

Regulatory Update

Middle East Edition

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1.0 DIFC AND DFSA LATEST DEVELOPMENTS

1.1 Amendment to DFSA Forms

The Dubai Financial Services Authority (DFSA) Individual application form (AUT-IND) is now accessible through the DFSA e-portal and no longer a downloadable application form. Applicants are requested to apply for authorised individual status through the new portal. The online form now includes additional questions and also requires a CV to be uploaded.

1.2 The DFSA Joins Peers in Discussion on a Global Financial Innovation Network

The DFSA has joined 11 other global regulators in issuing a discussion paper announcing the establishment of a Global Financial Innovation Network (GFIN) and consulting globally on the functions it proposes to carry out.

Initiated by the UK Financial Regulator, the Financial Conduct Authority, GFIN is made up of top global regulators, including the DFSA, Abu Dhabi Global Market (ADGM) and the Australian Securities and Investments Commission (ASIC) and seeks to discuss financial innovation to improve financial stability, integrity, customer outcomes and inclusion, through the responsible adoption of emerging technologies and business models. The discussion paper seeks public view on its mission statement, proposed functions and where it should prioritise activity.

The GFIN will increase the DFSA's bi-lateral and multi-lateral network between regulators and complements the DFSA's existing initiatives in FinTech which was launched last year.

1.3 Abraaj Capital Limited – DFSA Update

The DFSA has been closely monitoring the activities of Abraaj Capital Limited (ACL) in light of the financial difficulties of the wider Abraaj Group. The DFSA received notice of the winding up petition by ACL on the 1st August 2018 and there are two individuals proposed as joint provisional liquidators.

Previously ACL was authorised to conduct financial services such as managing assets, providing fund administration (but restricted to Funds established by the firm or members of its group), advising on financial products, arranging deals in investments and arranging and advising on credit. The DFSA has now taken regulatory action over the past few months to safeguard the investors and the DIFC and has instructed the sole shareholder of ACL - Abraaj Investment Management Limited (AIML) - that it is unable to carry out any unauthorised financial services in or from the DIFC.

The entity is still under investigation and therefore no further comment from the DFSA has been issued.

1.4 DFSA and Monetary Authority of Singapore Sign FinTech Agreement

The DFSA and the Monetary Authority of Singapore (MAS) have entered into an agreement which will boost referrals and FinTech cooperation between the two regulators. The move reflects the commitment to the sustainable development of financial services through emerging technology.

Part of the agreement highlights a system between the two regulators where innovative businesses could be referred between both regulators' innovative functions, increasing the information and development of both FinTech environments. The agreement also formalises the focus on specific technologies such as digital and mobile payments, blockchain, distributed ledgers and big data.

1.5 Dear SEO Letter Regarding Outcome of Financial Crime

The DFSA issued a Dear SEO Letter on 23rd July 2018, reporting on a financial crime thematic review ("the Review") conducted to assess firms' compliance with the AML Rules and progress on the required improvements from the 2015 Financial Crime Report. The scope of the Review included:

- data from annual AML Returns and supporting documents submitted by approximately 400 firms across all financial sectors, and also a number of Designated Non-Financial Businesses and Professions;
- reports on AML contraventions and observations from on-site risk assessments conducted by the DFSA; and
- visits to a number of Authorised Firms selected by the DFSA based on their business activities, prudential category, number and profile of clients, Suspicious Activity Report statistics and other relevant factors.

Overall, the Review findings revealed that most firms had taken actions to address the required improvements. However, the Review also revealed a number of issues, worth highlighting as material issues.

Business AML Risk Assessment

More than half of the ‘Business AML Risk Assessments’ reviewed require improvement due to a lack of supporting analysis of the relevant money laundering and terrorism financing risks faced by the particular business being assessed.

Moreover, the Review revealed that Senior Management’s role in the assessment process was generally limited to “reviewing and approving” the assessment, and should be more interactive in drafting the assessment to identify risks.

Ongoing Customer Due Diligence

The majority of firms had adequate systems and controls in place for ongoing CDD and transaction monitoring and were able to demonstrate that enhanced reviews were undertaken for transactions considered complex in nature, or, larger than usual for the particular customer, or, otherwise deemed high risk. However, areas for improvement to demonstrate compliance with the AML Rules, include:

- implementing ongoing CDD as described in the firm’s own policies.
- improved visibility for local staff as to the transaction monitoring systems used and knowledge of the parameters or alert triggers where transaction monitoring is performed by another entity within the Group or Parent.
- putting in place policies and procedures in place to deal with dormant customers or in the event a dormant customer became active.

Suspicious Activity Reporting

Firms had a good understanding of the suspicious activity reporting process and most staff were able to articulate the process of internal reporting of suspicious activity to the MLRO as the first point of contact.

While Suspicious Activity Reports (SARs) are generally reported in a timely manner, there were some instances of delay between the internal notification and the submission of the SAR to the Financial Intelligence Department of the Central Bank of the UAE (the “FID”), mainly due to internal investigations undertaken to confirm details of the suspicious activity.

