

CONSULTATION PAPER 155



MISCELLANEOUS CHANGES

20 DECEMBER 2023

PREFACE

Why are we issuing this paper?

1. This Consultation Paper (CP) seeks public comment on the DFSA's proposals to make a number of amendments to the DFSA's policy framework, as expressed in the DFSA Rulebook, and the Regulatory Law (DIFC Law No.1 of 2004, "the Regulatory Law"). Each item is a discrete item.

Who should read this paper?

2. The proposals in this paper will be of interest to Authorised Persons, to applicants, to their advisers, and other industry participants.

Terminology

3. Defined terms are identified by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

4. Please send any comments using this [online response form](#). You will need to 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. The deadline for providing comments is **18 January 2024**.
5. Following public consultation, we will proceed to make the relevant changes to the DFSA Rulebook as appropriate to reflect points raised in consultation. The proposed changes to the Regulatory Law will be submitted to His Highness the President of the DIFC for his consent that the changes should be submitted, for assent, to His Highness the Ruler. You should not act on the proposals until the relevant changes to the laws and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Structure of this CP

- Part 1: Deals with proposals that will result in changes to the DFSA Rulebook;
- Part 2: Deals with updates of cross-references and correction of other errors in the laws and DFSA Rulebook;
- Appendix 1: draft amendments to the Anti-Money Laundering, Counter Terrorist Financing and Sanctions (AML) Module of the DFSA Rulebook;
- Appendix 2: draft amendments to the Markets (MKT) Module of the DFSA Rulebook;
- Appendix 3: draft amendment to the Recognition (REC) Module of the DFSA Rulebook;

Appendix 4: draft amendments to the General (GEN) Module of the DFSA Rulebook;

Appendix 5: draft amendment to the Regulatory Law DIFC Law No.1 of 2004 (the Regulatory Law);

Appendix 6: draft amendment to the Collective Investment Rules (CIR) Module of the DFSA Rulebook;

Appendix 7: draft amendments to the Conduct of Business (COB) Module of the DFSA Rulebook; and

Appendix 8: draft amendments to the Glossary (GLO) Module of the DFSA Rulebook;

Annex 1: Questions asked in this Consultation Paper.

Part 1: Various proposals for changes to the DFSA Rulebook

Changes to the AML Module

Enhanced Customer Due Diligence

6. AML 7.4 sets out requirements when a Relevant Person is required to undertake Enhanced Customer Due Diligence in respect of a customer including, under AML 7.4.1(e), that a Relevant Person is required to obtain the approval of senior management to commence a business relationship with that customer.
7. In relation to this rule, the Financial Action Task Force has recommended that senior management approval should be obtained upon commencement of a business relationship with that customer or the continuation of a business relationship with an existing customer who has been identified as high risk.
8. We propose to add to AML 7.4(e) that senior management approval is also required to continue a business relationship.

Please see draft rules to AML 7.4 in Appendix 1

Question 1:

Do you agree with our proposal set out in paragraph 8? If not, why not?

Representative Offices

9. *Appointment of a Money Laundering Reporting Officer* AML 11.2 requires a Relevant Person to appoint an individual as a Money Laundering Reporting Officer (MLRO) to be responsible for the implementation of AML policies, procedures, systems and controls in addition to having oversight of compliance with AML rules and laws.
10. For a Representative Office, AML 11.2.2 requires that the individual appointed as the MLRO must be the same individual who holds the position of Principal Representative of that Representative Office.
11. Following our [Representative Office Sectoral Review](#) (the Review), we are proposing changes that are aimed at improving the quality of AML practices in Representative Offices.
12. Through the Review, we found that the expectation to require a Principal Representative to carry out the role of MLRO is not always desirable. This is because, in practice, a Principal Representative is often a sales/marketing professional with limited knowledge of the AML regime and may not possess the required skills and expertise to carry out the MLRO role effectively.
13. As such, while a Representative Office must still appoint a MLRO, we are proposing to remove the requirement that a Principal Representative must be the MLRO for a Representative Office.

MLRO as a resident in the UAE

14. Under AML 11.2.1(3), we require a MLRO to be resident in the UAE. Following the Review, and the proposal set out in paragraph 13, we are proposing that, a MLRO for a Representative Office does not need to be resident in the UAE.

