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Regulatory Update

Middle East Edition

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GOVERNANCE | RISK | COMPLIANCE

1.0 DIFC AND DFSA LATEST DEVELOPMENTS

1.1 DFSA Board Appoints Bryan Stirewalt as Next Chief Executive

The DFSA Board of Directors has appointed Bryan Stirewalt as the next Chief Executive of the DFSA after Ian Johnston announced his intention to retire.

Bryan Stirewalt has been in the DFSA for ten years and served as the Managing Director of Supervision for the last eight. Mr. Stirewalt has played an active role in supporting the work of international standard-setting bodies and now serves as the Co-Chair of the Basel Consultative Group (BCG), a forum that increases engagement between the Basel Committee and country supervisors.

Bryan's appointment took effect from **1st October 2018**.

1.2 DFSA Signs FinTech Agreement with Japan's Financial Services Agency

The DFSA has entered into an Exchange of Letters with the Financial Services Agency of Japan (FSA) to cooperate in the development of Financial Technology (FinTech).

Signed by the Chief Executive of the DFSA and the Commissioner at Japan's FSA the terms agree that both authorities will share information on developments in FinTech and ensure the efficient entry of financial innovators into both markets.

The purpose of this cooperation is to provide a regulatory framework for discussion and a referral mechanism, which will enable the authorities to refer financial innovators between their respective innovation functions. It also sets out how the authorities plan to share and use relevant information in their respective markets.

1.3 DFSA Implement Amendments to Rulebooks

Following Consultation Paper No 118. and No.120 the DFSA has amended the AML module following a self-assessment of the DIFC framework in preparation for the upcoming UAE Financial Action Task Force (FATF) Mutual Evaluation in 2019. The amendments will enhance the anti-money laundering and counter-terrorist financing (AML/CTF) regime and will support the ongoing alignment of the DIFC regime with the FATF recommendations.

The changes were discussed in detail in the February and May 2018 CCL Regulatory Updates and firms are encouraged to read through the Consultation Papers and the amended version of the rulebook through the DFSA website.

The amendments will come into force on 29th October 2018.

Further information
If you have any questions or concerns regarding these DFSA and DIFC developments and requirements, please contact Clare Curtis (CCurtis@cclcompliance.com)

2.0 ADGM AND FSRA LATEST DEVELOPMENTS

2.1 ADGM Launches New Commercial Licence for Tech Start-Ups

The Abu Dhabi Global Market (ADGM) has launched a new commercial licence for tech start-ups which will enable entrepreneurs to obtain an ADGM operational licence and take advantage of the same globally recognised international operating standard from which current ADGM funds, multinationals, SMEs, advisers and other registered entities currently benefit.

The new Tech Start-up Licence will allow start-ups to receive a full operational licence, the option to apply for four residential visas and meet the requirement for a registered address at a cost of $700.

2.2 ADGM Launches New PFP Regulatory Framework to Support Start-Ups and Enterprises

The ADGM has launched the framework to regulate operations of PFPs serving the equity investment, debt financing and trade receivable funding needs of start-ups, private enterprises and SMEs.

This is following the public consultation by the Financial Services Regulatory Authority on 16th August 2018 and the Discussion Paper in March 2018, which discussed plans to introduce a tailored, risk proportionate regulatory framework for transactions facilitated through a Private Financing Platform (PFP).

The FSRA's main proposals were:

- The creation of a new Regulated Activity (Operating a Private Financing Platform) which permits both investment-based and loan-based PFP transactions
- Loans or investments may be held directly by lenders or investors, or indirectly through a Special Purpose Vehicle (SPV). The PFP Framework will be supported by the range of SPVs available in the ADGM which will offer flexibility in various financing, securitisation and asset transfer options
- Participation in PFP transactions is targeted at Professional Clients as there are higher risks associated with these transactions. The FSRA may allow PFP operators to serve Retail Clients, on an exceptional basis, subject to the PFP operator putting in place risk-appropriate retail protections in line with the nature and scale of the PFP operator's business.
- The requirement for PFP operators, to have appropriate systems and controls including, but not limited to: due diligence arrangements for those accessing the PFP, client asset protections, and disclosure obligations, whilst at the same time retaining sufficient flexibility to accommodate innovative business models.

PFP's are similar to crowdfunding platforms, which tend to target retail clients. The FSRA's proposal will allow small firms to use PFPs to reach out to institutional clients and therefore offer a larger scope in funding opportunities.

2.3 ADGM Admits 3rd RegLab Cohort with More UAE FinTech Firms

The ADGM has approved the third batch of RegLab participants comprising of 10 local and international FinTech start-ups. The participants were selected from a pool of 36 applications and will join a pool of 16 firms from the 1st and 2nd cohorts which totals 26 firms in the programme.

The ADGM will provide a controlled environment for these firms to develop and test new FinTech solutions that they hope will be beneficial to financial services. Successful applicants can test their product within tailored regulatory requirements in order to mitigate the risk and impact within their industry, given the new and particular technology that FinTech firms tend to use.

