

Appendix 1

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

The DFSA Sourcebook



Regulatory Policy and Process (RPP Sourcebook)

**(Amendments to the December 2012
Edition)**

1 INTRODUCTION

1-1 PURPOSE

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1-1-3 RPP is therefore relevant to a Person who is:

- (a) seeking to be authorised or registered by the DFSA;
- (b) already subject to applicable laws, Rules and policies administered by the DFSA such as Authorised Persons (i.e. Authorised Firms or Authorised Market Institutions), ~~Ancillary Service Providers~~ DNFBPs, Auditors, Authorised Individuals, Principal Representatives and any other Persons subject to the DFSA's regulatory oversight; and
- (c) otherwise subject to the jurisdiction of the DFSA such as by reason of the DFSA's authority under a delegated powers.

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1-1-5 The types of Person mentioned above to whom RPP is relevant are not intended to be exhaustive and such Persons are generally referred to in this Sourcebook as a "firm" unless the context provides otherwise.

1-2 STATUS

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1-2-3 Anyone reading RPP should also refer to the:

- (a) DIFC laws, including DFSA administered laws ("Laws");
- (b) DFSA Rulebook ("Rules"); and
- (c) other parts of the DFSA Sourcebook ("Sourcebook");

that may have an impact on them.

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1-7 DFSA'S REGULATORY STRUCTURE

1-7-1 The DFSA is structured into a number of divisions and departments. For the purpose of this Sourcebook, the most relevant are as follows:

Supervision

- (a) The Supervision Division authorises firms and individuals to conduct Financial Services in or from the DIFC. This Division also registers ~~Ancillary Service Providers~~ DNFBPs and Auditors (see Chapter 2).
- (b) This Division also conducts supervisory oversight on all Authorised Firms, ~~Ancillary Service Providers~~ DNFBPs and Auditors, including by conducting risk assessments. The scope and frequency of such assessments are dictated by the nature of the firm's activities and its perceived risks. From time to time, Supervision carries out thematic reviews inspired by topical events which have both local and international relevance (see Chapter 3).

Markets

- (c) The Markets Division licenses and supervises Authorised Market Institutions in the DIFC (see Chapters 2 and 3).
- (d) The Division also recognises those financial markets who operate an exchange or clearing house outside the DIFC without having a physical presence in the DIFC but make their services available to Persons in the DIFC. Trading and Clearing members of an Authorised Market Institution who operate in a jurisdiction other than the DIFC and do not have a physical presence in the DIFC are also recognised by the Division.
- (e) The Division is also responsible for regulating Offers of Securities in or from the DIFC, and supervises Reporting Entities by monitoring their on-going market disclosures and compliance with Rules.

Enforcement

- (f) The primary function of the Enforcement Division is to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC. Consequently, the Enforcement Division is responsible for:
 - (i) liaising and co-operating with international regulatory and enforcement agencies pursuant to a relevant multilateral memorandum of understanding or bi-lateral arrangement in relation to investigation and enforcement matters;
 - (ii) conducting investigations commenced pursuant to Article 78 of the Regulatory Law 2004 in respect of contraventions of DFSA administered Laws and Rules; and
 - (iii) the taking of enforcement action in circumstances where contraventions of DFSA administered Laws and Rules pose an unacceptable risk to the DIFC.
- (g) The DFSA has a range of remedies to enforce the legislation that we administer (see Chapters 4 and 5).

Policy and Legal

- (h) The Policy and Legal Services Division is responsible for developing DFSA administered Laws, Rules and policies, as approved by the DFSA Board of Directors. The Division also assists in the drafting of certain DIFC Laws. This Division is also responsible for providing regulatory legal advice and managing the business of the Regulatory Policy Committee and the Rules and Waivers Committee and advises on the disclosure of confidential regulatory information.

2 AUTHORISATION - BECOMING REGULATED

2-1 DFSA'S APPROACH TO AUTHORISATION

Introduction

2-1-1 This chapter outlines the DFSA's approach to assessing an applicant or registrant to become:

- (a) an Authorised Person, that is, an Authorised Market Institution or an Authorised Firm (an Authorised Firm includes a Representative Office);
- (b) an Authorised Individual;
- (c) a Principal Representative;
- (d) a Key Individual;
- ~~(d) (e)~~ ~~an Ancillary Service Providers~~ DNFBP; or
- ~~(e) (f)~~ an Auditor.