Data compared by the DFSA showed that the number of internal notifications reported to the MLRO was double the number of SARs submitted to the FID. These results indicate that firms are capturing a range of suspicious activities and alerts and undertaking investigations to determine whether the activity reported to the MLRO should be reported to the FID. The DFSA also observed an overall improvement in the quality of the SARs. The majority of SARs reviewed by the DFSA were considered sufficiently detailed and supported by relevant documentation provided to the FID.

The DFSA reiterated that it will continue to enhance its AML regime to align with the international standards set by the Financial Action Task Force (refer CPs 118 and 120 earlier this year).

The DFSA will issue a more extensive report shortly, covering the findings of this Financial Crime Review. The DFSA will incorporate the Review and other relevant thematic reviews, into future on-site and off-site reviews and inspections.

Additionally, the DFSA plans to revise its website in the second half of this year to highlight relevant pieces of information to stakeholders with a view to giving firms the opportunity to consider these examples when assessing their current AML systems and controls and required actions necessary to achieve better compliance with the AML Rules.

Further information

If you have any questions or concerns regarding these DFSA and DIFC developments and requirements, please contact Clare Curtis (CCurtis@cclcompliance.com)

2.0 ADGM AND FSRA LATEST DEVELOPMENTS

2.1 ADGM Seeks Market Response to Joint Consultation on Global Financial Innovation Network

As with the DFSA, the ADGM has invited FinTech, RegTech and other Abu Dhabi companies in Abu Dhabi and the MENA region to participate and comment on the role and details of the Global Financial Innovation Network. The ADGM is an active advocate of developments in financial technology both locally and internationally.

The ADGM has formed vital international bridges with multiple financial regulators, governments and the private sector to promote and enable the development and adoption of FinTech across the various economies. As a member of the GFIN, the ADGM looks to further cooperate with its regulator counterparts and bring greater value to the FinTech industry both in Abu Dhabi and globally.

The Chief Executive Officer of the Financial Services Regulatory Authority of the ADGM stated that “Our experience in launching the FinTech regulatory regime and sandbox in the MENA has given us valuable traction and insights to the needs of the innovators and financial institutions. As the FinTech Hub in this region, the ADGM understands its responsibility in maintaining a conducive environment that allows a sustainable flow of fresh and innovative solutions to address the needs of consumers and our stakeholders locally and abroad. We look forward to further our partnerships with fellow regulators such as the UK FCA and the private sector to offer a greater platform for financial innovators to scale across various markets, and for all of us to maintain a practical, open and inclusive global FinTech community.”

The Consultation Period of the GFIN proposal will close on 14th October 2018.

Further information

If you have any questions or concerns regarding ADGM and FSRA developments and requirements, please contact Clare Curtis (CCurtis@cclcompliance.com)

3.0 MIDDLE EAST REGULATORY UPDATES

3.1 ESCA Grace Period to Local Promoters of Foreign Mutual Funds Has Expired

Authorised Firms should be aware that the ESCA grace period given to local promoters of foreign mutual funds to comply with the ESCA Administrative Decisions No. (58), 2017 concerning Compliance Mechanisms for Introduction and Promotion Activities and Mutual Fund Administrative Services, expired as of Thursday 28th June 2018.

From 28th June 2018, no new subscriptions will be approved in any fund registered with SCA through a promoter not listed on SCA’s list of licensed promoters. All firms should make sure that the name of the local promoter is on the licensed promoters list before submitting any new application for registering any foreign mutual fund and should make sure all application related fees are paid.

3.2 Unauthorised Virtual Currencies Declared Illegal in Saudi Arabia

Saudi Arabia’s Capital Market Authority’s (CMA) Standing Committee has decreed that digital currencies are illegal in Saudi Arabia and no parties or individuals are licensed for such practices. The CMA’s decision comes after its view of the negative consequences of trading virtual currencies, high risks on traders and high regulatory, security and market risks involved. To entirely curb investor interest in digital currency trading as well as Forex trading, the Standing Committee has been mandated by the supreme decree to work with the relevant agencies and ensure that marketing and promotions for virtual currencies are restricted as much as possible and promptly report defaulters to Saudi Arabian Monetary Authority (SAMA) or the CMA.

3.3 Key Iran Council Backs Anti-Money Laundering Move

Iran, who has been on the Financial Action Task Force (FATF) blacklist- a list which details jurisdictions who have been judged as non-cooperative in the fight against money laundering and terrorist financing - has passed legislation giving approval to the legal amendments on combating the terrorist financing.

Some members in the Iranian parliament opposed passing the legislation aimed at moving towards compliance with FATF standards and argued it could hamper Iranian financial support for allies that are classed as a terrorist organisation to some jurisdictions.

The moves however are in the hope that the country can make the necessary amendments to be removed from the blacklist that makes some foreign investors reluctant to deal with Iran.

