

Regulatory Update

Middle East Edition

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1.0 DIFC AND DFSA LATEST DEVELOPMENTS

1.1 DFSA and DIFC Make New Internal Appointments

His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, Deputy Ruler of Dubai and President of the Dubai International Financial Centre (“DIFC”) has appointed a new DFSA board to ensure the DIFC remains a prominent global financial and business centre. The board, selected for their expertise of senior-level regulatory, legal, financial market and business experience, consists of Saeb Eigner (Chairman), Fadel Al Ali (Deputy Chairman), Abdul Wahid Al Ulama, Andrew Spindler, Apurv Bagri, Charles Flint QC, Swee Lian Teo, Julie Dickson and Sabine Lautenschläger. The board will focus on setting the trajectory and policies of the DFSA and overseeing its operations.

Dr Tarek Hajjiri has been appointed as the first Commissioner of Intellectual Property for the DIFC. His role will include overseeing and administering intellectual legislations, resolving disputes and imposing noncompliance penalties. The appointment continues the DIFC’s commitment to meeting the duties enshrined in the Intellectual Property Law 2019 and further the move to international best practice.

1.2 DFSA’s 2020 Summer Innovation Testing Licence Programme Update

Sixteen firms were selected (from thirty-four applicants) for the Summer Innovation Testing Licence (“ITL”) cohort of 2020. The firms will be able to test their innovative solutions in and from the DIFC with the DFSA’s guidance under the protection of a restricted licence. Of the sixteen firms, thirteen propose to provide money services, whilst other licences were granted for products and services such as payroll solution applications, payments and cross-border money transfer platforms, E-wallet providers and AI-supported wealth management platforms.

The licences will be issued in October 2020. Find further details on the ITL programme [here](#).

1.3 DIFC and Dubai FDI to Jointly Stimulate Foreign Investment in the Emirate

The Dubai Investment Development Agency (“Dubai FDI”), an agent of Dubai Economy, Government of Dubai, has signed a Memorandum of Understanding (“MoU”) with the DIFC. The partnership aims to promote public-private engagement across Dubai FDI’s international and regional network including the MEASA markets, strengthen long term relationships between the two organisations and develop new opportunities for investors while also bringing added value to existing companies looking to expand their footprint in the region.

Further information

If you have any questions or concerns regarding these DFSA and DIFC developments and requirements, please contact [Jade Ashpole](#).

2.0 ADGM AND FSRA LATEST DEVELOPMENTS

2.1 Changes to the Founding Law in the ADGM

The Founding Law has been changed to reflect the framework and operations within the Abu Dhabi Global Market (“ADGM”) to align with international best practices. The changes include:

- The ability for ADGM entities to establish branches, subsidiaries or representative offices without onshore headquarters.
- Parties with a dispute can select the ADGM courts without a connection to the ADGM.
- The ADGM courts will be considered as part of the Abu Dhabi judicial system.
- The name of the Abu Dhabi ruler will be used for all ADGM Court judgements.
- Court judgements in an ADGM court shall not be used in the enforcements of non ADGM judgements in either Abu Dhabi or other jurisdictions.
- Codifying the enforcement of judgements between ADGM courts and Abu Dhabi courts.

Find the official amendments [here](#).

2.2 ADGM Amendments to the Insolvency Regulations 2015 and Companies Regulations 2020

With effect from the 8th July 2020, the Insolvency (Amendment No.4) Regulations 2020 provide companies with further details on the prescribed forms for procedural matters under the Insolvency Regulation 2015 as well as providing clarity as to their content enhancing the insolvency framework in the ADGM. The update aligns with the ADGM Courts' eCourts platform. Additional improvements include the ability for administrators to apply to the ADGM Courts for priority financing. For the regulation amendment click [here](#).

With effect from 9th July 2020, the amendments to the Companies (Amendment No.1) Regulations 2020 allow for flexibility for the Registrar to meet the ADGM's objectives, especially where it is in the interests of public policy. For the regulation amendment click [here](#).

2.3 CB UAE and ADGM Invite Applications for the 2020 Innovation Challenge

Applications are now open for local and international FinTech businesses to test their innovative proof of concept in the 2020 FinTech Abu Dhabi Innovation Challenge. The successful applicants will receive US\$20,000 to partner with either First Abu Dhabi Bank, Abu Dhabi Islamic Bank, Anglo-Gulf Trade Bank or Etihad Credit Insurance to co-develop a proof of concept solution to a problem statement in an effort to secure additional funding of US\$40,000 to continue the development. Applications will be assessed by how well the solution addresses a problem statement, the maturity and scalability of the solution, and how the solution might be deployed in the UAE. Finalists will test their solutions using the ADGM's Digital Lab with guidance from the Central Bank of the United Arab Emirates ("CB UAE") and the ADGM's Financial Services Regulatory Authority ("FSRA"). The challenge aims to fast track solutions to specific challenges faced in the financial services sector.

