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Regulatory Update

Middle East, July 2024

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1. DIFC AND DFSA LATEST DEVELOPMENTS

1.1 DIFC Announces Consultation of Real Property Law and Regulations

On 5 July, the Dubai International Financial Centre ('DIFC') issued a consultation paper on the proposed amendments to the Real Property Law, DIFC Law No. 10 of 2018 and the Real Property Regulations 2020.

Key amendments include the following:

- introduction of a Mortgage Registration fee of 0.25% of the value of a mortgage being registered by a purchaser of real property
    - this is in line with onshore practices and will cover the administration required by the Registrar of Real Property ('RORP')
- increasing the period to register a lease with the RORP from 20 days to 30 days
- an extension of the period of registration of off plan sales from the current 30 day period to 60 days
- clarifying the timeline of when an Off Plan Sales Agreement can be terminated by a prospective owner should a developer fail to provide a Disclosure Statement after the parties have entered into an Off Plan Sales Agreement.

You can read the Consultation Paper in full here. Comments were welcome until 2 August 2024.

1.2 DIFC Announces Enactment of Updated Prescribed Company Regulations

On 15 July, the amendments to the Prescribed Company Regulations came into force. This was following a period of review and a previously published consultation paper.

Under the current regime, establishing a Prescribed Company ('PC') is limited to Qualifying Applicants or where the PC is carrying out a Qualifying Purpose, both terms as defined under the Prescribed Company Regulations 2024. Under the new regulations, it will be possible to establish a PC in the following circumstances, where it is:

- controlled by one or more:
    - Gulf Cooperation Council ('GCC') citizens or entities controlled by GCC citizens
    - Authorised Firms
    - DIFC Registered persons, other than a PC or non-profit incorporated organisation
- established or continued for the primary purpose of holding legal title to, or controlling, one or more GCC registrable assets
- established or continued for a Qualifying Purpose (in line with the current regime)
- established by any person (natural or corporate), that is resident anywhere in the world, provided that the PC appoints an employee of a Dubai Financial Services Authority ('DFSA') registered Corporate Service Provider ('CSP') as a director and that CSP has an arrangement with the DIFC Registrar of Companies to carry out certain compliance and Anti-Money Laundering ('AML') functions on behalf of the PC.

The new regulations also provide that a PC must only be used for its Qualifying Purpose or as a holding company vehicle; it cannot employ any employees, this ensures that PCs are not used as operational entities. A new commercial package will provide existing PCs that no longer meet the relevant criteria with continued licensing benefits similar to the previous PC regime; this will be communicated to the relevant entities.

You can read the DIFC article in full here. You can read the new Prescribed Company Regulations here, and further information on the commercial package here.

1.3 DIFC Announces H1 2024 Results

On 30 July, the DIFC announced the results for the first half of 2024.

The key highlights are as follows:
- the number of active registered companies in the DIFC exceeded 6,000 for the first time, representing a 24% growth
- 820 new companies joined in the first six months
- there was a 33% increase in firms in the fintech and innovation sector
- total workforce of the DIFC is 43,878 which is an increase of 12%
- over 370 wealth and asset management firms, including more than 50 pure hedge funds are now based in the DIFC
- assets under management have increased from US$444Bn to US$700Bn
- the number of funds being marketed has increased by 31%
- occupancy levels for DIFC-owned and managed properties remained high at 99.6%
- to address the high demand for commercial premises, the DIFC will introduce another 1.6Mn square feet of commercial space to market over the next three years.

You can read the DIFC article in full here.

1.4 DFSA Issues Rulebook Amendments

On 16 July, the DFSA announced a notice of amendments to legislation following Consultation Papers 156 “Updates on the Regulation of Crowdfunding” and 158 “Credit Funds, Public Property Funds & REITS”.

The following Rulemaking Instruments came into force on 1 August 2024:
- Conduct of Business Module (‘COB’) Rule-Making Instrument (No. 296) of 2024
  - updating the prohibition on operators of advertising outside the platform
  - increasing the lending and investment limits for retail clients
  - changes to the valuation report requirements for properties listed on the platform
- Market Rules (‘MKT’) Rule-Making Instrument (No.387) of 2024
  - changes to what constitutes an exempt offer
- Collective Investment Rules (‘CIR’) Rule-Making Instrument (No.388) of 2024
  - changing the restriction on fund managers for managing an external fund which is a credit fund
  - updating the requirements on prospectus for external funds which are credit funds.

