

Appendix 2

The text in this Appendix is new and not underlined and struck through in the usual manner.

The DFSA Sourcebook



Regulatory Policy and Process

(RPP)

Chapter 5: Enforcement

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5 ENFORCEMENT

5-1 THE DFSA'S APPROACH TO ENFORCEMENT

Introduction

5-1-1 This chapter sets out the DFSA's approach to enforcement and how it commences and conducts investigations, and exercises its powers to address any misconduct or contravention of the Law or Rules.

5-1-2 A reference to:

- (a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and
- (b) the Law in this chapter is a reference to any legislation administered by the DFSA.

Enforcement philosophy

5-1-3 The DFSA's enforcement philosophy is guided by the following principles which govern the DFSA's approach to fulfilling its objectives as set out in Article 8:

- (a) the DFSA adopts a risk based approach to regulation. This means that the DFSA will focus its efforts on those activities that it perceives as posing the greatest risk to the fulfilment of its objectives;
- (b) the DFSA will act swiftly and decisively to stop conduct which threatens the integrity of the DIFC or the stability of the financial services industry in the DIFC, minimise its effects, and prevent such conduct re-occurring;
- (c) the DFSA works closely with home regulators of international firms to ensure that there is a co-ordinated approach to regulation;
- (d) the DFSA will act fairly, openly, accountably and proportionally in the exercise of its enforcement powers; and
- (e) the DFSA will generally publish details of the outcome of an enforcement action in keeping with its fair and transparent approach and to maintain the integrity of the DIFC by deterring contraventions of Laws or Rules or other misconduct. The DFSA will not publicise details of the commencement or conduct of investigations, unless it is in the furtherance of the DFSA's objectives or the public interest to do so.

5-2 ENFORCEMENT FRAMEWORK

Introduction

5-2-1 The DFSA will take an enforcement action in line with its objectives and enforcement philosophy, and may conduct investigations where there is a suspected contravention of a Law or Rule.

General contravention provisions

5-2-2 A Person contravenes the Law or the Rules when that Person:

- (a) does an act or thing that the Person is prohibited from doing by or under the Law or Rules;
- (b) does not do an act or thing that the Person is required or directed to do by or under the Law or Rules; or
- (c) otherwise contravenes a provision of the Law or Rules.¹

Involvement in contravention

5-2-3 If a Person is knowingly concerned in a contravention by another Person of the Law or Rules, then both Persons may be held liable for committing a contravention pursuant to Article 86.

5-2-4 A Person is “knowingly concerned” in a contravention² if the Person:

- (a) has aided, abetted, counselled or procured the contravention;
- (b) has induced, whether by threats or promises or otherwise, the contravention;
- (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
- (d) has conspired with another or others to effect the contravention.

Enforcement process

5-2-5 When taking enforcement action, the DFSA will adopt the enforcement process described in this chapter. The DFSA’s enforcement process is comprised of the following elements:

- (a) Assessment of complaints and referrals (see section 5-3);
- (b) Commencement of an investigation (see section 5-4);
- (c) Information gathering (see section 5-5);

- (d) Consideration of investigative findings (see paragraphs 5-3-15 to 5-3-17);
- (e) Remedies (see section 5-6); and
- (f) Conclusion of the Investigation (see section 5-20).

5-3 ASSESSMENT OF COMPLAINTS AND REFERRALS

5-3-1 The assessment of complaints and referrals concerning potential misconduct or suspected contravention of the Law or Rules is a key function of the DFSA's regulatory remit and Enforcement framework. Every complaint and referral, regardless of source, is assessed to determine whether an investigation or other action ought to take place.

Sources of complaints and referrals

5-3-2 The DFSA may become aware of potential misconduct or suspected contraventions of Laws or Rules from a variety of sources including:

- (a) members of the public;
- (b) its supervisory activities; and
- (c) other external regulatory authorities or law enforcement agencies.

Complaints

5-3-3 The DFSA receives and assesses two types of complaints:

- (a) regulatory complaints; and
- (b) complaints against the DFSA and its employees.

5-3-4 A Person wishing to lodge a complaint with the DFSA should do so in writing. A complaint can be lodged:

- (a) electronically via the complaints portal on the DFSA website (see <http://www.dfsa.ae/Pages/Complaints/Complaints.aspx>);
- (b) by facsimile to 04 362 0801; or
- (c) by sending the complaint to PO Box 75850 Dubai, UAE or delivering the complaint to the DFSA at Level 13, The Gate Building, DIFC.

5-3-5 When a complaint is received, the DFSA will send an acknowledgement letter to the complainant which will include details of the DFSA officer assigned to assess the complaint.

Regulatory Complaints

5-3-6 Complaints received by the DFSA from members of the public which relate to:

- (a) any conduct or dissatisfaction with any Person regulated by the DFSA;
- (b) a contravention of a Law or Rule; or
- (c) any conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC;

are classified as regulatory complaints and are assessed through the DFSA's complaints management function.

5-3-7 If, during the assessment of a regulatory complaint, the DFSA identifies a potential contravention of a Law or Rule, it will refer the complaint to the relevant DFSA division for further consideration. Thereafter, the relevant division assumes responsibility for the complaint.

5-3-8 All complaints lodged with the DFSA are held in confidence in accordance with the Regulatory Law 2004. However, in order to assess a complaint properly, the DFSA may need to speak to third parties including any Person who is the subject of the complaint.

Complaints against the DFSA and its employees

5-3-9 Complaints received by the DFSA about the conduct and activities of the DFSA and its employees are administered and assessed separately by the DFSA's Office of General Counsel.

5-3-10 Information on how the DFSA's Office of General Counsel assesses complaints against the DFSA and its employees can be found on the DFSA's website (see <http://www.dfsa.ae/Pages/Complaints/ComplaintsAgainstDFSA.aspx>).

5-3-11 The DFSA may also receive allegations of misconduct through an external referral from other regulatory authorities and law enforcement agencies. Such allegations are generally received pursuant to the IOSCO or IAIS Multilateral Memorandum of Understanding (MMoU), or bi-lateral arrangements for the exchange of information between the DFSA and other regulatory and enforcement agencies.

5-3-12 In determining whether to recommend the commencement of an investigation, the Enforcement Committee will consider a number of factors including, but not limited to:

- (a) the nature, seriousness and impact of the suspected contravention and whether the suspected contravention is ongoing;
- (b) whether the suspected contravention affects, or has the potential to affect, the DFSA objectives;

- (c) whether those involved in the suspected contravention are likely to co-operate;
- (d) whether it is likely that the suspected contravention may be proven;
- (e) the disciplinary record and compliance history of the Person or Persons involved in the suspected contravention;
- (f) whether, if proven, a suitable remedy is available;
- (g) the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude toward the matter;
- (h) the nature of any request for assistance made by another regulator or body pursuant to Article 39; and
- (i) whether any party who may have suffered some detriment as a result of the suspected contravention is able to take his own remedial action.