The closing date for applications is 1 August 2020.

Further information

For any questions or concerns regarding the ADGM or FSRA, please contact [Kareem Wahid](#).

3.0 SCA LATEST DEVELOPMENTS

3.1 SCA Consults on its New Rulebook

The United Arab Emirates ("UAE") Securities and Commodities Authority ("SCA") has released their new Rulebook which will aim to compile the SCA regulations into a single document to align with international best practice. The new Rulebook would apply to all legal and natural persons carrying on any of the financial services activities and approved functions described under the Rulebook.

The draft SCA Rulebook proposes:

- Licensing requirements to be triggered only by the threshold test of activities that are carried on "in a certain manner". This approach is similar to the threshold currently seen in the UK, DIFC and ADGM "by way of business".
- An implied general prohibition of carrying on regulated activities in financial services without a licence where the previous rule book has an explicit prohibition. Note that the breach is listed explicitly a "gross breach" but does not provide clear guidance on how this will be applied.
- One central list of twenty-one SCA-regulated financial activities and five new licence categories with their capital requirements, the former of which is yet to be published.
- Clarity on the approved functions, listing nineteen approved functions with core functions of General Director, Compliance Officer, Risk Officer and Discipline Employee (similar to the Money Laundering and Reporting Officer). All approved functions would need to be assessed by the SCA for fitness and propriety.
- A definition of "securities".

- Removing the exemption of promotions to firms which are regulated by the SCA or by another similar regulated authority.
- A definition of “Financial Advice”.

The consultation period ended on 28 July 2020. Find the link to the draft [here](#).

3.2 SCA Chairs the Committee of Heads of the GCC Financial Market Authorities

The SCA chaired a virtual meeting of the Committee of Heads of the GCC Financial Market Authorities to discuss integration among the GCC securities markets by fostering cooperation among the GCC financial markets.

The meeting considered:

- Implementing a passporting regime across financial market regulators in relation to financial activities, services, products, or initial offerings.
- Individual states managing the IFRS 9 implementation in light of the COVID-19 pandemic will be required to provide any guidebooks or procedures to the General Secretariat by the end of July 2020.
- An SCA working paper for financial inclusion to facilitate and enhance access to financial services that are suitable to all segments of society.
- The experiences of Abu Dhabi Securities Exchange (“ADX”) and the Saudi Stock Exchange (“Tadawul”) in electronic connection and clearing were reviewed.
- The Capital Markets Authority of Kuwait’s paper was reviewed for procedures to improve the Know Your Client (“KYC”) form and the standardised database for the GCC nationals.
- A draft MOU between financial market regulators on joint cooperation to improve the KYC form for the GCC nationals, and to conduct a comparative study to determine the KYC requirements for opening a trading account with the GCC.
- A roadmap for implementing key initiatives to achieve integration within the GCC. Amongst the initiatives, an issuance of uniform investor numbers across the GCC was discussed whereby financial market regulators should work directly with the exchanges to determine the necessary for a successful implementation.

The GCC Financial Market Integration Strategy Working Group was assigned with devising an agreement (regulatory framework) for the intra-licensing of mutual funds and associated services.

3.3 SCA Embarks on a Project to Restructure the Legislative System for Broker Classification

The SCA has restructured its licensing categories as part of an integrated approach to upgrade the financial markets operating in the country to a ‘developed’ market status. The initiative aims to promote the infrastructure of licensed companies to enable them to meet their obligations towards investors, and to compete with their counterparts in advanced markets while achieving the maturity levels across financial services companies.

The licence categories are as follows:

- First category (dealing in securities): the activities carried out by trading brokers, clearing and trading brokers, international market brokers, unregulated derivatives contracts and currency trading brokers in the spot market, and dealers.
- Second category (dealing in investments): the activities related to the management of securities portfolios, the management of investment fund investments, the establishment and management of investment funds (management companies), and the administrative services of investment funds.
- Third category (safekeeping, clearing, and registration): the activities related to general clearing, safekeeping, registrars of private joint stock companies, issuers of covered warrants, and depository banks and their agents.
- Fourth category (credit rating): credit rating activity.

- Fifth category (arrangement and counselling): financial consultations and the activities carried out by financial advisors and listing advisors, in addition to introduction and promotion activities.

The SCA will welcome feedback until 17 August 2020 by emailing customerhappiness@sca.ae.