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2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS

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Background and history

2-2-5 In respect of the background and history of an Authorised Person, the DFSA may have regard to any matters including, but not limited to, the following:

- (a) any matter affecting the propriety of the Authorised Person's conduct, whether or not such conduct may have resulted in the commission of a

criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;

- (b) whether an Authorised Person has ever been the subject of disciplinary procedures by a government body or agency or any ~~self-regulating~~ self-regulatory organisation or other professional body;
- (c) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self-regulatory organisation, Financial Services Regulator or regulated exchange or clearing house;
- (d) whether an Authorised Person has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
- (e) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by an Authorised Person in excess of \$10,000 or awards that total more than \$10,000;
- (f) whether an Authorised Person has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; and
- (g) whether an Authorised Person has been open and truthful in all its dealings with the DFSA.

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Legal status of Authorised Firms

2-2-8 The DFSA will only consider an application for authorisation where the legal status of the proposed entity meets the requirements set out in section 7.2 of the GEN module or chapter 5 7 of the AMI module. In the case of non-DIFC firms other than companies limited by shares, the DFSA will consider whether the legal form is appropriate for the activities proposed.

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Controllers

2-2-12 In respect of the Controllers of an Authorised Person, the DFSA may, taking into account the nature, scale and complexity of the firm's business and organisation, have regard to:

- (a) the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Authorised Person, and the degree of influence

that they are, or may be, able to exert over the Authorised Person and/or its activities;

- (b) where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller;
- (c) the financial strength of a Controller and its implications for the Authorised Person's ability to ensure the sound and prudent management of its affairs, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Person Firm; and
- (d) whether the Authorised Person is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a Controller. In considering such matters, the DFSA may have regard to, among other things, the type and level of regulatory oversight which the Controller is subject to in the relevant country or countries and the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

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Resources, Systems and Controls

2-2-14 The DFSA may have regard to whether the Authorised Person has sufficient resources, including the appropriate systems and controls (including those set out in chapter 5 of the GEN module and AMI Rule 5.5.4), such as:

- (a) the Authorised Person's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Person appears in a position to be able to continue to comply with such Rules;
- (b) the extent to which the Authorised Person is or may be able to secure additional capital in a form acceptable to the DFSA where this appears likely to be necessary at any stage in the future;
- (c) the availability of sufficient competent human resources to conduct and manage the Authorised Person's affairs, in addition to the availability of sufficient Authorised Individuals or Key Individuals, as applicable, to conduct and manage the Authorised Person's Financial Services;
- (d) whether the Authorised Person has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;
- (e) whether the Authorised Person has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering and counter terrorism legislation, and relevant UN Security

Council sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;

- (f) the impact of other members of the Authorised Person's Group on the adequacy of the Authorised Person's resources and in particular, though not exclusively, the extent to which the Authorised Person is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator;
- (g) whether the Authorised Person Firm is able to provide sufficient evidence about the source of funds available to it, to the satisfaction of the DFSA. This is particularly relevant in the case of a start-up entity; and
- (h) the matters specified in paragraph 2-2-12(c).

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Authorised Market Institutions – Other Considerations

2-2-16 In determining whether an Authorised Market Institution has satisfied its Licensing Requirements set out in chapter 5 of the AMI module, including in chapter 5 of GEN Rule 7.2.2, the DFSA will, ~~in addition to the matters raised in this chapter,~~ consider:

- (a) its arrangements, policies and resources for fulfilling its obligations under the Licensing Requirements prescribed in AMI Rule 4.2.1;
- (b) its arrangements for managing conflicts and potential conflicts between its commercial interest and applicable regulatory requirements in section 5.4 of the AMI module;
- (c) the extent to which its constitution and organisation provide for effective governance;
- (d) the arrangements made to ensure that the Governing Body has effective oversight of its Regulatory Functions;
- (e) the fitness and propriety of its Key Individuals and the access the Key Individuals have to the Governing Body;
- (f) the size and composition of the Governing Body including:
 - (i) the number of independent members on the Governing Body;
 - (ii) the number of members of the Governing Body who represent Members of the Authorised Market Institution or other persons and the types of persons whom they represent; and
 - (iii) the number and responsibilities of any members of the Governing Body with executive roles within the Authorised Market Institution.

