GOVERNANCE | RISK | COMPLIANCE

Regulatory Update

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Middle East Edition

INDEX

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CONTACTS

NIGEL PASEA
Managing Director
NPasea@cclcompliance.com

JADE ASHPOLE
Managing Consultant
JAshpole@cclcompliance.com

1.0 DIFC AND DFSA LATEST DEVELOPMENTS

1.1 DIFC Appoints a New Higher Board of Directors

The Dubai International Finance Centre ("DIFC") has a new Higher Board of Directors, which sees His Highness Sheikh Maktoum Bin Mohammed bin Rashid Al Maktoum being reinstated as the Chairman of the Higher Board of Directors. Other appointments made were the Governor of the DIFC, the Chairman of the Board of Directors of the DIFC Authority, the Chairman of the Dubai Financial Services Authority's Board of Directors and the Chief Justice of the DIFC Courts. The Higher Board will continue to exercise oversight on the strategies and policies in line with the DIFC's objectives.

1.2 DIFC Issues its First Licence to Provide Money Services in the DIFC

The DIFC has issued its first licence in Money Services showing its commitment to further develop the financial ecosystem in the DIFC. The licence was introduced following the Money Services regulations that were released earlier in 2020 promoting financial innovation in the region.

1.3 Bryan Stirewalt, Chief Executive of the DFSA, to Retire

Bryan Stirewalt has announced his intention to retire in September 2021, drawing to a close 23 years' service with the Dubai Financial Services Authority ("DFSA"). We wish Bryan the best for the future and thank him for his leadership. A new Chief Executive has yet to be appointed.

1.4 Notice of Changes to Legislation

Following Consultation Paper 136 - Miscellaneous, the DFSA has announced changes to the following rulebooks:

- General Module ("GEN")
  - amending the activity of 'Operating a Crowdfund Platform' to include trusts and beneficial interests in a trust
  - minor updates to the licensed functions and Authorised Individual section
  - minor amendment to the notification obligations of Authorised Persons concerning regulatory impact
- Conduct of Business Module ('COB")
  - expanding the rules relating to insurance business to permit Contracts of Insurance concerning risks situated in another Financial Free Zone, in addition to the DIFC
  - enhancing the public disclosure requirements for crowdfunding platforms to include the actual default rates, percentage of loans entered into on the platform, and the expected failure rates. Loan crowdfunding operators must also disclose information on its website within seven days after the end of each quarter of a calendar year concerning the total number of loans and a breakdown of late payments
  - minor amendments to depositor protection requirements and the client money distribution rules to reflect the updated Insolvency Law
- Islamic Finance Rules ("IFR")
  - updated guidance relating to transitional relief for marketing material
- Collective Investment Rules ("CIR")
  - introducing a new periodic Fund Return which must be completed by fund managers of domestic funds in respect of each domestic fund managed
- Glossary Module ("GLO")
  - updating the meaning of the terms 'Credit Facility', 'Financial Free Zone' and 'Trust Law'

Firms affected by any of the above changes should consider and implement the relevant changes by the enactment date of the 1st February 2021.

Full details of the changes can be found here.

1.5 DFSA Issue a Dear SEO Letter on Cyber Security Risks

The DFSA has introduced guidance on cyber security frameworks and general best practice to assist firms in protecting themselves from cybercrime. The letter emphasises the importance of establishing a sound and robust framework, as well as ensuring systems are secure, reliable, resilient and recoverable. The DFSA also noted that responsibility for cyber security rests with the board and senior management.

Firms should:

- review the DFSA's guidelines and carry out a gap analysis review against their current cyber security frameworks
- ensure the individuals overseeing the cyber security framework and third-party providers are sufficiently competent
- implement appropriate controls to secure data relative to the sensitivity and criticality of the data
- monitor controls regularly, including stress testing where necessary
- arrange comprehensive cyber training for staff and introduce campaigns to raise awareness of cyber security
- consider whether current cyber security frameworks are adequate for remote working and whether additional authorisation controls, firewalls and encryption methods are required
- maintain adequate infrastructure to monitor systems for any anomalies or events which could indicate a cyber incident
- notify the DFSA, via their ePortal, within 72 hours of identifying a cyber incident.

