

**APPENDIX 4**

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**REGULATORY LAW AMENDMENT LAW**

**DIFC LAW NO. xx of [2012]**

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## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the “Regulatory Law Amendment (No.x) Law of [2012]”.

### **2. Legislative Authority**

This Law is made by the Ruler of Dubai.

### **3. Date of enactment**

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

### **4. Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

### **5. Saving and Transitional**

(1) The saving and transitional provisions in this Article are applicable in circumstances where the DFSA has issued a notice under Article 90 or 91 of the previous law. For the purposes of this Article the “previous law” means the version of the Regulatory Law 2004 in force immediately prior to this amendment law coming into force.

(2) Where such a notice has been issued by the DFSA, the amendment of Articles 90 and 91 under this law shall not affect:

(a) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or

(b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,

in relation to the relevant notice, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under the Regulatory Law 2004 as amended by this amendment law subject to Article 5 (3).

(3) Where such a notice has been issued by the DFSA, Articles 90 and 91 as prescribed in the previous law are deemed to continue in force until such time as necessary for the purposes of any investigation or proceeding specified in this Article to be concluded.

(4) The DFSA may, by Rules, prescribe any transitional or saving provisions as appear to the DFSA necessary so as to give effect to, or to facilitate, the transition from the previous law to this Law.

**PART 2: AMENDMENTS TO REGULATORY LAW 2004**

6. In the Regulatory Law 2004 insert the underlined text and delete the struck through text as follows:

**CHAPTER 4 - THE REGULATORY APPEALS COMMITTEE OF THE DFSA BOARD**

**27. Jurisdiction of the Regulatory Appeals Committee**

- (1) In Article 27(2):
- (a) 'applicant' means a person who has applied to the DFSA for a decision; and
  - (b) 'officer, employee or agent' of a person includes a person who proposes to become an officer, employee or agent of a person.
- (2) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where:
- (a) an applicant appeals the decision of the DFSA in relation to an application for a Licence or Recognition Notice or for an extension to the scope of a Licence or Recognition Notice;
  - (b) an applicant, Authorised Firm or Authorised Market Institution, Recognised Body or Recognised Member appeals the decision of the DFSA to impose or vary or withdraw a condition or restriction to its Licence or Recognised Notice;
  - (c) an Authorised Firm, Authorised Market Institution, Recognised Body or Recognised Member appeals a decision of the DFSA in relation to the exercise of its power to withdraw a Licence, revoke a Recognition Notice or to withdraw an authorisation in relation to a Financial Service;
  - (d) an officer, employee or agent of an Authorised Firm appeals a decision of the DFSA in relation to his application for Authorised Individual status or for extension of his status;
  - (e) an Authorised Individual appeals the decision of the DFSA to impose or vary or withdraw a condition or restriction to the grant of Authorised Individual status;
  - (f) a person appeals a decision of the DFSA to:
    - (i) issue a written notice, or vary or withdraw a written notice to which he is subject, under Article 58(1); or
    - (ii) refuse to vary or withdraw a written notice following his request pursuant to Article 58(8);
  - (g) an Authorised Individual appeals a decision of the DFSA to:

- (i) issue a written notice, or vary or withdraw a written notice to which he is subject, under Article 58(2);
  - (ii) refuse to vary or withdraw a written notice following his request or the request of an Authorised Firm pursuant to Article 58(8); or
  - (iii) suspend or withdraw his Authorised Individual status under Article 58(2), (3) or (5);
- (h) an Authorised Firm or Authorised Market Institution appeals the decision of the DFSA to issue a notice to it or make a requirement of it under Article 74, 75, 76 or 78;
- (i) a person seeking to acquire or who has acquired control of an Authorised Firm or Authorised Market Institution appeals the decision of the DFSA to notify under Article 64 that a controller is unacceptable;
- (j) an applicant appeals a decision of the DFSA in relation to an application for registration as an auditor;
- (k) a person appeals a decision of the DFSA to:
- (i) issue an administrative fine under Article 90; or
  - (ii) issue an administrative censure under Article 91; or
- (l) ~~(k)~~ an appeal is brought under such other jurisdiction as the DFSA Board of Directors may provide in the Rules or as may be conferred by or under any other DIFC Law.