5-4 COMMENCEMENT OF INVESTIGATIONS

Introduction

5-4-1 Upon receipt of an internal or external referral, the allegation will be assessed to determine if there is a suspicion of a contravention of the Law or Rules. If a suspicion arises, then the Enforcement Division may make a recommendation to the Enforcement Committee to commence an investigation. The Enforcement Committee (EC) is a management committee of the DFSA whose primary function is to consider enforcement matters and to make recommendations to the Chief Executive in relation to such enforcement matters.

5-4-2 The Chief Executive of the DFSA, or his delegate, is the only individual authorised to commence an investigation. The Chief Executive or his delegate can exercise his discretion unilaterally but will generally consider the recommendations of the Enforcement Committee.

Investigation determination

5-4-3 Article 78 empowers the DFSA to conduct such investigations as the Chief Executive or his delegate consider expedient:

- (a) where he has reason to suspect that there is being or may have been committed a contravention of the Laws or Rules; or
- (b) further to a request for assistance.³

5-4-4 Whether a matter is expedient is determined by reference to factors such as those set out in paragraph 5-3-12.

5-4-5 Whether the Chief Executive or his delegate has “reason to suspect” a contravention of the Law or Rules, is a question which the Chief Executive will determine on the facts and circumstances, available at the time, of each particular matter.

5-4-6 The DFSA is not bound to disclose, to any party, that an investigation is ongoing or the basis upon which an investigation is commenced. However, the DFSA may notify a Person who is the subject of an investigation that an investigation has commenced, and the general nature of the investigation.

5-4-7 However, the DFSA will not make such a notification if it is likely to compromise or prejudice the investigation. The DFSA will not advise a Person at the conclusion of an investigation unless the Person has earlier been notified of its commencement.

5-4-8 The decision to commence an investigation is not a decision which is appealable to the Regulatory Appeals Committee.

5-5 INFORMATION GATHERING

Introduction

5-5-1 Once an investigation is commenced, the DFSA may exercise its powers to gather information to advance its objectives.

5-5-2 Those powers may only be exercised by delegates of the Chief Executive. The delegation need not be limited to DFSA employees. The Chief Executive may delegate DFSA powers to non-DFSA staff who are able to assist with a DFSA investigation.

5-5-3 Similarly, where the DFSA is exercising its powers on behalf of another regulator, it may also delegate powers to a representative of that regulator⁴.

Article 80 Powers

5-5-4 Article 80(1) is a key component of the DFSA's investigative powers. Without the compulsory powers in Article 80(1), the DFSA would not be able to conduct effective and thorough investigations into potential misconduct or suspected contraventions of the Law or Rules, and consequently would not be able to meet its objectives.

5-5-5 During an investigation, the DFSA may obtain relevant information and documents on a compulsory basis, principally through the exercise of its powers under Article 80(1), and on a voluntary basis.

5-5-6 The powers under Article 80(1) are different from the non-investigation powers under Article 73(1). The key distinctions are that the Article 80 powers may be used:

- (a) only for the purposes of an investigation; and
- (b) in circumstances where the DFSA considers that a Person is or may be able to give information or produce a document which is or may be relevant to an investigation.

In comparison, the Article 73(1) power permits the DFSA to request information and documents from an Authorised Firm, Authorised Market Institution, Ancillary Service Provider, auditor and any director, officer, employees or agent of such person, which the DFSA considers is necessary or desirable to meet the objectives of the DFSA.

5-5-7 When it exercises its powers under Article 80(1) (b), (c), (d) or (e), the DFSA will provide a written notice to the Person on whom the requirement is being imposed.

Inspection

5-5-8 Article 80(1)(a) empowers the DFSA to enter business premises of a Person during the course of an investigation for the purpose of inspecting and copying information or documents. This power will be exercised when the DFSA considers that such Person is or may be able to provide information or documents that is or may be relevant to an investigation.

5-5-9 The DFSA will generally not provide prior notice of an inspection in circumstances where the provision of prior notice may prejudice the investigation.

5-5-10 When exercising its power to enter business premises pursuant to Article 80(1)(a), the DFSA may²:

- (a) require any appropriate Person to:
 - (i) make available any relevant information stored at the business premises for inspection or copying; or
 - (ii) convert any relevant information into a physical form capable of being copied; and
- (b) use the facilities of the occupier of the business premises, free of charge, to make copies.

Production of information

5-5-11 Article 80(1)(b) empowers the DFSA to require a Person to give or procure the giving of information. The DFSA considers that the term “information” should be interpreted broadly, in accordance with its ordinary meaning.

5-5-12 Information may include, for example, the following:

- (a) knowledge communicated or received concerning a particular matter, fact or circumstance;
- (b) knowledge gained through work, commerce, study, communication, research or instruction, including information that is not factual or accurate;
- (c) data obtained as output from a computer by means of processing input data with a program or any data at any stage of processing including input, output, storage or transmission data;
- (d) an explanation or statement about a matter;
- (e) the identification of a Person, matter or thing; and
- (f) the provision of a response to a question.

5-5-13 The DFSA will allow a reasonable period for compliance with the requirement to give information. The reasonableness of the requirement will depend upon the circumstances of each case. The DFSA may, in some circumstances, require the giving of information forthwith where the giving of prior notice may prejudice the investigation.

Production of documents

5-5-14 Article 80(1)(c) empowers the DFSA to require a Person to produce or procure the production of specified documents. The DFSA considers that the term “document” should be interpreted broadly, in accordance with its ordinary meaning. Specified documents may include, for example, any record of information, including:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for Persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

5-5-15 This power can only be used when an investigation has commenced and the DFSA considers that the Person to whom the notice is addressed is, or may be, able to produce documents which are relevant to the investigation.

5-5-16 Article 80(1)(c) empowers the DFSA to require production of original documents or copies. Whether original or copy documents are required by the DFSA will be determined taking into account the facts and circumstances of the investigation.

5-5-17 When exercising its Article 80(1)(c) power, the DFSA may retain possession of any document for so long as is necessary for the investigation to which the notice relates. When a Person is unable to produce documents in compliance with a requirement made by the DFSA, the DFSA may require the Person to state, to the best of that Person's knowledge or belief, where the documents may be found and who last had possession, custody or control of those documents.

5-5-18 The DFSA will allow a reasonable period of time for compliance with the requirement to produce documents. The reasonableness of the requirement will depend upon the circumstances of each case. The DFSA may, in some circumstances, require the production of documents forthwith, where the giving of prior notice may prejudice the investigation.

Compulsory interview

5-5-19 Article 80(1) (d) empowers the DFSA to require a Person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) to attend a compulsory interview and provide oral evidence relevant to an investigation it is conducting.

