
DIFC LAWS AMENDMENT LAW

DIFC LAW NO. 7 of 2012

PART 1: GENERAL

1. **Title**

This Law may be cited as the “DIFC Laws Amendment (No.2) Law of 2012”.

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 27(2)(h) – (l) is amended by inserting the underlined text and deleting the struck through text as follows:

- (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, 75A, 76 or 78;
- (i) a person ~~seeking to acquire or who has acquired control of an Authorised Firm or Authorised Market Institution~~ appeals a the decision of the DFSA to notify made pursuant to its powers under Article 64 or the Rules made for the purposes of that Article ~~that a controller is unacceptable~~;
- (j) an applicant appeals a decision of the DFSA in relation to an application for registration as an auditor;
- (k) a person appeals a decision of the DFSA to:
 - (i) issue an administrative fine under Article 90; or
 - (ii) issue an administrative censure under Article 91; or
- (l) ~~(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.

7. Article 36 (b) is deleted and replaced by the following:
 - (b) license, authorise, register, recognise, regulate and supervise the conduct of activities and persons required to be regulated by the DFSA by or under Dubai Law or DIFC Law;

8. Article 51(c) is deleted and replaced by the following:
 - (c) the person has failed either to remove a controller or to take such other action as required by the DFSA under Article 64; or

9. Article 64 is deleted and replaced by the following:

64. Provisions Governing Controllers

- (1) The DFSA may make Rules governing controllers of Authorised Firms, Authorised Market Institutions and Ancillary Service Providers, including in relation to:
 - (a) when a person becomes or ceases to be a controller of an Authorised Firm, Authorised Market Institution or Ancillary Service Provider;
 - (b) when the acquisition or increase in the level of control of an Authorised Firm, 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.

- (2) Without limiting the generality of the DFSA powers, the DFSA may:
 - (a) approve or object to a person becoming a controller of an Authorised Firm or Authorised Market Institution;
 - (b) approve or object to an increase in the level of control of an existing controller of an Authorised Firm or Authorised Market Institution;
 - (c) object to an existing controller of an Authorised Firm or Authorised Market Institution where it has reasonable grounds to believe that such a person is no longer an acceptable controller; and
 - (d) approve a person as a controller or approve an increase of control by an existing controller subject to such conditions as it considers appropriate.

- (3) Where the DFSA considers an existing controller of an Authorised Firm or Authorised Market Institution to be an unacceptable controller:

- (a) it must notify the controller and the Authorised Firm or Authorised Market Institution in writing that the controller is no longer an acceptable controller; and
 - (b) it may require that the controller, the Authorised Firm or Authorised Market Institution take such actions as specified by the DFSA.
- (4) Without limiting the generality of the DFSA powers, the DFSA may, for the purposes of Article 64(3)(b):
- (a) require an Authorised Firm or Authorised Market Institution to take such action as specified by the DFSA in relation to an unacceptable controller;
 - (b) where an Authorised Firm or Authorised Market Institution has failed to comply with a requirement referred to in Article 64(4)(a) to the satisfaction of the DFSA, either withdraw, or impose conditions, on the Authorised Firm's or Authorised Market Institution's licence; or
 - (c) require the unacceptable controller to take such action as specified by the DFSA.

10. A new Article 75A is inserted immediately after Article 75 as follows:

75A. Power to issue directions for prudential purposes

- (1) For prudential purposes, the DFSA may, by written notice, direct that a particular Authorised Firm or Authorised Firms within a specified class:
 - (a) comply with any specified additional capital or liquidity requirements;
 - (b) apply a specific provisioning policy or treatment of specified assets;
 - (c) comply with specified limits on material risk exposures;
 - (d) comply with specified limits on exposures to related parties;
 - (e) meet additional or more frequent reporting requirements; or
 - (f) take such other action as is specified in the direction.
- (2) A direction issued under Article 75A(1) comes into force on the date specified in the written notice and remains in force, subject to Article 75A(4), until it is revoked or varied in writing by the DFSA pursuant to Article 75A(3).
- (3) The DFSA may, by written notice, revoke or vary, any direction given pursuant to Article 75A(1).

- (4) A direction issued to Authorised Firms within a specified class, including any variation made to such a direction pursuant to Article 75A(3), shall not remain in force for a period longer than 12 months from the date specified in the initial direction notice issued pursuant to Article 75A(1).

11. Article 80 is deleted and replaced by the following:

80. Powers to Obtain Information and Documents 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 (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) at a specified time and place to answer questions in private (compulsory interview); or
 - (e) require such person to give it any assistance in relation to the investigation which the person is able to give.
- (2) Where the DFSA exercises its power under Article 80(1)(a) to enter business premises, it may:
 - (a) require any appropriate person to make available any relevant information stored at those premises for inspection or copying;
 - (b) require any appropriate person to convert any relevant information into a form capable of being copied; and
 - (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) Where the DFSA exercises its power under Article 80(1)(d) to conduct a compulsory interview, it may give a direction:
 - (a) concerning who may be present;
 - (b) preventing any person present during any part of the compulsory interview from disclosing to any other person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;

- (c) concerning the conduct of any person present, including as to the manner in which they will participate in the interview;
 - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
 - (e) requiring the interviewee to answer any questions relevant to the investigation.
- (4) A requirement made under Article 80 (1) (b),(c), (d), and (e) shall be stated in writing.
- (5) 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.
- (6) The DFSA may exercise its powers under Article 80 (1) in respect of any person within, or outside of, the DIFC.
- (7) 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.
- (8) Subject to Article 80(9), 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.
- (9) 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.
- (10) The DFSA may retain possession of any information and documents given to it pursuant to a requirement made under Article 80(1) for so long as is necessary:
- (a) for the purposes of the investigation to which the notice relates;
 - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
 - (c) for such a proceeding to be completed.
- (11) A person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under Article 80(1), but any lien is not otherwise prejudiced.
- (12) Where a person is unable to produce information or documents in compliance with a requirement made under Article 80(1), the DFSA may require the

person to state, to the best of that person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.

