

**Appendix 3**

In this appendix underlining indicates new text and striking through indicates deleted text.



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# The DFSA Rulebook

## Ancillary Service Providers Module

### (ASP)

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### 3 GENERAL PROVISIONS

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#### **3.6 Relevant United Nations Resolutions and Sanctions**

**3.6.1** (1) An Ancillary Service Provider must establish and maintain effective systems and controls to:

- (a) obtain and make appropriate use of relevant resolutions or sanctions issued by the United Nations Security Council; and
- (b) disclose in its annual AMLO report to the DFSA the manner in which it has complied with such relevant resolutions or sanctions.

(2) In relation to an activity which is restricted or prohibited by a relevant sanction or resolution issued by the United Nations Security Council, an Ancillary Service Provider must immediately notify the DFSA when it becomes aware that it is:

- (a) carrying on or about to carry on a service;
- (b) holding or about to hold money or other assets; or
- (c) undertaking or about to undertake any other business whether or not arising from or in connection with (a) and (b);

for or on behalf of a Person, and such carrying on, holding or undertaking constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.

(3) An Ancillary Service Provider must ensure that the notification stipulated in (2) above includes the following information:

- (a) a detailed description of the relevant activity in (2) (a), (b) or (c); and
- (b) the action proposed to be taken or has been taken by the Ancillary Service Provider with regard to the matters specified in the notification.

**Guidance**

1. In relation to the term “make appropriate use” in Rule 3.6.1 this may mean that an Ancillary Service Provider cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of that Person.
2. Relevant resolutions or sanctions mentioned in Rule 3.6.1 may, inter alia, relate to money laundering or terrorist financing or proliferation of weapons of mass destruction financing or otherwise may be relevant to the services provided by, or business activities of, the Ancillary Service Provider. For example, an Ancillary Service Provider should exercise due care to ensure that it does not provide any service to a Person engaged in money laundering or terrorist financing or proliferation of weapons of mass destruction financing.
3. In respect of the United Nations Security Council’s resolutions or sanctions, the AMLO should also refer to Rules 6.4.2(2)(i), 6.4.3(e) and 6.10.1(h) for requirements relating to the MLRO’s responsibility, reporting and training and awareness.

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## **6. ANTI MONEY LAUNDERING RULES APPLYING TO ANCILLARY SERVICES**

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### **6.4 Appointment, responsibilities and duties of the AMLO**

#### **Appointment**

**Guidance**

1. The requirement to designate an individual as the AMLO is in Rule 5.2.1.
2. Pursuant to Rule 5.2.2 the AMLO must be ordinarily resident in the U.A.E.

#### **6.4.1** An Ancillary Service Provider must ensure that the AMLO is of sufficient seniority within the Ancillary Service Provider to enable him to:

- (a) act on his own authority;
- (b) have direct access to the ~~governing body~~ Governing Body and senior management;
- (c) have sufficient resources including, if necessary, an appropriate number of appropriately trained Employees to assist in the performance of his duties in an effective, objective and independent manner;

- (d) have unrestricted access to information the Ancillary Service Provider has about the financial and business circumstances of a customer or any Person on whose behalf the customer is or has been acting; and
- (e) have unrestricted access to relevant information about the features of the transaction which the Ancillary Service Provider has entered into or may have contemplated entering into with or for the customer or that Person.

### **Responsibilities**

- 6.4.2** (1) An Ancillary Service Provider must ensure that its AMLO is responsible for all of its anti money laundering activities carried on in or from the DIFC.
- (2) An Ancillary Service Provider must ensure that its AMLO carries out and is responsible for the following:
- (a) establishing and maintaining the Ancillary Service Provider's anti money laundering policies, procedures, systems and controls and compliance with anti money laundering legislation applicable in the DIFC;
  - (b) the day-to-day operations for compliance with the Ancillary Service Provider's anti money laundering policies, procedures, systems and controls;
  - (c) acting as the point of contact to receive internal Suspicious Transaction Reports from the Ancillary Service Provider's Employees pursuant to Rule 6.6.1;
  - (d) taking appropriate action pursuant to Rule 6.6.2 following the receipt of an internal Suspicious Transaction Report from the Ancillary Service Provider's staff;
  - (e) making, in accordance with U.A.E. Law No. 4 of 2002 regarding Criminalisation of Money Laundering, external Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. (if appropriate) and sending corresponding copies to the DFSA under Rule 6.6.2;
  - (f) acting as the point of contact within the Ancillary Service Provider for competent U.A.E. authorities and the DFSA regarding money laundering issues;
  - (g) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA; ~~and~~
  - (h) establishing and maintaining an appropriate anti money laundering training programme and adequate awareness arrangements pursuant to Rules under section 6.10- and

- (i) receiving and acting upon relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions under Rule 3.6.1 and section 6.8.