5-5-20 During the course of an investigation, not all interviews will be conducted under compulsion. The DFSA may, where appropriate, conduct voluntary interviews. The decision as to whether a compulsory or voluntary interview will be conducted will depend upon the circumstances of the particular case.

5-5-21 Persons attending for a compulsory interview must first be served with a written notice requiring their attendance. An interviewee is not entitled to refuse or fail to answer a question on the basis that their answers may incriminate them or make them liable to a penalty.⁶

5-5-22 A compulsory interview will be conducted in private and the interviewer may give directions⁷ to the interviewee regarding:

- (a) who may be present during the interview;
- (b) swearing an oath or giving an affirmation that the answers provided will be true;
- (c) what, if any, information may be disclosed by the interviewee or any other Person present at the interview to any third party;
- (d) the conduct of any Person and the manner in which they will participate during the interview; and
- (e) answering any question which is relevant to the investigation.

5-5-23 An interviewee is entitled to legal representation during the course of a compulsory or voluntary interview. At the conclusion of the interview, the lawyer will be permitted to address any issues with the interviewer or interviewee relevant to the

investigation. However, the lawyer is not permitted to answer questions on behalf of the interviewee or obstruct the investigation.

5-5-24 All compulsory interviews will be recorded. The DFSA will, upon a written request from the interviewee at the conclusion of the interview, provide the interviewee or his lawyer with a copy of the recording or an accurate transcript of the interview. The provision of a recording or transcript may be subject to any reasonable conditions imposed by the DFSA.

Assistance

5-5-25 Article 80(1)(e) empowers the DFSA to require a Person to give it any assistance in relation to an investigation which the Person is able to give.

5-5-26 The DFSA considers that providing assistance may include requiring a Person to do a physical act or provide information to advance an investigation. For example, this may include the situation where the DFSA requires a Person to provide assistance by commenting on the accuracy of a document or compiling information that had been stored in a different manner.

5-5-27 The power under Article 80(1)(e) can be used independently, or in conjunction with the exercise of other Article 80(1) powers. For example, the DFSA can exercise its powers under Article 80(1)(d), to require a Person to attend a compulsory interview and Article 80(1)(e), to require the interviewee to provide reasonable assistance during the interview. The interviewee may be required, during the interview to draw a diagram or locate and produce a document referred to in an answer to a question.

Confidentiality

5-5-28 When carrying out its regulatory functions, the DFSA must maintain confidentiality of information, unless disclosure is expressly sanctioned by Article 38. The DFSA's Policy Statement with respect to Confidential Regulatory Information outlines its policy in respect of the treatment of information and documents.

5-5-29 The DFSA may also impose obligations of confidentiality in respect of information and documents provided during the exercise of its powers under Article 80(1).

5-5-30 The DFSA can make directions⁸ to protect the confidentiality of information and documents which are part of a compulsory interview.

5-5-31 The DFSA can direct the recipient of an Article 80(1) (b), (c), (d) or (e) notice not to disclose the receipt of the notice, or any information relating to compliance therewith, to any other Person, other than his legal representative, if it considers that such disclosure may hinder an investigation⁹.

5-5-32 Confidentiality directions are made to ensure that an investigation is not prejudiced by the disclosure of the nature of the information sought or the questions

asked during an investigation. In each case, the DFSA needs to consider whether or not such directions are appropriate in the circumstances of that matter.

Protections

5-5-33 Parties who are required to comply with a requirement made by the DFSA during the course of an investigation, and Persons who are the subject of an investigation, benefit from certain protections in the Regulatory Law 2004 including:

- (a) Article 81 which ensures that a Person who is required to comply with a requirement made during the course of an investigation cannot be subject to any liability or liable in any proceeding because of that Person's compliance with the requirement;
- (b) Article 80(9) which provides that where a Person takes part in a compulsory interview, any statements made during the interview cannot be disclosed to a law enforcement agency for the purpose of criminal proceedings unless the Person consents to the disclosure or the DFSA is required by law or court order to disclose the statement; and
- (c) Article 38 which provides that confidential information provided to the DFSA must not be disclosed except in certain limited circumstances.

Claims of privilege and other protections

5-5-34 A claim by a Person that information is a Privileged Communication is not of itself an excuse for failing to comply with a requirement made by the DFSA during the course of an investigation¹⁰.

5-5-35 A lawyer may refuse to comply with a requirement to provide information where, to comply, would require the lawyer to disclose a Privileged Communication made by, to or on behalf of the lawyer in his capacity as a lawyer.

5-5-36 Should a lawyer refuse to disclose a Privileged Communication, the lawyer must disclose sufficient information to identify the Person entitled to claim the privilege and the document which contains the privileged information. In such a case, the DFSA considers it appropriate for a lawyer to secure those documents, pending the resolution of any claim for privilege.

Enforcement of the DFSA's investigative powers

5-5-37 The DFSA will enforce compliance with its requirements whenever there is less than full compliance by seeking orders in the DIFC Court¹¹.

5-5-38 Article 84(2) empowers the DFSA to make application to the Court for the issue of a search warrant in circumstances where:

- (a) information or documents were required to be given or produced by the exercise of a compulsory power;
- (b) the documents or information required to be produced have not been given or produced; and
- (c) the DFSA has reasonable grounds to suspect that within the next 3 business days, the information or those documents are or may be on particular premises.

5-5-39 Should the Court exercise its discretion to issue a search warrant, it must be addressed to a named Dubai Police Officer together with any other individual, including a DFSA officer or third party, named in the warrant.

5-5-40 The DFSA may exercise its right to make application for a search warrant rather than seeking compliance of its requirement through some other process only where it is satisfied that:

- (a) the preconditions in Article 84(2) for the issue of a warrant are met;
- (b) there is no legitimate basis for non-compliance; and
- (c) in the absence of the execution of a search warrant, the information or documents sought may be removed or destroyed or otherwise not made available.

5-5-41 Any material seized by officers of the DFSA pursuant to a search warrant issued under Article 84 may be dealt with by the DFSA as if such material had been produced to it pursuant to a notice to produce documents.

Obstruction of the DFSA

5-5-42 A Person must not, without reasonable excuse, engage in conduct that is intended to obstruct the DFSA in the exercise of its investigative powers by means including the following:

- (a) the destruction of documents;
- (b) the failure to give or produce information or documents specified by the DFSA;
- (c) the failure to attend before the DFSA at a specified time and place to answer questions;
- (d) the giving of information that is false or misleading; or

- (e) the failure to give any assistance in relation to an investigation which the Person is able to give¹².

5-5-43 Any breach of Article 83 will be regarded seriously by the DFSA and appropriate action will be taken.