- (g) the structure and organisation of its Governing Body, including any distribution of responsibilities among its members and committees;
- (h) the integrity, relevant knowledge, skills and expertise of the members of the Governing Body to provide effective leadership, direction and oversight of the Authorised Market Institution's business. For this purpose, such individuals should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the Authorised Market Institution's business to be able to fulfil their roles;
- (i) the commitment necessary by the members of the Governing Body to fulfil their roles effectively, demonstrated, for example, by a sufficient allocation of time to the affairs of the Authorised Market Institution and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Market Institution and its stakeholders;
- (j) the integrity, qualifications and competence of its Key Individuals;
- (k) its arrangements for ensuring that it employs individuals who are honest and demonstrate integrity;
- (l) the independence of its regulatory and listings departments from its commercial departments; and
- (m) whether the remuneration structure and strategy adopted by the Authorised Market Institution is consistent with the requirements in GEN Rule 5.3.31(1).

2-3 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED INDIVIDUALS, AND PRINCIPAL REPRESENTATIVES AND KEY INDIVIDUALS

Introduction

2-3-1 This section sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of:

- (a) in the case of an Authorised Firm, an Authorised Individual or Principal Representative under section 7.6 of the GEN module and section 4.2 of the REP module, respectively; and
- (b) in the case of an Authorised Market Institution, a Key Individual under chapter 5 of the AMI module.

2-3-2 In order to assess the fitness and propriety of a proposed Authorised Individual, Key Individual or Principal Representative, the DFSA may request an interview with the proposed individual.

2-3-3 In respect of Authorised Individuals, Article 53(2) of the Regulatory Law 2004 provides that applications for Authorised Individual status in respect of Licensed Function roles must be made by both the individual seeking to be authorised and the Authorised Firm for which that individual is to perform services. **2-3-4** Under Articles 55 & 56 of the Regulatory Law 2004, the DFSA may reject an application for Authorised Individual status or extension to such status or grant Authorised Individual status or extension to such status with or without conditions and restrictions.

2-3-4 AMI Rule 3.3.1(1) requires applications for Key Individual to be made by both the individual seeking to be authorised and the Authorised Market Institution for which that individual is to perform a Key Individual function. In assessing whether an individual meets the fitness and propriety criteria to be able to perform the role of a Key Individual, the DFSA takes into account the considerations noted in paragraphs 2-3-5 to 2-3-7 below.

Integrity

2-3-5 In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:

- (a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
- (b) a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
- (c) whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self-regulatory organisation or other professional body;
- (d) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self-regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
- (e) a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
- (f) a dismissal or a request to resign from any office or employment;
- (g) whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
- (h) an adverse finding in a civil proceeding by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;

- (i) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against the individual in excess of \$10,000 or awards that total more than \$10,000;
- (j) an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
- (k) whether the individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that person was connected with that body corporate or within one year of such a connection;
- (l) whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that person was connected with that partnership or within a year of such a connection;
- (m) whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- (n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, the DFSA, or any officially appointed inquiry, or Financial Services Regulator; and
- (o) whether the individual has been candid and truthful in all his dealings with the DFSA.

Competence and capability

2-3-6 In determining the competence and capability of an individual to perform the role of an Authorised Individual, Principal Representative or Key Individual as relevant, the DFSA may have regard to any factors, whether in the U.A.E. or elsewhere including, whether an individual is capable of performing functions which he has to perform within the his Authorised Firm or Authorised Market Institution which employs or intends to employ him ~~to perform~~. A relevant factor may also include evidence of appropriate qualifications, including for example, the bespoke examination offered by the Chartered Institute for Securities and Investment in respect of DIFC Laws and Rules.

