

# Regulatory Update

## Middle East Edition

INDEX

SEPTEMBER 2020

<b>1.0 DIFC AND DFSA LATEST DEVELOPMENTS</b>	<b>2</b>
1.1 New Opportunities in the DIFC Through Expanded Prescribed Company Regime	2
1.2 DFSA Issues Discussion Paper on Sustainable Finance in the DIFC	2
1.3 DFSA Publishes a Markets Brief on Insider List for Reporting Entities	2
1.4 DFSA Issues a Dear SEO Letter and a Markets Brief on the Transition From IBOR	3
1.5 DFSA Issues a Dear MLRO Letter Regarding an Update to the Sanctions List	3
<b>2.0 ADGM AND FSRA LATEST DEVELOPMENTS</b>	<b>3</b>
2.1 ADGM Begins Public Consultation on Proposed Electronic Transactions Regulations	3
2.2 ADGM Appoints New CEO for its Financial Services Regulatory Authority	4
2.3 FSRA Issues a Dear SEO Letter Regarding Client Assets Thematic Reviews	4
<b>3.0 MIDDLE EAST REGULATORY UPDATES</b>	<b>4</b>
3.1 SAMA Launches the Joint Research Programme	4
3.2 FSB RCG MENA Group Discusses the Economic and Financial Market Development	5
3.3 UAE Issues Cabinet Resolution on the Regulation of the Procedures of the Real Beneficiary	5
3.4 UAE Issues Cabinet Decision Concerning Economic Substance Requirements	5
<b>4.0 INTERNATIONAL UPDATES</b>	<b>6</b>
4.1 IOSCO Issues Measures to Reduce Conflict of Interests in Debt Capital Raising	6
4.2 Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing	6
<b>5.0 ENFORCEMENT ACTION</b>	<b>7</b>
5.1 Isle of Man Advice Firm Receives a \$69,342 Fine for Regulatory Failures	7
5.2 J.P. Morgan Securities Admits to Manipulative Trading in U.S. Treasuries	7

## CONTACTS

NIGEL PASEA  
Managing Director  
NPasea@cclcompliance.com

JADE ASHPOLE  
Managing Consultant  
JAshpole@cclcompliance.com

## 1.0 DIFC AND DFSA LATEST DEVELOPMENTS

### 1.1 New Opportunities in the DIFC Through Expanded Prescribed Company Regime

The Dubai International Finance Centre (“DIFC”) has expanded its Prescribed Company regime to all non-retail companies in the DIFC along with their shareholders, Ultimate Beneficial Owners (“UBO”) and affiliates. The Prescribed Company regime was introduced in 2019 as a cost-effective option for firms seeking to benefit from the legal and regulatory framework of the DIFC, by using structures from the DIFC. Prescribed Companies can use flexible office solutions, including co-working spaces or shared offices, as well as benefitting from lower incorporation and annual licence fees.

### 1.2 DFSA Issues Discussion Paper on Sustainable Finance in the DIFC

The Dubai Financial Services Authority (“DFSA”) has released a paper which discusses the most suitable way to foster the development of sustainable finance in the DIFC. The DFSA looks to address the issues of taxonomy, transparency, disclosure and reporting related to the environmental, social and governance aspects as part of the various United Arab Emirates (“UAE”) agreements, including the UAE Green Agenda 2015-2030 and the Dubai Declaration on Sustainable Finance. The paper discusses the UAE’s current thinking on sustainable finance, drawing ideas from the UAE Guiding Principles on Sustainable Finance (published by the UAE Working Group on Sustainable Finance) and international thought leaders.

The paper sets out:

- sustainable finance taxonomy
- the international and UAE landscape and developments
- direction of travel on sustainable finance in the DIFC

This paper would be of interest to:

- authorised firms
- investors and customers of authorised firms
- issuers of securities listed on DIFC Authorised Market Institutions
- Designated Non-Financial Businesses and Professions (“DNFBPs”) including Auditors and Single Family Offices
- advisers to any of the above
- other stakeholders, NGOs and interested parties

The DFSA welcomes comments until 9th December 2020. To read the full paper, click [here](#). You can submit your comments [here](#).

