

Appendix 6

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



The DFSA Rulebook

Markets Rules

(MKT)

5 ACCOUNTING PERIODS, AND FINANCIAL REPORTS AND AUDITING

Guidance

1. Article 43 of the Law provides that a Reporting Entity shall prepare and file with the DFSA an annual financial report in accordance with the requirements prescribed in the Rules.
2. Article 44 of the Law provides that a Reporting Entity shall prepare and file with the DFSA:
 - a. a semi-annual financial report; and
 - b. any other financial statements as are required by the DFSA,in the circumstances prescribed by Rules.
3. Article 97(2) of the Regulatory Law 2004 provides that DFSA shall make Rules setting out the requirements an auditor must meet to become registered by the DFSA including the provision of auditing services to a Public Listed Company. The Rules in this chapter set out the requirements for an auditor of a Public Listed Company including the appointment and termination of an auditor by a Public Listed Company and registration and withdrawal by the DFSA.

5.1 Application

- 5.1.1** This section applies to every Reporting Entity other than that of a Listed Fund except where a narrower application is provided in respect of any particular class of Security.

Guidance

Chapter 6 contains the requirements relating to accounting periods and financial reporting in respect of Listed Funds.

Accounting periods

- 5.1.2** (1) A Reporting Entity must not change its accounting reference date as specified in its most recent Prospectus unless it has obtained the prior approval of the DFSA in accordance with the requirements in (2).
- (2) A Reporting Entity that proposes to change its accounting reference date must:
- (a) notify the DFSA and the Authorised Market Institution where it is the Listing Authority of its proposal at least 28 business days prior to making such a change; and
 - (b) obtain the DFSA's prior approval for the proposed change.

Annual financial report

- 5.1.3** (1) Pursuant to Article 43 of the Law, a Reporting Entity must prepare and file an annual financial report and the Reporting Entity must include in that report the information required under (2).
- (2) In respect of the financial year to which the annual financial report relates, it must contain:
- (a) audited financial statements;
 - (b) a review of the operations during the year and the results of those operations;
 - (c) details of any significant changes in the Reporting Entity's state of affairs during the financial year;
 - (d) details relating to the Reporting Entity's principal activities during the year and any significant changes in the nature of those activities during the year;
 - (e) details of any matter or circumstance that has arisen since the end of the year that has significantly affected or may significantly affect:
 - (i) the Reporting Entity's operations in future financial years and the results of those operations; or
 - (ii) the Reporting Entity's state of affairs in future financial years; and
 - (f) likely developments in the Reporting Entity's operations in future financial years and the expected results of those operations;
 - (g) a statement of auditors required under Article 45(2) of the Law; and
 - (h) a statement by Directors whether or not, in their opinion, the business of the Reporting Entity is a going concern, with supporting assumptions or qualifications as necessary.

Guidance

With regard to the opinion required under the obligation in Rule 5.1.3(2)(h), the DFSA recognises that while the accounts will be prepared by Persons other than the Directors, the Board has overall responsibilities to ensure the integrity and independence of the financial reporting process.

- 5.1.4** The annual financial report of a Reporting Entity that is not a Public Listed Company must be audited by an independent, competent and qualified auditor in accordance with the International Auditing and Assurance Standards Board ("IAASB") or other standards acceptable to the DFSA or where appropriate, AAOIFI standards.

- 5.1.5** The annual financial report must be signed by at least two Directors of the Reporting Entity.

Guidance

The DFSA expects a Reporting Entity to make, within its annual financial report, appropriate levels of disclosure for different types of Securities. Accordingly, the disclosure made for an issuer of Shares would be significantly more extensive than the disclosure made in respect of an issuer of Debentures.

Semi-annual financial report

- 5.1.6** (1) Pursuant to Article 44(1)(a) of the Law, a Reporting Entity in respect of Shares or Certificates over Shares must, in addition to the annual financial report, prepare and file a semi-annual financial report which meets the requirements in (2) and (3).
- (2) A Reporting Entity must:
- (a) prepare such report:
 - (i) for the first six months of each financial year or period; and if there is a change to the accounting reference date, prepare such report in respect of the period up to the old accounting reference date; and
 - (ii) in accordance with the applicable IAASB standards or other standards acceptable to the DFSA or where appropriate, AAOIFI standards;
 - (b) if the figures have either been audited or reviewed by auditors, include in the report statements to that effect; and
 - (c) ensure that that the report includes:
 - (i) an indication of important events that have occurred during the first six months of the financial year, and their impact on the financial statements;
 - (ii) a description of the principal risks and uncertainties for the remaining six months of the financial year; and
 - (iii) a condensed set of financial statements, an interim management report and associated responsibility statements.
- (3) A semi-annual financial report must be signed by at least two Directors of the Reporting Entity.