Financial soundness

2-3-7 In determining the financial soundness of an individual, the DFSA may have regard to any factors including, but not limited to, the following:

- (a) whether an individual is able to meet his debts as they fall due; and
- (b) whether an individual has been adjudged bankrupt, had a receiver or an administrator appointed, had a bankruptcy petition served on him, had his

estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in the U.A.E. or elsewhere.

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2-9 REGISTERING AS A DNFBP APPLICATION TO BE AN ANCILLARY SERVICE PROVIDER

2-9-1 Chapter 15 of the AML module sets out the registration requirements for a DNFBP. A DNFBP must register with the DFSA by way of a notification by completing and submitting the DNFBP1 form in the AFN module of the DFSA Sourcebook.

2-9-2 At the time of registration the DFSA expects a DNFBP to be in full compliance with its obligations set out in the AML module of the DFSA Rulebook.

~~2-9-1 An applicant seeking to become an Ancillary Service Provider will need to comply with requirements including those set out set out in the ASP module.~~

~~2-9-2 In respect of Ancillary Service Providers, Article 44(1) of the Regulatory Law 2004 prohibits a Person from carrying on an Ancillary Service in or from the DIFC unless the Person is registered as an Ancillary Service Provider.~~

~~2-9-3 Chapter 4 of the ASP module outlines some of the matters required to be addressed when making an application to carry on Ancillary Services. The activities which constitute Ancillary Services are defined in the ASP module as Providing Legal Services and Providing Accountancy Services.~~

~~2-9-4 ASP Rule 4.2.2 provides that applications for registration as an Ancillary Service Provider may be submitted only by a Body Corporate or Partnership.~~

~~2-9-5 The DFSA will have particular regard to whether the firm, or anyone in a position of influence in or over it, has criminal convictions or been the subject of adverse findings by courts or regulatory authorities in the UAE or elsewhere, or is known to have engaged in dishonest or improper business practices.~~

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2-11 APPLICATION FOR AN ENDORSEMENT TO OPERATE A MULTILATERAL TRADING FACILITY OR ACT AS A TRADE REPOSITORY

2-11-1 An applicant seeking to obtain an endorsement on its Licence to operate a Multilateral Trading Facility pursuant to GEN Rule 2.2.12 or act as a Trade Repository pursuant to GEN Rule 2.2.13 will need to comply with the applicable requirements including those set out set out in the GEN and AMI modules.

2-11-2 An applicant seeking to obtain an endorsement on its Licence to operate a Multilateral Trading Facility has to be an Authorised Market Institution which is Licensed to Operate an Exchange, or an applicant for such a Licence (see GEN Rule 2.2.12). In order to obtain such an endorsement, an applicant needs to demonstrate to the DFSA that it can meet the requirements specified in AMI Rule 4.2.1(3). Pursuant to that Rule, all the Licensing Requirements applicable with respect to operating an Exchange apply with respect to the operation of a Multilateral Trading Facility as if though such a facility is an Exchange.

2-11-3 An applicant seeking to obtain an endorsement on its Licence to act as a Trade Repository must be an Authorised Firm or an Authorised Market Institution, or an applicant for such a Licence (see GEN Rule 2.2.13(1). Such an applicant needs to demonstrate to the DFSA its ability to meet the requirements set out in App 5 of the GEN module.

3 SUPERVISION - BEING REGULATED

3-1 DFSA'S APPROACH TO SUPERVISION

Introduction

3-1-1 Chapter 3 focuses on the DFSA's risk-based approach to supervision and the on-going relationship between the DFSA and an Authorised Person, ~~Ancillary Service Provider~~ DNFBP or Auditor (collectively referred to as firms in this Chapter unless otherwise stated).

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3-1-23 An Authorised Firm and Authorised Market Institution ~~are~~ is required to comply with the high level principles in GEN Rule 4.2.10 and AMI Rule ~~940.2.1~~ 4.2.1 respectively. These Rules require an Authorised Person to deal with the DFSA in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to such person of which the DFSA would reasonably expect to be notified.

3-2 SUPERVISION OF AUTHORISED FIRMS

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Outsourcing

3-2-54 An Authorised Person ~~Firm~~ must comply with those requirements in GEN Rules 5.3.21 and 5.3.22 when outsourcing functions or activities. In relation to Funds, there are additional outsourcing and delegation requirements applicable for Fund Managers and Trustees in section 8.12 of the CIR module.