Return of information and documents

5-5-44 Where the DFSA¹³ has obtained original copies of information and documents during the course of an investigation, the DFSA will usually return such information and documents to the Person from whom the information and documents were received, as soon as practicable, after the conclusion of the investigation or related proceedings.

5-5-45 Where information and documents have been produced to the DFSA in the course of an investigation to assist another regulator or agency, the DFSA may¹⁴ release the information and documents to that other regulator or agency. The information and documents will usually be returned to the Person from whom the information and documents were received, as soon as practicable, after receiving them back from the other regulator or agency.

5-6 REMEDIES

5-6-1 At the conclusion of an investigation, the Enforcement Committee considers the findings of the investigation and may resolve to recommend to the Chief Executive to:

- (a) refer a matter to the Financial Markets Tribunal¹⁵;
- (b) exercise a power on behalf of another regulator¹⁶;
- (c) delegate power to another regulator¹⁷;
- (d) accept an Enforceable Undertaking¹⁸;
- (e) accept a settlement;
- (f) commence Court proceedings¹⁹; and
- (g) appoint a Decision Maker.

5-6-2 A Decision Maker is an individual delegated by the Chief Executive to exercise a power on behalf of the DFSA. A Decision Maker will be appointed by the Chief Executive, generally upon receiving a recommendation from the Enforcement Committee.

5-6-3 Whilst not an exhaustive list, the Enforcement Committee may recommend to the Chief Executive that a matter be referred to a Decision Maker for the:

- (a) imposition of a fine²⁰;
- (b) imposition of a censure²¹;
- (c) imposition of conditions or restrictions on a Licence²²;
- (d) withdrawal of an authorisation under a Licence²³;
- (e) withdrawal of a Licence²⁴;
- (f) imposition of conditions or restrictions on an Authorised Individual²⁵;
- (g) restriction or suspension of an Authorised Individual, or the withdrawal of his or her authorisation²⁶;
- (h) withdrawal of the registration of an Ancillary Service Provider;
- (i) revocation of recognition²⁷;
- (j) appointment of a manager²⁸;
- (k) withdrawal of the registration of an Auditor²⁹; and
- (l) suspension of the registration of an Auditor³⁰.

5-6-4 There is a range of remedies which the DFSA may pursue to achieve its objectives and the DFSA may pursue more than one remedy. The types of remedies, along with an indication of the DFSA's approach to the use of such remedies, are set out in sections 5-7 to 5-18 of this chapter and in chapter 4.

5-6-5 When the DFSA exercises a power specified in sections 5-7 to 5-9 in this chapter, it will follow the decision making procedures set out in chapter 6 of this Sourcebook. Chapter 6 sets out whether a Person will:

- (a) receive prior written notice and have a suitable opportunity to make representations prior to the DFSA exercising a power;
- (b) receive reasons for any decision to exercise such power; and
- (c) have a right of appeal to the Regulatory Appeals Committee.

5-6-6 When the DFSA exercises a power specified in sections 5-10 to 5-18 in this chapter, it will follow the procedures set out in the relevant section.

5-6-7 The DFSA does not exercise criminal jurisdiction. Should criminal conduct be identified, then it will be referred to the appropriate law enforcement agency.

5-7 APPOINTMENT OF MANAGERS

5-7-1 Pursuant to Article 88, the DFSA may require an Authorised Person to appoint one or more individuals to act as a manager of the business of the Person on such terms as the DFSA may stipulate. Such individuals must be nominated or approved by the DFSA.

5-7-2 The types of circumstances in which the DFSA may exercise this power are set out in Article 88(3). For example, the DFSA may require an Authorised Person to appoint a manager where it has concerns about the solvency or the level of compliance with prudential requirements of an Authorised Person.

5-7-3 An Authorised Person may receive an opportunity to make representations prior to being required to appoint a manager in accordance with the procedures set out in chapter 6. However, in circumstances of urgency, the DFSA may not give advance notice of the proposed requirement and may not provide the relevant Authorised Person with the opportunity to make representations prior to the imposition of the requirement.

5-7-4 When the DFSA does require an Authorised Person to appoint a manager, it will do so in writing, setting out:

- (a) that the Authorised Person is required to appoint a manager;
- (b) the time by which such manager must be appointed;
- (c) the reasons for the Authorised Person being required to appoint a manager;
- (d) the individual nominated by the DFSA to be the manager or the process by which approval may be given by the DFSA; and
- (e) the fact that the Authorised Person may appeal to the Regulatory Appeals Committee in respect of the decision.

5-7-5 The DFSA recognises that the use of its Article 88 power to appoint a manager is likely to have a significant impact on an Authorised Person. Accordingly, the DFSA is likely to exercise such power only in exceptional circumstances.

5-7-6 In considering whether a manager should be appointed, the DFSA may take into consideration all relevant circumstances, including but not limited to, the following matters:

- (a) the nature and extent of the business of the Authorised Person;
- (b) the nature of the DFSA's concerns in relation to the Authorised Person and whether they affect, or have the potential to affect, the DFSA's objectives;

- (c) whether the DFSA's concerns in relation to the Authorised Person may be addressed by the appointment of a manager;
- (d) where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;
- (e) whether an appropriately qualified manager may be available and willing to undertake the appointment;
- (f) the likely duration of the appointment; and
- (g) the likely impact of costs associated with the appointment of a manager.

5-8 FINES

5-8-1 The DFSA may seek to impose a fine upon a Person whom it considers has contravened a provision of the Law or Rules. The DFSA may seek to impose such a fine³¹ through:

- (a) exercising its power pursuant to Article 90; or
- (b) commencing proceedings before the Financial Markets Tribunal³² (see section 5-10 of this chapter).

5-8-2 A fine imposed by the DFSA pursuant to Article 90 or the Financial Markets Tribunal ("FMT") is referred to as an administrative fine. In some circumstances, the DFSA may seek to impose a fine by commencing proceedings before the Court.

5-8-3 In determining whether to impose a fine and the quantum of the fine, the DFSA may take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in section 5-16 of this chapter.

5-8-4 Generally, the DFSA will not seek to impose more than one fine on a Person in respect of:

- (a) multiple contraventions which are closely connected to the same set of facts and circumstances; or
- (b) the same contravention.

5-8-5 Where the DFSA decides to commence proceedings in the FMT or the Court for the imposition of a fine or any other remedy, it will follow the procedures set out in section 5-10 of this chapter. The FMT and the Court may impose a fine in any amount considered appropriate.

Administrative fine

5-8-6 The DFSA will generally seek to impose an Article 90 fine in respect of less serious conduct. The DFSA considers that the seriousness of the conduct can vary, depending on the particular facts and circumstances. Isolated, one-off, or unintended breaches would generally be considered as being less serious, whilst repeated, systemic and intentional breaches would be considered as being more severe and aggravated in nature. When determining whether to impose an administrative fine and the quantum of such a fine, the DFSA will take into account a number of circumstances and factors, including, but not limited to, whether the conduct was deliberate or reckless, and whether the contravention is continuing.