### Guidance

Where an Ancillary Service Provider outsources specific anti money laundering tasks of its AMLO to another individual or a third party provider, including within a corporate Group, the AMLO of the Ancillary Service Provider remains responsible for ensuring compliance with the duties imposed on the AMLO. The Ancillary Service Provider should satisfy itself of the suitability of anyone who acts for it.

### Reporting

**6.4.3** The AMLO must report at least annually to the ~~governing body~~ Governing Body or senior management of the Ancillary Service Provider on the following matters:

- (a) the Ancillary Service Provider's compliance with applicable anti money laundering laws including Rules;
- (b) the quality of the Ancillary Service Provider's anti money laundering policies, procedures, systems and controls;
- (c) any internal Suspicious Transaction Reports made by the Ancillary Service Provider's staff pursuant to Rule 6.6.1 and action taken in respect of those reports, including the grounds for all decisions;
- (d) any external Suspicious Transaction Reports made by the Ancillary Service Provider pursuant to Rule 6.6.2 and action taken in respect of those reports including the grounds for all decisions; ~~and~~
- (e) any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions under Rule 3.6.1 and section 6.8 and how the Ancillary Service Provider has taken them into account; and
- ~~(e)~~ (f) any other relevant matters related to money laundering as it concerns the Ancillary Service Provider's business.

**6.4.4** An Ancillary Service Provider must ensure that its ~~governing body~~ Governing Body or senior management promptly:

- (a) assess the report provided under Rule 6.4.3;
- (b) take action, as required subsequent to the findings of the report, in order to resolve any identified deficiencies; and
- (c) make a record of their assessment in (a) and the action taken in (b).

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## **6.5 Customer identification requirements**

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- 6.5.4** (1) An Ancillary Service Provider must:
- (a) ensure that the information and documentation concerning a customer's identity remains accurate and up-to-date; and
  - (b) conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of transactions undertaken by, a customer throughout the course of the relationship.
- (2) If at any time an Ancillary Service Provider becomes aware that it lacks sufficient information or documentation concerning a customer's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the customer's identity.

### **Guidance**

1. An Ancillary Service Provider should undertake a periodic review to ensure that customer identity documentation is accurate and up-to-date.
2. When conducting ongoing due diligence on the business relationship with, and scrutiny of transactions undertaken by a customer, an Ancillary Service Provider should:
  - i. ensure consistency of such transactions with its knowledge of the customer and the customer's intended purpose and the nature of the relationship; and
  - ii. verify, where necessary, the source of funds.
3. The degree of the ongoing due diligence to be undertaken will depend on the risk assessment carried out pursuant to section 6.9.

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- 6.5.8** (1) All relevant information, correspondence and documentation used by an Ancillary Service Provider to:
- (a) verify a customer's identity pursuant to Rules 6.5.1 and 6.5.2; and
  - (b) conduct the ongoing due diligence and scrutiny required under Rule 6.5.4,

must be kept for at least six years from the date on which the business relationship with a customer has ended.

- (2) If the date on which the business relationship with a customer has ended remains unclear, it may be taken to have ended on the date of the completion of the last transaction.

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## **6.8 Government, regulatory and international findings**

### **Guidance**

- ~~1. Taking into account its risk assessment pursuant to section 6.9, an Ancillary Service Provider may make reference to and make appropriate use of any findings issued by:
  - a. the government of the U.A.E. or any government departments in the U.A.E.;
  - b. the Central Bank of the U.A.E. or the AMLSCU;
  - c. the Financial Action Task Force (FATF); and
  - d. the DFSA;which contain:
  - e. a finding or other conclusion concerning arrangements for restraining money laundering in a particular country or jurisdiction; and
  - f. an assessment that those arrangements assessed to be materially deficient in comparison with one or more of the relevant, internationally accepted standards, including any recommendations published by the FATF, required of or recommended to countries and jurisdictions.~~
- ~~2. When an Ancillary Service Provider makes a decision about its anti money laundering policies, procedures, systems and controls, it may take into account any findings of inadequacy, for example from the FATF list of Non-Cooperative Countries and Territories, concerning the approach to money laundering of individual countries or jurisdictions.~~
- ~~3. Ancillary Service Providers should examine and pay special attention to any transactions or business relations with Persons located in such countries or jurisdictions.~~
- ~~4. Ancillary Service Providers considering transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments, or the specific recommendations have been made. These circumstances should be taken into account in respect of introduced business from such jurisdictions, and when receiving inward payments for existing customers.~~
- ~~5. The Ancillary Service Provider's AMLO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU (if appropriate) and the DFSA if they do not qualify as suspicious pursuant to U.A.E Law No. 4.~~

