



CONSULTATION PAPER NO. 60

February 2009

Miscellaneous Amendments to Legislation

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on the DFSA's proposals to make a variety of amendments to a number of modules of the DFSA Rulebook, and also to the Regulatory Law 2004.

Who should read this paper?

2. The proposals in this Paper would be of particular interest to Authorised Persons.

How to provide comments

3. All comments should be provided 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?

4. The deadline for providing comments on this proposal is 16 April 2009. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to enact the changes to the DFSA's Rulebook, and propose law amendments to the President of the DIFC. Because these are still proposals, you should not act on them until the relevant changes to the DFSA Rulebook or laws are made. We will issue a notice on our website advising you when this happens.

Comments to be addressed to:

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or e-mailed to: NAlves@dfsa.ae

Defined Terms

5. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO) module. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

6. The DFSA has gathered together in one paper a number of miscellaneous amendments to the modules of the Rulebook and to laws. Each of the items listed below is a discrete amendment. Such amendments are grouped under the relevant module in the Appendices.

Proposed amendments

Item 1. Residency requirement in AUT

7. In line with the DFSA's approach to risk based regulation and taking into account consultee comments from our independent stakeholder survey, we have reviewed the residency requirements relating to Compliance Officers and Money Laundering Reporting Officers (MLROs).
8. The existing requirements are specified in the GEN and AUT modules of the Rulebook. There are a number of broad principles (e.g. GEN Rules 4.2.3 and 4.2.4) which in summary, require a Firm to ensure:
 - a. its affairs are managed effectively and responsibly by its senior management;
 - b. it has adequate systems and controls to comply with the law; and
 - c. it can maintain and be able to demonstrate that it has adequate resources to conduct and manage its affairs.
9. Chapter 5 of GEN contains more specific Rules relating to the compliance function required by a Firm. The Rules require a Firm to resource adequately its compliance function and provide it with unrestricted access to relevant records, and ensure it is independent from other operational functions. A firm must also establish and maintain monitoring and reporting processes and procedures for compliance breaches.
10. In AUT Rule 10.3.2 the DFSA additionally requires the Compliance Officer and MLRO to be ordinarily resident in the UAE. Given our aim to allow firms some flexibility to implement and maintain adequate compliance arrangements, the continuation of the residency requirement does not appear warranted from a risk based approach to regulation. However, as specified in the proposed guidance, the DFSA considers that some Authorised Firms (particularly start-ups) will need a Compliance Officer/MLRO who is resident in the UAE in order to demonstrate it has adequate compliance arrangements.

11. The compliance function in a large and complex Authorised Firm is divided along its major business lines and consequently such a firm may appoint several compliance officers each of whom is an expert in their particular field (the relevant business line) and responsible that business line. In such circumstances the DFSA may, in exceptional circumstances, be amenable to granting authorised status to more than one compliance officer.
12. The proposed amendments are set out in Appendix 1.

Item 2. Controller requirements in AUT

13. The DFSA continuously monitors regulatory developments in other advanced jurisdictions to ensure that we remain in the forefront of international best practice. The DFSA also monitors developments in the market, and maintains close contact with market participants.
14. In September 2007, the European Council adopted the Acquisitions Directive (2007/44/EC). The Directive introduced a single European Controllers regime across wide areas of financial services.
15. The DFSA's controller provisions require prior notification/approval in prescribed circumstances involving a change in control of an Authorised Firm. In line with the Directive, referred to above, the DFSA proposes to provide carve-outs for short-term holdings, for custodianship, and for holdings arising from underwriting or placement where voting power is not exercised to intervene in the management of the issuer. These regulatory carve-outs avoid unnecessary approvals in cases where the "control" has no practical relevance.
16. The proposed amendments are set out in Appendix 1.

Item 3. Correction of typographical and other errors

17. We have taken the opportunity to make minor amendments to correct cross references and other anomalies. We have also removed Guidance note 6 from GEN 1.2 as Chapter 7 was previously deleted upon enactment of the FER module.
18. The proposed amendments are set out in Appendices 1 and 2.

Item 4. Article 24(4) Regulatory Law 2004

19. The DFSA proposes to ask the Ruler to amend Article 24(4) of the Regulatory Law 2004 to allow the DFSA to dispense with the requirement to consult on Rule changes in circumstances where the amendments are to correct anomalies and typographical errors or where the amendments are consequential in nature, and in all cases do not involve a change in policy.

20. Articles 24(1)-(3) of the Regulatory Law oblige the DFSA to provide at least 30 days of public consultation on draft Rules. Article 24(4) allows the DFSA to dispense with that requirement where the DFSA Board of Directors concludes that any delay likely to arise under Articles 24(1)-(3) is prejudicial to the interests of the DIFC.
21. While in past instances the DFSA has appropriately relied upon Article 24(4) to dispense with consultation, it considers that there are additional circumstances where consultation may be unnecessary or inappropriate. These include where the proposed changes are minor typographical amendments or where consultation would be superfluous – for example where it may be necessary to consequentially amend the Rulebook to reflect an amendment to a DIFC law or Dubai Law No. 9 of 2004 governing the DIFC – provided in all cases that the amendments do not involve a change in policy.
22. Accordingly, the DFSA proposes the addition of these alternative criteria. The proposed amendments are in Appendix 3.
23. Note that this proposal does not impact on the DFSA's obligation to consult on proposed changes to law, under Article 7(8)(d) of Dubai Law No. 9 of 2004.

Item 5. Article 111 Regulatory Law 2004

24. The DFSA proposes to ask the Ruler to amend Article 111 of the Regulatory Law 2004 to correct a range of typographical errors, primarily relating to cross-referencing where references to Article 112 should be to 111. The proposed amendments are in Appendix 3.

Item 6. Definition of Guidance in the Regulatory Law 2004

25. Part 2(f) of Schedule 1 of the Regulatory Law states that “Guidance” includes “guidance made and issued by the Chief Executive under the Law”. Consultation Paper 57 recently proposed amendments to Article 36 of the Regulatory Law 2004 to clarify the powers of the Chief Executive to issue Guidance. However, this did not address the related issue of what qualifies as Guidance in this context. While this issue may not be of interest to Authorised Persons in the DIFC, it is thought prudent to clarify this as the DFSA is subject to an obligation under Article 36(d) to notify the Board of the issue of Guidance. The proposal clarifies that “Guidance” refers only to notations in the Rulebook.
26. This proposal will affect similar provisions elsewhere in the laws administered by the DFSA, eg Part 2(f) of Schedule 1 of the Markets Law 2004.