3.4 SCA Amends the Decision on Issuing and Offering Islamic Securities

The SCA Board has approved an amendment to the SCA Board Chairman's Decision No. (20/R.M) of 2018 on Issuing and Offering Islamic Securities to provide more guidance to Foreign Issuers wishing to offer Islamic securities. This amendment updates the guidance to align with the principles of the International Organisation of Securities Commissions (IOSCO) on the issuance of Islamic securities aiming to encourage local and foreign investors.

The amendments have been submitted to the Higher Shariah Authority for review and feedback. To review, click [here](#).

4.0 MIDDLE EAST REGULATORY UPDATES

4.1 UAE to Merge Financial Sector Regulators

The UAE Insurance Authority will merge with the SCA to create a more agile and efficient government structure. The merger will support a consistent approach on topics that affect both authorities where, under the current regime, there is an overlap of responsibilities. With the unification of frameworks, changes can be expected on the licensing requirements and rulebooks supported by a digitalised government services platform.

The date of the merger is yet to be confirmed.

5.0 INTERNATIONAL UPDATES

5.1 IOSCO Release Consultation Report on Principles on Outsourcing

IOSCO has published a consultation report to receive feedback on proposed principles for regulated entities that outsource tasks to service providers. The consultation paper sets out a common set of seven outsourcing principles that are based on earlier outsourcing principles but their application is now expanded to include trading venues, market intermediaries, market participants acting on a proprietary basis, credit rating agencies and financial market infrastructures.

The 7 principles are as follows:

- Principle 1: A regulated entity should conduct suitable due diligence processes in selecting an appropriate service provider and in monitoring its ongoing performance.
- Principle 2: A regulated entity should enter into a legally binding written contract with each service provider, the nature and detail of which should be appropriate to the materiality or criticality of the outsourced task to the business of the regulated entity.
- Principle 3: A regulated entity should take appropriate steps to ensure both the regulated entity and any service provider establish procedures and controls to protect the regulated entity's proprietary and client-related information and software and to ensure a continuity of service to the regulated entity, including a plan for disaster recovery with periodic testing of backup facilities.
- Principle 4: A regulated entity should take appropriate steps to ensure that service providers protect confidential information and data related to the regulated entity and its clients, from intentional or inadvertent unauthorised disclosure to third parties.
- Principle 5: A regulated entity should be aware of the risks posed, and should manage them effectively, where it is dependent on a single service provider for material or critical outsourced tasks or where it is aware that one service provider provides material or critical outsourcing services to multiple regulated entities including itself.

- Principle 6: A regulated entity should take appropriate steps to ensure that its regulator, its auditors, and itself are able to obtain promptly, upon request, information concerning outsourced tasks that is relevant to contractual compliance and/or regulatory oversight including, as necessary, access to the data, IT systems, premises and personnel of service providers relating to the outsourced tasks.
- Principle 7: A regulated entity should include written provisions relating to the termination of outsourced tasks in its contract with service providers and ensure that it maintains appropriate exit strategies.

The consultation paper can be found [here](#) and comments are invited by 1 October 2020.

5.2 FATF Report to G20 on Stablecoins

The Financial Action Task Force (“FATF”), on request of the G20, has investigated the anti-money laundering (“AML”) and counter-terrorism financing (“CTF”) issues relating to so-called ‘stablecoins’. Stablecoins are roughly defined as a type of crypto asset “that aims to maintain a stable value relative to a specified asset, or a pool or basket of assets to other assets” although a universal definition is not yet available.

The report addresses the following:

- What are the characteristics of stablecoins?
- What are the money laundering and terrorist financing risks of stablecoins?
- How the FATF standards apply to stablecoins and the different businesses involved in the so-called stablecoin.
- How the FATF plans to enhance the global AML and CTF framework for virtual assets and stablecoins.

In the recently completed 12-month review of the FATF standards, the FATF has addressed the application of AML and CTF requirements on virtual assets and virtual asset service providers. The FATF calls on all jurisdictions to implement the revised FATF standards as a matter of priority.

For the full report click [here](#).

5.3 12 Month Review of Revised FATF Standards - Virtual Assets and VASPs

The FATF has reported its findings following the elapse of its 12 months review period on the revised “Standards on virtual assets and virtual asset service providers”. The revisions placed AML and CTF requirements on virtual assets and virtual asset service providers (“VASPs”). The review also measured how jurisdictions and the private sector have implemented the revised standards, as well as monitoring for any changes in the typologies, risks and the market structure of the virtual assets sector.

The report finds that, overall, both the public and private sectors have made progress in implementing the revised FATF standards. However, due to this area’s infancy, the FATF will undertake a second 12-month review, due to be completed in June 2021.

You can find the full report [here](#).

