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**CONSULTATION PAPER NO. 76**

**15 JUNE 2011**

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**PROPOSED CHANGES TO THE MARKETS LAW REGIME  
PART 2 - RECOGNITION AND AUDITING**

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## CONSULTATION PAPER NO 76

### PROPOSED CHANGES TO THE MARKETS LAW REGIME PART 2 - RECOGNITION AND AUDITING

#### Why are we issuing this paper?

1. This Consultation Paper is the second consultation forming part of our review of the DIFC markets regime. This consultation seeks public comments on the DFSA's proposals to amend and simplify the Law and Rules in relation to:
  - (a) the recognition of overseas exchanges, clearing houses and members of Authorised Market Institutions; and
  - (b) expand the DFSA's supervisory oversight of auditors to include audit firms for DIFC incorporated companies that are listed on an AMI .or any other exchange.

This paper also sets out the proposed changes to the Regulatory Law 2004, the Markets Law [2011] and the Rules to achieve the proposed amendments.

#### Who should read this paper?

2. The proposals in this paper would be of interest to:
  - (a) Recognised Bodies and Recognised Members ("Recognised Persons");
  - (b) Persons considering making an application to be recognised as a Recognised Person;
  - (c) Authorised Market Institutions;
  - (d) operators of a non-DIFC multilateral trading facility or alternative trading system;
  - (e) DIFC incorporated companies listed on an AMI or any other exchange;
  - (f) Auditors of DIFC incorporated companies in (e); and
  - (g) advisors to Persons in (a) to (f) above.

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### How is this paper structured?

3. In this paper, we set out:

#### **PART 1 – RECOGNITION**

- (a) some background regarding the Recognition Regime (paragraphs 8 - 13);
- (b) an outline of our proposed changes (paragraphs 14 - 25);
- (c) an outline of the key changes to the REC module (paragraphs 26 - 35); and
- (d) other related changes including transitional provisions (paragraphs 36 - 39).

The proposed changes to the Regulatory Law 2004, additions to the new Markets Law [2011] and Rules are in Appendices 1 - 4.

#### **PART 2 - AUDITING**

- (a) the purpose of the proposed changes (paragraphs 40 - 45);
- (b) the proposed changes (paragraphs 46 - 48);
- (c) some background regarding the expansion of the DFSA's supervisory oversight of auditors and the rationale for the proposed amendments (paragraphs 49 -52);
- (d) some benchmarking with key international organisations and jurisdictions (paragraphs 53 – 58); and
- (e) the impact of the proposed changes (paragraphs 59 - 623).

The proposed changes to the Regulatory Law 2004 and Rules including the new Markets Rules are in Appendices 1-7.

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## How to provide comments?

4. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper No. in the subject line. 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.

## Comments to be addressed or emailed to:

**Consultation Paper No. 76**  
**Policy and Legal Services**  
**DFSA**  
**PO Box 75850**  
**Dubai, UAE**

Email: [consultation@dfsa.ae](mailto:consultation@dfsa.ae)

Tel: +971(0)4 3621500

## What happens next?

5. The deadline for providing comments on the proposals is **4 August 2011**. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to recommend the proposed changes to the Regulatory Law 2004 and the Markets Law [2011] to the President for enactment by the Ruler. If the proposed changes to the law are enacted, we shall then proceed to enact the relevant changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the law and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

## Terminology in this paper

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

## Structure of this paper

7. This Consultation Paper is the second consultation forming part of our review of the DIFC markets regime. This Consultation Paper is split into two parts. Part 1 deals with our proposals in relation to changes to Recognition and Part 2 deals with changes regarding the Auditing of Reporting Entities.