Market disclosure

- 5.1.7** (1) A Reporting Entity where it is required by the Law and the Rules to prepare the following financial reports must disclose to the market, in accordance with Rule 4.7.1:

- (a) its annual financial report;
 - (b) its semi-annual financial report; and
 - (c) its preliminary financial results.
- (2) A Reporting Entity must make the market disclosure required in (1) within the following time periods:
- (a) in relation to its annual financial report, as soon as possible after the accounts have been approved, but no later than 120 days after the end of the financial period;
 - (b) in relation to its semi-annual financial report, as soon as possible and in any event no later than 60 days after the end of the period to which the report relates; and
 - (c) in relation to its preliminary financial results, as soon as possible but no later than 30 minutes before the market opens on the day after the approval of the Board of Directors.
- (3) A Reporting Entity must, where there is a change to its accounting reference date, disclose to the market in accordance with Rule 4.7.1:
- (a) the change to its accounting reference date as soon as possible; and
 - (b) a second interim report within six months of the old accounting reference date if the change of the accounting reference date extends the annual accounting period to more than 14 months.

5.2 Application

- 5.2.1** (1) This section applies to every:
- (a) Public Listed Company;
 - (b) Auditor of a Public Listed Company ; and
 - (c) applicant for registration with the DFSA as an auditor of a Public Listed Company.
- (2) In this chapter in relation to a Public Listed Company a reference to “auditor” includes references to an “Auditor”.

Guidance

1. This chapter contains the requirements relating to auditors of a Public Listed Company as provided for in Article 97 of the Regulatory Law 2004. In particular it relates to a number of requirements an auditor of a Public Listed Company must comply with in

order to be registered by the DFSA in order that it can provide auditing services to a Public Listed Company.

2. Article 97 of the Regulatory law 2004 defines a Public Listed Company as one that is incorporated or formed in the DIFC; and
 - a. has or had securities admitted to trading on an Exchange in the DIFC; or
 - b. has or had securities admitted to trading on an exchange outside of the DIFC;

Appointment and termination of auditors

5.2.2 A Public Listed Company must:

- (a) notify the DFSA of the appointment of an auditor, including the name and business address of the auditor and the date of the commencement of the appointment;
- (b) prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the business of the Public Listed Company for which the auditor has been appointed; and
- (c) ensure that the auditor, at the time of appointment and for the duration of the engagement as auditor, is registered with the DFSA.

5.2.3 A Public Listed Company must notify the DFSA immediately if the appointment of its auditor is or is about to be terminated, or on the resignation of its auditor, giving the reasons for the cessation of the appointment.

5.2.4 A Public Listed Company must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

5.2.5 (1) A Public Listed Company must take reasonable steps to ensure that the relevant audit staff of the auditor are independent of and not subject to any conflict of interest with respect to the Public Listed Company.

- (2) A Public Listed Company must notify the DFSA if it becomes aware, or has reason to believe, that the relevant audit staff of the auditor are no longer independent of the Public Listed Company, or have a conflict of interest which may affect their judgement in respect of the Public Listed Company.

Guidance

1. The relevant staff of an auditor are independent if their appointment or retention by a Public Listed Company is not contrary to any applicable ethical guidance issued by the professional supervisory body to which they are subject.
2. A Public Listed Company should consider rotating the appointed relevant staff of the auditor every five years to ensure that the relevant staff of the auditor remain independent.

5.2.6 Where an auditor has not been appointed by a Public Listed Company, the DFSA may direct a Public Listed Company to appoint an auditor in accordance with the requirements in this chapter.

5.2.7 Where an auditor appointed by a Public Listed Company is in the opinion of the DFSA not suitable to audit that Public Listed Company, the DFSA may direct that auditor to remove itself as the auditor of that Public Listed Company.

