions:

- (a) the full legal title of the DFSA shall be "The Dubai Financial Services Authority";
- (b) the full legal title of the DFSA may be abbreviated in common usage to "DFSA";
- (c) the registered office of the DFSA is to be situated in the Emirate of Dubai;
- (d) the DFSA may acquire, hold and dispose of property of any description;
- (e) the DFSA may make contracts and other agreements;
- (f) the DFSA may receive and spend monies;
- (g) the DFSA may, with the prior written consent of the President, borrow monies and provide security for such borrowings;
- (h) the DFSA may agree in writing with the President an amount of unsecured borrowing below which the prior written consent of the President is not required;
- (i) the DFSA may employ persons on such terms as it considers appropriate;
- (j) the DFSA shall appoint and employ such persons as it shall deem necessary for it to be able to exercise its powers and perform its functions; and
- (k) the DFSA may sue and be sued in its own name.