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## Part 1 – Recognition

### Background

8. Following a periodic review of our Recognition Module (“REC”) the DFSA proposes to amend and simplify the Law and Rules in relation to the recognition of overseas exchanges, clearing houses and members of an AMI (the “Recognition Regime”). Our proposed changes to the Recognition Regime are proportionate in light of the risks posed to the DIFC and the DFSA’s objectives and:
  - (a) take into account the rapid evolution in the international trading landscape. The last decade has seen the rise of electronic trading, order routing, and internet-based trading interfaces. The electronic nature of modern trading has blurred the geographic boundaries of cross-border trading;
  - (b) are designed to expand the regime to include the recognition of alternative trading systems, the quasi exchanges which are developing an increasingly important role in trading of financial instruments on the international capital markets; and
  - (c) ensure that the Recognition Regime is aligned with Article 4(5) of the Federal Law, which requires that a person undertaking financial services business in the DIFC has a place of business in the DIFC.
9. In summary, the current DFSA Recognition Regime operates as follows:
  - (a) it permits non-DIFC exchanges and clearing houses meeting certain regulatory standards to provide access to their facilities to persons located in the DIFC. Such exchanges and clearing houses are generically defined as “Recognised Bodies”; and
  - (b) it permits non-DIFC firms meeting certain regulatory requirements to be remote members of an Authorised Market Institution (“AMI”) in order to trade Investments on a DIFC exchange from a place of business outside the DIFC. Such remote members are generically defined as “Recognised Members”.
10. The persons in (a) and (b) above are defined as “Recognised Persons” and the rationale for the regime is that it permits Recognised Persons to carry on prescribed limited cross-border activities without the need to be authorised or otherwise licensed by the DFSA. The DFSA considers that to license such persons would impose a disproportionate regulatory burden given that the substantive activities carried on pursuant to their recognition occur outside the DIFC under the laws and supervision of the Financial Services Regulator in their home jurisdiction.
11. The rationale for recognition is that:
  - (a) the status provides Recognised Persons with greater legal certainty in respect of any perimeter issues;
  - (b) the status provides Recognised Persons with an exemption from the Financial Promotions Prohibition;

- (c) recognition, or a similar status, is accepted practice in a number of key jurisdictions; and
  - (d) recognition increases market access, and liquidity, for market participants.
12. The Recognition Regime, which was implemented in 2004, was originally cast as a carve-out from the Financial Services Prohibition in Article 41 of the Regulatory Law 2004. This approach was deliberately conservative, reflecting the nascent state of the DIFC legal framework. However, our experience and legal analysis of Recognised Persons show that in fact no Financial Service is carried on by such persons in or from the DIFC in the ordinary course of their activities, with one exception which we discuss in paragraph 17 below.
13. Recognised Persons might, however, breach the Financial Promotions Prohibition in Article 41A of the Regulatory Law 2004, in carrying on their activities unless an exemption in GEN 3.4 applies.

### **Outline of our proposed changes**

#### Structural changes

14. The DFSA does not expect the proposed changes to have a material impact on Recognised Persons. The proposed changes to the Regulatory Law 2004 and the proposed new Markets Law [2011] are found at Appendix 1 and Appendix 2. The proposed new REC module is at Appendix 3. Changes to the AMI module are at Appendix 4, changes to the GLO module are at Appendix 5 and changes to the GEN module are at Appendix 7.
15. The legal framework of the Recognition Regime is currently contained in the Regulatory Law 2004. However, the Recognition Regime is fundamentally about access to capital markets and the legal framework for such regime is more closely aligned to the provisions contained in the Markets Law [2011] than the Regulatory Law 2004. As a result we propose to move the substantive law relating to Recognised Persons from Chapter 9 (Article 61) of the Regulatory Law 2004 into Part 3 of the proposed new Markets Law [2011], in relation to which we are currently consulting on other matters under Consultation Paper 75. We also propose to move the more rule-like requirements currently contained at the Law level into the Rulebook.