5.2.8 The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a direction made under Rule 5.2.7.

Co-operation with auditors

5.2.9 A Public Listed Company must take reasonable steps to ensure that it and its Employees:

- (a) provide such assistance as the auditor reasonably requires to discharge its duties;
- (b) give the auditor right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the auditor's ability to discharge its duties;
- (d) do not provide false or misleading information to the auditor; and
- (e) report to the auditor any matter which may significantly affect the financial position of the Public Listed Company.

Function of the auditor

5.2.10 A Public Listed Company, must in writing require its auditor to:

- (a) conduct an audit of the Public Listed Company's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of its financial business or other standards acceptable to the DFSA or where appropriate, AAOIFI standards.
- (b) produce a report on the audited accounts which states:
 - (i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;
 - (ii) in particular, whether the accounts give a true and fair view of the financial position of the Public Listed Company for the financial year and of the state of the Public Listed Company's affairs at the end of the financial year end; and
 - (iii) any other matter or opinion relating to the requirements of this chapter;

- (c) submit the reports produced pursuant to Rule 5.2.10(b) above to the Public Listed Company; and
- (d) notify the DFSA in writing if the auditor resigns due to significant concerns which have previously been raised with senior management of the Public Listed Company and which have not been addressed.

5.2.11 A Public Listed Company must submit any auditor's reports and financial statements required by this chapter to the DFSA within four months of the Public Listed Company's financial year end.

Registration of an Auditor

5.2.12 An Auditor intending to audit Public Listed Companies must apply to the DFSA for registration in accordance with the Rules in this Chapter.

5.2.13 An applicant for registration must complete and submit the appropriate form in AFN, supported by such additional material as may be required by the DFSA.

Guidance

Applicants and Auditors are required to pay fees as prescribed in FER.

Consideration of the application

- 5.2.14** (1) An applicant for registration must be able to demonstrate to the DFSA's satisfaction that:
- (a) it is fit and proper as provided in (2);
 - (b) it has professional indemnity insurance as required under Section 5.2.43;
 - (c) it has adequate systems, procedures and controls to ensure due compliance with:
 - (i) the International Standards on Auditing;
 - (ii) the International Standards on Quality Control; and
 - (iii) the Code of Ethics for Professional Accountants;
 - (d) where applicable, it has adequate systems, procedures and controls to ensure due compliance with:
 - (i) the Islamic Accounting and Auditing Standards; and
 - (ii) the Code of Ethics for Accountants and Audit Firms of Islamic Financial Institutions;
 - (e) it is controlled by Persons each of whom hold a Recognised Professional Qualification from a Recognised Professional Body; and

- (f) it has complied with any other requirement as specified by the DFSA.
- (2) For the purposes of assessing whether an applicant for registration meets the fit and proper requirement under (1)(a), the DFSA will consider:
- (a) the application and submissions;
 - (b) background and history;
 - (c) the ownership and the Group structure;
 - (d) resources, including human and technological;
 - (e) whether the applicant's affairs are likely to be conducted and managed in a sound and prudent manner; and
 - (f) any other matter considered relevant by the DFSA.
- (3) For the purposes of (1)(e):
- (a) "control" means:
 - (i) in a body corporate, a majority of the directors and a majority of the votes of the shareholders; or
 - (ii) in a partnership (except a limited partnership) means a majority of the partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote; and
 - (iii) in a limited partnership means a majority of the general partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote;
 - (b) "majority" means:
 - (i) where under the Auditor's constitution matters are decided on by the exercise of voting rights, a majority of the rights to vote on all, or substantially all, matters; or
 - (ii) in any other case a majority of the Persons having rights under the constitution of the Auditor to enable them to direct its overall policy or alter its constitution.

5.2.15 The DFSA may impose in its absolute discretion any terms or conditions on the registration.

Regulatory appeals

5.2.16 An applicant may appeal to the Regulatory Appeals Committee against any refusal to grant registration, or any terms or conditions of registration imposed under Rule 5.2.15 and the Regulatory Appeals Committee has jurisdiction to hear any such appeal.

Guidance

Under Article 98 of the Regulatory Law 2004, the DFSA may in its absolute discretion grant or refuse to grant registration.