5-8-7 Where the circumstances and factors in a matter are of a more serious nature, the DFSA would not consider proceeding by way of administrative fine. Instead, the DFSA would consider commencing proceedings in either the Financial Markets Tribunal or the Court, unless the matter is settled by way of an Enforceable Undertaking.

5-8-8 The Enforcement Committee will generally make a recommendation to the Chief Executive to appoint a Decision Maker to consider whether a fine should be imposed against a Person.

5-8-9 A Decision Maker is an individual with a delegation to exercise a power on behalf of the DFSA. Prior to making a decision, the Decision Maker will follow the process set out in Article 90(3) and Chapter 6 of the RPP Sourcebook.

5-8-10 The Decision Maker may impose a fine, in any amount, up to the maximum prescribed in Article 90(2) (i.e. \$20,000 in respect of a natural person and \$100,000 in respect of a body corporate).

5-8-11 If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

5-9 ADMINISTRATIVE CENSURE

5-9-1 The DFSA may seek to impose a censure upon a Person whom it considers has contravened a provision of the Law and Rules it administers. The DFSA may seek to impose such a censure through:

- (a) exercising its power pursuant to Article 91; or
- (b) commencing proceedings before the FMT³³ or Court (see section 5.10 of this chapter).

5-9-2 The Enforcement Committee will generally make a recommendation to the Chief Executive to appoint a Decision Maker to consider whether a censure should be

imposed against a Person. Prior to making a decision, the Decision Maker will follow the process prescribed in Article 91 and Chapter 6 of the RPP Sourcebook.

5-9-3 In determining whether to impose a censure, the DFSA may take into consideration the circumstances of the conduct and will be guided by the Penalty guidance set out in section 5-16 of this chapter.

5-10 THE INSTITUTION OF PROCEEDINGS BEFORE THE FINANCIAL MARKETS TRIBUNAL OR COURT

5-10-1 The Chief Executive or his delegate is the only individual authorised to institute proceedings before the FMT. He may institute proceedings where it appears reasonably likely to him that there has been a breach of the Law or Rules (see Article 33).

5-10-2 The Chief Executive will consider the facts and circumstances of each case, and where appropriate, any recommendation of the Enforcement Committee, in determining whether to commence proceedings before the FMT.

5-10-3 In considering whether to commence proceedings before the FMT or Court, the Chief Executive may take into consideration all relevant circumstances, including but not limited to, the following matters:

- (a) the nature, seriousness and impact of the suspected contravention and whether the suspected contravention is ongoing;
- (b) the remedies available to the FMT, should the contravention be proven;
- (c) the conduct of the Person after the contravention, including action taken by the Person to minimise the effect of the contravention and to bring the issue to the attention of the DFSA;
- (d) the previous disciplinary record and compliance history of the Person;
- (e) action taken by the DFSA in previous similar cases; and
- (f) action taken by a Financial Services Regulator in respect of the conduct of the Person giving rise to the breach or any related conduct.

5-10-4 The DFSA may, prior to the commencement of proceedings before the FMT or Court, send a preliminary findings letter to the Person or Persons who are the subject of the proposed proceedings. Such a letter would generally:

- (a) set out the DFSA's preliminary view that proceedings should be commenced, the remedies the DFSA is minded to seek and the general facts upon which the DFSA has relied upon in forming its preliminary view;

- (b) provide an opportunity to make submissions on the accuracy of the general facts upon which the DFSA has relied and any proposal to commence proceedings; and
- (c) where appropriate, invite the commencement of settlement discussions (in accordance with the settlement guidance in section 5-17 of this chapter).

5-10-5 The DFSA will take into account any submissions received in response to a preliminary findings letter before making a recommendation to the Enforcement Committee and, ultimately, the Chief Executive about whether to commence proceedings before the FMT or Court.

5-10-6 If satisfied that the alleged contravention is proven the FMT may make any order including those set out in Article 34. The orders include fines, censures, compensation, disgorgement and cease and desist orders.

5-11 INJUNCTIONS AND ORDERS

5-11-1 The DFSA has a broad power to make application to the DIFC Court for injunctive relief and other orders (see Article 92). The DFSA may seek orders including, but not limited to:

- (a) an order restraining a Person that is engaging in conduct that would constitute a contravention of the Law or Rules;
- (b) an order requiring a Person to do an act or thing to remedy a contravention or to minimise loss or damage; or
- (c) any other order as the Court sees fit, including an order restraining the transfer of assets or the movement of individuals.

5-11-2 In deciding whether an application for an injunction or other order is appropriate in any given case, the DFSA will consider all relevant circumstances including, but not limited to, the following matters:

- (a) the nature, seriousness and impact of the contravention and whether the contravention is ongoing;
- (b) whether the contravention affects, or has the potential to affect, the DFSA's objectives;
- (c) whether any party who may have suffered some detriment as a result of the contravention is able to take their own remedial action;
- (d) where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;

- (e) whether there is a danger of assets being dissipated or removed from the jurisdiction of the Court;
- (f) whether there is a danger that the Person or Persons may leave the jurisdiction, and if so, the effect that the Person's or Persons' absence may have on the effectiveness of the Court's orders;
- (g) the costs the DFSA would incur in applying for and enforcing an injunction or other orders and the likely effectiveness of such an injunction or other order;
- (h) the disciplinary record and compliance history of the Person;
- (i) whether, if proven, a suitable remedy is available;
- (j) the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter; and
- (k) whether there is information to suggest that the Person who is the subject of the possible application is or has been involved in money laundering, terrorist financing or other form of financial crime or criminal conduct.

5-12 CIVIL PROCEEDINGS

5-12-1 Article 94 provides that where a Person has:

- (a) intentionally, recklessly or negligently committed a breach of duty, requirement, prohibition, obligation or responsibility imposed under the Law or Rules ; or
- (b) committed fraud or other dishonest conduct in connection with the matter arising under the Law or Rules;

the Person is liable to compensate any other Person for any loss or damage caused to that other Person as a result of such conduct.

5-12-2 Article 94(2) provides that the Court may, on application of the DFSA, or of a Person who has suffered the loss or damage, make orders for the recovery of damages or for compensation or for the recovery of property or other order as the Court sees fit, except where such liability is excluded under the Law and Rules administered by the DFSA.

5-12-3 Article 94 gives the DFSA, and any aggrieved Persons, broad powers to make application for recovery of damages and other orders where there has been an identified contravention of the Laws and Rules administered by the DFSA. An aggrieved Person may exercise rights provided under Article 94 independently or contemporaneously with, and exclusively of, the DFSA.