You can read the DFSA article in full here.

1.5 DFSA Publishes Audit Monitoring Report

On 2 July, the DFSA announced the publication of the Audit Monitoring Report which provides key findings from inspections of Registered Auditors conducted in 2022 and 2023.

The report analysed regulatory engagements, AML and financial statement audits and found that there was a significant decline in audit quality. This is in line with global trends. As the DFSA is committed to global principles of transparency and accountability, the DFSA has taken measures to address some of the issues faced by auditors, as documented in the report.

You can read the DFSA article in full here. You can read the full report here.

1.6 DFSA Issues Dear SEO Letter on AI Survey

On 1 July, the DFSA issued a Dear SEO Letter regarding an "Artificial Intelligence Survey". This letter notifies Authorised Firms that the DFSA is conducting a survey to gain an understanding of the adoption, usage and governance arrangements established for Artificial Intelligence ('AI') by Authorised Firms in the DIFC. Responses to the survey were due by 22 July. Following the survey, the DFSA plans to continue to connect with Authorised Firms to understand how they can ensure the safe and responsible adoption of AI in the financial services industry.

You can read the Dear SEO Letter "Artificial Intelligence Survey" here.

1.7 DFSA Issues Dear SEO Letter on CIR Reporting Requirements

On 1 July, the DFSA issued a Dear SEO Letter concerning "Collective Investment Rules Reporting Requirements". This letter serves to remind Authorised Firms who manage collective investment funds ('fund managers') of their reporting obligations and the consequences of non-compliance. This follows the DFSA's identification of instances of non-compliance with a number of CIR reporting requirements. This includes the Annual and Interim reports (CIR 9.4.2(1)) and the Periodic Fund Returns (CIR 9.6.2). Fund Managers are reminded that non-submission of the specified reports may result in a Fixed Penalty Notice being issued.

You can read the Dear SEO Letter "Collective Investment Rules Reporting Requirements" here.

1.8 DFSA Issues Dear SEO Letter on DFSA ePortal

On 5 July, the DFSA issued a Dear SEO Letter on the topic of "System Upgrade to the DFSA ePortal". This letter notifies all relevant entities that the DFSA's ePortal system upgrade will take effect on 8 July. The DFSA ePortal will now serve as a single unified login page that will host the DFSA's online forms and the Electronic Prudential Reporting System (EPRS) where regulatory returns submissions are made.

You can read the Dear SEO Letter "System Upgrade to the DFSA ePortal" here.

Further information

If you have any questions or concerns regarding these DIFC and DFSA developments and requirements, please contact Nigel Pasea.

2. ADGM AND FSRA LATEST DEVELOPMENTS

2.1 ADGM Publishes Whistleblowing Framework

On 10 July, the Abu Dhabi Global Market (‘ADGM’) announced the publication of its whistleblowing framework.

The new framework encompasses the following:
- regulations that recognise and protect good faith reporting of ‘protected disclosures’
- availability of internal and external channels for reporting reasonably suspected breaches of ADGM legislation or financial crime
- protection for anonymous reporting in good faith
- non-retaliation protections integrated into existing employment regulations
- good governance requirements to support whistleblowing
- written policies and procedures for firms licenced by the FSRA, designated non-financial businesses or professions (‘DNFBPs’) and large ADGM entities.

You can read the ADGM article in full here. You can read the FSRA rules for whistleblowing here.

2.2 ADGM Announces Fee Revision for Commercial Licences

On 17 July, the ADGM announced significant revisions to its licencing fee schedule as part of its transitional arrangements for Al Reem Island Businesses. Beginning on 1 January 2025, the ADGM will implement major reductions of 50% or more for obtaining non-financial and retail licences. The new fee structure will be applicable across the ADGM, including both Al Maryah and Al Reem Island. The cut-off date for the previously introduced fee exemption for qualifying non-financial and retail businesses located on Al Reem Island is 31 October 2024. The full fee schedule will be applicable starting 1 January 2025 and will be published in December 2024.