- ~~6. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example taken off the FATF list of NCCTs, may nevertheless require attention which is higher than normal.~~
- ~~7. In order to assist Ancillary Service Providers, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings. However, the DFSA expects that an Ancillary Service Provider takes its own steps in acquiring relevant information from various available sources.~~
- ~~8. Taking into account its risk assessment pursuant to section 6.9, an Ancillary Service Provider may make reference to and make appropriate use of any findings issued by:
  - ~~a. the government of the U.A.E. or any government departments in the U.A.E.;~~
  - ~~b. the Central Bank of the U.A.E. or the AMLSCU;~~
  - ~~c. U.A.E. enforcement agencies; and~~
  - ~~d. the DFSA;~~which contain a finding or other conclusion concerning names of Persons, groups, organisations or entities or any other body where suspicion of Money Laundering or terrorist financing exists.~~
- ~~9. An Ancillary Service Provider may obtain and appropriately use available national and international information, for example suspect lists or databases from credible public or private sources with regard to Money Laundering and terrorist financing. The DFSA encourages Ancillary Service Providers to perform checks against their customer databases and records for any names appearing on such lists and databases as well as to monitor transactions accordingly.~~
- ~~10. The risk of terrorists entering the financial system can be reduced if Ancillary Service Providers apply effective anti money laundering strategies, particularly in respect of 'Know Your Customer' procedures, see Rules under sections 6.5 and 6.9 in conjunction with App2 and App3.~~

**6.8.1 An Ancillary Service Provider must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:**

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) the Financial Action Task Force (FATF); and
- (d) the DFSA;

concerning arrangements for preventing money laundering and terrorist financing in a particular country or jurisdiction, including any assessment of material deficiency against relevant countries in adopting international standards.



**Guidance**

1. The systems and controls mentioned in Rule 6.8.1 should be established and maintained by an Ancillary Service Provider taking into account its risk assessment pursuant to section 6.9. In relation to the term “make appropriate use” in Rule 6.8.1 this may mean that an Ancillary Service Provider cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of that Person.
2. When an Ancillary Service Provider makes a decision about its anti money laundering policies, procedures, systems and controls, it should take into account any findings of inadequacy, for example any notice or guidance from the FATF concerning the approach to money laundering of individual countries or jurisdictions.
3. An Ancillary Service Provider should examine and pay special attention to any transactions or business relations with Persons located in such countries or jurisdictions.
4. An Ancillary Service Provider considering transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessment, or the specific recommendations have been made. These circumstances should be taken into account in respect of introduced business from such jurisdictions, and when receiving inward payments for existing customers.
5. The Ancillary Service Provider’s AMLO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU (if appropriate) and the DFSA if they do not qualify as suspicious pursuant to U.A.E Law No. 4. See section 6.6 on internal and external reporting requirements.
6. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example taken off the sources mentioned in this Guidance, may nevertheless require attention which is higher than normal.
7. In order to assist Ancillary Service Providers, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings, guidance, directives or sanctions. However, the DFSA expects that an Ancillary Service Provider takes its own steps in acquiring relevant information from various available sources. For example an Ancillary Service Provider may obtain relevant information from the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and Foreign Assets Control (OFAC) of the United States Department of Treasury.
8. Ancillary Service Providers should take note of Rule 3.6.1 which requires such service providers to obtain and make appropriate use of the United Nations Security Council’s relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and proliferation of weapons of mass destruction.

**6.8.2** An Ancillary Service Provider must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) U.A.E. enforcement agencies; and
- (d) the DFSA;

concerning names of Persons, groups, organisations or entities or any other body where suspicion of money laundering or terrorist financing exists.

#### **Guidance**

1. The systems and controls mentioned in Rule 6.8.2 should be established and maintained by an Ancillary Service Provider taking into account its risk assessment pursuant to section 6.9. In relation to the term “make appropriate use” in Rule 6.8.2 this may mean that an Ancillary Service Provider cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of that Person.
2. An Ancillary Service Provider may obtain and appropriately use available national and international information, for example suspect lists or databases from credible public or private sources with regard to money laundering and terrorist financing. The DFSA encourages Ancillary Service Providers to perform checks against their customer databases and records for any names appearing on such lists and databases as well as to monitor transactions accordingly.
3. The risk of terrorists entering the financial system can be reduced if Ancillary Service Providers apply effective anti money laundering strategies, particularly in respect of ‘Know Your Customer’ procedures. See Rules under sections 6.5 and 6.9 in conjunction with App2 and App3.
4. Ancillary Service Providers should take note of Rule 3.6.1 which requires such service providers to obtain and make appropriate use of the United Nations Security Council’s relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and proliferation of weapons of mass destruction.