#### Financial Services Prohibition

16. Article 41 of the Regulatory Law 2004 currently provides an exemption for Recognised Persons from the Financial Services Prohibition (the "Prohibition"). However, given that the legitimate activities of a Recognised Person under the Recognition Regime take place materially outside the DIFC, such activities would not normally result in a breach of the Prohibition. Therefore, the DFSA considers that the exemption from the Prohibition is unnecessary. As a result we propose to remove it from the Regulatory Law 2004. The DFSA considers that while there is no doubt that when a Recognised Member deals as principal on an AMI there is a resulting transaction created under DIFC law and on a DIFC exchange, this does not necessarily mean that such a person is carrying on a Financial Service in or from the DIFC. Likewise, the same analysis applies where the Recognised

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Member deals as agent on behalf of a client on an AMI. Merely placing an order on an exchange through a server (wherever located) does not bring a person located outside the DIFC into the DIFC for the purposes of Article 41 of the Regulatory Law 2004.

17. However, the DFSA considers that if a Recognised Member deals on an AMI with a customer who is located in the DIFC, then such activity might breach the Prohibition because the substantive Financial Service would take place, at least in part, in the DIFC. To address this, we propose to restrict the activities of Recognised Members to dealing with non-DIFC customers and DIFC customers for whom it deals as a result of an unsolicited request for execution-only services. From this restriction we propose to carve out Recognised Members who are regulated by a Financial Services Regulator in the UAE, as is envisaged by the Federal Law. We also propose to carve out Recognised Members who have a Branch which is an Authorised Firm because such Recognised Members would have a place of business in the DIFC (see proposed new REC Rules 2.5.1 and 2.5.3 in Appendix 3).
18. Because we have removed the explicit exemption from the Prohibition we propose to add a new requirement in the Markets Law [2011] which mandates that a person who operates an exchange, clearing house or alternative trading system from a place of business outside the DIFC can only provide direct access to its facilities to persons in the DIFC if it is admitted to the list of Recognised Persons (see Article 37(2) of the Markets Law [2011] in Appendix 2). By “direct access” the DFSA means admitting as a member or giving a person direct market access in the DIFC (via a terminal). We do not consider third-party access to the market to be “direct access”. The rationale for requiring exchanges, clearing houses or alternative trading systems which offer direct access to persons in the DIFC to be recognised is that this permits the DFSA to have limited regulatory oversight and information-sharing arrangements for such persons.

#### Financial Promotions Prohibition

19. Because of the proposed new restrictions on Recognised Members dealing with customers in the DIFC, we also propose to remove the exemption from the Financial Promotions Prohibition for Recognised Members in GEN 3.4.1(2)(b). However, Recognised Bodies will continue to benefit from this exemption. For Recognised Members from the UAE a separate exemption from the Financial Promotions Prohibition in GEN 3.4.1(2)(a) may be relied on when undertaking marketing in the DIFC. For all other Recognised Members, other exemptions exist which may be appropriate, such as GEN 3.4.1(3)(b), which exempts Financial Promotions made to certain Professional Clients.
20. Without an explicit exemption from the Prohibition, Recognised Persons would need to consider their activities carefully to ensure that they do not carry on a Financial Service in or from the DIFC without a relevant Licence. The DFSA considers that one of the key “indicators” as to whether a Person is carrying on a Financial Service in or from the DIFC is whether such person is carrying on the activity “by way of business” in or from the DIFC GEN Rule 2.3.1 contains the by way of business test.
21. The Rules regarding recognition will remain in the REC module of the DFSA Rulebook. However, because of the substantial structural changes proposed to the Recognition Regime, we propose to replace the current REC module

with a new REC module. The new REC module will be structured on the basis of subject matter rather than category of Recognised Person, will contain only five chapters (compared to 10 at present) and will be considerably shorter. Further details regarding the structure of the REC module are set out below.