3-2-55 The DFSA requires an Authorised Person ~~Firm~~ to notify it of any material outsourcing arrangements. In the case of an Authorised Market Institution, any material outsourcing arrangements require the DFSA's prior approval pursuant to

AMI Rule 5.5.3(1). An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of the service would cast serious doubt on the Authorised Firm's continuing ability to remain fit and proper or comply with applicable Laws and Rules.

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3-4 SUPERVISION OF ANCILLARY SERVICE PROVIDERS DNFBPs

3-4-1 The DFSA expects to undertake periodic visits to the place of business of a DNFBP Ancillary Service Providers as part of its risk based approach to supervising firms. The DFSA may also include Ancillary Service Providers DNFBPs in thematic visits.

3-4-2 Onsite visits to Ancillary Service Providers are likely to DNFBPs will generally focus on their compliance with relevant AML/CTF laws and the Rules contained in the AML module. This may include the DFSA testing the firm's systems and controls for conducting a money laundering risk assessment, customer due diligence and complying with relevant United Nations Security Council Sanctions and Resolutions.

3-4-3 The onsite visit is likely to include interviews with senior management and a review of relevant records. Depending on the outcome of the visit, the DFSA may provide a letter to the firm to discuss its findings.

3-4-4 The DFSA will also expects to receive an Annual AML Return from a DNFBP (see AML Rule 14.5.1) which will assist the DFSA in its supervision of DNFBPs ~~copy~~ of the annual Anti Money Laundering Officer ("AMLO") report from Ancillary Service Providers (see ASP Rule 6.4.5(2)).

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3-6 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

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Application for a Change in Control

3-6-7 Chapter 8 of the AMI module sets out the requirements relating to a change in control. These requirements are similar to those for an Authorised Firm which are set out at paragraphs 3-2-33 to 3-2-37.

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4 SUPERVISORY AND ENFORCEMENT POWERS

4-1 INTRODUCTION

4-1-1 This chapter provides information on how the DFSA will generally exercise its powers when conducting supervisory or enforcement activities. These powers can be exercised in respect of any Persons, including an Authorised Person, ~~Ancillary Service Provider~~ DNFBP or Auditor (collectively referred to as “firms” in this chapter unless otherwise stated), an Authorised Individual or Principal Representative.

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4-2 POWER TO REQUEST INFORMATION AND DOCUMENTS

4-2-1 In order to supervise the conduct and activities of an Authorised Person, ~~Ancillary Service Provider~~ DNFBP, Fund, Auditor or any director, officer, employee or agent of such person, the DFSA requires access to a broad range of information relating to a Person’s business. Such information is usually provided to the DFSA on a voluntary basis. In particular, an Authorised Person and Authorised Individual is expected to deal with the DFSA in an open and cooperative manner and disclose to the DFSA any information of which the DFSA would reasonably expect to be notified.

4-3 POWER TO ACCESS PREMISES

4-3-1 The DFSA may enter the premises of an Authorised Person, ~~Ancillary Service Provider~~ DNFBP, Fund or Auditor during normal business hours or at any other time as may be agreed, for the purpose of inspecting and copying information or documents (at the relevant Person’s expense) stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.¹

4-3-2 The DFSA will provide reasonable notice to an Authorised Person, ~~Ancillary Service Provider~~ DNFBP, Fund or Auditor when it seeks information, documents or access to premises. In exceptional circumstances, such as where any delay may be prejudicial to the interests of the DIFC, the DFSA may seek access to premises without notice.

