

Notice of Proposed Amendment to Legislation

Background

The DFSA is proposing an urgent minor amendment to the Regulatory Law 2004 to be presented to the Ruler for his consideration for enactment. The amendment relates to the definition of a “Privileged Communication” in Schedule 1 of the Regulatory Law 2004. The term “Privileged Communication” is used in Articles 67, 82 and 104 of the Regulatory Law 2004.

The proposal stems from the DFSA’s involvement in a UAE working group led by the UAE Ministry of Finance. This group is dealing with the assessment of the UAE by the OECD Global Forum on Transparency and the Exchange of Information for Tax Purposes (OECD Global Forum) against 10 principles under three broad categories:

- (a) Availability of Information (i.e. whether jurisdictions have ownership and identity information, accounting records and detailed banking information for companies, partnerships, trusts, foundations and other entities);
- (b) Access to Information (i.e. whether jurisdictions have the power to obtain information and records from relevant persons); and
- (c) Exchanging Information (i.e. whether jurisdictions have effective international tax agreements and protect the confidentiality of information).

The assessment of the UAE’s legislative requirements commenced in 2011 (Phase 1 review). The OECD Global Forum will also test whether the UAE’s legislative requirements enable the effective exchange of tax information (Phase 2 review).

The OECD Global Forum has published its Phase 1 review report on the UAE. The report highlights the following matter which requires action by the DFSA under the laws it administers. The UAE report highlights the issue as follows:

264. Where the DFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a privileged communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless (Art.82 (2) DFSA Law):

- *the person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or*



- *otherwise, the person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.*

265. The DFSA Law defines privileged communication as a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality. As any other advice given by the lawyer to a client is also covered by definition of privileged communication, this suggests the scope of legal privilege is wider than the international standard and this has the potential to hinder effective exchange of information.

In order to comply with the relevant OECD Global Forum Standards, the DFSA proposes to amend the definition of a Privileged Communication in Schedule 1 of the Regulatory Law 2004 as follows:

“a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law ~~advice or from the relationship of lawyer and client or other similar relationship~~, but does not include a general duty of confidentiality.”

The DFSA considers that the proposed amendment is necessary to ensure that the DIFC, and therefore the UAE, complies with the standards set by the OECD Global Forum in the timeframe set by the OECD. The DFSA is providing for public consultation pursuant to Article 7 of Dubai Law No 9. Given the nature of the amendment sought and its urgency, the deadline for providing comments on the proposal is **23rd September 2012**.

All comments should be in writing and sent to the email specified below. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

Comments to be emailed to:

Email: consultation@dfsa.ae

Consultation Paper No.85

Issued
13 September 2012