Obligations of auditors and audit principals

5.2.17 An Auditor must:

- (a) continue to comply with all its obligations including those in Chapter 5;
- (b) comply with the applicable International Standards of Auditing, Quality Control and Codes of Ethics referred to in Rule 5.2.14 (1)(c) and (d);
- (c) appoint an Audit Principal in accordance with the International Standards on Quality Control; and
- (d) ensure that each Audit Principal is fit and proper to conduct audit work on behalf of the Auditor.

5.2.18 An Audit Principal must:

- (a) manage the conduct of audit work undertaken by the Auditor;
- (b) sign audit reports on behalf of the Auditor; and
- (c) sign any other report as may be required by the DFSA from time to time.

5.2.19 In assessing whether an Audit Principal is fit and proper, the Auditor must ensure that the Audit Principal at a minimum:

- (a) holds a Recognised Professional Qualification;
- (b) has at least five years of prior relevant audit experience in the past seven years; and
- (c) is a member in good standing of a Recognised Professional Body.

Guidance

When assessing a person's suitability to be appointed as an Audit Principal, an Auditor should ascertain matters such as whether any disciplinary action has been taken against that person by a Recognised Professional Body.

Notification of changes

5.2.20 An Auditor must notify the DFSA in writing within 30 days:

- (a) of any change of its Audit Principals, including the appointment of any new Audit Principal;
- (b) of any claims made against the Auditor including but not limited to those lodged against the Auditor's professional indemnity insurance;
- (c) of any matter that can reasonably be regarded as having a material adverse effect on the DFSA's registration of the Auditor;
- (d) of a change of name or address of the Auditor; and
- (e) if it no longer meets the requirements for registration as an Auditor.

Books and records

5.2.21 An Auditor must maintain proper books and records at all times to facilitate the proper performance of its functions and discharge of its duties under these Rules.

5.2.22 An Auditor must maintain records demonstrating how it established the fitness and propriety of each Audit Principal for the purposes of Rules 5.2.17 to 5.2.19.

5.2.23 An Auditor must:

- (a) maintain records and all relevant information relating to its professional indemnity insurance including the terms of cover and its duration; and
- (b) upon a request by the DFSA, provide to the DFSA forthwith evidence of the terms of cover and the validity of those policies.

5.2.24 An Auditor must maintain records of insurance claims made under its professional indemnity insurance policy. Such records, together with each annual renewal proposal form, must be available for inspection by the DFSA.

5.2.25 An Auditor must maintain proof of records of continuing professional development undertaken by its Employees, including Audit Principals.

5.2.26 An Auditor must maintain books and records referred to in the above Rules for a period of at least 6 years. In the case of the books and records referred to in Rule 5.2.21, those records must be kept for at least a period of 6 years after the completion of each audit carried out in respect of each client that is a Public Listed Company.

Withdrawal of registration

Guidance

Under Article 98(3) of the Regulatory Law 2004, the DFSA may make Rules setting out how and on what grounds registration may be withdrawn.

5.2.27 (1) The DFSA may withdraw an Auditor's registration either on its own initiative or at the request of the Auditor.

(2) A request for withdrawal by an Auditor must be in writing.

5.2.28 In considering requests for the withdrawal of an Auditor's registration, the DFSA must be satisfied that:

(a) the Auditor has made appropriate arrangements with respect to its existing customers; and

(b) any other matter which the DFSA would reasonably expect to be resolved has been resolved;

before granting a request for a withdrawal.

Guidance

An application by an Auditor to withdraw its registration does not in itself result in a cancellation of its registration. Until such time as the DFSA withdraws the registration, the Auditor remains subject to, and must comply with, the Regulatory Law 2004, Rules and any other relevant legislation administered by the DFSA.

5.2.29 Once an Auditor applies to withdraw its registration, the Auditor must not accept appointments as an Auditor nor issue any audit reports without obtaining the prior written consent of the DFSA.

5.2.30 The DFSA must take the necessary steps to withdraw the registration of an Auditor as soon as practicable after an Auditor has applied to withdraw its registration.

Withdrawal on the DFSA's initiative

5.2.31 The DFSA may withdraw the registration of an Auditor on its own initiative if it has reasonable grounds to believe that:

(a) the Auditor is no longer fit and proper; or

(b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

5.2.32 The DFSA may only withdraw the registration of an Auditor on its own initiative if it has given to the Auditor:

- (a) a prior written notice setting out the DFSA's reasons for proposing to withdraw its registration; and
- (b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed withdrawal.

