

## **DFSA Policy Statement on Compliance Advisers to Reporting Entities**

### **Introduction**

1. Under Rule 8.4.3 of the OSR Module, the DFSA has the discretion to require a Reporting Entity to appoint a compliance adviser for a specified period to assist a Reporting Entity to comply with its continuing obligations under the Markets Law 2004 and OSR Module (“continuing regulatory obligations”).
2. This Policy Statement describes the views of the DFSA on matters relating to compliance advisers, including;
  - (a) the purpose of a compliance adviser;
  - (b) what kind of knowledge, experience, qualifications and resources a compliance adviser should have;
  - (c) the circumstances in which the DFSA is likely to exercise its discretion and require a Reporting Entity to appoint a compliance adviser;
  - (d) what are the obligations of a Reporting Entity regarding compliance advisers; and
  - (e) how a compliance adviser can assist a Reporting Entity to meet its continuing regulatory obligations.

### **To whom does this Policy apply?**

3. This Policy Statement applies to Reporting Entities that are required by the DFSA to appoint a compliance adviser under Rule 8.4.3 and Chapter 11 of the OSR Module. Reporting Entity is defined in the Schedule of the Markets Law 2004.
4. This Policy Statement will also be of interest to entities who act as compliance advisers to Reporting Entities. Compliance advisers are not defined in the Markets Law 2004 or DFSA Rules and do not have or take on any regulatory obligations of their own if they agree to act as compliance advisers to Reporting Entities.
5. When the DFSA decides that it is necessary for a Reporting Entity to appoint a compliance adviser it will notify the Reporting Entity of its decision in writing. The DFSA anticipates that before directing a Reporting Entity to appoint a compliance adviser, it will discuss the proposed appointment with the Reporting Entity to ensure the appointment is necessary and that the proposed compliance adviser has the appropriate expertise and resources to act.
6. The Reporting Entity will then be obliged to enter a contract for services with a person who has the appropriate expertise and resources to act as the Reporting Entity’s compliance adviser.

**What is the purpose and role of a compliance adviser?**

7. The purpose of a compliance adviser is to assist a Reporting Entity, which in the opinion of the DFSA, is unable, or has difficulty, on its own to comply with its continuing regulatory obligations. Rather than prohibiting a Reporting Entity in these circumstances from participating in the DIFC capital markets, the DFSA may conclude that it is in the interests of the DIFC capital markets for the Reporting Entity to retain persons with the necessary expertise and resources to help the Reporting Entity meet its continuing regulatory obligations until it is able to do this on its own.
8. It is important to understand that the compliance adviser's role and duties are based on its contractual obligations to the Reporting Entity and not on any regulatory obligations. A Reporting Entity does not, and cannot, avoid or diminish its regulatory obligations simply because it is required to have a compliance adviser. The responsibility for the Reporting Entity to comply with its continuing regulatory obligations remains the sole regulatory responsibility of the Reporting Entity.
9. This is why it is the Reporting Entity's obligation:
  - (a) to demonstrate that its compliance adviser has the appropriate knowledge, experience, qualifications and resources, including systems and controls, to fulfil its advisory role;
  - (b) to give its compliance adviser unfettered access to the Reporting Entity's senior management and governing body including access to relevant information concerning the operations of the Reporting Entity; and
  - (c) to ensure its compliance adviser continues to fulfil its role until the DFSA advises the Reporting Entity that the compliance adviser is no longer required.

**What kind of expertise and resources does the DFSA expect a compliance adviser to have?**

10. A compliance adviser should be a person fully familiar with the Markets Law 2004 and OSR Module and have appropriate knowledge, experience, qualifications and resources to be able to assist and guide a Reporting Entity to comply with its continuing regulatory obligations.
11. As stated above, the obligation is on the Reporting Entity to demonstrate that its compliance adviser possesses the necessary knowledge, experience, qualifications and, resources, including systems and controls, to be able to advise the Reporting Entity on its continuing regulatory obligations.
12. The DFSA expects a compliance adviser to have a track record in providing advice on continuous disclosure, corporate governance, director's duties and other related matters to companies whose securities trade publicly in the DIFC or in jurisdictions whose regulatory and legal regimes are relatively comparable to the DIFC. The DFSA may require a compliance adviser to be domiciled in the DIFC.
13. A compliance adviser may be a specialist corporate finance advisory firm (i.e. investment bank) or a firm that provides legal, accounting or compliance services in the financial services field. The DFSA expects compliance advisers will be partnerships or corporations with significant financial services and compliance experience. The DFSA expects key employees of the compliance

adviser to have professional training in accounting, finance, economics or law and at least 5 years relevant experience.