You can read the ADGM article in full here.

2.3 ADGM RA Publishes Consultation Paper

On 26 July, the ADGM Registration Authority (‘RA’) published “Consultation Paper No.6 of 2024 Proposed Amendments to Employment Regulations”. The amendments seek to enhance the Employment Regulations 2019 and reflect global changes in work practices.

The key amendments are as follows:
- amending the definition of ‘employee’ to enable employers to hire remote employees and to allow for more flexible working arrangements
- clarifying ambiguities related to employee entitlements
- expanding the list of employees’ duties to their employer
- clarifying certain requirements regarding obtaining and cancelling an employee’s work permit and visa
- expanding obligations and responsibilities relating to discrimination and victimisation in the workplace.

You can read the DIFC article in full here. You can read the Consultation Paper here.

2.4 ADGM Issues Dear SEO Letter

On 1 July, the ADGM issued a Dear SEO letter concerning the “Decision by the National Committee for Combating Money Laundering and Financing Terrorism and Illegal Organisations (the Committee) regarding High-Risk Jurisdictions”.

This letter seeks to inform firms that pursuant to Notice No. FSRA/FCCP/06/2021, 28/2021, 14/2022, 01/202, 23/2023, 47/2023 and 20/2024, the National Committee (‘Committee’) has undertaken the following:

- to adopt the list of high-risk jurisdictions in accordance with the Financial Action Task Force public statement on the jurisdictions subject to a Call for Action (the Blacklist), and adopt the countermeasures contained in the interpretive note to Recommendation 19
- to adopt the list of Jurisdictions under Increased Monitoring (the Gray List) along with the requirements to implement procedures by Financial Institutions (‘FIs’), DNFBPs, Virtual Asset Service Providers (‘VASPS’) and Non-Profit Organisations (‘NPOs’)
    - this may include enhanced due diligence measures referred to in the interpretive note to Recommendation 10 as well as Article (4) of the 2019 Cabinet Decision
- to post the URL link for the lists mentioned above on the website of the Committee
- all FIs, DNFBPs, VASPS and NPOs in the United Arab Emirates (‘UAE’) shall verify and review the lists and information issued by the FATF and the Committee on a regular basis
- all regulatory authorities in the UAE must instruct all FIs, DNFBPs, VASPS and NPOs to implement the counter-measures stated in this decision.

2.5 FSRA on Global Technology Outage

On 19 July, following a global outage of services arising from the software provided by CrowdStrike, the FSRA, through email, recommended Authorised Persons to monitor for updates on the situation and reach out to their respective technology providers for support. They were reminded that where the impact was significant, Authorised Persons have obligations under GEN 8.10. The FSRA have also asked Authorised Persons to provide responses to a series of queries by 24 July in order to assess the impact across the ADGM.

Further information

If you have any questions or concerns regarding these ADGM and FSRA developments and requirements, please contact Shadi Dajani.

3. MIDDLE EAST REGULATORY UPDATES

3.1 UAEFIU Publishes Updated Strategic Analysis Report

On 3 July, the UAE Financial Intelligence Unit (‘UAEFIU’) published an Updated Strategic Analysis Report on Trade-Based Money Laundering (‘TBML’). TBML is defined as “the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origin”. This report focuses on TBML attributes and emerging patterns from the period 1 January 2022 to 31 December 2023.

In regard to high-risk items and sectors, the UAEFIU found the following:

- the top items involved in suspected transactions were: (1) foodstuff, specifically rice, nuts, seeds; (2) building and construction materials; (3) auto spare parts and associated accessories; (4) electronic goods, appliances and associated accessories
- dual-use items on the list of high-priority items published by international authorities included electric accumulators, communication apparatus, electrical static converters, insulated electric conductors, etc
- misuse of precious metals and stones (‘PMS’) in TBML continue to be a concern
- vehicles (mainly used) emerged as a new concern.