#### **Issues for consideration**

1. Do you have any concerns or comments about our proposed structural changes to the Recognition Regime?

#### Alternative trading systems

22. The DFSA proposes to permit alternative trading system (“ATS”) operators located outside of the DIFC to provide remote access to their facilities to Persons located in the DIFC. This proposal would create a level playing field with traditional exchanges and reflects the growing influence and presence of ATS in the capital markets.
23. The rise in the last decade of the number of ATS operators in the global capital markets, stimulated by the 2007 implementation of the Markets in Financial Instruments Directive (“MiFID”) in Europe, has changed the global landscape for trading securities. In particular, MiFID removed the concentration of trading on single exchange operators and put in place a more formal legislative framework (and regulations) for ATS operators. This has brought various benefits to investors including reduced trading costs, improved execution speed and increased choice of trading venue. Under MiFID, ATS are called Multilateral Trading Facilities (“MTF”).
24. In Europe, the role of MTFs is now growing in importance and in some cases is as important as trading on a regulated market. The US underwent a similar re-balancing of trading venues with the introduction of its ATS regulations in 1998.
25. To reflect this regulatory convergence between exchanges and ATS, the DFSA proposes to permit ATS operators located outside the DIFC to be recognised as Recognised Bodies. However, to create a level playing field, the DFSA proposes that exchanges and ATS located outside the DIFC should have to meet the same Recognition Criteria, including meeting standards in their home jurisdiction which would broadly meet the Licensing Requirements for an AMI (see AMI Chapter 7).

#### **Issues for consideration**

2. (a) Do you agree with our proposals to permit ATS operators to be recognised as a Recognised Bodies thereby allowing them to provide remote access to their facilities to Persons located in the DIFC?
- (b) Is it appropriate for the DFSA to apply the same Recognition Criteria to both overseas ATS operators and exchanges? In particular, we would like you to comment on the applicability of the AMI Licensing Requirements to an ATS operator (see proposed REC Rule 4.1.1(f))?

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## Proposed Changes to the REC Module

26. The DFSA proposes to create a new REC module. However, the content of the proposed new REC Module is not substantially different from the existing module, and it is predominantly the layout of the Rules that will be changed. For efficiency we propose to group the Rules based on subject matter rather than category of Recognised Person. However, we are proposing to amend and delete some of the current Rules. The more substantial proposed changes are set out in this section.

### Recognition Criteria

27. One of the key proposed changes to the REC module is that the current Recognition Requirements for Recognised Persons will be amended and simplified. The Recognition Requirements will now be referred to as "Recognition Criteria". There will be six criteria for Recognised Bodies and seven for Recognised Members (see proposed REC Rule 2.4 or 2.5).
28. We propose that Recognised Persons will no longer be recognised by way of a formal Recognition Notice. Instead, for a Person to become recognised as a Recognised Person, it will be necessary for such Person to apply to be admitted to, and appear on, the list of Recognised Persons maintained by the DFSA. The DFSA will only admit a Person to the list of Recognised Persons if it appears to the DFSA that such Person satisfies and will continue to satisfy the proposed Recognition Criteria.
29. We are also proposing to remove from the REC Module criteria that are not relevant for the DFSA in its consideration of a Recognised Person. For example the requirement relating to fitness and propriety of a Recognised Body in current REC Rule 3.2.4. The Recognition Regime is based on the reliance by the DFSA on the regulatory framework in the jurisdiction in which the Recognised Person is located. The DFSA will continue to rely upon the licence or other authorisation granted by the Financial Services Regulator in the home jurisdiction rather than undertaking an independent assessment of the fitness and propriety of the applicant for recognition.
30. The Recognition Criteria for a Recognised Body have also been augmented by the inclusion of specific criteria relating to the arrangements in place for co-operation between the DFSA and the Financial Services Regulator responsible for the licensing or authorisation of the Recognised Body and also criteria relating to the equivalence of the law and practice under which the Recognised Body is licensed or authorised. These additional criteria were already considered by the DFSA pursuant to Rule 3.2.2 in considering whether a jurisdiction is acceptable to the DFSA, so the inclusion of specific Rules has only clarified the criteria the DFSA will take into account.
31. For Recognised Members we are also proposing to add a further requirement relating to the equivalence of the law or practice under which the Recognised Member is licensed or authorised.
32. Once admitted to the list of Recognised Persons, if a Recognised Person fails to meet the Recognition Criteria, the DFSA may remove them from the list. This will be subject, of course, to the DFSA providing a reasonable period for a person in breach to achieve compliance and the usual procedural fairness considerations. The DFSA may also remove a person from the list of