### 1.3 DFSA Publishes a Markets Brief on Insider List for Reporting Entities

The DFSA has published a markets brief to explain its expectations regarding the creation and maintenance of insiders lists. Reporting entities may be required to keep and update an insider list in line with the DFSA Markets Rules in MKT 4.2.7/ MKT 6.5.7 for listed funds. The paper discusses who insiders are, what is meant by an insider list, what inside information is, the types of insider, the purpose of an insider list, who is responsible for creating and maintaining such a list, the content of that list and the duties of insiders.

Some of the key requirements are to include:

- personal details of the insider and the company for which the insider works
- the reasons for the person’s entry to the list
- the start date of access to the inside information
- the date the access was revoked, or the person’s position ended
- the date that the form was drafted
- a record of the dates when the list was updated

Where an insider list is applicable for your firm, you should review the relevant DFSA marketing rules, using the insight from the published markets brief, to ensure that your list meets the DFSA expectations.

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

#### **1.4 DFSA Issues a Dear SEO Letter and a Markets Brief on the Transition From IBOR**

The DFSA has issued a “Dear SEO Letter” and a markets brief on the transition away from the Inter Bank Offered Rates (“IBOR”) benchmarks. The letter explains the expectation placed on DFSA authorised firms to implement a transition plan to move from IBOR and associated rates, such as the London Interbank Offered Rates (“LIBOR”), to other alternative solutions by the 2021 deadline.

Firms will need to consider how they:

- deal with existing IBOR-referencing securities or products with maturities or rolling-over arrangements beyond the end of the 2021 LIBOR phase-out deadline
- negotiate with counterparties and include conversion clauses in legacy contracts referencing IBORs
- measure their own exposures, and adapt to new valuation methods
- adapt internal and third-party managed systems, processes and documentation to factor in the transition
- conduct appropriate awareness campaigns and inform clients about the impact of the transition

The markets brief sets out information for issuers and reporting entities on prospectus disclosure requirements and continuing obligations relating to the transition from LIBOR.

Firms should be undertaking pre-emptive work prior to the transition deadline by:

- considering the impact of the move from IBOR to alternative reference rates
- planning updates to their risk management framework
- notifying the DFSA in advance of any change in the rights attaching to securities which are listed for reporting entities
- notifying the DFSA in advance of any change in the rate of interest in the case of debt security for reporting entities only

#### **1.5 DFSA Issues a Dear MLRO Letter Regarding an Update to the Sanctions List**

The DFSA has requested urgent action by firms regarding eleven new entries on the United Nations Security Council sanctions list. All authorised firms are requested to review the sanctions list against their client databases and any other information in relation to potential or existing clients and take action where required.

The updated sanction list can be found [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 Begins Public Consultation on Proposed Electronic Transactions Regulations**

The Abu Dhabi Global Market (“ADGM”) published a consultation paper on making the transition to a digitally enabled way of business. It proposes a regulation that would allow for electronic validation of transactions, thereby updating legal concepts of physical copies of documents, giving equal weighting to online validation methods, such as electronic signatures and e-contracts.

The full regulation can be found [here](#). The ADGM welcomes your comments until 14th October 2020 by emailing [consultation@adgm.com](mailto:consultation@adgm.com).

## **2.2 ADGM Appoints New CEO for its Financial Services Regulatory Authority**

The ADGM announced that Emmanuel Givanakis will assume the position of Chief Executive Officer of the Financial Services Regulatory Authority (“FSRA”) in April 2021, succeeding Richard Teng.

## **2.3 FSRA Issues a Dear SEO Letter Regarding Client Assets Thematic Reviews**

The FSRA issued a “Dear SEO” letter confirming the expectations of firms with the permission to “hold and control client assets”.