Further information

If you have any questions or concerns regarding regulatory developments in the Middle East, please contact Clare Curtis (CCurtis@cclcompliance.com)

4.0 INTERNATIONAL DEVELOPMENTS

4.1 Australian Financial Regulator to Focus on ICOs and Cryptocurrency Exchanges

The Australian financial regulator, ASIC, has released a report with its plans to further scrutinise the cryptocurrency exchange and virtual currency industry within Australia.

The report comes as part of the regulator's annual "Corporate Plan" which details its plans for this and next year. The regulator stated that consumers were increasingly engaging with digital currencies and related technology in the financial sector. As such, there is a need to develop tighter cyber resilience procedures, particularly among exchanges and payment systems.

With increasing global cyber-attacks and fraud globally affecting financial services, ASIC plans to provide the necessary oversight to ensure threats from a growing digital environment do not adversely affect the consumer. The regulator will also focus on ensuring firms that provide technological solutions comply with regulations to avoid 'misconduct' that is often committed through digital and cyber-based mechanisms.

Further information

If you have any questions or concerns regarding any international developments, please contact Clare Curtis (CCurtis@cclcompliance.com)

5.0 ENFORCEMENT ACTION

5.1 Dutch Bank Fined in Money Laundering Case

Dutch bank ING has paid 775 million euros to settle a huge money laundering case in the Netherlands.

The bank acknowledged that serious shortcoming in its systems had enabled customers to misuse its accounts by not properly vetting the beneficial owners of client accounts and by not noticing unusual transactions through them.

Suspicious occurred in 2016 when financial investigators launched a probe after initial investigations revealed that many white-collar crime suspects held bank accounts at ING.

This led to suspicions that ING NL was not sufficiently monitoring bank accounts and did not report unusual transactions or reported them too late and therefore missed potential signals of money laundering.

ING said it has taken measures against several senior employees, including freezing salaries and bonuses and suspension without pay. ING has since improved its procedures for admitting and vetting clients while the executive board has agreed to forgo a bonus for 2018.

Further information

If you have any questions or concerns regarding enforcement action, please contact Clare Curtis (CCurtis@cclcompliance.com)

6.0 FINANCIAL CRIME

6.1 Former Malaysian PM Charged with Money Laundering Over 1MDB Scandal

Malaysia's anti-corruption agency, has charged the former prime minister Najib Razak with three counts of money laundering as part of its investigation into the multi-billion-dollar 1MDB scandal.

The charges relate to three transfers totalling US\$10million into his bank accounts from SRC International, a former unit of the 1MDB fund that US investigators say was looted of billions by Najib's associates.

The 1MDB corruption scandal, described as the biggest in Malaysia's history, saw billions of dollars allegedly embezzled and lavishly spent around the globe on luxury property and other extravagant purchases. Lawsuits filed in US courts by the Department of Justice allege that an estimated \$4.5bn was misappropriated from 1MDB by high-level officials of the fund and their associates. 1MDB is being investigated by at least six countries including Singapore, Switzerland and the US.

Each money laundering charge is punishable by up to 15 years in jail and a fine of no less than five times the proceeds of the illegal activity, or RM5 million, whichever is higher.

6.2 Former Julius Baer Executive Pleads Guilty to Money Laundering

A former Julius Baer Group Ltd. wealth manager, Matthias Krull, has admitted to participating in a billion-dollar scheme to launder money embezzled from Venezuela's state-owned oil company, PDVSA, less than a month after he was arrested for his alleged role in the plot.

Krull and members of the money laundering conspiracy used sophisticated false-investment schemes and US real estate to conceal that the \$1.2 billion was in fact embezzled from PDVSA.

Krull was arrested in July and charged with using real estate in Florida and fake investment schemes to conceal \$1.2 billion in funds that were embezzled from PDVSA. He is scheduled to be sentenced 29th October 2018.

6.3 Denmark to Investigate Danske Bank Over Money Laundering Allegations

The Danish Public Prosecutor for Serious Economic and International Crime has started a criminal investigation into Danske Bank over allegations of money laundering through its Estonian branch.

The investigation concerns transactions worth billions of Danish crowns that may have been laundered between 2007 and 2015. Danske Bank has admitted to flaws in its anti-money laundering controls in Estonia in the past and has launched its own inquiry, the results of which are expected in September 2018.

The Danish Public Prosecutor has declined to comment on how long the investigation might take but prosecutors have stated that Danish anti-money laundering legislation allows for financial penalties tied to the number of suspicious transactions, meaning fines may "significantly exceed profits".

Further information

If you have any questions or concerns regarding financial crime, please contact Clare Curtis (CCurtis@cclcompliance.com)

ABOUT CCL

CCL has been providing a comprehensive range of regulatory compliance service to firms in the financial services industry since 1988, with offices in London, Dubai, Abu Dhabi and Mumbai. We combine a long history and extensive experience in financial services compliance with the expertise of a team of practitioners that includes former regulators, senior compliance professionals, lawyers and accountants.

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If you wish to discuss how CCL can assist you with any of the issues raised in this Regulatory Update, please contact us the details below:

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This Regulatory Update provides information about the consultative documents and publications issued by various regulators which are still current, proposed changes to the Rules and Guidance set out in Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the regulators' document referred to.