Please see draft rules to AML 11.2 in Appendix 1

Question 2:

- (i) **Do you agree with our proposal to remove the requirement that a Principal Representative of a Representative Office must also be the MLRO? If not, why not?**
- (ii) **Do you agree with our proposal that a MLRO for a Representative Office does not need to be resident in the UAE? If not, why not?**

Annual AML Returns

15. AML14.5 states that a Relevant Person must complete an AML Return form found in the Application Forms and Notices (AFN) Sourcebook and submit that form to the DFSA. We now require Relevant Persons to complete the AML Return on the electronic portal and submit it to the DFSA. We are proposing to update this provision to reflect this new method of submission and format.
16. Additionally, we are also proposing to remove AML 14.5.2, which has a transitional period that lapsed in 2017 and is no longer relevant.

Please see draft rules to AML 14.5 in Appendix 1

Question 3:

Do you agree with our proposals in paragraph 15 and 16? If not, why not?

Changes to the MKT Module

Exemption in relation to annual financial reporting requirement

17. MKT 5.1.4 requires a Reporting Entity (as defined in Article 38 of the Markets Law, DIFC Law No. 1 of 2012) to produce an annual financial report, which must include, for example, audited financial statements, a review of operations and results of those operations, significant changes to the Reporting Entity's state of affairs, details relating to its principal activities, and details relating to the identity and holdings of any Connected Person.
18. We note that certain jurisdictions, such as the European Union (EU) and the United Kingdom (UK), have not applied this requirement for issuers who exclusively issue debentures that are admitted to trading where the unit is at least EUR 100,000 (or an equivalent amount).
19. We intend to reduce the existing requirement for a similar category of issuers, and propose that the information in MKT 5.1.4(2), other than for MKT 5.1.4(2)(a) and MKT 5.1.4(2)(g), is not required where Debentures are admitted to trading where the unit is USD 100,000 or more.

20. These proposals would not affect a Reporting Entity for reports with a financial year ending 31st December 2023, that is due to be submitted to the DFSA by 30th April 2024.

Please see draft rules to MKT 5.1.4 in Appendix 2

Question 4:

Do you agree with our proposal in paragraph 19? If not, why not?

Removal of reference to Public Funds in MKT APP7.1.1

21. MKT APP 7.1 specifies the additional content of a Prospectus for Security Tokens and Funds that invest in Crypto Tokens. MKT App 7.1.1 has a cross reference to CIR 14.3.1.1(h). This cross-reference is not correct, and we propose to delete it.

Please see draft rules to MKT A7.1.1 in Appendix 2

Question 5:

Do you agree with our proposal to remove reference to CIR14.3.1(1)(h) from the requirement in MKT APP7.1? If not, why not?

Changes to the REC Module

Recognised Body reporting requirements.

22. Under REC 3.4, a Recognised Body is required to report to the DFSA on events as specified in REC 3.4.1 and 3.4.2. We have recently reviewed these rules and are proposing to clarify and remove some events from the notification requirements in order to focus on the reporting of events that are key to the business and activities of the Recognised Body in the DIFC.
23. Currently, Recognised Bodies are required to notify specified events within the jurisdiction in which the Recognised Body has its head office or principal business, and in “any other jurisdictions”. We propose to amend this rule to clarify that a notification is only required to the extent that the specified event relates to operating an exchange, clearing house or alternative trading system, in any jurisdiction outside the DIFC.
24. We also propose to remove notification of “refusal of an application” from REC 3.4.1 and 3.4.2, as we no longer deem this to be necessary.
25. In REC 3.4.2, we propose to amend the term from ‘Recognised Person’ to ‘Recognised Member,’ as Person includes exchanges and central counterparty clearing, which are not relevant for this rule.

Please see draft rules to REC 3.4.1 and 3.4.2 in Appendix 3

Question 6:

Do you agree with our proposal to update Recognised Body notification requirements? If not, why not?

Changes to the GEN Module

Arranging and Advising on Money Services

26. GEN 2.32.1(1) sets out a definition of Arranging and Advising for Money Services which includes:
 - a. making arrangements for another Person to receive Money Services; and
 - b. giving advice to another Person on the merits of using a particular Money Services Provider.
27. GEN 2.32.2 then specifies that an Authorised Firm does not fall under the definition in GEN 2.32.1 if it is the relevant Money Services Provider. However, as with other exclusions in GEN that apply to other arranging and advising activities, this exclusion is intended to apply to the entity itself and does not apply to a branch which makes arrangements for its head office, or any other branch of the same legal entity, to enter into a transaction defined under GEN 2.32.1(1).
28. We propose to amend Rule 2.32.2 to clarify that the exclusion does not apply to a branch that makes arrangements for its head office or for any other branch of the same legal entity.

Please see draft rules to GEN 2.32.2 in Appendix 4

Question 7:

Do you agree with our proposal to clarify the exclusion in GEN 2.32.2? If not, why not?