~~4-11 Deleted POWER TO VARY OR WITHDRAW THE REGISTRATION OF AN ANCILLARY SERVICE PROVIDER~~

~~4-11-1~~ The DFSA has the power to vary or withdraw the registration of an Ancillary Service Provider pursuant to sections 4.5 and 4.6 of the ASP module and Article 60(4) of the Regulatory Law 2004. The DFSA may exercise this power where it is satisfied that:

¹ Article 73(2) of the Regulatory Law 2004, GEN Rule 11.1.2.(d)

- ~~(a) the Ancillary Service Provider has failed to carry on an Ancillary Service in the DIFC for a continuous period of 12 months or more; or~~
- ~~(b) the Ancillary Service Provider has breached, or is breaching, the Laws or Rules of the DIFC.²~~

~~4-11-2 In determining whether to exercise its powers to withdraw the registration of an Ancillary Service Provider, the DFSA may have regard to all relevant matters including, but not limited to, the circumstances specified in paragraph 4-7-3 as relevant to an Ancillary Service Provider.~~

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5 ENFORCEMENT

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5-5 INFORMATION GATHERING

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5-5-7 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~~ DNFBP, 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.

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5-6 REMEDIES

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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 fine³;
- (b) imposition of a censure⁴;
- (c) imposition of conditions or restrictions on a Licence⁵;
- (d) withdrawal of an authorisation under a Licence⁶;
- (e) withdrawal of a Licence⁷;

² ASP Sections 4.5 and 4.6.

³ Article 90 of the Regulatory Law 2004

⁴ Article 91 of the Regulatory Law 2004

⁵ Article 49 of the Regulatory Law 2004

⁶ Article 50 of the Regulatory Law 2004

- (f) imposition of conditions or restrictions on an Authorised Individual⁸;
- (g) restriction or suspension of an Authorised Individual, or the withdrawal of his or her authorisation⁹;
- (h) withdrawal of the registration of a ~~DNFBP~~~~Ancillary Service Provider~~;
- (i) revocation of recognition¹⁰;
- (j) appointment of a manager¹¹;
- (k) withdrawal of the registration of an Auditor¹²; and
- (l) suspension of the registration of an Auditor¹³.

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5-20 MAINTENANCE OF REGISTERS

5-20-1 The DFSA is also required to publish and maintain a register¹⁴ in respect of:

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

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6 DECISION MAKING

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6-5 DECISION MAKER PROCEDURES

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6-5-3 Decision Maker Decisions are made by a DFSA officer known as a Decision Maker. The Decision Maker will be a person with no previous direct involvement in

⁷ Article 51 of the Regulatory Law 2004

⁸ Article 57 of the Regulatory Law 2004

⁹ Article 58 of the Regulatory Law 2004

¹⁰ Article 60 of the Regulatory Law 2004

¹¹ Article 61 of the Regulatory Law 2004

¹² Article 88 of the Regulatory Law 2004

¹³ Article 98 of the Regulatory Law 2004

¹⁴ Article 62 of the Regulatory Law 2004

the matter to which the decision relates. Examples of these decisions include where the DFSA, on its own initiative, proposes to:

- (a) impose an administrative fine or censure,
- (b) withdraw a Licence of an Authorised Person;
- (c) withdraw the status of an Authorised Individual;
- (d) withdraw the registration of an ~~Ancillary Service Provider~~ or Auditor; or
- (e) withdraw the registration of a Public Fund.

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APPENDIX 1 DFSA'S REGULATORY POWERS

A reference to executive* refers to the Chief Executive or a DFSA Officer that has been delegated the authority to act as Chief Executive.

