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**CONSULTATION PAPER NO 49**

**1 JULY 2007**

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**PROPOSALS RELATING TO FEES**

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### PROPOSALS RELATING TO FEES

#### Why are we issuing this paper?

1. This Consultation Paper seeks public comments on the DFSA's proposals to amend its fees regime. A number of detailed changes are proposed, to take effect from 1 December 2007 onwards. In addition to the substantive changes, the fees provisions which currently reside in several Modules of the DFSA Rulebook are to be brought together in a new single module namely the Fees Rules Module (FER).

#### Who should read this paper?

2. The proposals in this paper will be of primary interest to Authorised Firms, Authorised Market Institutions, Ancillary Service Providers, Recognised Members, Recognised Bodies, Registered Auditors and those seeking, or considering seeking, such status. The proposal will also be of interest to a Bidder in respect of a takeover and a Person filing a Prospectus with the DFSA. They will also be of interest to Reporting Entities, though no changes are currently proposed in the fees payable by those entities.

#### How is this paper structured?

3. In this paper, we set out:
  - (a) definitions – paragraph 7
  - (b) background to the DFSA's fees regime – paragraphs 8 -10;
  - (c) proposals relating to Authorised Firms, and applicants for authorisation – paragraphs 11-18;
  - (d) proposals relating to Authorised Market Institutions, and applicants for authorisation – paragraph 19
  - (e) proposals relating to registered Auditors, and applicants for registration – paragraph 20;
  - (f) proposals relating to Ancillary Service Providers, and applicants for registration – paragraph 21;
  - (g) proposals relating to Recognised Bodies, and applicants for Recognition – paragraph 22;

- (h) proposals relating to Recognised Members, and applicants for Recognition – paragraph 23;
- (i) proposals relating to other fees– paragraph 24;
- (j) proposals relating to currency and payment – paragraph 25;
- (k) proposals relating to commencement – paragraph 26 and 27.

Annex A sets out a comparison of the current against the proposed fees, and the proposed Rule amendments are in Annex B with consequential Rule amendments in Annex C.

#### **How to provide comments?**

- 4. All comments should be forwarded to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

#### **What happens next?**

- 5. The deadline for providing comments on these proposals is **2 August 2007**. Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to enact the changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.
- 6. It is proposed that the final changes will be enacted at the DFSA Board's meeting on 3 September 2007. It is therefore important that responses are received by the deadline mentioned above.

#### **Comments to be addressed to:**

**Peter Casey**

**Director, Policy  
DFSA  
PO Box 75850  
Dubai, UAE**

**or e-mailed to: [pcasey@dfsa.ae](mailto:pcasey@dfsa.ae)**

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## Definitions

7. In this paper, generally, capitalised terms are defined in the GLO Module of the DFSA Rulebook. For convenience, the following terms have the meaning set out below:
- (a) **Ancillary Service Provider** - A Person who is registered by the DFSA in relation to the carrying on of one or more Ancillary Services.
  - (b) **Annual Audited Expenditure** - The expenditure calculated in accordance with PIB Rule 2.5.2.
  - (c) **Auditor** - A partnership or company that is registered by the DFSA to provide audit services to Authorised Firms and Authorised Market Institutions that are Domestic Firms or to Domestic Funds. References to "Auditor" include "applicant" where relevant.
  - (d) **Authorised Firm** - A Person, other than an Authorised Market Institution, who holds a Licence.
  - (e) **Authorised Individuals** - An individual who has been authorised by the DFSA to carry out one or more Licensed Functions.
  - (f) **Authorised Market Institution** - A Person who is Licensed by the DFSA in relation to the carrying on either or both of the Financial Services prescribed in GEN Rule 2.17.1 and 2.18.1.
  - (g) **Authorised Person** - An Authorised Firm or an Authorised Market Institution.
  - (h) **Bidder** - includes, but is not limited to, companies wherever incorporated and individuals wherever resident who or which make a Bid under TKO.
  - (i) **Recognised Body** - A Person who holds a Recognition Notice, issued to it pursuant to Article 61 of the Regulatory Law 2004, recognising it as a Recognised Body.
  - (j) **Recognised Member** - A Person who holds a Recognition Notice, issued to that Person pursuant to Article 61 of the Regulatory Law 2004, recognising it as a Recognised Member.
  - (k) **Takeover** - has the meaning given in the Markets Law 2004.

## Background to the DFSA's fees regime

8. The fee policy of the DFSA aims to embody the following principles:
- partial cost recovery;

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- the cost of regulation to the market should be proportionate, transparent and flexible;
  - fees should not be a disincentive to locate in the DIFC, as opposed to broadly comparable centres;
  - fees should not provide any perverse behavioural incentives; and
  - fees should be efficient to be administered.
9. There are currently different fee structures for different DFSA activities. For entities with which we have a continuing regulatory relationship, we generally levy an authorisation fee (or equivalent) and an annual supervision fee (or equivalent), with limited transaction fees for particularly large regulatory transactions (e.g. a major change in the scope of a licence). For entities with which we do not have such a relationship (e.g. Reporting Entities) there is greater reliance on transaction charges, for example for considering takeovers. We see no reason at present to propose a fundamental change to this approach.
10. The current and proposed fees are set out in Annex A, and explained in the paragraphs that follow.