Financial Promotions Prohibition

29. Under GEN 3 on Financial Promotions, we have provided guidance that the DFSA may consider a person to carry out Financial Promotions activities if they are being carried out on a regular basis or for a prolonged period while physically located in the DIFC.
30. Currently, the guidance to this rule states that the DFSA considers "a regular basis" to be anything more than occasional and "a prolonged period" to be anything more than three (3) consecutive days. Based on our experience with relevant cases, we believe that a prolonged period could be longer and would propose to amend this period from anything more than three (3) consecutive days to anything more than five (5) consecutive days.

Please see draft guidance to GEN 3.2.1 in Appendix 4

Question 8:

Do you agree with our proposal in paragraph 30? If not, why not?

Part II: Other amendments to the Regulatory Law and the DFSA Rulebook

31. The proposed changes set out in this part of the Consultation Paper are to update or amend other provisions, where change is needed.

Update to the Regulatory Law

32. The current text in Article 82 of the Regulatory Law refers to Article 69 of the Collective Investment Law 2006. The reference should be to Article 68 of the Collective Investment Law 2010. We propose that the Regulatory Law should be updated to correct this cross-reference.

Please see draft Regulatory Law Article 82 in Appendix 5

Update to the CIR Module

33. There are three changes proposed to correct cross-references in CIR:
- The first is in CIR 10.3.15(1). The rule includes subsection “(1)” when there is no actual subsection in CIR 10.3.15. The rule should read simply as CIR 10.3.15.
 - The second is in the current text in Guidance item 2 of CIR 14.3.2 on “Information Memorandum of an Exempt Fund or a Qualified Investor Fund”. The rule refers to the “disclosure obligation in Article 50(2) of the Law”. Reference to Article 50(2) of the Law should be a reference to Article 52(2) of the Law.
 - The third is in CIR 14.6.5 on the Fund Manager obligation to keep records of “consent”. The consent should refer to the consent received under CIR 14.6.4. However, the current text refers to CIR Rule 14.5.4, instead of 14.6.4, and should be amended.
34. We propose to update CIR and correct these references in CIR accordingly.

Please see draft CIR 10.3.15, 14.3.2 and 14.6.5 in Appendix 6

Updates to the COB Module

Correction to terminology used in COB 2.1.2

35. COB 2.1.2 specifies exclusions to the chapter on client classification. The current text in COB 2.1.2(5) was meant to refer to “Members, Beneficiaries and Participating Employers of an Employee Money Purchase Scheme”. However, in the second line the word “Scheme” is missing after ‘Purchase’.
36. We propose to update COB and correct this reference.

Please see draft COB 2.1.2(5) in Appendix 7

Correction to terminology used in COB 6.16.6

37. COB 6.16.6 specifies rules on the margin requirements for Retail Clients. In Rule 6.16.6(1)(d), reference is made to “cryptocurrency” when it should be “Crypto Token.” We propose to update this term to be aligned to the term defined and used in the DFSA regime.

Please see draft COB 6.16.6(1)(d) in Appendix 7

*Update to the GLO Module**Definition of Client Investment*

38. The definition of ‘Client Investments’ in GLO refers to COB 6.13, which specifies the rules on Client Investments and Client Crypto Tokens. The definition of Client Investment is actually specified in COB 6.13.1.
39. We propose to update the reference made in GLO for Client Investment from COB 6.13 to COB 6.13.1.

Please see draft rules on these definitions in GLO in Appendix 8

Question 9:

Do you have any objections to our other proposals to update or make correction to rules within DFSA Rulebooks and laws under Part II of this CP? If so, what are your objections and what alternative course of action would you suggest?

Annex I: Questions in this Consultation Paper**Question 1:**

Do you agree with our proposal set out in paragraph 8? If not, why not?

Question 2:

- (i) Do you agree with our proposal to remove the requirement that a Principal Representative of a Representative Office must also be the MLRO? If not, why not?**
- (ii) Do you agree with our proposal that a MLRO for a Representative Office does not need to be resident in the UAE? If not, why not?**

Question 3:

Do you agree with our proposals in paragraph 15 and 16? If not, why not?

Question 4:

Do you agree with our proposal in paragraph 19? If not, why not?

Question 5:

Do you agree with our proposal to remove reference to CIR14.3.1(1)(h) from the requirement in MKT APP7.1? If not, why not?

Question 6:

Do you agree with our proposal to update Recognised Body notification requirements? If not, why not?

Question 7:

Do you agree with our proposal to clarify the exclusion? If not, why not?

Question 8:

Do you agree with our proposal in paragraph 30? If not, why not?

Question 9:

Do you have any objections to our other proposals to update or make correction to rules within DFSA Rulebooks and laws under Part II of this CP? If so, what are your objections and what alternative course of action would you suggest?