

# Regulatory Update

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## Middle East Edition

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## 1.0 DIFC AND DFSA LATEST DEVELOPMENTS

### 1.1 DIFC Launches New Innovation Licence to Boost Creativity and Entrepreneurship

The Dubai International Finance Centre (“DIFC”) has launched a new licence for start-ups, entrepreneurs, and technology firms. The licence aims to help firms grow and scale their businesses using the DIFC’s independent English Common Law legal and regulatory framework, world class intellectual property and data protection regime, as part of the Future Dubai District initiative announced by His Highness Sheikh Mohammed bin Rashid Al Maktoum. The new DIFC Innovation Licence will offer a subsidised commercial licensing option with licences from US\$1,500 per year. As part of the licence terms, the business will gain access to co-working spaces at attractive rates. The licence will allow for up to four visas when renting an office space as well as a fifty per cent subsidy on additional visas.

### 1.2 DIFC Issues Amendments to the Common Reporting Standard Law and Regulations

The Common Reporting Standard Law Amendment Law No. 6 of 2020 has been enacted, modifying the Common Reporting Standard Law, DIFC Law No. 2 of 2018 and supports the heightened compliance requirements in the DIFC, which aim to ensure that reporting financial institutions meet the same standards, transparency levels and robust legal and regulatory framework to align with international best practice.

The key changes include:

- introducing offences and penalties for providing false self-certifications
- introducing offences and penalties for financial institutions failing to obtain valid self-certifications
- formally adopting the explanatory material issued and published by the Organisation for Economic Cooperation & Development for the purpose of assisting with the interpretation of the Common Reporting Standards

Firms should implement and maintain robust self-certification validation procedures, where appropriate.

You can find the law amendments [here](#).

### 1.3 DFSA Releases Consultation Paper No. 132 - Updating the Large Exposures Regime

The Dubai Financial Services Authority (“DFSA”) Consultation Paper No.132 sets out several proposed changes to their prudential regime that relate to large exposures of financial institutions regulated by the DFSA. The paper aims to align the DFSA requirements with the standard issued by the Basel Committee on Banking Supervision (“BCBS”) and the international standards to address inconsistency in defining, controlling, and measuring large exposures as well as reducing systemic risks.

The paper discusses:

- the definition of large exposures
- large exposure limits
- aggregation of exposures
- effective controls
- removal of the current higher large exposures limit applicable to financial institutions in Prudential CAT 1 and 5
- treatment of parental support for large exposure limits
- update to the undrawn credit facilities and mortgages
- credit conversion factors floor
- eligible credit risk mitigation
- mandatory exposure shifting
- trading book exposures
- exposure to Sovereigns and connected entities
- covered bonds

- collective investment undertakings, securitisation vehicles and other structures
- exposure to central counterparties

This paper will be of particular interest to:

- authorised firms who are licensed as deposit takers, credit providers and proprietary dealers
- agents dealing on a matched principal basis or as an Islamic banking institution
- persons interested in applying for a licence to conduct any of the activities listed above or service providers who assist in these activities.

You can review the consultation paper [here](#). Comments are invited until 25 November 2020, you can submit your comments [here](#).

#### **1.4 DFSA Releases Consultation Paper No.133 - The Future of Finance: Venture Capital**

The DFSA has released Consultation Paper No.133 for venture capital firms operating in the DIFC. The consultation paper proposes amendments to the current regulatory regime to support the DIFC's ecosystem as part of the 'Future of Finance' strategy. The DFSA acknowledges the importance of venture capital in supporting start-ups and small businesses to pursue innovative ideas and ways of doing business in the region.

The paper discusses:

- defining a Venture Capital Fund as a specialist class of Fund, distinct from a Private Equity Fund
- types of funds
- fund managers' duties
- prospectus disclosure
- distribution of Foreign Funds
- skills and experience needed to manage a Venture Capital Fund
- Prudential requirements
- fund reporting
- Islamic finance and venture capital
- Fees

This paper will be of particular interest to fund managers, persons considering establishing a fund manager or Funds in the DIFC, and advisers to any of these persons.

You can review the consultation paper [here](#).