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 33	when the DFSA is proposing to commence proceedings before the Financial Markets Tribunal	executive*	No
Article 46	when the DFSA is proposing to require an applicant to provide additional information reasonably required to decide an application for a Licence	executive	No
Article 47	when the DFSA is proposing to refuse to grant an application for a Licence, or, an extension to a Licence	executive	Yes
Article 48	when the DFSA is proposing to grant an application for a Licence, or, an extension to a Licence, with or without conditions and restrictions	executive	No
Article 49(1)	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions on a Licence, or, vary or withdraw conditions and restrictions on such Licence	executive	Yes
Article 49(1)	when the DFSA, on its own initiative, is proposing to impose conditions and restrictions or additional conditions and restrictions on a Licence, or, vary or withdraw	decision maker	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
	conditions and restrictions on such Licence		
Article 50(1)	when the DFSA, at the request of an Authorised Person, is proposing to withdraw an authorisation in relation to one or more Financial Services under a Licence	executive	Yes
Article 50(1)	when the DFSA, on its own initiative, is proposing to withdraw an authorisation in relation to one or more Financial Services under a Licence	decision maker	Yes
Article 51	when the DFSA, at the request of an Authorised Person, is proposing to withdraw a Licence	executive	Yes
Article 51	when the DFSA, on its own initiative, is proposing to withdraw a Licence	decision maker	Yes
Article 54	when the DFSA is proposing to require an applicant to provide additional information reasonably required to decide an application for an Authorised Individual status	executive	No
Article 55	when the DFSA is proposing to refuse to grant an application for an Authorised Individual status, or, an extension to such status	executive	Yes
Article 56	when the DFSA is proposing to grant an application for an Authorised Individual status, or, an extension to such status, with or without conditions and restrictions	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 57	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions on the grant of an Authorised Individual's status, or, vary or withdraw conditions and restrictions on such status	executive	Yes
Article 57	when the DFSA, is proposing on its own initiative, to impose conditions and restrictions or additional conditions and restrictions on the grant of an Authorised Individual's status, or, vary or withdraw conditions and restrictions to such status	decision maker	Yes
Article 58(1)	when the DFSA, on its own initiative, is proposing to restrict an individual from performing one or more functions in connection with the provision of Financial Services or Ancillary Services	decision maker	Yes
Article 58(2)	when the DFSA, at the request of a relevant person or Authorised Person, is proposing to either restrict, suspend or withdraw the status of an Authorised Individual	executive	Yes
Article 58(2)	when the DFSA, on its own initiative, is proposing to either restrict, suspend or withdraw the status of an Authorised Individual	decision maker	Yes
Article 60(3)	when the DFSA is proposing to grant an application for registration as an Ancillary Service Provider	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 60(3)	when the DFSA is proposing to refuse to grant an application for registration as an Ancillary Service Provider	executive	Yes
Article 73	when the DFSA is proposing to either obtain information or documents, or to enter the premises of any Authorised Firm, Authorised Market Institution, Ancillary Services Provider DNFBP or Fund for the purpose of inspecting and copying information within the premises	executive	No
Article 74	when the DFSA is proposing to require an Authorised Firm or Authorised Market Institution to provide a report on any matter or information about which the DFSA could have or has required under Article 73	executive	Yes
Article 75	when the DFSA is proposing to impose a prohibition or requirement on the business of an Authorised Firm, Authorised Market Institution, Fund Manager or Fund	decision maker	Yes
Article 75A	when the DFSA for prudential purposes is proposing to require an Authorised Firm or Authorised Firms within a specified class to comply with a direction	decision maker	Yes
Article 76	when the DFSA is proposing to impose on an Authorised Firm or Authorised Market Institution a prohibition, from or requirement to dealing with relevant property	decision maker	Yes
Article 77(2)	when the DFSA is proposing to substitute or vary a prohibition or requirement made under Articles 75 and 76	decision maker	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 77(2)	when the DFSA is proposing to withdraw a prohibition or requirement made under Article 75 and 76	decision maker	No
Article 78	when the DFSA is proposing to conduct an investigation under Chapter 2 of Part 5	executive*	No
Article 79(2)	when the DFSA is proposing to apply to the Court to recover part or all of the costs of an investigation	executive	No
Article 80	when the DFSA is proposing to exercise powers of compulsion to obtain information, documents and testimony from any person that may be relevant to an investigation	executive	No
Article 84	when the DFSA is proposing to apply to the Court for an injunction or warrant to search premises in order to enforce compliance with a requirement made pursuant to the exercise of any power under Articles 73, 74 or 80	executive	No
Article 87(5)	when the DFSA is proposing to apply to the Court to recover outstanding fines	executive	No
Article 88(1)	when the DFSA is proposing to require an Authorised Firm or Authorised Market Institution to appoint one or more individuals to act as managers of the business of such person	decision maker	Yes
Articles 89(1)	when the DFSA is proposing to accept a written enforceable undertaking given by a	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
& (2)	person, or, withdraw or vary such undertaking		
Article 89 (3)	when the DFSA is proposing to apply to the Court to enforce compliance with a written enforceable undertaking accepted by the DFSA under Articles 89 (1) and (2)	executive	No
Article 90	when the DFSA is proposing to issue an administrative fine	decision maker	Yes
Article 91	when the DFSA is proposing to issue an administrative censure	decision maker	Yes
Article 92 (2)	when the DFSA is proposing to apply to the Court for an injunction or other judicial relief, where a person has engaged, is engaging or is proposing to engage in conduct which contravenes a relevant requirement under Article 92(1)	executive	No
Article 92 (3)	when the DFSA is proposing to apply to the Court, where the DFSA is conducting, or has conducted, an investigation or has instituted civil or regulatory proceedings, for orders under Articles 92(3) (c) (d) (e) (f) (g) (h) or (i)	executive	No
Article 93	when the DFSA is proposing to apply to the Court to wind up an Authorised Firm, Authorised Market Institution, or, to wind up a company that is in breach of the Financial Services Prohibition	executive	No
Article 94(2)	when the DFSA is proposing to apply to the Court for an order for damages, compensation, or recovery of property or any other order the Court sees fit, where	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
	there has been a breach of a requirement as described in Article 94(1)		
Article 95	when the DFSA is proposing to apply to the Court to intervene in any Court proceedings where the DFSA considers it necessary to meet its objectives	executive	No
Article 98(1)	when the DFSA is proposing to grant an application for the registration of an Auditor	executive	No
Article 98(1)	when the DFSA is proposing to refuse an application for the registration of an Auditor	executive	Yes
Article 99(7)	when the DFSA is proposing to order the remove of an Auditor	executive	No
Article 111	when the DFSA is proposing to nominate or approve a person to make a scheme report relating to a sanctioned transfer scheme under Article 108	executive	No