The full guidance 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 to Amend the Application of English Law Regulations 2015

Following Consultation Paper No.4 of 2020 - Proposed Amendments to the Application of English Law Regulations 2015, the Board of Directors of the Abu Dhabi Global Market ("ADGM") have amended references to several laws by enacting the Application of English Law Regulations (Amendment No.1) 2020.

The updates include:

- references to the Bills of Exchange Act 1882 to now include the Small Business, Enterprise and Employment Act 2015
- references to the Trustee Act 1925 to now include the Inheritance and Trustee Powers Act 2014
- additional subsections to the Limited Partnerships Act 1907 regarding the debts and obligations of the firm
- references to the Marine Insurance Act 1906 to now include the Insurance Act 2015

Firms under the guidance of the affected laws should review the updates carefully and make immediate changes.

A full list of the changes can be found here.

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 Issues the Systematically Important Financial Institutions Treatment System

The Saudi Arabian Monetary Authority ("SAMA") has issued the Systematically Important Financial Institutions ("SIFIs") Treatment System in line with G20 recommendations, the Financial Stability Board and international best practice. The new treatment system enables SAMA to supervise systemically important financial institutions and the preservation of monetary and financial stability. The system also enables SAMA to implement a "treatment plan" designed to address and maintain the safety and stability of the financial sector by protecting depositors' funds, client assets and insurance policies which, in turn, will reduce the dependence of government support. Systemically important financial institutions covered by the treatment system will be required to prepare a "restoration plan" consisting of procedures and steps to restore the institutions' position in the event of a default.

3.2 Oman CMA Creates a New Department Against Money Laundering and Terrorist Financing

The Capital Market Authority ("CMA") of Oman has introduced a new Anti-Money Laundering ("AML") and Counter Terrorist Financing ('CTF") department in order to meet national and international requirements as part of the Oman Vision 2040. The creation of the AML and CTF department follows the implementation of the regulations supporting the Combating Money Laundering and Financing Terrorism Law No.30/2016, enacted in 2020, which outlined offences and penalties and provided guidance to firms on AML and CTF matters.

3.3 SCA Issues a Decision on Offering and Issuing Shares of Public Joint Stock Companies

The UAE Securities and Commodities Authority ("SCA") Board has issued the Chairman of the Authority's Board of Directors' Decision No. (25/Chairman) of 2020, concerning the regulation of offering and issuing shares of Public Joint-Stock Companies. Under the new Decision, free zone companies can offer shares for subscription by the public in an Initial Public Offering ("IPO"), provided that certain requirements are met.

Some of the requirements include:

- The free zone company that wishes to offer shares to the public under the new Decision must take the legal form of a joint stock company or a legal form that has characteristics similar to that of the joint stock company under the UAE Commercial Companies Law.
- The free zone company willing to offer shares in public offering must have a minimum paid up capital of AED 20 million. In addition, the net shareholders' equity must be at least equal to 100% of the paid-up capital.
- The free zone company must be registered within a free zone that has a Cooperation Agreement with SCA in relation to the supervision and control over companies. Although the Decision does not set out a specific definition of Cooperation Agreement, the form of such Cooperation Agreement will be prepared and made available by SCA.
- Should the free zone company satisfy all the requirements under the Decision and the SCA approves the application for public offering, the free zone company must offer at least 25% and not more than 70% of its shares in the public offering. By exception to the foregoing rule, SCA can approve an offering of 100% of the free zone company's shares, provided that the offering is limited to qualified investors as defined under SCA rules and regulations.

You can read the full Decision here.

4.0 INTERNATIONAL UPDATES

4.1 FATF and Egmont Publish Report on Trade-Based Money Laundering

The Financial Action Task Force ("FATF") and the Egmont Group have published the 'FATF/Egmont Trade-Based Money Laundering: Trends and Developments', a focused report on their observations of trade-based money laundering. The report analyses current trends using FATF case studies and highlights the techniques used by money launderers and terrorist organisations, as well as providing practical prevention measures that firms can implement to protect their business.

Some of the key indicators of Trade Based Money Laundering ("TBML") include:

- newly formed firms experiencing rapid growth in existing markets
- firms with consistent and significant cash payments, including those directed towards previously unknown third parties
- unexplained and complex supply chains involving multiple transshipments
- firms specialising in one sector unexpectedly pivoting to an unrelated sector
- firms simultaneously involved in more than one unrelated sector

The report also observes that certain economic sectors and products are more vulnerable to TBML, and the risk of TBML is higher where the goods have a wide price margin, are shipped internationally, or are difficult to examine at customs.