#### **1.5 DFSA 2018 - 2019 Audit Monitoring Report**

The DFSA has released its findings following a sample of oversight visits to registered auditors, public listed companies, authorised firms, authorised market institutions and domestic funds in the DIFC. The report covers findings on anti-money laundering obligations, systems of quality control, and compliance with the DFSA's Auditor Module by registered auditors. The DFSA found that:

- for long outstanding material receivable balances, the engagement teams often rely heavily on the clients' legal advisors without further investigation as to whether the balances were recoverable; verification of the legal advisors' competence was often not questioned.
- there were non-registered audit principals leading engagements and the registered auditor would conduct a quality control review. This is a breach of Article 97C (2) of the Regulatory Law.
- without sufficient audit work on the parent entity, some auditors had deemed it suitable for the parent entity to provide a letter of comfort where the client had been incurring losses since inception.
- several engagement teams and a few registered auditors did not take full control of the process for obtaining bank confirmations, as required by ISA 505 - External Confirmations.
- audit lists given by the registered auditor were often incomplete, or the audit was not listed against the auditors'

name, meaning that the DFSA did not have a full selection of all the auditors' engagements.

- regarding use of experts, the engagement file often relied on external valuations without sufficient audit trail
- a registered auditor failed to notify the DFSA about relocation of key staff members in breach of the Auditor Module of the Rulebook, Principle 5.
- assets were misclassified: receivable balances related to advisory services were classified as current assets. However, in practice, the assets would only be paid on the realisation of private equity investments, which would not be realisable within 12 months from the end of the financial year.

With specific focus on Anti Money Laundering (“AML”) findings the DFSA found that:

- ultimate beneficial owners were not identified as part of ongoing CDD
- not enough care was given to assessing money laundering and terrorist financing risks

Firms should be aware that:

- engagement teams should conduct a thorough review of auditor engagement terms, the scope of work and consideration of the client's legal advisors competence / experience
- the registered auditor should be the only auditor taking responsibility of your audit. If you need to update your auditor, notify the DFSA before the assignment begins
- where a firm relies on use of experts, minutes should be kept demonstrating the specific challenge on methodology of the external valuation report. An audit working paper should be kept detailing the audit principles acceptance of these assumptions
- AML systems and controls should be established and maintained in relation to its activities; firms should take a risk-based approach that is proportionate to the risks they are exposed to

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

#### **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 ADGM and Sunline Collaborate on the Development of FinTech Solutions in the Digital Lab**

The Abu Dhabi Global Market's (“ADGM”) Financial Services Regulatory Authority (“FSRA”) and Sunline Holding (HK) Ltd (“Sunline”) have signed a Memorandum of Understanding to support development of the ADGM's FinTech ecosystem by providing a FinTech development suite to the ADGM Digital Lab.

Sunline will develop digital financing and loans solutions for small and medium size enterprises (“SME”) to grow operations by connecting FinTech companies with banks. The development suite will enhance the ADGM Digital Lab offerings, allowing banks to create specialised end-to-end workflows for loan products specifically for SMEs' needs. In addition to this, the FSRA and Sunline have agreed to support FinTech participants and connect ecosystem enablers to leverage Abu Dhabi infrastructure. This will entice firms to develop, test and launch innovative FinTech products, services and business solutions in the Middle East and North Africa markets and Belt and Road Corridor using the ADGM's platform.

#### **Further information**

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

### 3.0 MIDDLE EAST REGULATORY UPDATES

#### 3.1 SAMA Launches the “Let Them Know You” Awareness Campaign

The Saudi Arabian Monetary Authority (“SAMA”) launched its “Let Them Know You” campaign to educate all establishments, institutions and legal entities about the Legal Entity Identifier referred to as “MOARIF”. MOARIF provides firms with the ability to carry out deep due diligence by linking all data sources in one complex system to identify the parties to financial transactions. The innovative approach seeks to enhance the safety and transparency of financial markets and improve risk management, quality and accuracy of financial statements as well as providing information about the entity’s parent and subsidiary.

### 4.0 INTERNATIONAL UPDATES

#### 4.1 IOSCO Examines the Evolution of Liquidity Provision in Equity Securities Markets

The Board of the International Organisation of Securities Commissions (“IOSCO”) has published a report exploring how the liquidity provision has evolved in equity securities markets. The report is based on surveys of regulatory authorities, trading venues and market intermediaries, and identifies several common themes in relation to market making programmes and other liquidity provision incentive arrangements.

