
DIFC LAWS AMENDMENT LAW

DIFC LAW NO. 2 of 2013

PART 1: GENERAL

1. Title

This Law may be cited as the “DIFC Laws Amendment (No.2) Law 2013”.

2. Legislative Authority

This Law is made by the Ruler of Dubai.

3. Date of enactment

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

4. Commencement

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

PART 2: AMENDMENTS TO THE REGULATORY LAW 2004

5. The Regulatory Law 2004 is amended as prescribed in this Part.

6. Article 39 is amended by inserting the underlined text as follows:

39. Exercise of Powers on Behalf of Other Regulators

At the request of:

- (a) the Companies Registrar;
- (b) a Financial Services Regulator;
- (c) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter terrorist financing or national or international sanctions;
- (d) a self-regulatory body or organization exercising and performing powers and functions in relation to financial services;
- (e) a civil or criminal law enforcement agency; or
- (f) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers,

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.

7. Article 40 is amended by inserting the underlined text as follows:

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, counter terrorist financing or national or international sanctions; 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.

8. Article 44 is deleted and the word “Deleted” is to be inserted after the Article number.

9. Article 58(1) is amended by deleting the struck through text as follows:

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.

10. Article 60 is amended by inserting the underlined text and deleting the struck through text as follows:

60. Registration of ~~Ancillary Service Providers and~~ DNFBPs

- ~~(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 by an Ancillary Service Provider 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 by an Ancillary Service Provider.~~

~~(4) The DFSA may make Rules setting out the grounds on which and manner in which the registration of an Ancillary Service Provider 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.~~

~~(61) The DFSA shall make Rules prescribing the person or class of persons which are designated to be a DNFBP.~~

~~(72) A person who meets the definition of a DNFBP, as defined in the Rules made for the purposes of Article 60(6) (1), must register with the DFSA.~~

~~(83) The DFSA may make Rules prescribing the requirements for registration under Article 60(7) (2) and prescribing the circumstances under which the DFSA may de-register a person who is registered under Article 60(2).~~

11. Article 62(2) is amended by inserting the underlined text and deleting the struck through text as follows:

(2) The DFSA shall publish and maintain a register of current and past ~~grants and withdrawals~~ of registrations of all ~~Ancillary Service Providers and~~ DNFBPs in such manner as may be prescribed in the Rules.

12. Article 63(1) is amended by deleting the struck through text as follows:

63. Extended jurisdiction

(1) Any power which the DFSA may exercise in relation to an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~, Registered Auditor, Authorised Individual, DNFBP 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~~ or DNFBP or Registered Auditor;
- (c) the Authorised Individual status of such Authorised Individual;
- (d) the registration of the Principal Representative; or
- (e) the registration of a Domestic Fund;

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

13. Article 64(1) is amended by inserting the underlined text and deleting the struck through text as follows:

64 Provisions Governing Controllers

- (1) The DFSA may make Rules in connection with the change of control of Authorised Firms, and Authorised Market Institutions ~~and Ancillary Service Provider~~, including Rules as to:
- (a) when a person becomes or ceases to be a controller of an Authorised Firm, or Authorised Market Institution ~~or Ancillary Service Provider~~;
 - (b) when the acquisition or increase in the level of control of an Authorised Firm, or Authorised Market Institution ~~or Ancillary Service Provider~~ requires either the prior approval of, or notification to, the DFSA;
 - (c) when the DFSA may object to an existing controller;
 - (d) the procedures relating to the approval, notification and objections referred to in Article 64(1)(b) and (c); and
 - (e) any other matter necessary or incidental to give effect to the provisions governing controllers.

14. Article 67(1) is amended by deleting the struck through text as follows:

67. Obligations of Disclosure to the DFSA

- (1) (a) Subject to Article 67(2), any of the following persons:
- (i) an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~ or DNFBP; or
 - (ii) an auditor of any person in (i);

shall disclose to the DFSA anything which reasonably tends to show a matter specified in (b):

- (b) The relevant matters for the purposes of (a) are:
- (i) a breach, or likely breach of a provision of the Law or Rules or other legislation administered by the DFSA;
 - (ii) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or
 - (iii) any other matter as the DFSA may prescribe in Rules;
- which may be attributable to the conduct of the person in (a)(i) or its directors, officers, employees or agents.

15. Article 71 is amended by inserting a new subparagraph (4) as follows:

- (4) A person who is subject to Rules made pursuant to Article 72 shall conduct customer due diligence in the circumstances prescribed by the Rules.

16. Article 73 is amended by deleting the struck through text as follows:

73. Powers to Obtain Information

- (1) The DFSA may require an Authorised Firm, Authorised Market Institution, ~~Ancillary Service Provider~~, DNFBP, 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~~, Fund, DNFBP or Auditor 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, ~~Ancillary Service Provider~~ or DNFBP.

- (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.

17. Article 3 of Schedule 1 is amended by deleting the following definitions:

Term	Definition
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.

PART 3: AMENDMENTS TO THE MARKETS LAW 2012

18. The Markets Law 2012 is amended as prescribed in this Part.

19. Article 12 is amended by inserting the underlined text as follows:

12. Definition of an Offer of Securities to the Public

An Offer of Securities to the Public means a communication to any person in any form or by any means, presenting information on the terms of the offer and the Securities offered, so as to enable an investor to decide to buy or subscribe to those Securities but excluding:

- (a) any communication in connection with the trading of Securities admitted to trading on an Authorised Market Institution;
- (b) any communication made for the purposes of complying with the ongoing reporting requirements of the DFSA or an Authorised Market Institution; or
- (c) any other communication prescribed in the Rules as an Exempt Communication.

20. Article 38(3) is amended by inserting the underlined text and deleting the struck through text as follows:

- (3) A person is not a Reporting Entity:
 - (a) if the person;
 - (i) is an Exempt Offeror; or

- (ii) has made an Offer of Securities to the Public where that offer is an Exempt Offer;
- (b) if:
- (i) the person previously had Securities admitted to an Official List of Securities but currently has no Securities admitted to an Official List of Securities;
 - (ii) the current holders of at least seventy five per cent of the Securities of the Reporting Entity or the Listed Fund, as is relevant, have agreed in writing that the person is no longer needed to be a Reporting Entity; and
 - (iii) the DFSA has confirmed in writing upon being notified of the grounds referred to in Article 38(3)(b)(i) and (ii) that the person need no longer be a Reporting Entity; ~~and or~~
- (c) in the case of a person referred to in Article 38(1)(a),(b) or (c), if that person is declared by the DFSA pursuant to Article 38(4)(a)(ii) not to be a Reporting Entity.

21. Article 3 of the Schedule is amended by inserting the following definitions:

Term	Definition
<u>Exempt Offer</u>	<u>has the meaning prescribed in the Rules made under this Law.</u>
<u>Exempt Offeror</u>	<u>a person specified in Article 13(2) of this Law and any person prescribed in the Rules made for the purposes of that Article.</u>