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## **CHAPTER 7 – RESTRICTION, SUSPENSION AND WITHDRAWAL OF AUTHORISED INDIVIDUAL STATUS**

### **58. Restricting Persons or Suspending or Withdrawing Authorisations**

- (1) If the DFSA reasonably concludes that a person is not a fit and proper person to perform any functions in or in connection with the provision of Financial Services or Ancillary Services in the DIFC, whether or not they are Licensed Functions, it may by means of written notice restrict such person from performing any or all such functions.
- (2) If the DFSA reasonably concludes that:
- (a) an Authorised Individual is in breach of or has been in breach of, an obligation that applies as a result of such person's Authorised Individual status; or
  - (b) a person is no longer fit and proper to perform a role in respect of which he is an Authorised Individual;

it may:

- (c) by means of a written notice restrict the person from performing one or more Licensed Functions; or
  - (d) suspend or withdraw Authorised Individual status from such person.
- (3) The DFSA may withdraw the Authorised Individual status of a person if:
- (a) the person becomes bankrupt;
  - (b) the person is convicted of a serious criminal offence;
  - (c) the person becomes incapable (through mental or physical incapacity) of managing his affairs;
  - (d) the person or the relevant Authorised Firm asks the DFSA to withdraw the status; or
  - (e) the Licence of the relevant Authorised Firm is withdrawn.
- (4) The DFSA may withdraw authorisation in relation to one or more Licensed Functions of an Authorised Individual if the Authorised Individual or relevant Authorised Firm asks the DFSA to withdraw such authorisation.
- (5) Where the DFSA:
- (a) is conducting an investigation under Article 78; and
  - (b) in the course of such investigation suspects that a person has engaged in conduct that may form grounds for the withdrawal of the person's Authorised Individual status;

it may suspend the Authorised Individual status of such person for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the person.

- (6) A person who:
- (a) performs a function in breach of Article 58(1); or
  - (b) performs a Licensed Function:
    - (i) in breach of the Rules;
    - (ii) contrary to a written notice issued under Article 58(2); or
    - (iii) where his Authorised Individual status has been suspended or withdrawn under Article 58(2), (3), (4) or (5);
- commits a contravention.
- (7) The DFSA may vary or withdraw a written notice issued under Article 58(1) or (2) where it is reasonable to do so.

- (8) The DFSA may act under Article 58(7) on its own initiative or at the request of the relevant person or Authorised Firm.

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## CHAPTER 2 - THE CONDUCT OF INVESTIGATIONS

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### 80. Powers to Obtain Information and Documents for Investigation

- (1) 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, it may:
- (a) enter the business premises of such person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
  - (b) require such person to give, or procure the giving of, specified information in such form as it may reasonably require;
  - (c) require such person to produce, or procure the production of, specified documents;
  - (d) require such person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) ~~at~~ at a specified time and place to answer questions in private (compulsory interview) ~~, including under oath or affirmation administered by an officer of the DFSA that the statements that the person will make will be true;~~ or
  - (e) require such person to give it any assistance in relation to the investigation which the person is able to give.
- (2) Where the DFSA exercises its power under Article 80(1)(a) to enter business premises, it may:
- (a) require any appropriate person to make available any relevant information stored at those premises for inspection or copying;
  - (b) require any appropriate person to convert any relevant information into a form capable of being copied; and
  - (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) Where the DFSA exercises its power under Article 80(1)(d) to conduct a compulsory interview, it may give a direction:
- (a) concerning who may be present;

- (b) preventing any person present during any part of the compulsory interview from disclosing to any other person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
  - (c) concerning the conduct of any person present including as to the manner in which they will participate in the interview;
  - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
  - (e) requiring the interviewee to answer any questions relevant to the investigation.
- (4) ~~(2)~~ A requirement made under Article 80 (1) (b),(c), (d), and (e) shall be stated in writing.
- (5) ~~(3)~~ The DFSA may require the relevant person to give such information or produce such documents by the end of a reasonable period and at a place specified in the notice.
- (6) ~~(4)~~ The DFSA may exercise its powers under Article 80 (1) in respect of any person within, or outside of, the DIFC.
- (7) ~~(5)~~ In exercising its powers under Article 80(1) outside of the DIFC, the DFSA shall comply with local requirements relevant to the exercise of those powers including, where appropriate, informing or proceeding in collaboration with a local regulator.
- (8) ~~(6)~~ Subject to Article 80~~(9)~~ ~~(7)~~, information given or documents produced as a result of the exercise by the DFSA of powers under Article 80 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (9) ~~(7)~~ The DFSA shall not disclose a statement made by a person in answer to any question asked pursuant to a requirement made of the person under Article 80(1)(d) to any law enforcement agency for the purpose of criminal proceedings against the person unless:
- (a) the person consents to the disclosure; or
  - (b) the DFSA is required by law or court order to disclose the statement.
- (10) The DFSA may retain possession of any information and documents given to it pursuant to a requirement made under Article 80(1) for so long as is necessary:
- (a) for the purposes of the investigation to which the notice relates;
  - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
  - (c) for such a proceeding to be completed.