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Recognised Persons in other circumstances where it is necessary or desirable in the pursuit of the DFSA objectives. A decision to admit a person to, or remove a person from, the list of Recognised Persons will be appealable to the Regulatory Appeals Committee.

#### Miscellaneous

33. We are proposing to remove the Rule relating to changes of scope of recognition for a Recognised Body. This is because, under the proposed new regime, recognition will not be granted on the basis of a particular scope of activity. Consequently, this Rule will no longer be necessary.
34. We are also proposing to remove certain reporting and notification requirements. The DFSA relies upon the Recognised Person's lead or home state Financial Services Regulator to supervise a Recognised Person. The focus of the DFSA's interest is on the DIFC and on those activities of the Recognised Person that may have an impact on the DIFC. The new reporting requirements reflect this position.
35. We also propose to remove the guidance on waivers in the REC module. This guidance is merely signposting and the substantive right to seek a waiver of a Rule in REC (or AMI) is found in the Regulatory Law 2004. Finally, under these proposals the DFSA's "extended jurisdiction" in Article 63 of the Regulatory Law 2004 will no longer apply to Recognised Persons. We propose, in future, to rely on our general powers in relation to formerly Recognised Persons when necessary.

#### **Other matters**

##### Changes to the AMI module

36. At present, pursuant to AMI Rule 7.2.7, an AMI may only admit as a member Authorised Persons and Recognised Persons. Under our proposals this restriction on AMI membership will remain but we propose to add a new category of permitted member to allow AMI's to admit persons who meet the criteria in GEN Rule 2.3.2(2). GEN Rule 2.3.2(2) exempts persons who are undertaking principal trading in Commodity Derivatives from the requirement to be Authorised. Because we do not Authorise such persons, we do not propose that persons who are undertaking principal trading in Commodity Derivatives on an AMI should be required to be Recognised Members. However, we do propose that an AMI should be able to admit them as members.
37. Currently Recognised Members which meet the requirements in REC Rule 7.2.3(b) are required to have an agent for service in the DIFC as well as submit to the jurisdiction of the DIFC for activities relating to their Membership of an AMI. As these requirements are important mechanisms for the DFSA and the relevant AMI in investigating and enforcing market misconduct, we are proposing to keep these requirements. It is proposed that the AMI Rules be amended to include a prohibition on an AMI from permitting as a Member a person who meets the criteria in GEN Rule 2.3.2(2) or a Recognised Member, unless such person meets certain requirements including submitting to the jurisdiction of the DIFC Courts and DFSA and appointing an agent for service of process in the DIFC.

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### Transitional provisions

38. The proposals contained in this consultation will create a new framework and criteria for recognition. Therefore the DFSA has included transitional provisions which will permit all persons currently recognised to transition to the new regime under grandfathering provisions. Where a person so grandfathered fails to meet any of the Recognition Criteria they must, pursuant to the new Rules, notify the DFSA of such failure (see proposed new REC Rule 3.4.4(a)) and include in the notification any necessary remedial action. The DFSA will provide such a person with a reasonable period in which to achieve compliance.
39. Further, because the DFSA is removing some of the process around recognition, such as the issue of a Recognition Notice and “in principle Recognition”, existing Recognition Notices will cease to have effect upon implementation of the new Recognition Regime and all Recognised Persons should refer to the DFSA register for evidence of admittance to the list of Recognised Persons. If a Recognised Person requires proof of their recognised status in the DIFC for regulatory or other purposes, the DFSA will be able to provide a stamped copy of the evidence of admittance to the list of Recognised Persons on request. However, the DFSA register will be the definitive list.