### **When will a Reporting Entity be required to appoint a compliance adviser?**

14. The DFSA will carefully consider the circumstances of each case before it decides to require a Reporting Entity to appoint a compliance adviser. While it is difficult to predict all of the scenarios in which the DFSA would conclude that it is necessary and appropriate to require a Reporting Entity to appoint a compliance adviser, the DFSA anticipates considering doing so in the any of the following circumstances, namely where the DFSA is of the opinion that:
- (a) there is a reasonable expectation that the proposed compliance adviser, if appointed, will be able to assist the Reporting Entity to meet its continuing regulatory obligations;
  - (b) the Reporting Entity is, or may be unable, or has, or may have difficulty on its own to carry out its continuing regulatory obligations;
  - (c) the Reporting Entity does not appear to have the necessary experience or internal resources to meet its continuing regulatory obligations;
  - (d) the Reporting Entity has previously been sanctioned, reprimanded or breached its continuing regulatory obligations in the DIFC or another jurisdiction;
  - (e) the Reporting Entity has breached a Listing Rule of the DIFX or any other exchange, particularly when the breaches are persistent or serious or give rise to concerns about the adequacy of compliance arrangements;
  - (f) the DFSA has concerns about the adequacy of compliance arrangements or the directors' understanding of their and the Reporting Entity's obligations to comply with continuing regulatory obligations; or
  - (g) it is in the interests of the DIFC capital markets for the Reporting Entity to appoint a compliance adviser.
15. The above list is not exhaustive and the DFSA retains the discretion to direct a Reporting Entity to appoint a compliance adviser in any other circumstances if it is appropriate and necessary to do so.

### **What are a Reporting Entity's obligations regarding compliance advisers?**

16. All of the obligations in Chapter 11 of the OSR dealing with compliance advisers fall on the Reporting Entity. This is reflected in Rules 11.2.2, 11.3, 11.4 and 11.5. Under these provisions, it is the obligation of the Reporting Entity, who has been directed by the DFSA to appoint a compliance adviser to, among other things:
- (a) take reasonable steps to ensure that the compliance adviser has the required, knowledge, experience, qualifications and resources to carry out its duties;
  - (b) take reasonable steps to ensure that the compliance adviser is independent and has managed conflicts of interest appropriately;

- (c) provide any information about the compliance adviser if requested to do so by the DFSA;
- (d) ensure the Reporting Entity and its employees cooperate with the compliance adviser and do not interfere with the compliance adviser's ability to discharge its duties;
- (e) take reasonable steps to rectify any failure brought to the Reporting Entity's attention by the compliance adviser;
- (f) take reasonable steps to ensure that the compliance adviser cooperates in any investigation conducted by the DFSA as provided by OSR Rule 11.3.3; and
- (g) promptly advise the DFSA in writing when a compliance adviser resigns or is terminated including providing details of all relevant facts and circumstances.

**What can a compliance adviser do to assist a Reporting Entity?**

17. To assist a Reporting Entity to meet its continuing regulatory obligations, particularly those prescribed in Rule 8, App2, App3 and App4 of the OSRs, a compliance adviser may consider it useful, among other things, to:
- (a) accompany the Reporting Entity to any meetings with the DFSA, unless otherwise requested by the DFSA; and
  - (b) discuss with the Reporting Entity;
    - (i) the disclosure of any Material Information as required under rule 8.2.1(1) before such disclosure is made;
    - (ii) a submission of non-disclosure notification as required under rule 8.3.1(1) before such submission is made;
    - (iii) a transaction or event in App2, App3 and App4 which may require disclosure before such event is contemplated;
    - (iv) any material deviation from any forecast, estimate or other information in the Prospectus or equivalent document;
    - (v) any change to the intended use of proceeds of an Offer as outlined in the Prospectus or equivalent document before any such use by the Reporting Entity;
    - (vi) the Reporting Entity's operating performance and financial condition by reference to the Reporting Entity's business objectives and use of issue proceeds as stated in its Prospectus or equivalent document;
    - (vii) the Reporting Entity's compliance with the terms and conditions of any waivers granted from the Markets Law and OSR Module;
    - (viii) whether any profit forecast or estimate in the Prospectus or equivalent document will be or has been met by the Reporting Entity and whether it is appropriate to notify the DFSA and make disclosure in a timely and appropriate manner;
    - (ix) compliance with any undertakings provided by the Reporting Entity and its directors at the time of becoming a Reporting Entity and in the event of non-compliance, discuss the issue with the

- Reporting Entity's board of directors and make recommendations to the board regarding appropriate remedial steps; and
- (x) information to be provided by the Reporting Entity further to a DFSA request.

The above list is not mandatory or exhaustive, but merely a guide to highlight some of the continuing regulatory obligations of Reporting Entities and those for which compliance advisers will likely provide specific assistance.

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