Key elements include:

- registration of market makers
- obligations imposed on market makers
- balancing the obligations and benefits of the programmes
- monitoring compliance with the programme
- public disclosure about the programmes

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

#### 4.2 FCA Consults on New Rules to Improve Open-Ended Property Fund Structures

The United Kingdom’s Financial Conduct Authority (“FCA”) has released a consultation paper on proposals to reduce the potential harm to investors from the liquidity mismatch in open ended funds. The report makes recommendations to reduce the mismatch of units, often sold daily, with the aim to reduce the need to suspend dealings in fund units. Fund suspensions have become more common place in recent years with influential market shifts such as Brexit and COVID-19. The current scheme has the effect of incentivising investors to be the first to exit the fund in times of stress, which could harm remaining investors or require quick asset sales to address liquidity needs. The new rule would propose that investors would give notice of up to one hundred and eighty days before an investment can be redeemed to allow for fund managers to manage redemptions and to better plan the sales of assets if required.

The consultation paper welcomes other suggestions to meet the same aim. The paper can be reviewed in full [here](#).

#### 4.3 Update to the International and National Sanction Lists

The United Nations Security Council (“UNSC”) has issued an updated list of individuals and entities on the sanction list and national list of terrorists. The United Arab Emirates, as a member state of the UN, has published an updated national list in support of this revision and has added two individuals and three entities based in Congo.

Firms should be aware of new additions to the list and review their current KYC in response to the list.

The updated list can be found [here](#).

#### **Further information**

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

## 5.0 ENFORCEMENT ACTION

### 5.1 Interactive Broker LLC to Pay \$38 Million over AML Claims

Interactive Brokers LLC has been charged \$38 million collectively by the U.S Securities and Exchange Commission (“SEC”), the U.S. Commodity Futures Trading Commission (“CFTC”) and the Financial Industry Regulatory Authority (“FINRA”) to settle claims that it failed to maintain an adequate anti money laundering (“AML”) programme for more than five years. It is claimed that Interactive Broker LLC failed to monitor hundreds of millions of dollars of customers’ wire transfers and failed to report possible manipulation of microcap securities in customer accounts. It is also claimed that during the firm’s growth over the five-year review period the compliance function’s processes, oversight and procedures did not correspond with that growth. In addition to this, the SEC claims that the firm failed to raise more than one hundred and fifty suspicious activity reports in breach of the firm’s AML obligations. Interactive Brokers have agreed to pay the settlement without admitting or denying claims.

In order to avoid similar regulatory action, firms should consider:

- strengthening their AML measures in line with the growth of their firm, taking into consideration staffing numbers, oversight arrangements and risk framework
- implementing robust transaction monitoring arrangements to identify suspicious activity
- providing regular training to employees on suspicious activity reporting including examples of what a suspicious activity may look like
- reviewing the compliance function periodically to ensure it is adequately resourced and that systems and controls are commensurate to the AML risks faced by the firm

### 5.2 High Court Orders Illegal Pension Introducers to Pay £10,715,000 Restitution to Consumers

In a case brought by the FCA to the British High Court, illegal pension introducers Avacade, Alexandra Associates and their directors - Craig Lummis, Lee Lummis and Raymond Fox - have been ordered to pay £10,715,000 to investors induced to transfer their pensions into illegal self-invested personal pensions. The Court found that the companies engaged in the regulated activities of arranging and advising of investment without FCA authorisation, made false or misleading statements through unapproved financial promotions on their websites, promotional material and in telephone calls to consumers with the knowledge of the firms’ directors. The companies were found to have targeted the elderly and vulnerable. The FCA has banned Alexandra Associates (trading as Avacade Future Solutions), Craig Lummis, Lee Lummis, and Raymond Fox from engaging in regulated activities in the UK without authorisation.. Avacade Limited is in the process of being liquidated.

Firms should:

- review their business activities to ensure they have the correct financial service permissions
- apply to the regulator for a variation of permission if it intends to offer a new financial service
- undertake compliance reviews of marketing material prior to distribution
- conduct detailed suitability assessments before providing advice or a recommendation to clients, including a review of the client’s understanding of investment risk

#### **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.

### Consultancy Services & Support

- Compliance Advisory
  - Assurance Reviews
  - Compliance Remediation
  - Financial Crime Prevention
  - Corporate Governance
  - Risk Management
  - Prudential Rules & Regulatory Reporting
  - Data Protection
- Authorisation
- Outsourcing (Compliance Officer & MLRO)
- Documentation
- Regulatory Technology – CCL C.O.R.E

### Training (through CCL Academy)

- Compliance
- AML & Financial Crime Prevention
- Rules & Regulations
- Senior Management & The Board
- Finance Induction
- CISI Qualifications

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.