### **Issues for consideration**

3. (a) Do you have any concerns or comments about our proposed changes to the Recognition Regime?
- (b) Do the proposed changes create any unintended consequences?

## **Part 2 – Auditors of listed companies incorporated in the DIFC**

### **Current Auditor Regulation**

40. Currently, the DFSA only registers and supervises audit firms of Authorised Firms (AFs) and Authorised Market Institutions (AMIs) that are domestic entities. These audit firms may be located in or outside the DIFC with the DFSA undertaking comprehensive independent oversight of such registered auditors’ audit activities relating to AF’s and AMI’s. The DFSA does not have any supervisory oversight of auditors of companies incorporated in the DIFC which are listed on an AMI or any other exchange, unless they are AF’s or AMI’s. The auditors of DIFC incorporated companies not caught by the DFSA’s oversight are required to be registered through the DIFC Registrar of Companies (“ROC”).

### **Scope and Purpose**

41. Currently, in the European Union (“EU”) auditors for a listed company in an EU member state may be from another member state or be from a jurisdiction outside the EU. If the auditors are from a jurisdiction outside the EU they must be overseen by a regulator of equivalent quality and status.

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42. In the DIFC, the DFSA has a comprehensive regime in place for the supervision of Auditors. Accordingly, to ensure that the DIFC is considered by the EU as equivalent, the DFSA proposes to undertake regulatory oversight of auditors of DIFC incorporated companies listed on an AMI or any other exchange. These changes will be made in combination with other changes to the Regulatory Law 2004 in relation to confidentiality.
  43. The changes which are proposed to achieve equivalence with the relevant EU directive will only affect Reporting Entities who are incorporated in the DIFC and whose securities are admitted to trade on an AMI. All other Reporting Entities are not affected by these changes.
  44. Such independent regulatory oversight of auditors of listed companies incorporated in the DIFC would allow for the passporting of auditors registered by the DFSA into the EU, thus enabling those auditors to conduct audits of DIFC based companies where they seek listings in the EU.
  45. Second, these changes will also allow the DFSA to meet Principle 8 of the Core Principles of Independent Audit Regulators by the International Forum for Independent Audit Regulators (“IFIAR”) of which the DFSA is a member. This change will result in the DFSA audit regime being in line with all the IFIAR Core Principles.

#### **Proposed Changes**

46. The proposed changes are to expand the DFSA’s supervisory oversight of auditors to include auditors for companies incorporated in the DIFC which seek listing on an AMI or an exchange in another jurisdiction.
47. The proposed amendments are contained in Appendix 1 – 7
48. The changes to the current regulatory regime necessary to achieve this will also encompass consequential changes to the current audit regime applying to DIFC established companies (under the DIFC Companies Law 2009 and Companies Regulations) as appropriate.

#### **Background**

49. These changes are as a result of communication with the European Commission (“EC”) and to also allow us to meet the Core Principles of IFIAR. The EC is considering the recognition of DFSA registered audit firms and their ability to be considered equivalent to EU audit firms<sup>1</sup>.
50. Since the financial crisis of 2008, IFIAR has issued a number of Core Principles for audit regulators globally and is working towards the common goal of serving the public interest and enhancing investor protection by improving audit quality, including through independent inspections of auditors and/or audit firms. This is being achieved by specifically promoting collaboration and consistency in regulatory activity through cross-border collaboration and exchange of information, particularly in the area of inspections of auditors and audit firms.

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<sup>1</sup> Pursuant to Chapter XI of the EU directive 2006/43/EC

51. In April 2011, IFIAR published its Core Principles, including Principle 1, which requires that the responsibilities and powers of audit regulators should, at a minimum, require independent oversight of the audits of public interest entities, for example, listed companies incorporated in the DIFC.
52. As a member of IFIAR, the DFSA where possible, will adhere to these Core Principles. We believe the proposed changes would be in keeping with the Core Principles.