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Ancillary Service Providers (ASP) Anti-Money Laundering (AML)Module

ASP Module	Description	Type of Decision	Right of appeal to RAC
Rule 4.5.1(a) <u>15.2.3(a)</u>	when the DFSA, at the request of an Ancillary Service Provider DNFBP , is proposing to withdraw <u>cancel</u> its registration	executive	Yes <u>No</u>
Rule 4.5.1(a) <u>15.2.3 (b) to (e)</u>	when the DFSA, on its own initiative , is proposing to withdraw <u>cancel</u> the registration of an Ancillary Service Provider DNFBP	decision maker	Yes
Rule 4.5.1(b)	when the DFSA, at the request of an Ancillary Service Provider, is proposing to change the scope of authority under its registration	executive	Yes
Rule 4.5.1(b)	when the DFSA, on its own initiative , is proposing to change the scope of authority under the registration of an Ancillary Service Provider	decision maker	Yes

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Authorised Market Institutions (AMI) Module

AMI Module	Description	Type of Decision	Right of appeal to RAC
<u>Rule 4.3.3</u>	<u>when the DFSA approves or disapproves a proposed material change to existing arrangements of an Authorised Market Institution to meet the Licensing Requirements</u>	<u>executive</u>	<u>Yes</u>
<u>Rules 5.6.6 and 5.6.77-2-20</u>	<u>when the DFSA is proposing to dispense with the public consultation for a proposed change to the Business Rules or to approve a proposed amendments to the Business Rules of an Authorised Market Institution</u>	<u>executive</u>	<u>Yes No</u>
<u>Rule 6.9.1(4)</u>	<u>when the DFSA is approving a proposed liquidity incentive scheme</u>	<u>executive</u>	<u>Yes</u>
<u>Rule 8.2.1(1) 6.11.2</u>	<u>when the DFSA is proposing to approve proposed the Listing Rules or any amendments to such rules of an Authorised Market Institution wishing to admit Securities to its own Official List of Securities</u>	<u>executive</u>	<u>No</u>
<u>Rule 8.2.1(2)</u>	<u>when the DFSA is proposing to approve amendments to the Listing Rules of an Authorised Market Institution</u>	<u>executive</u>	<u>No</u>
<u>Rules 8.2.2 and 8.2.4</u>	<u>when the DFSA is proposing to approve a proposed acquisition or increase in level of control with or without conditions or object to an application for a change in control, of an Authorised Market Institution</u>	<u>decision maker</u>	<u>Yes</u>

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