Firms who deal with, or have exposure to, the following products and industries should apply particular caution:

- gold, precious metals, and minerals
- auto parts and vehicles
- agricultural products and foodstuffs
- clothing and second-hand textiles
- portable electronics such as mobile phones or laptops

Firms are encouraged to review the report and consider their exposure to TBML by updating their business AML risk assessments and enhancing systems and controls to address risk, where necessary.

The full report can be found here.

4.2 FATF Releases the Updated Consolidated Assessment Ratings

FATF and FATF-Style Regional Bodies ("FSRB") have released an update to their consolidated assessment rating. The ratings are deduced by peer-to-peer reviews and reflect the effectiveness of AML and CFT measures.

As reflected in the report, the Bahamas was removed from the increased monitoring process in December.

The following countries were acknowledged for making progress in their AML and CFT measures but will remain on the enhanced follow up list:

- Bangladesh
- Sri Lanka
- Morocco
- Mauritania

Firms should review the updated ratings in line with the mutual evaluations and consider the need to update Country Risk Lists, where necessary.

The updated table of ratings can be found here.

4.3 Update to the UN Sanctions List

The United Nations ("UN") advised the Committee for Goods and Material Subjected to Import and Export to amend names on the UAE Terrorist list.

Firms should screen their customer databases against the amended list, which can be found here. Keep abreast of sanction list updates by subscribing here.

4.4. IOSCO Issues Industry Survey on Exchange Traded Funds

The International Organisation of Securities Commissions ("IOSCO") has issued a voluntary questionnaire to industry participants in order to enhance its understanding of Exchange Traded Funds ("EFT"). The survey results are expected to provide clarity on EFT's reaction to the market volatility experienced in 2020 and will assist in creating future guidance.

Responses are welcomed from asset managers and liquidity providers/ market makers by the 1st March by emailing C5_ETF_Survey@iosco.org. The questionnaire can be found here.

4.5 IOSCO Publishes Report on Education of Retail Investors Regarding Risks of Crypto-Assets

The IOSCO has published a report on the risk and characteristics of crypto-assets for retail investors and provides educational guidance to regulators. It gives information on the types of crypto-assets available, such as Initial Coin Offerings ("ICO"), as well as explaining the primary risks related to crypto-assets, such as the market liquidity risks and the lack of regulation.

In addition to this, the report provides guidance on:

- developing educational content on crypto-assets
- informing the public about unlicensed and/or fraudulent firms
- using a variety of communication channels to inform investors about the risks
- forging partnerships to develop and disseminate educational materials

You can find the full report here.

Further information

For any questions or concerns regarding these updates, please contact Jade Ashpole.

5.0 ENFORCEMENT ACTION

5.1 Abu Dhabi Judicial Department Jails Six People and Imposes 160m AED Fine

Six expats and two businesses have been charged by the Abu Dhabi Judicial Department ("ADJD") with money laundering offences, including attempting to conceal the proceeds of drug trafficking.

The ADJD imposed:

- a fine of ten million dirhams with ten years imprisonment for each of the six individuals, followed by deportation
- a fine of fifty million dirhams for both companies owned by the offenders

The offenders were found to be part of an international group who used various UAE bank accounts, opened in the name of a UAE resident, to deposit money funded by illegal drug trafficking. The funds were then transferred to a foreign exchange in Pakistan.

Firms are reminded to:

- take reasonable measures to understand a customer's source of funds, particularly for high-risk customers. Understanding source of funds means understanding more than the financial institution from where the funds come. For example, the source of funds could be from the sale of a property, inheritance, company dividends, salary or investment income.
- understand the nature and purpose of the proposed business relationship and undertake periodic monitoring to ensure the account is being used as intended
- challenge unusual transactions by asking for the rationale, purpose and supporting evidence, where necessary

- report suspicious activity, such as a large volume of transactions in and out of an account over a short period of time, transactions that lack sufficient rationale, and accounts being used for unexplained third-party transactions

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:

Email: **info@cclcompliance.com**
Website: **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.