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**CONSULTATION PAPER NO. 64**

**05 OCTOBER 2009**

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**ENHANCEMENTS TO THE FEES MODULE**

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## CONSULTATION PAPER NO 64

### Enhancements to Fees Module

#### 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 the Fees Module (FER) of the DFSA Rulebook.

#### 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 **4 November 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. Because these are still proposals, you should not act on them until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website advising you when this happens.

#### Comments to be addressed to:

**Nicholas Alves**  
Director, Policy and Legal Services  
Dubai Financial Services Authority  
Level 13, The Gate, P. O. Box 75850  
Dubai, UAE

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

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## 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 Fees Module (FER) of the Rulebook. Each of the items listed below is a discrete amendment.

## Proposed amendments

<b>Item 1. Late Payment of Fees</b>
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7. An increasing number of Authorised Firms are not paying their annual fees on time. The DFSA is no longer willing to tolerate such practice. It is, therefore, proposing in Rule 1.2.2(2) to introduce a late payment fee of \$1,000 or the equivalent of 3% of the annual fee due, whichever is the greater, this amount is to be paid in addition to the fee due.
8. Currently, Rule 1.2.4 provides for an annual fee to be increased by 1% for each month or part of a month it remains outstanding. This provision will remain and is proposed to be merged into Rule 1.2.2(2).
9. The Guidance makes it clear that in the event of overdue payments, the DFSA may take appropriate action under the Regulatory Law 2004. This could include action to withdraw authorisation to carry on Financial Services.

<b>Item 2. Electronic Payment of Fees</b>
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10. The DFSA proposes to amend FER Rule 1.2.7 to better specify the means by which it will accept payment from applicants, Authorised Persons, Ancillary Service Providers, and other Persons subject to FER. The DFSA is no longer willing to accept monies from third parties in respect of a Person's obligations under FER except to the limited extent specified under the Rule. The limited carve out is in respect of applicants in formation who cannot open a bank account until they are in possession of a commercial licence. In all other situations the transfer of money must be effected by electronic transfer from the relevant Person's bank account directly into the DFSA's bank account.

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<b>Item 3. Protected Cell Companies</b>
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11. The DFSA's insurance regime contains provisions for Captive Insurers, and for Protected Cell Companies (PCCs), which it was expected would also be used for certain types of captive insurance. However, our benchmarking suggests that the setting up and establishment costs for Captive Insurers and PCCs in the DIFC are greater than those in other reputable jurisdictions with significant captive insurance business. Although the DFSA's fees are only one component of these costs, we propose to reduce them to levels comparable to those in the comparator jurisdictions.
12. In regard to application fees, we propose that:
- a. the application fee for a Captive Insurer be reduced from \$15,000 to \$5,500; and
  - b. the application fee for a PCC be reduced from the current \$40,000 which is applied irrespective of the number of cells, to \$8,000 for the core and \$1,000 for each cell registered at the time of authorisation.

We also propose that any existing PCC applying to add new cells to the existing PCC should pay an additional fee of \$1,000 per each cell to be added.

13. The annual fee for an Authorised Firm consists of a base component, plus an expenditure-related component. We propose that the base component be reduced in line with application fees, that is:
- a. for a Captive Insurer, from \$15,500 to \$5,500; and
  - b. for a PCC from \$40,000 to \$8,000 plus \$1,000 for each cell.

The basis of calculation of the expenditure-related component, set out in Rule 3.2.2, would remain unchanged.

14. For the first part-year of authorisation, the annual fee is calculated on a slightly different basis, namely a pro-rata basis taking into account the number of months remaining in the year. The basis of calculation of the annual fee in the first year (in Rule 3.1.1), will remain unchanged but the fees charged will be lower because they will be based on the new application fees set out above.

<b>Item 4. Representative Offices</b>
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15. The DFSA is concurrently proposing to introduce a new Financial Service, namely Operating a Representative Office. An Authorised Firm which carries on that activity will be known as a Representative Office. The DFSA has issued Consultation Paper No. 65 which sets out its proposals in this regard.

16. A Representative Office will be permitted to undertake the following activities in or from the DIFC:
  - a. marketing of financial services which are provided in a jurisdiction other than the DIFC, by either the Person conducting the marketing or by a member of the Person's Group;
  - b. marketing of financial products which are offered in a jurisdiction other than the DIFC, by either the Person conducting the marketing or by a member of the Person's Group; or
  - c. introducing potential customers or investors to either the introducer's place of business in a jurisdiction other than the DIFC or to a member of that introducer's Group in such a jurisdiction.
  
17. In light of the limited nature of the Financial Service of Operating a Representative Office, the DFSA proposes to set the fee level for Representative Offices below that for other Authorised Firms. However, in setting an appropriate fee level, the DFSA has taken into consideration the costs of authorising and supervising Representative Offices. It is proposed that an application fee of \$2,000 (similar to that for Ancillary Service Providers) and an annual fee of \$4,000 would be appropriate for Representative Offices.

<b>Item 5. Adding Clarity</b>
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18. It is proposed to make several minor amendments to two FER Rules namely:
  - a. to make clear in Rule 1.2.2, that the relevant fees are payable in advance; and
  - b. to make clear in Rule 3.10.1 (Domestic Funds), that the net asset value for calculation of an annual fee is ascertained by reference to the previous year. The amendments also clarify that if no valuation was available as at 10 November in the previous year, the net asset value will be determined as at the date of the most recent valuation.

<b>Item 6: Miscellaneous</b>
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19. The DFSA provided Guidance to assist applicants during the coming into force of FER. This Guidance was intended only to have effect during the transition from the 2006 fee regime into the 2007 fee regime. Consequentially this Guidance (under Rule 1.1.2) is no longer required and is proposed to be deleted.