5-12-4 The DFSA may not commence proceedings in every case where there may have been a relevant contravention. This does not prevent, however, any aggrieved Person from commencing his own proceedings.

5-12-5 In determining whether to commence proceedings, the DFSA may take into account all relevant circumstances. It is not possible to provide an exhaustive list of the circumstances that may be taken into account, as they may depend on the facts of the particular matter. However, the following list indicates some of those matters that may be considered:

- (a) the nature, seriousness and impact of the suspected contravention and whether the alleged contravention is ongoing;
- (b) whether the conduct and contravention affects, or has the potential to affect, the DFSA objectives;
- (c) whether any party who may have suffered some detriment as a result of the alleged contravention is able to take his own remedial action;
- (d) in circumstances where more than one Person has suffered loss or damage:
 - (i) the number of those that have suffered loss or damage and the amount of loss or damage involved; and
 - (ii) whether it is convenient or possible for a class of aggrieved Persons to run a proceeding;
- (e) the cost that the DFSA would incur in applying for or enforcing any order that it is successful in obtaining;
- (f) whether the conduct in question can be adequately addressed by the use of other regulatory powers;
- (g) whether there is information to suggest that the Person is or has been, involved in money laundering, terrorist financing or other form of financial crime or criminal conduct; and
- (h) whether the DFSA has a reasonable chance of success in the relevant proceedings.

5-13 THE COMPULSORY WINDING UP OF A REGULATED ENTITY

5-13-1 The DFSA may apply to the Court for the winding up of a company which is or has been an Authorised Firm, an Authorised Market Institution or operating in breach of the Financial Services prohibition where it considers it is just and equitable and in the interests of the DIFC³⁴.

5-13-2 In deciding whether such an application is just and equitable and in the interests of the DIFC, the DFSA will consider all relevant circumstances including but not limited to the following matters:

- (a) the need to protect the company's Clients, particularly in cases where an Authorised Firm holds or controls Client Assets,
- (b) whether the company has operated in accordance with the laws of the DIFC;
- (c) where the company has contravened the Law or Rules, the nature, seriousness and impact of the contravention and whether the contravention is ongoing;
- (d) where the company has contravened the Law or Rules, whether any alleged contravention affects, or has the potential to affect, the DFSA objectives;
- (e) where the company has contravened the Law or Rules, whether there are any other steps a Person could take or other orders a Court could make to remedy any contravention;
- (f) whether the needs of those operating in the DIFC and the interests of the DIFC are best served by the company ceasing to operate;
- (g) in the case of an Authorised Firm, where the DFSA considers that its Licence should be withdrawn or where it has been withdrawn, the extent to which there is other business that the firm carries on without authorisation;
- (h) whether there is information to suggest that the company is or has been involved in money laundering, terrorist financing or other form of financial crime or other criminal conduct;
- (i) where there is a significant cross border or international element to the business being carried on by the company, the impact on the business in other jurisdictions and whether another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter;
- (j) the extent to which the company has cooperated, and is likely to continue to cooperate, with the DFSA; and
- (k) the nature of the involvement of the officers of a company in the foregoing and whether this suggests a systemic failure within the company.

5-14 MARKETS LAW - ORDERS IN THE INTERESTS OF THE DIFC

5-14-1 Article 68 of the Markets Law 2011 provides that the Court or FMT, on application by the DFSA, may make one of a range of orders in relation to a Person,

irrespective of whether a contravention has occurred, if it is in the interests of the DIFC for such an order to be made.

5-14-2 Before the DFSA can make an application for an order (whether interim, ex parte or final), the DFSA must be satisfied that such an order would be in the interests of the DIFC and will take into account all relevant circumstances, including, but not limited to, the following:

- (a) the nature and extent of the conduct or any other matters in question;
- (b) the effect of the conduct or any other matters on the market and the DFSA's objectives;
- (c) whether the market is currently informed of all material information;
- (d) what steps the relevant Person has taken in respect of the conduct or any other matters being considered;
- (e) whether any other form of relief is available to the DFSA or appropriate in the circumstances;
- (f) whether the relevant conduct or any other matters could have a significant impact on the integrity of the DIFC market or the confidence in that market; and
- (g) the effect of the conduct or any other matters on the interests of participants in the DIFC.

5-15 INTERVENTION POWER

5-15-1 Article 95 empowers the DFSA to intervene as a party in any proceeding in the DIFC Court where it considers such intervention appropriate to meet the objectives of the DFSA. Where the DFSA so intervenes it shall be subject to any other law, and have all the rights, duties and liabilities of such a party.

5-15-2 This provision does not affect the ability of the DFSA to seek leave to appear in proceedings, as *amicus curiae* (i.e. someone not a party to a case, who volunteers to offer information to assist a court in deciding a matter before it), to make submissions on an issue of significance to the DIFC or to place material before the Court that may otherwise not be available.

5-15-3 The DFSA will generally only exercise this right of intervention where it forms the view that it will not be able to meet its objectives by simply appearing as *amicus curiae* and that to fully serve the interests of the DIFC, it is necessary to join the proceeding as a party and stay involved in the matter throughout.

5-16 PENALTY GUIDANCE

5-16-1 This section sets out the DFSA's policy for the determination of a financial penalty ("penalty"). Such a penalty may be an administrative fine or the submission of a proposed penalty to the Financial Markets Tribunal (or other competent tribunal or Court).

5-16-2 The DFSA may also refer to this section when determining an appropriate penalty in settlement agreements including an Enforceable Undertaking.

5-16-3 When determining a penalty the DFSA will consider all relevant facts and circumstances including, but not limited to, the following:

- (a) the DFSA's objectives;
- (b) the deterrence effect of the penalty on:
 - (i) Persons that have committed the contraventions; and
 - (ii) other Persons from committing similar contraventions;
- (c) the nature, seriousness and impact of the contravention the subject of the penalty including, but not limited to, consideration of the following factors:
 - (i) the duration and frequency of the contravention;
 - (ii) whether the contravention revealed serious or systemic weakness in the Person's management, systems and controls relating to all or part of the Person's business;
 - (iii) in market misconduct cases, the DFSA should consider whether the contravention had an adverse effect on markets and, if it did, how serious that effect was and may consider the risk to the reputation of the DIFC markets;
 - (iv) the loss or risk of loss caused to consumers, investors or other market users; and
 - (v) the nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention.
- (d) the extent to which the contravention was committed deliberately or recklessly including, but not limited to, consideration of the following factors:
 - (i) in relation to an individual:

- (A) whether the contravention was intentional (in that the individual intended or foresaw the potential or actual consequences of his actions);
 - (B) whether the individual has given no consideration to the consequences of the behaviour that constitutes the contravention.
 - (C) where the individual has not followed a firm's internal procedures and/or the relevant DFSA Laws and Rules, the reasons for not doing so; and
 - (D) where the individual has taken decisions beyond his field of skill, competence and experience, the reasons for the decisions and for them being taken by that individual;
- (ii) in relation to a firm:
- (A) whether the contravention was intentional or reckless, for example where a firm deliberately takes a course of action when it knew the actual or potential consequences of its actions;
 - (B) where the firm's internal procedures were intentionally designed to produce the contravention or were drafted in such a way that the contravention was probable; and
 - (C) where the firm has acted beyond its field of competence, for example by entering into a business line with which it has no previous experience;
- (e) if the contravention involved a number of Persons, the degree of involvement and specific role of each Person;
- (f) the benefit gained (whether direct or indirect, pecuniary or non-pecuniary) or loss avoided as a result of the contravention which is the subject of the penalty;
- (g) the conduct of the Person on whom the penalty is imposed following the contravention including, but not limited to, consideration of the following factors:
- (i) whether or not the Person brought the contravention to the DFSA's attention (or to the attention of other regulatory authorities, where relevant);
 - (ii) the degree of cooperation the Person showed during the DFSA's enquiries and investigation of the contravention; and
 - (iii) any remedial steps taken by the Person since the contravention was identified (and whether those steps were taken at the Person's own initiative or that of the DFSA);

- (h) the difficulty in detecting and investigating the contravention the subject of the penalty;
- (i) whether the Person committed the contravention the subject of the penalty in such a way as to avoid or reduce the risk that the contravention would be discovered. A Person's incentive to commit a contravention may be greater where the contravention which is, by its nature, harder to detect. The DFSA may therefore impose a more significant penalty where it considers that a Person committed a contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;
- (j) the disciplinary record and compliance history of the Person on whom the penalty is imposed including, but not limited to, consideration of the following factors:
 - (i) whether the DFSA or any other law enforcement agency or Financial Services Regulator has taken any previous enforcement action against the Person;
 - (ii) whether the Person has previously undertaken not to do a particular act or engage in particular behavior (for example in an Enforceable Undertaking to the DFSA); and
 - (iii) whether the DFSA or any other law enforcement agency or Financial Services Regulator has previously taken supervisory action against the Person (for example by restricting the business of the Person) or has previously requested the Person to take remedial action and the extent to which that action has been taken; and
- (k) the financial circumstances of the Person, particularly in the case where the DFSA is considering an administrative fine, including, but not limited to a consideration of whether there is verifiable evidence of serious financial hardship or financial difficulties if the Person were to pay the level of a financial penalty appropriate for the particular contravention.

5-16-4 The DFSA may take into account that natural persons may not always have the financial resources of a body corporate and that enforcement action may have a greater impact on a natural person than a body corporate.

5-16-5 The DFSA may consider the potential impact on a firm's financial position which may result from a proposed penalty, particularly in relation to the implications for a firm's clients and, where relevant, the firm's ability to pay restitution.

5-17 SETTLEMENT GUIDANCE

5-17-1 A settlement is a resolution, between the DFSA and a third party, to agree an outcome resulting from an investigation. A Person who is or may be the subject of any form of enforcement action arising out of or during the course of an investigation may enter into settlement discussions with the DFSA.

5-17-2 Settlement discussions are possible at any stage of the enforcement processes, either before or after enforcement action has commenced. When considering whether or not to enter into negotiations for settlement, or a settlement agreement, the DFSA will consider its objectives.

5-17-3 The DFSA generally considers that the early settlement of an investigation advances its objectives in that it may result in, for example, consumers obtaining compensation sooner, the saving of DFSA and industry resources, and the promotion of good business and regulatory practices.

5-17-4 The DFSA's general view is that settlement discussions should take place as early as possible. However, the DFSA will only be able to settle when it is confident it has sufficient understanding of the nature and gravity of the suspected misconduct to make a reasonable assessment of the appropriate outcome.

5-17-5 The DFSA expects settlement discussions to take place on a "without prejudice" basis; namely, that no party to the discussions may subsequently rely upon any admissions or statements made during the course of the settlement discussion or on any document created recording those discussions.

5-17-6 The DFSA will only settle when the agreed terms result in what the DFSA considers to be an effective regulatory outcome.

5-17-7 The DFSA will set clear and reasonable timetables for settlement discussions to ensure they do not unreasonably delay settlement or a regulatory or enforcement outcome.

5-17-8 Settlement in particular circumstances should not be regarded as binding precedent for future settlement discussions.

Factors the DFSA Will Consider When Contemplating Settlement

5-17-9 In deciding whether a proposed settlement is acceptable and in accordance with meeting its objectives, the DFSA will consider a number of factors, including but not limited to:

- (a) the nature, seriousness and impact of the conduct or suspected contravention the subject of the proposed settlement, and whether the suspected contravention is continuing;

- (b) whether the Person is prepared to acknowledge publicly the DFSA's concerns about the conduct or suspected contravention which is the subject of the proposed settlement, and the necessity for protective or corrective action;
- (c) whether the conduct or suspected contravention which is the subject of the proposed settlement was inadvertent;
- (d) whether the suspected contravention which is the subject of the proposed settlement was the result of the conduct of one or more individual officers or employees of the Person;
- (e) the seniority and level of experience of the individuals involved in the conduct and/or suspected contravention which is the subject of the proposed settlement;
- (f) whether the Person co-operated with the DFSA including providing complete information about the conduct or suspected contravention which is the subject of the proposed settlement, and any remedial action taken by the Person;
- (g) whether the settlement will achieve an effective outcome for those (such as consumers or investors) who have been adversely affected by the conduct and/or suspected contravention which is the subject of the proposed settlement;
- (h) whether the Person is likely to comply with the terms of the settlement;
- (i) whether the Person's compliance with the Law and Rules generally will be improved;
- (j) the disciplinary record and compliance history of the Person;
- (k) the prospects for a swift resolution of the matter; and
- (l) whether the settlement promotes general deterrence in making regulated entities in the DIFC aware of the conduct or suspected contravention which is the subject of the proposed settlement, and the consequences arising from engaging in similar conduct or contraventions.

Form of Settlement

5-17-10 Any settlement entered into by the DFSA will be documented in the form of a legally enforceable agreement executed by all parties. Generally, a settlement accepted by the DFSA will be in the form of an Enforceable Undertaking.

Enforceable Undertakings

5-17-11 An Enforceable Undertaking (EU) is a written promise, made under Article 89, to do or refrain from doing a specified act or acts. It is an alternative mechanism for regulating contraventions of the Law or Rules.