## **6.9 Money laundering risks**

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**6.9.3** An Ancillary Service Provider must establish and maintain policies, procedures, systems and controls in order to monitor for and detect suspicious transactions.

**Guidance**

1. An Ancillary Service Provider should apply an intensified and ongoing monitoring programme over higher risk transactions and accounts.
2. Various risk aspects about transaction monitoring and about the detection of suspicious transactions, which the Ancillary Service Provider should take into account, are set out as further Guidance in App3 section A.3.3.

**6.10 Awareness and training**

**6.10.1** An Ancillary Service Provider must have arrangements to provide periodic information and training to all relevant Employees to ensure that they are aware of:

- (a) the identity and responsibilities of the Ancillary Service Provider's AMLO;
- (b) applicable legislation relating to anti money laundering;
- (c) the potential effect on the Ancillary Service Provider, its Employees and its customers of breaches of applicable legislation relating to money laundering;
- (d) the Ancillary Service Provider's anti money laundering policies, procedures, systems and controls and any changes to these;
- (e) money laundering risks, trends and techniques;
- (f) the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged that may warrant an internal Suspicious Transaction Report pursuant to Rule 6.6.1;
- (g) Ancillary Service Provider's arrangements regarding the making of an internal Suspicious Transaction Report pursuant to Rule 6.6.1;
- (h) the use of relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in Rule 3.6.1 and section 6.8; and
- (i) requirements relating to customer identification and ongoing due diligence of business relations and scrutiny requirements pursuant to the Rules in section 6.5.

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## **App3 Money laundering risks**

### **A3.1 Risk assessment**

#### **Guidance relating to Rule 6.9.1**

1. Generally, an Ancillary Service Provider is expected to take a risk-based approach when assessing any business relationship or transaction with respect to its specific money laundering risk and the information and evidence that might be required or validated for this purpose. 'Know Your Customer' procedures need to be established and managed according to the perceived money laundering risk.
2.
  - a. The Ancillary Service Provider should take specific and adequate measures necessary to compensate for the higher risk of money laundering which might arise, for example from the following products, services or customers:
    - i. non face-to-face business relationships or transactions, such as via mail, telephone or the Internet;
    - ii. customers from ~~FATF 'Non-Cooperative Countries and Territories'~~ and higher-risk countries as may be found in sources mentioned in, see also Guidance under section Rule 6.8.1; and
    - iii. Politically Exposed Persons, see also Rule 6.9.2.
  - b. Pursuant to Rule 6.9.3, an Ancillary Service Provider should apply an intensified monitoring of transactions and accounts in relation to these products, services and customers.
3. While an Ancillary Service Provider should assess the money laundering risks posed by the products and services it offers and devise its products with due regard to those risks, a risk-based approach does not release the Ancillary Service Provider from its overall obligation to comply with anti money laundering obligations.
4. The highest risk products or services in respect of money laundering are those where unlimited third party funds can be freely received, or where funds can regularly be paid to third parties, without evidence of identity of the third parties being taken.
5. Money laundering risks are increased if a Person is able to hide behind corporate structures such as limited companies, offshore trusts, special purpose vehicles and nominee arrangements. When devising its internal procedures, an Ancillary Service Provider should consider how its customers and operational systems impact upon the capacity of its staff to identify suspicious transactions.
6. The geographical location of an Ancillary Service Provider's customer may also affect the money laundering risk assessment. The DFSA recommends that where an Ancillary Service Provider has customers located in countries:
  - a. without adequate anti money laundering strategies;
  - b. where cash is the normal medium of exchange;

- c. which have a politically unstable regime with high levels of public or private sector corruption;
- d. which are known to be drug producing or drug transit countries; or
- e. which have been classified as countries with inadequacies in their anti money laundering regulations, see ~~Guidance under section 6.8~~ Rule 6.8.1;

it should consider which additional 'Know Your Customer' and monitoring procedures might be necessary to compensate for the enhanced risks of money laundering.

7. Such measures may encompass, for example, the following:

- a. requiring additional documentary evidence;
- b. taking supplementary measures to verify or certify the documents supplied; or
- c. requiring that the initial transaction is carried out through an account opened in the customer's name with a credit or financial institution subject to these Rules or regulated in a FATF Country.