- (11) A person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under Article 80(1), but any lien is not otherwise prejudiced.
- (12) Where a person is unable to produce information or documents in compliance with a requirement made under Article 80(1), the DFSA may require the person to state, to the best of that person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (13) Where the DFSA considers that, if disclosed, the fact of the issuing of a notice requiring a person to:
- (a) produce documents;
  - (b) give information;
  - (c) attend a compulsory interview; or
  - (d) give assistance;
- may hinder the investigation to which it relates, the DFSA may direct a person who receives a notice under Article 80(1) not to disclose the receipt of a notice or any information relating to compliance therewith to any other person, other than his legal representative under a duty of confidentiality.

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## **PART 7: ENFORCEMENT**

### **88. Appointment of Managers**

- (1) The DFSA may by written notice require an Authorised Firm or Authorised Market Institution to appoint one or more individuals to act as managers of the business of the person on such terms as the DFSA may stipulate in its written notice. Such terms may be varied from time to time by notice in writing given by the DFSA to the person.
- (2) The individual or individuals appointed to act as managers of the business under Article 88(1) must be nominated or approved by the DFSA.
- (3) The DFSA may impose a requirement under Article 88(1) ~~in the circumstances prescribed in the Rules, where it considers it necessary or desirable to appoint a manager:~~
- (a) to determine or address concerns as to the solvency or the level of compliance with prudential requirements of the Authorised Firm or Authorised Market Institution;
  - (b) for the orderly transition of the Authorised Firm or Authorised Market Institution from one set of owners or controllers to a new set of owners or controllers;

- (c) to wind down the operations of the Authorised Firm or Authorised Market Institution for the protection of customers of the Authorised Firm or Authorised Market Institution; or
- (d) where it has reasonable grounds to suspect serious contraventions of the law have been committed by the Authorised Firm or Authorised Market Institution and to ensure that customers or regulated entities are not adversely affected or to maintain the integrity of the DIFC.

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**90. Administrative ~~Notice of Imposition of Fine~~**

- (1) ~~The DFSA shall prescribe in Rules:~~
  - (a) ~~which of the provisions of the Law or Rules or other legislation administered by the DFSA are provisions to which this Article applies; and~~
  - (b) ~~procedures in relation to the imposition and recovery of fines under this Article.~~
- (1) The DFSA may fine a person where such person contravenes:
  - (a) a Rule made by the DFSA; or
  - (b) a provision of any legislation administered by the DFSA except for Articles 30 and 35.
- (2) Where the DFSA considers that a person has contravened a provision of the Rules or legislation prescribed under Article 90(1), it may impose by written notice given to the person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding:
  - (a) \$20,000 in the case of a natural person; or
  - (b) \$100,000 in the case of a body corporate;
 in respect of each contravention.
- (3) ~~If, within the period specified in the notice:~~
  - (a) ~~the person pays the prescribed fine to the DFSA, then no proceedings may be commenced by the DFSA against the person in respect of the relevant contravention;~~
  - (b) ~~the person has not paid the prescribed fine to the DFSA, and has taken such action as is prescribed in the Rules to object to the imposition of the fine, then proceedings may be commenced by the DFSA against the person in respect of the relevant contravention;~~  
or

- ~~(c) — the person has not paid the prescribed fine to the DFSA, and has not taken such action as is prescribed in the Rules to object to the imposition of the fine, then the DFSA may apply to the Court for recovery as a debt due so much of a fine as is not paid.~~
- (3) The DFSA may exercise its power under Article 90(1) only if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed fine.
- (4) Upon deciding to impose a fine upon a person, the DFSA must without delay inform the person in writing of:
  - (a) such decision and the reasons for such decision;
  - (b) the date on which the decision is to take effect; and
  - (c) the date by which payment of the fine must be made.
- (5) If the person has not paid the full amount of the fine within the period specified in the notice, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs.

## 91. Administrative Censures

- ~~(1) The DFSA shall prescribe in Rules:
 
  - ~~(a) — which of the provisions of the Law or Rules or other legislation administered by the DFSA are provisions to which this Article applies; and~~
  - ~~(b) — procedures in relation to the imposition of a censure under this Article.~~~~
- ~~(2) Where the DFSA considers that a person has contravened a provision of the legislation prescribed under Article 91(1)(a) the DFSA may censure the person, including by means of publishing a written notice of censure.~~
- ~~(3) The DFSA may only exercise its power under Article 91(2) if:
 
  - ~~(a) — it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed censure; and~~
  - ~~(b) — the person has not taken such action as is prescribed in the Rules to object to the imposition of the censure.~~~~
- (1) The DFSA may censure a person where such person contravenes:
  - (a) a Rule made by the DFSA; or
  - (b) a provision of any legislation administered by the DFSA except for Articles 30 and 35.
- (2) The DFSA may exercise its power under Article 91(1) only if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed censure.

- (3) Upon deciding to impose a censure upon a person, the DFSA must without delay inform the person in writing of:
- (a) such decision the reasons for such decision; and
  - (b) the date on which the censure is to be made.
- (4) The DFSA may censure a person by any means, including by ways of publishing a notice of censure.