### **Benchmarking**

53. The EC has been evaluating the situation of auditor oversight systems in non member countries/jurisdictions, including the DIFC, with the aim of allowing international co-operation and in particular passporting on the supervision of audit firms in cases where the auditor oversight systems in the non member countries/jurisdictions are considered equivalent to that in the EU. The goal is to avoid duplication of supervisory work and unnecessary burden on audit firms and above all to promote a high degree of investor protection by ensuring high quality audits.
54. The EC has the status of an observer with IFIAR and its individual member states within the EU are members. EU directives require each member state to ensure that all statutory auditors and audit firms of listed companies are subject to a system of quality assurance. For example, the criteria for quality assurance include independence of the audit regulator from audit firms with respect to their funding and inspections.
55. The EC ensures a harmonized approach to the independent oversight of auditors of publicly listed entities in the EU and allows for the passporting of auditors registered in non member countries/jurisdictions into the EU, in order to allow those auditors to conduct audits of listed companies in the relevant member states. Each member state will determine whether to disapply any requirements in respect of those audits of third country/jurisdiction companies, which fall within the remit of the third country/jurisdiction regulatory authority. Some member states may determine that registration is not required.
56. In the United Kingdom (UK), the Audit Inspection Unit (AIU) of the Professional Oversight Board (POB), which is a part of the Financial Reporting Council (FRC) oversees the audits of all UK incorporated companies with listed equity and/or listed debt and public interest entities such as non listed banks, building societies and pension schemes. FRC and its relevant bodies namely the POB and AIU are independent from the profession, and FRC is a member of IFIAR.
57. In the US, the Public Company Accounting Oversight Board (PCAOB) was set up by the Sarbanes-Oxley Act of 2002, to oversee the auditors of publicly listed companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair and independent audit reports. PCAOB allows for the registration of auditors from third countries/jurisdictions but still conducts its own supervision. The PCAOB is a body corporate and operates as a non profit corporation. It is independent from the profession and a member of IFIAR.

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58. In Australia, pursuant to the Corporations Act 2001, the Australian Securities and Investments Commission (“ASIC”) has responsibility for the surveillance, investigation and enforcement of auditors of publicly listed companies. ASIC is independent from the profession and a member of IFIAR. If a foreign company lists on the Australian Stock Exchange, the audit may be conducted by a foreign based auditor, provided that the ASX is satisfied that the standards of audit from the foreign jurisdiction are determined to be equivalent.

### **Impact of Proposals**

59. The benefits of including these audit firms within the DFSA’s remit are as follows:
- a. The DIFC would have a consistent audit supervisory regime for DFSA regulated entities and companies incorporated in the DIFC where their securities are to be listed (on an AMI or exchange acceptable by the DFSA).
  - b. The DFSA would comply with the recently published IFIAR Core Principles and in particular the obligation to be the independent audit regulator for companies incorporated in the DIFC and seeking listings.
  - c. An audit firm registered with the DFSA would be able to continue their audit activities of DIFC based companies seeking listings on exchanges outside the DIFC.
60. Under these proposals the DFSA would be supervising auditors of listed companies incorporated in the DIFC that may not be carrying out financial services. This will require expertise for oversight of non-financial service audits. The DFSA is of the view that it has the necessary resources to achieve this oversight.
61. The ROC would continue to be the audit regulator for those audit firms that conduct audits of entities that are not DFSA AFs, AMIs or listed companies incorporated in the DIFC.
62. Currently, these changes will only affect a small number of primary listings (both debt and equity), where the listed company is incorporated in the DIFC.
63. As a result of the introduction of these rules in MKT for auditors the DFSA has identified a number of improvement opportunities for the current auditor regime in the GEN Module. To address those improvements we also propose to make a number of changes to Chapter 8 of GEN.

### **Issues for consideration**

4. Do you consider these changes appropriate for the purposes outlined above? If not why?