The TBML methods and techniques found are as follows:
- fictitious trade documents (found in 41% of the reports)
- phantom shipments (possibly used in 62% of TBML related suspicious reports)
- manipulation and misrepresentation of invoices (occurred in 11% of the Suspicious Transaction Reports ('STR')
  - this included the over-invoicing, under-invoicing and multiple invoicing of goods
- falsely described goods (found in 5% of the STRs)
- over or under-shipment of goods
- third-port shipment
- misuse of a letter of credit.

Other trade-based financial crime and typologies were also found:
- Service-Based Money Laundering
- Trade-Based Terrorist Financing
- sanction circumvention
- unlicensed hawala
- evasion of taxes or customs duties.

You can read the full report here.

3.2 CBUAE Signs Multiple MoUs

On 16 July, the Central Bank of the UAE ('CBUAE') and National Bank of Ethiopia ('NBE') signed a bilateral currency swap agreement for the UAE Dirham and Ethiopian Birr and a Memorandum of Understanding ('MoU') to establish a framework for the use of local currencies in settling cross-border transactions. They also plan to link the respective payment and messaging systems in accordance with the regulatory requirements of each country.

On 17 July, the CBUAE and Bank Indonesia ('BI") signed a MoU with the purpose of establishing a framework to enhance bilateral cooperation in the area of payment systems. The MoU aims to link the payment systems between the two countries to achieve faster, more efficient, affordable and transparent cross-border payments.

On 19 July, the CBUAE and Central Bank of Seychelles ('CBS') signed two MoUs concerning the enhancement of the use of local currencies in cross-border commercial and financial transactions and interlinking payments and messaging systems between the respective countries. The MoUs aim to develop the exchange market, remittance settlement and facilitate bilateral trade and direct investment.

You can read the 16 July CBUAE article here. You can read the 17 July CBUAE article here. You can read the 19 July CBUAE article here.

3.3 SCA Issues Regarding SPVs

On 24 July, the Securities and Commodities Authority ('SCA') issued a decision concerning Special Purpose Vehicles ('SPVs'). The purpose of the decision is to enhance the effectiveness of the securitisation and sukuk regulations, advance the investment funds industry and provide alternative financing opportunities for joint stock companies. Federal Decree Law No.32 of 2021 on Commercial Companies mandates the decision.

The key areas covered in the decision are as follows:
- scope of application
- classification and nature of SPVs
- SPV incorporation and licencing process

- obligations of the SPV manager
- SPV dissolution and liquidation procedures
- SCA's powers regarding inspections, violations, penalties and monitoring.

You can read the SCA article in full here.

Further information

For any questions or concerns regarding these updates, please contact Mohsin Ismail.

4. INTERNATIONAL UPDATES

4.1 FATF Updates Consolidated Ratings

On 18 July the Financial Action Task Force ('FATF') published an updated consolidated ratings table. The table summarises jurisdictions' progress against the 40 FATF Recommendations. The recommendations assess the jurisdiction's maturity against AML, Counter Terrorist Financing and Proliferation Financing measures.

You can read the consolidated rating table here.

4.2 Public Consultation on FATF National Risk Assessment

On 1 July, FATF announced that it is in the process of updating its guidance on National Risk Assessments ('NRA'), particularly Money Laundering NRAs. They have asked for feedback from civil society, academia, and the private sector of whether the NRA reflects their experiences. Responses were due by 22 July and have now been closed.

You can read the FATF article in full here.

4.3 FATF Issues Multiple Publications

On 8 July, FATF published "Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption". This review has been undertaken to assess the compliance landscape and identify the sectors which must be prioritised for further improvement. At first glance, the Horizontal Review depicts positive results with over half of FATF members scoring over 80%. However, it was also found that some cornerstone obligations, such as conducting customer due diligence or implementing internal controls, were behind the compliance levels of other obligations. FATF encourages all members to ensure they are in line with longstanding Recommendations.