The guidance provides that:

- with regards to governance:
  - firms must demonstrate that responsibilities for the day to day management and oversight of client assets have been clearly assigned
  - firms must have a defined monitoring process
- with regards to internal controls:
  - firms must establish and maintain clear policies and procedures with regards to client asset provisions
  - firms must ensure that there is adequate separation of duties between employees that have the authority to execute transactions on behalf of clients and those who to operate client accounts
  - firms must be able to demonstrate that relevant Conduct of Business (“COB”) disclosures have been provided to their clients
- with regards to procedures and policies relating to third-party agents:
- firms must conduct suitability assessments of third-party agents, and those holding client money must obtain written acknowledgements from both local and overseas third-party agents

In addition, the FSRA advises firms who are relying on RegTech, FinTech and SupTech during the period of COVID-19 working arrangements to contact the FSRA to discuss the possibility of waiving certain regulatory requirements.

### **Further information**

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

## **3.0 MIDDLE EAST REGULATORY UPDATES**

### **3.1 SAMA Launches the Joint Research Programme**

The Saudi Arabian Monetary Authority (“SAMA”) has launched a new programme which brings together academics, specialists, and experts to serve the national economy. The programme aims to address current issues as part of the realisation of the Saudi Vision 2030.

The programme will cover six areas of study including:

- the financial sector
- macroeconomics and foreign trade
- private sector
- labour market, energy and mining sector

An award will be granted to the team of researchers with the best research ideas.

You can find further information [here](#).

### **3.2 FSB RCG MENA Group Discusses the Economic and Financial Market Development**

The Financial Stability Board (“FSB”) Regional Consultative Group (“RCG”) for the Middle East and North Africa (“MENA”) held a meeting to discuss global and regional macroeconomics, and financial market developments.

Some of the key issues discussed included:

- the medium and long term threats to financial stability due to the COVID-19 pandemic
- the FSB's work on BigTech firms in emerging markets, benchmark transition, enhancing cyber resilience and cross-border payments
- the regulatory and supervisory and oversight challenges raised by the "global stablecoin" arrangement

### **3.3 UAE Issues Cabinet Resolution on the Regulation of the Procedures of the Real Beneficiary**

The UAE Ministry of Finance ("MOF") issued Cabinet Resolution No. 58 of 2020 on the Regulation of the Procedures of the Real Beneficiary to replace Cabinet Resolution No. 34 of 2020. The new resolution seeks to synchronise the onshore UAE requirements with the non-financial free zones requirements for identifying beneficial owners of corporate entities.

New requirements include:

- onshore entities are required to keep a current register of shareholders, beneficial owners and nominee directors
- onshore entities are also obliged to file information regarding their shareholders and beneficial owners by the 27<sup>th</sup> October 2020
- onshore entities will have a duty to notify the Registrar of any changes within 15 days of any changes or amendments to the register

### **3.4 UAE Issues Cabinet Decision Concerning Economic Substance Requirements**

The UAE MOF has issued "Ministerial Decision No.100 for the year 2020 on the issuance of directives for the implementation of the provisions of the Cabinet Decision No.57 of 2020 concerning economic substance requirements" repealing "Ministerial Decision No. 215 of 2019".

The new Economic Substance Regulation ("ESR") provides guidance for entities that conduct one of the following relevant activities:

- Banking Business
- Insurance Business
- Investment Fund management Business
- Lease - Finance Business
- Headquarters Business
- Shipping Business
- Holding Company Business
- Intellectual Property Business ("IP")
- Distribution and Service Centre Business

The ESR will not apply to an exempt licensee, who is an entity conducting a relevant activity but who falls under one of the following exemptions:

- (a) an investment fund
- (b) an entity that is tax resident in a jurisdiction other than the UAE
- (c) an entity wholly owned by UAE residents and meets the following conditions:
  - (i) the entity is not part of a MNE Group
  - (ii) all of the entity's activities are only carried out in the UAE
- (d) a licensee that is a branch of a foreign entity, the Relevant Income of which is subject to tax in a jurisdiction other than the UAE

Where the entity does not fall under an exempt licensee, an economic substance notification should be submitted electronically within six months from the end of the entity’s financial year and the supporting economic substance report should be submitted twelve months following the financial year end. An exempt licensee is required to submit a notification with information and documents confirming its capacity as an exempt licensee to its regulatory authority.