#### **Authorised Firms**

11. Authorised Firms currently pay an annual supervision fee which contains three components. The first (the base component) is based on the Financial Services for which the firm is licensed, the second on the number of Authorised Individuals in the firm, and the third on turnover. The total fee is capped at \$150,000. The application fee is made up of the first two of these components only.
12. In 2006, the DFSA abolished the Licensed Representatives element of its Authorised Individuals regime. This means that the number of Authorised Individuals does not vary between firms as much as before and no longer functions as an effective proxy for conduct of business supervision. We therefore propose to simplify the regime by removing it.
13. The current turnover metric has posed problems in practice, especially for firms where income deriving from DIFC-originated business is booked outside the DIFC. We propose to replace this by expenditure, defined in the same way as in calculating our expenditure based capital requirement. For DFSA incorporated firms this will be the whole-firm expenditure. For firms incorporated elsewhere, it will be the expenditure in the DIFC. This information is already collected, and audited, as part of the annual return.

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14. At present, firms that have been authorised but have not yet submitted an annual return pay a turnover component based on figures in the most recent business plan submitted to the DFSA. This has also posed problems in practice, and we therefore propose to remove this provision. This means that firms which have not yet submitted an annual return will pay no turnover component.
  15. To offset the loss of income from this proposal and the abolition of the Authorised Individual component, we propose to increase the general level of base components. We have also introduced a new charging band for some firms in asset management, reflecting the levels of supervision they involve. We have, however, reduced the base component for insurance companies.
  16. The maximum annual fee is currently capped at \$150,000. There are no firms that currently benefit from this cap, and we are proposing that it be removed.
  17. Application fees for Authorised Firms currently consist of the base component plus the Authorised Individuals component. In future it is proposed that they should consist solely of the base component.
  18. Where an Authorised Firm seeks to add new Financial Services to its Licence, a charge will be made on the same basis as now, when the new Financial Services will take the firm into a higher charging band.

#### **Authorised Market Institutions**

19. No change is proposed to the present regime, which involves flat rate fees based on the Financial Services involved. The DFSA may, however, consider at a later stage the possibility of introducing transaction based fees in respect of DIFC exchanges.

#### **Registered Auditors**

20. The new registered Auditors regime involves a programme of assessments of registered Auditors carried out by an external party on DFSA's behalf and at DFSA's expense. As a result, we propose to increase the annual fee for a registered Auditor to \$6,000. On the other hand, we consider that the initial registration fee can be reduced to \$4,000. We also make new proposals for the first annual fee to be reduced where registration is granted in the last quarter of the year.

#### **Ancillary Service Providers**

21. No change is proposed except that Ancillary Service Providers who are also registered Auditors will have to pay only the registered Auditors annual fee.

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## **Recognised Bodies**

22. Recognised Bodies are non-DIFC exchanges who offer their services electronically to firms within the Centre. At present we charge an initial fee of \$10,000 and no annual fee. This is out of line with practice elsewhere and may create a perverse incentive for firms to provide their services from outside the Centre. It is proposed to raise the initial fee to \$25,000 and charge an annual fee of \$10,000. It is also proposed to reduce the first annual fee when Recognition is granted in the last quarter of a year.

## **Recognised Members**

23. Recognised Members are firms who trade on DIFC exchanges from outside the Centre. At present, they pay no fees. It is proposed that they should be charged fees equivalent to those for Ancillary Service Providers, that is, an application fee of \$2,000 and an annual fee of \$1,000.

## **Other fees**

24. No change is proposed to other DFSA fees, specifically those relating to Collective Investment Funds, the filing of Prospectus documents and Takeovers.

## **Currency and Payment method**

25. The DFSA is proposing to clarify by way of a Rule that all fees are payable only in United States Dollars and by bank transfer.

## **Commencement Date**

26. The FER module is due to come into force on 1 December 2007. The effect of the coming into force of the Rules on that date is:
- (a) All applications filed on or after 1 December will be subject to the new fee structure in respect of application fees and, thereafter, in respect of initial and subsequent annual fees.
  - (b) All applications filed prior to 1 December will be subject to the current application fees set out in the relevant modules. However, the initial annual fee to be charged will depend on whether Registration, Authorisation or Recognition is granted prior to 1 December in which case the current fees remain applicable or if the Registration, Authorisation or Recognition is granted on or after 1 December then the new fee structure applies in respect of initial annual fees and subsequent annual fees.
27. In paragraph 26, “applications” include applications to extend the scope of a Licence, to wind up a Fund, upon filing a prospectus and in respect of bid documents.