- (13) Where the DFSA considers that, if disclosed, the fact of the issuing of a notice requiring a person to:
- (a) produce documents;
 - (b) give information;
 - (c) attend a compulsory interview; or
 - (d) give assistance;

may hinder the investigation to which it relates, the DFSA may direct a person who receives a notice under Article 80(1) not to disclose the receipt of a notice or any information relating to compliance therewith to any other person, other than his legal representative under a duty of confidentiality.

12. Article 88 is amended by inserting underlined text and deleting the struck through text as follows:

- (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, where it considers it necessary or desirable to appoint a manager:~~
 - (a) to determine or address concerns as to the solvency or the level of compliance with prudential requirements of the Authorised Firm or Authorised Market Institution;
 - (b) for the orderly transition of the Authorised Firm or Authorised Market Institution from one set of owners or controllers to a new set of owners or controllers;
 - (c) to wind down the operations of the Authorised Firm or Authorised Market Institution for the protection of customers of the Authorised Firm or Authorised Market Institution; or
 - (d) where it has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Firm or Authorised Market Institution and to ensure that customers or regulated entities are not adversely affected or to maintain the integrity of the DIFC.

13. Articles 90 and 91 are deleted and replaced by the following:

90. Administrative Fine

- (1) The DFSA may fine a person where such person contravenes:
 - (a) a Rule made by the DFSA; or
 - (b) a provision of any legislation administered by the DFSA except for Articles 30 and 35.
- (2) Where the DFSA considers that a person has contravened a provision of the Rules or legislation under Article 90(1), 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) \$20,000 in the case of a natural person; or
 - (b) \$100,000 in the case of a body corporate;in respect of each contravention.
- (3) The DFSA may exercise its power under Article 90(1) only 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 fine.
- (4) Upon deciding to impose a fine upon a person, the DFSA must without delay inform the person in writing of:
 - (a) such decision and the reasons for such decision;
 - (b) the date on which the decision is to take effect; and
 - (c) the date by which payment of the fine must be made.
- (5) If the person has not paid the full amount of the fine within the period specified in the notice, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs.

91. Administrative Censures

- (1) The DFSA may censure a person where such person contravenes:
 - (a) a Rule made by the DFSA; or
 - (b) a provision of any legislation administered by the DFSA except for Articles 30 and 35.
- (2) The DFSA may exercise its power under Article 91(1) only 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 censure.

- (3) Upon deciding to impose a censure upon a person, the DFSA must without delay inform the person in writing of:
 - (a) such decision and the reasons for such decision; and
 - (b) the date on which the censure is to be made.
- (4) The DFSA may censure a person by any means, including by way of publishing a notice of censure.

14. A new Article 91A is inserted immediately after Article 91 as follows:

91A. Saving and Transitional

- (1) The saving and transitional provisions in this Article are applicable in circumstances where the DFSA has issued a notice under Article 90 or 91 of the previous law. For the purposes of this Article the “previous law” means the version of the Regulatory Law 2004 in force immediately prior to the DIFC Laws Amendment (No.2) Law of 2012 coming into force.
- (2) Where such a notice has been issued by the DFSA, Articles 90 and 91 (as amended) under this law shall not affect:
 - (a) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or
 - (b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,

in relation to the relevant notice, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this law subject to Article 91A(3).
- (3) Where such a notice has been issued by the DFSA, Articles 90 and 91 as prescribed in the previous law are deemed to continue in force until such time as necessary for the purposes of any investigation or proceeding specified in this Article to be concluded.
- (4) The DFSA may, by Rules, prescribe any transitional or saving provisions as appear to the DFSA necessary so as to give effect to, or to facilitate, the transition from the previous law to this Law.

15. The defined term, ‘Privileged Communication’, in Article 3 of Schedule 1 to the Regulatory Law 2004 is amended by inserting underlined text and deleting the struck through text as follows:

Term	Definition
Privileged Communication	a communication attracting a privilege arising from the provision of professional legal advice and any other <u>privilege applicable at law</u> advice or from the relationship of lawyer and client or other similar relationship , but does not include a general duty of confidentiality.

PART 3: AMENDMENTS TO THE LAW REGULATING ISLAMIC FINANCIAL BUSINESS 2004

16. The Law Regulating Islamic Financial Business 2004 is amended as prescribed in this Part.
17. In each place that ‘Markets Law 2004’ appears in the Law Regulating Islamic Financial Business 2004, it is to be replaced with ‘Markets Law 2012’.

PART 4: AMENDMENTS TO THE COLLECTIVE INVESTMENT LAW 2010

18. The Collective Investment Law 2012 is amended as prescribed in this Part.
19. In each place that ‘Markets Law 2004’ appears in the Collective Investment Law 2010, it is to be replaced with ‘Markets Law 2012’.
20. In Article 49 (2) the reference to “Part 3” is to be deleted and replaced by “Part 2”.