5.4 FCA Seeks Views on Deadlines for Certification Regime and Conduct Rules

The date by which all UK Financial Conduct Authority (“FCA”) solo-regulated firms must have made a first assessment of the fitness and propriety of their certified staff has been extended to 31 March 2021. The new deadline gives firms who have been affected by COVID-19 the opportunity to properly implement the Certification Regime.

Consultation has commenced on extending other requirements under the Senior Managers & Certification Regime (“SM&CR”) including delaying the date the Conduct Rules come into force, the deadline for submission of information about Directory Persons to the FS Register and updating the rules to the deadline for assessing Certified Persons as fit and proper.

Senior Managers are still expected to be responsible to ensure that Certified Persons are fit and proper as well as ensuring Conduct Rules training is effective. There should be no hesitation to remove staff from Certified roles who are deemed not fit and proper. The FCA has confirmed that the benchmark administrators have until December 2021 to train non-senior managers and there is no proposal to delay the implementation date.

Consultation comments are welcomed until 14 August 2020. To review and comment, click [here](#).

Further information

For any questions or concerns regarding these updates, please contact [Jade Ashpole](#).

6.0 ENFORCEMENT ACTION

6.1 SEC Charges Financial Advisor with Fraud for Stealing Millions from Investors

Mr Michael Barry Carter, an ex-financial advisor of Morgan Stanley, has been charged with fraud, by the U.S. Securities and Exchange Commission (“SEC”) for stealing from brokerage customers and his advisory clients. Mr Carter reportedly stole US\$6 million between 2007 and 2019 and will serve a jail sentence of 25 years. The SEC is seeking injunctive relief, the return of allegedly ill-gotten gains, plus prejudgment interest and a civil penalty.

The fraud consisted of at least 53 unauthorised transfers from his clients’ accounts to his own bank account. Mr Carter sold securities without customer authorisation, diverted accountant statements to addresses under his control and transferred funds by forging signatures of his clients.

6.2 Hong Kong Regulator Imposes HK\$25.2M Fine on Guotai Junan Securities

Guotai Junan has been fined HK\$25.5 million by the Hong Kong Securities and Futures Commission (“SFC”) for failings in their AML and CTF safeguards. The failings occurred between March 2014 and March 2015 totalling HK\$37.5 billion over 15,584 transactions, some of which were internally raised red flags.

Guotai Junan failed to:

- Adequately monitor the activities of its clients
- Conduct appropriate scrutiny of fund transfers
- Identify suspicious transactions
- Report suspicious transactions in a timely manner to the Joint Financial Intelligent Unit
- Ensure AML and CTF policies and procedures were properly and effectively implemented for third party transfers
- To take reasonable steps to determine whether its clients’ subscription applications were consistent with its knowledge of their background and source of funds
- Reasonable steps were taken to verify the ultimate beneficial owners of the clients’ accounts and their source of funds
- Appropriate enquiries were made when there were grounds for suspicion
- Detect 590 potential wash trades in a timely manner
- There were adequate written trade monitoring procedures or guidelines in place

6.3 Bank of Ireland Fined €1.66M for Failings Amid Cyber Fraud

The Bank of Ireland (“BoI”) has been fined €1.66 million for regulatory breaches by the Central Bank of Ireland following a cyber-fraud hacker attack. BoI failed to report the cyber incident to the An Garda Síochána (the national police) and, once reported, the bank did not appropriately cooperate with the investigation to the extent that it “has the effect of misleading” the authorities. The bank has been found to have released confidential account details without asking the required security questions or confirming the reason why the fraudster was calling from an unregistered number, consequently allowing the fraudster to release €106,430 of the clients’ funds to a UK bank account.

To avoid similar incidents, Authorised Firms should ensure that:

- They sign-up to and incorporate the cyber threat intelligent platform (for example the DFSA “TIPS” platform) in their cyber security frameworks and report cyber-attacks in a timely fashion.

- IT tests are conducted regularly, that the relevant departments address security weaknesses and senior management are engaged in any issues and remediation.
- Incident Response Plan procedures are implemented as part of their cyber security framework.

6.4 Commerzbank Fine Demonstrates Danger of AML Lapses

Commerzbank London has been fined £37.8 million for basic AML failings following multiple warnings from the FCA. Commerzbank London was found to have inadequate procedures and policies in place for customer due diligence checks on their clients and failed to conduct ongoing due diligence in a timely fashion. In addition to this, Commerzbank did not rectify long-standing weaknesses in their automated tool for monitoring money laundering risk on client transactions.

Further information

If you have any questions or concerns regarding enforcement action, please contact [Jade Ashpole](#).

ABOUT CCL

CCL has been providing a comprehensive range of regulatory compliance services 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.