Additional key updates include the definition of “relevant activities”, “licensee” as well as clarification on the classification of “branches”.

You can read the full decision [here](#).

## 4.0 INTERNATIONAL UPDATES

### 4.1 IOSCO Issues Measures to Reduce Conflict of Interests in Debt Capital Raising

The International Organisation of Securities Commissions (“IOSCO”) has published guidance to help its members address potential conflicts of interest and associated conduct risks market intermediaries may face during the debt capital raising process. The guidance also explores the benefits and risks of Blockchain technology. The IOSCO provides nine measures to address potential issues when preparing to raise debt finance.

The guidance broadly covers addressing conflicts in:

- the interest in pricing
- the interest in quality of available information
- allocations
- preparing to raise debt finance for issuers

The final report can be found [here](#).

### 4.2 Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing

The Financial Action Task Force (“FATF”) has released a report to assist firms with recognising money laundering and terrorist financing red flags when dealing with virtual assets. The publication draws from accumulated knowledge from over one hundred cases to identify common themes where virtual assets are being used for criminal activity, with the aim of assisting detection by national authorities. The guidance provides further clarification to virtual asset service providers, financial institutions, DNFBPs, and other reporting entities to report suspicious transactions.

The key indicators are:

- technological features that increase anonymity, such as the use of peer-to-peer exchanges websites, mixing or tumbling services or anonymity-enhanced cryptocurrencies
- geographical risks - criminals can exploit countries with weak, or absent, national measures for virtual assets
- transaction patterns- irregular, unusual or uncommon patterns can suggest criminal activity
- transaction size – if the amount and frequency has no logical business explanation
- sender or recipient profiles - unusual behaviour can suggest criminal activity
- source of funds or wealth - which can relate to criminal activity

You can find the full report [here](#). The FATF has provided brief industry specific guidance for Financial & Non-Financial Sectors which can be viewed [here](#), a Virtual Asset Service Providers brief can be viewed [here](#), and a Public Sector brief can be viewed [here](#).

#### Further information

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

## 5.0 ENFORCEMENT ACTION

### 5.1 Isle of Man Advice Firm Receives a \$69,342 Fine for Regulatory Failures

The Isle of Man Financial Services Authority (“TOMFSA”) has issued a fine of £90,000 (reduced to £62,996), to the financial advisory firm Island Financial Solutions (“IFS”) for failing to provide appropriate oversight, governance and compliance controllers on its activities, following a supervisory inspection in 2018. The main breach regarded the treatment of the defined benefit pension transfer, the signing of documents and fee transparency.

Firms are advised to:

- ensure advice is suitable with respect to the specific services offered
- fully inform clients of the risks to which they are exposed
- implement an effective compliance regime to monitor and detect poor practices, such as backdating and pre-signing documents
- be transparent with the authorities on commission and fee arrangements

### 5.2 J.P. Morgan Securities Admits to Manipulative Trading in U.S. Treasuries

The U.S. Securities and Exchange Commission (“SEC”) charged J.P Morgan Securities LLC (“JPMS”) for fraudulently engaging in manipulative trading activity in relation to U.S. Treasury securities. JPMS has admitted the finding and has agreed to pay a disgorgement of \$10 million and a civil penalty of \$25 million for trades carried out between April 2015 and January 2016. The SEC found that JPMS employed manipulative trading strategies by trading bona fide orders with non bona fide orders simultaneously, by revoking orders that were not beneficial after the gain, and by creating a false appearance of buy and sell interest.

#### **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:

Email: [info@cclcompliance.com](mailto:info@cclcompliance.com)

Website: [www.cclcompliance.com](http://www.cclcompliance.com)

Tel: Dubai +971 4 323 0800 | Abu Dhabi +971 2 440 2146

or write to us at:

CCL Limited  
Level 2, Gate Village Building 7,  
Dubai International Financial Centre (DIFC),  
Dubai, PO Box 506733,  
United Arab Emirates

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.