

# The DFSA Sourcebook



## **Regulatory Policy and Process (RPP Sourcebook)**

## 1 INTRODUCTION

### 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:

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#### ~~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.~~

#### Policy and Strategy Division

(h) The Policy and Strategy Division is responsible for the DFSA's policy framework, including its maintenance and development, as well as providing advice on the intent of the policy framework to Divisions of the DFSA.

(i) The Division also oversees the DFSA's risk framework and its approach to strategic planning.

#### Legal Department

(j) The Legal Department provides advice and legal opinions on matters affecting the DFSA. This includes advising the operational divisions on the supervision and enforcement of the Laws and Rules administered by the DFSA and on the application of legislation and associated jurisdiction issues. It is also responsible for drafting and maintaining the DIFC Laws and Rules administered by the DFSA and for consulting with the Dubai Government and the DIFC Authority on DIFC, Dubai and Federal legislation.

(k) The Department also provides litigation management and advice for the DFSA on matters which are, or could be, before the DIFC Courts or the Financial Markets Tribunal.

(l) The General Counsel is responsible for managing and supervising the Legal Department, advising the DFSA Board and its committees, investigating complaints against the DFSA and overseeing the DFSA's ethics programme.

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## 2 AUTHORISATION - BECOMING REGULATED

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### 2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS

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#### Locations of offices

**2-2-6** An Authorised Person should be able to satisfy the DFSA that it is in compliance with chapter 6 of the GEN module. In particular, section 6.5 of GEN module requires that if an Authorised Person is a Body Corporate, or a Partnership, constituted under the laws of the DIFC it should maintain its head office and registered office within the boundaries of the DIFC. ~~In considering the location~~ The 'head office' of an Authorised Person's head office, the DFSA may have regard to the location of its directors, partners, and senior Person is defined as the principal place where it carries on both the day-to-day management with respect to and control of its strategic, operational business and administrative arrangements. Where an also the activities for which it is authorised by the DFSA. An Authorised Firm is a Partnership with its head office Person operating in the DIFC, it through a branch must carry on have a place of business in or from the DIFC that is the principal place where it carries on the activities for which it is authorised by the DFSA and the address in the DIFC to which communications and notices may be sent.

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## 5 ENFORCEMENT

### 5-15 SETTLEMENT GUIDANCE

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#### Enforceable Undertakings

**5-15-13** An 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 addressing the DFSA's concerns, including regulating contraventions of the Law. It may, amongst other things, include remedial actions that are not otherwise available under a notice of decision.

**Acceptance of an Enforceable Undertaking**

**5-15-14** An EU may be given by a Person and accepted by the DFSA at any time, either before, during or after an investigation, the making of a decision or the commencement of litigation or proceedings in the Court. 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 cannot 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.

**5-15-15** 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, or the circumstances in which an EU would be acceptable to the DFSA. The DFSA will consider all the relevant circumstances of a matter when deciding whether to accept an EU including whether other regulatory tools, for example a notice of decision, might achieve a more appropriate outcome in the particular matter. However, in the context of an enforcement matter, the DFSA will generally only accept an EU that:

- (a) contains an admission or acknowledgement of any contraventions of the Law or the DFSA's 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.

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**6 PENALTY GUIDANCE**

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**6-4 DETERMINING THE APPROPRIATE LEVEL OF FINANCIAL PENALTY**

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**6-4-54** The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

**6-4-65** The DFSA will not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

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