On 9 July, FATF published the report "Virtual Assets: Targeted Update on Implementation of the FATF Standards on VAs and VASPs". This report is the fifth update on jurisdictions' compliance with FATF's Recommendation 15 and its Interpretative Note (R.15/INR.15). Recommendation 15 pertains to AML and counter-terrorist financing measures to virtual assets ('VA') and VASPs. Based on 130 FATF mutual evaluation and follow-up reports since R.15/INR.15 was adopted in 2019, 75% of jurisdictions are only partially or not compliant with the FATF's requirements. This is identical to the findings of April 2023 (75% partially compliant or non-compliant jurisdictions). FATF considers the slow progress in regulating the VA sector to be a serious concern and calls upon all jurisdictions to rapidly implement FATF's standards.

On 17 July, FATF published "Mitigating Unintended Consequences". In 2021, FATF launched a major review of the unintended consequences of measures to combat money laundering and terrorist financing. This investigation included asking whether AML and counter terrorist financing methods were responsible for derisking, financial exclusion and the suppression of non-profit organisations and human rights. Further work on procedures for handling unintended consequences and abuse of the FATF standards is ongoing and was emphasised in the 2024 Ministerial Declaration.

You can read Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption here. You can read Virtual Assets: Targeted Update on Implementation of the FATF Standards on VAs and VASPs here. You can read Mitigating Unintended Consequences here.

Further information

For any questions or concerns regarding these updates, please contact Mohsin Ismail.

5. ENFORCEMENT ACTIONS

5.1 DFSA Takes Action Against Symphony Services Limited

On 18 July, the DFSA announced that it published Decision Notices imposing penalties on Symphony Services Limited ('SSL') and its Chief Executive Officer ('CEO') Mr Daniyar Japarkulov.

The DFSA has imposed a fine of US$210,000 on SSL and a withdrawal of SSL's registration as a DNFBP. They have imposed a fine of US$140,000 on Daniyar Japarkulov, and he has also been prohibited from holding office in, or being an employee of any DNFBP, domestic fund, reporting entity or Authorised Person. He is also restricted from performing any function in connection with the provision of financial services in or from the DIFC.

SSL has been registered with the DFSA since September 2016 as a DNFBP with company service provider activities. Daniyar Japarkulov served as the CEO and Director of SSL.

The DFSA took action against SSL for:

- providing the DFSA with false, deceptive and misleading information
    - in December 2021, when SSL was requested to produce documents for an AML risk assessment, SSL created and backdated certain documents.
- failing to comply with the DFSA requirements and obstructing the DFSA
    - on 23 March 2022, SSL did not allow the DFSA to inspect and copy the required information and documents during the visit to SSL's premises.

The DFSA took action against Daniyar Japarkulov as he had knowledge and direct involvement in SSL's conduct and therefore was knowingly involved in the contraventions specified.

Both SSL and Daniyar Japarkulov agreed to settle with the DFSA and therefore their respective fines were reduced by a settlement discount of 30%.

You can read the DFSA article in full here. You can find the Decision Notice for SSL here. You can find the Decision Notice for Daniyar Japarkulov here.

5.2 CBUAE Revokes Licence

On 26 July, the CBUAE revoked the licence of Galaxy Insurance Broker (‘Galaxy’) and struck its name off the register, pursuant to Article 22(2) of the Board of Directors Resolution No. 15 of 2013 Concerning Insurance Brokerage Regulations. This was following the discovery that Galaxy had a weak compliance framework and failed to comply with its regulatory obligations.

You can read the CBUAE notice here.

Further information

For any questions or concerns regarding these updates, please contact Mohsin Ismail.

ABOUT WAYSTONE COMPLIANCE SOLUTIONS

Waystone Compliance Solutions offers a new and unique approach to compliance services at a corporate level.

As a truly global partner, we have the capabilities to help you manage regulatory risk right across your organisation.

We can provide key services from initial registration and licensing to compliance programme integration. Our compliance solutions span business strategies, market activities, and operational and technology infrastructure, not to mention sales and marketing procedures. And we can do so anywhere in the world.

Our aim at Waystone is simple: to enable our clients to navigate the complex regulatory environment with confidence.

At Waystone, we have brought together the experience, the expertise, and the global reach to give you the certainty you need to address the ever-changing regulatory world. And by doing so, provide you with a secure route on the road to success.

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- Documentation
- Training

If you wish to discuss how Waystone can assist you with any of the issues raised in this regulatory update, please contact us using the details below:

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