5.2.33 Upon deciding to withdraw the registration of an Auditor, the DFSA must without delay inform the Auditor in writing of:

- (a) such decision; and
- (b) the date on which the decision is to take effect.

Guidance

Generally, the DFSA will consider exercising the power to withdraw the registration of an Auditor on its own initiative only after a thorough investigation.

5.2.34 An Auditor may appeal to the Regulatory Appeals Committee against a decision of the DFSA to withdraw its registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

Suspension by the DFSA

Guidance

Under Article 105 of the Regulatory Law, the DFSA may make Rules setting out how and on what grounds registration may be suspended.

5.2.35 The DFSA may suspend an Auditor's registration if it has reasonable grounds to believe that:

- (a) the Auditor is no longer fit and proper; or
- (b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

5.2.36 Subject to Rule 5.2.37, the DFSA may only suspend the registration of an Auditor after it has given to the Auditor:

- (a) a prior written notice setting out the DFSA's reasons for proposing to suspend its registration; and
- (b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed suspension.

5.2.37 Where the DFSA forms the view that any delay likely to arise as a result of having to comply with the requirements in Rule 5.2.36 is likely to be prejudicial to the interests of the DIFC, it may suspend an Auditor's registration immediately. In such circumstances, the Auditor may make representations during the suspension period.

5.2.38 An Auditor may appeal to the Regulatory Appeals Committee against the DFSA's decision to suspend the Auditor's registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

5.2.39 Upon deciding to exercise its powers under Rule 5.2.35, the DFSA must, without delay, inform the Auditor in writing of:

- (a) its decision;
- (b) the reasons for the suspension; and
- (c) the date on which the decision is to take effect and, if known, the duration of the suspension.

Guidance

The decision of the DFSA to suspend an Auditor's registration remains in effect until the appeal is heard and a decision is rendered, unless the Regulatory Appeals Committee orders a stay of the suspension decision.

Continuing professional development

5.2.40 An Auditor must ensure that all Employees, including Audit Principals, engaged in audit work undertake continuing professional development in accordance with the requirements of:

- (a) the Recognised Professional Body of which the Employee or Audit Principal is a member;
- (b) any applicable internal standards of the Auditor; and
- (c) any direction or order given by the DFSA.

Anti Money Laundering

5.2.41 An Auditor must comply with the U.A.E. Federal Law No. 4 of 2002 regarding Criminalisation of Money Laundering.

5.2.42 An Auditor, in relation to its duties as an Auditor of a Public Listed Company, must comply with the same anti money laundering requirements in Chapters 5 and 6 of the ASP module. In that Chapter, references to Ancillary Service Providers are to be treated as references to Auditors unless the context requires otherwise.

5.2.43 Rule 5.2.2 of the ASP module does not apply to an Auditor.

Professional indemnity insurance

- 5.2.44** An Auditor must hold adequate professional indemnity insurance covering all types of civil liability arising in connection with the conduct of the Auditor's business by Employees including its Audit Principals.
- 5.2.45** An Auditor must, upon request of the DFSA, provide to the DFSA any information relating to the Auditor's professional indemnity insurance policy including the terms and duration of, and any claims made under, such policy.
- 5.2.46** An Auditor's professional indemnity insurance may be effected with any reputable insurance company or other underwriter provided that the DFSA may require Auditors not to use certain insurance companies or underwriters or forms of insurance cover.

Run-off cover

- 5.2.47** An Auditor, who intends to cease operations in the DIFC, must make appropriate arrangements to cover its liability in connection with past conduct of the Auditor for a period of at least 2 years.

Register of Auditors

Guidance

The DFSA maintains a register of Auditors pursuant to GEN 8.18 by recording the following information in respect of current and former Auditors:

- a. full name of the Auditor;
- b. names of the Audit Principals of the Auditor;
- c. address of the Auditor;
- d. contact details of the Auditor;
- e. date of registration of the Auditor;
- f. date of withdrawal of registration of the Auditor;
- g. date of any suspensions of registration applicable to an Auditor; and
- h. date of cessation of suspension or registration.