Acceptance of an Enforceable Undertaking

5-17-12 An EU may be given by a Person at any time, either before, during or after an investigation or before the commencement of litigation or proceedings in the DIFC Court or Financial Markets Tribunal and accepted by the DFSA. The DFSA does not have the power to require a Person to enter into an EU, nor can a Person compel the DFSA to accept an EU. This does not mean, however, that the DFSA can't propose an EU to a Person, during the course of settlement negotiations, or provide a Person with a draft EU to provide guidance as to the terms of an EU that the DFSA would be willing to accept in the circumstances of the matter.

5-17-13 The DFSA may accept an EU that it considers necessary or desirable in pursuit of its objectives. Article 89 does not prescribe a particular structure or format to an EU. However, in the context of an enforcement matter, the DFSA will generally only accept an EU that:

- (a) contains an admission or acknowledgement of the DFSA concerns;
- (b) contains undertakings that address the DFSA's concerns; and
- (c) contains an agreement to make the EU public, and an agreement not to make public statements that conflict with the spirit of the EU.

5-17-14 A Person offering an EU to the DFSA will in most circumstances also undertake in the EU to pay any costs associated with compliance with the EU.

5-17-15 An EU will not take effect until it is formally accepted by the Chief Executive of the DFSA or his delegate.

Variation or Withdrawal

5-17-16 Once accepted by the DFSA, an EU can only be withdrawn or varied with the consent of the DFSA in writing. The DFSA will only consider a request to vary an undertaking if:

- (a) the variation will not alter the spirit of the original undertaking;
- (b) compliance with any one or more terms of the undertaking is subsequently found to be impractical or impossible; or
- (c) there has been a material change in the circumstances which led to the undertaking being given.

Compliance with an EU

5-17-17 If the DFSA considers that a Person has not complied with a term of the EU, the DFSA may apply to the Court for appropriate orders. The DFSA may publicise the fact

of the application to the Court and any subsequent orders of the Court. The DFSA will also seek the costs of the application.

5-18 COSTS

5-18-1 The DFSA will generally seek litigation costs orders from the Court and the FMT where it has commenced a proceeding and been successful in achieving the outcome sought.

5-18-2 The DFSA may also make an application claiming the costs of an investigation where the FMT or any court of law, as a result of investigation, has found a contravention of the Law or Rules³⁵. Such applications are described in section 5-10 of this chapter.

Undertakings as to Damages

5-18-3 Pursuant to Article 47(1) of the DIFC Court Law, the Court shall not require the DFSA to give an undertaking as to damages as a condition for granting an injunction or any order made under DIFC Law. In making any order the Court shall not take into account in determining the merits of an application for the injunction that the DFSA has not given an undertaking as to damages.

Enforcement of orders

5-18-4 The DFSA will do all things necessary and where appropriate, commence relevant actions to ensure full compliance with any orders of the Financial Markets Tribunal or of the Court which arise out of an investigation.

5-18-5 In particular, Article 87(5) provides that the DFSA may apply to the Court for recovery, as a debt due, of so much of a fine as is not paid by a party together with costs. Further, in appropriate circumstances, the DFSA may apply to the Court for the winding up of a body corporate.

5-19 PUBLICITY & MAINTENANCE OF REGISTERS

5-19-1 The DFSA will generally publish the outcome of enforcement actions that it undertakes. This approach is consistent with the pursuit of its objectives such as maintaining confidence and the integrity of the DIFC and to prevent or reduce, through better understanding and deterrence, conduct that may damage the DIFC. Further, the publication of its enforcement outcomes is consistent with the DFSA's commitment to open and transparent enforcement processes. The DFSA will generally refrain from publicising information that is commercially confidential or contrary to the public interest.

5-19-2 The DFSA is also required to publish and maintain a register³⁶ in respect of:

- (a) withdrawals and suspensions of Licences and authorisations of Authorised Firms, Authorised Market Institutions and Authorised Individuals;
- (b) withdrawals of registration of Ancillary Service Providers; and
- (c) withdrawals and suspensions of Auditors.

5-20 CONCLUSION OF AN INVESTIGATION

5-20-1 The DFSA will conclude an investigation when:

- (a) it determines to take no further action in response to the suspected contraventions of the Law and Rules subject of the investigation; and
- (b) all remedies and obligations resulting from an investigation are concluded and fulfilled.

5-20-2 The DFSA may determine to take no further action in respect of the suspected contraventions the subject of an investigation due to insufficiency of evidence or in circumstances where pursuing enforcement action in respect of the suspected contraventions would not accord with the DFSA's objectives.

Costs of investigation

5-20-3 Where a Person is found by the FMT or Court to have contravened a provision of the Law or Rules, the FMT or Court may order³⁷ that Person to reimburse the DFSA in respect of the whole or a specified part of the costs and expenses of the investigation, including the remuneration of an officer involved in the investigation.

¹ Article 85 of the Regulatory Law 2004

² Article 86 (7) of the Regulatory Law 2004

³ Article 39 of the Regulatory Law 2004

⁴ Article 40 of the Regulatory Law 2004

⁵ Article 80 (2) of the Regulatory Law 2004

⁶ Article 82 of the Regulatory Law 2004

⁷ Article 80 (3) of the Regulatory Law 2004

⁸ Article 80 (3)(b) of the Regulatory Law 2004

⁹ Article 80 (13) of the Regulatory Law 2004

¹⁰ Article 82 of the Regulatory Law 2004

¹¹ Article 84 (1) of the Regulatory Law 2004

¹² Article 83 of the Regulatory Law 2004

¹³ Article 80 (10) of the Regulatory Law 2004

¹⁴ Article 38 of the Regulatory Law 2004

¹⁵ Article 33 of the Regulatory Law 2004

¹⁶ Article 39 of the Regulatory Law 2004

¹⁷ Article 40 of the Regulatory Law 2004

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- ¹⁸ Article 89 of the Regulatory Law 2004
¹⁹ Articles 84, 92, 93, 94 and 95 of the Regulatory Law 2004
²⁰ Article 90 of the Regulatory Law 2004
²¹ Article 91 of the Regulatory Law 2004
²² Article 49 of the Regulatory Law 2004
²³ Article 50 of the Regulatory Law 2004
²⁴ Article 51 of the Regulatory Law 2004
²⁵ Article 57 of the Regulatory Law 2004
²⁶ Article 58 of the Regulatory Law 2004
²⁷ Article 60 of the Regulatory Law 2004
²⁸ Article 61 of the Regulatory Law 2004
²⁹ Article 88 of the Regulatory Law 2004
³⁰ Article 98 of the Regulatory Law 2004
³¹ Article 105 of the Regulatory Law 2004
³² Article 87 (1) of the Regulatory Law 2004
³³ Articles 33 and 34 of the Regulatory Law 2004
³⁴ Article 93 of the Regulatory Law
³⁵ Article 79(2) of the Regulatory Law
³⁶ Article 62 of the Regulatory Law 2004
³⁷ Article 79 (2) of the Regulatory Law 2004