2.4 ADGM Announces Launch of Digital Sandbox

The ADGM has announced an initiative to launch a FinTech digital sandbox. This will allow financial institutions and FinTech innovators to experiment on products and solutions in a digital platform environment, supported by the Financial Services Regulatory Authority (FSRA) of the ADGM. The sandbox will run jointly with the FSRA's Regulatory Laboratory (RegLab).

2.5 ADGM Issues Consultation Paper on Bank Recovery and Resolution Regime

The ADGM has published Consultation Paper No.5 of 2018 setting out its proposed Bank Recovery and Resolution Regulations.

The FSRA is proposing a tailored, risk-proportionate approach that effectively addresses the risks posed by the failure of any significant financial institution or a member of its financial group.

Features of the proposed regulations would include the following:

- Powers to require recovery and resolution planning for ADGM-based institutions of significant size and interconnectedness that are within the scope of these proposals
- Early intervention and direction powers to require management of in-scope firms to adopt measures to halt the deterioration in their firm's financial position.

Comments on this CP must be submitted by **8th November 2018**.

2.6 ADGM Signs Memorandums of Understanding and Cooperation Agreement

The ADGM and the Beijing Financial Street Services Bureau have signed a Memorandum of Understanding (MoU) in Beijing.

The MoU serves to promote the development of financial centres in China and the United Arab Emirates and to heighten engagements.

The ADGM Registration Authority has also signed an MoU with the Emirates Development Bank (EDB). This MoU commits both parties to collaborate on initiatives that will aim to address potential barriers and improve the cost and ease of obtaining bank loans and supporting businesses through their funding lifestyles.

Maqta Gateway, an Abu Dhabi Ports subsidiary, and the ADGM have signed an MoU to collaborate on innovation projects, technologies and knowledge transfer.

Du and Etisalat, the leading UAE telecom providers have signed an MoU with the ADGM to deploy and showcase innovative related services across the ADGM. The MoU between ADGM and Etisalat formally establishes a framework where Etisalat will provide innovative and integrated telecommunications service offerings catering to ADGM's registered firms and entities. This will also facilitate further exploration and development of Etisalat research facilities and programmes focusing on various areas, including FinTech, blockchain and cyber security.

An MoU has been signed between the ADGM and the Abu Dhabi Smart Solutions and Services Authority (ADSSSA). The MoU establishes a formal framework for ADGM and ADSSSA to work closely together to enhance the development of technology infrastructure on Al Maryah Island, fostering greater innovation and deployment of sustainable smart systems to help further enable the financial and business community in the ADGM and wider Abu Dhabi.

The ADGM has also signed a Cooperation Agreement with the Abu Dhabi Department of Economic Development (DED) to provide more integrated support for innovators and technology enterprises across various key industries leveraging the Technology and Innovation Pioneers Platform under DED's Takamil Programme

Further information
If you have any questions or concerns regarding ADGM and FSRA developments and requirements, please contact Clare Curtis (CCurtis@cclcompliance.com)

3.0 INTERNATIONAL NEWS

3.1 ING CFO Steps Down Following $900 Million Money Laundering Fine

ING Group's Chief Financial Officer, Koos Timmermanns, is to step down after the bank admitted it had failed to prevent money laundering. It also agreed to a 775 Million Euro settlement with prosecutors.

The decision comes as regulators across Europe consider whether to tighten controls on financial crime.

ING have also internally taken disciplinary measures against 10 employees and stated its management board would forgo any bonuses for 2018.

ING has said that it would continue to strengthen its compliance procedures, despite already stating that it has reformed its customer vetting and monitoring processes.

3.2 Central Bank of Kenya Criticised for Lack of AML Controls

The Central Bank of Kenya has come under criticism from the commercial banks in Kenya regarding failing to authenticate all State payments before approving them even though last month the Central Bank fined five commercial banks in connection with the theft of funds at the National Youth Services (NYS). The Central Bank also required that key bank staff responsible for the violations to step down and face possible criminal prosecution.

3.3 U.S. Rejects Iran's Legal Claim to Recover $1.75 Billion in Frozen Assets

The US has rejected Iran's legal claim to recover $1.75 billion in national bank assets that were seized by US courts.

The United States have now put in plans to put the amount towards American families of victims of the 1983 bombing of a US Marine Corps barracks in Beirut.

3.4 Hong Kong and UK Regulators Sign Deal for Mutual Recognition of Funds

The UK regulator, the Financial Conduct Authority (FCA), and the Hong Kong Securities and Futures Commission (SFC) have signed a Memorandum of Understanding on Mutual Recognition of Funds.

This will allow eligible Hong Kong public funds and United Kingdom retail funds to be distributed in each other's market through a streamlined process.

3.5 London High Court Clarifies Meaning of Politically Exposed Person in 4MLD

Following the UK's National Crime Agency's (NCA) first Unexplained Wealth Order (UWO) against the wife of Jahangir Hajiyev who was the ex-chairman of the state-owned International Bank of Azerbaijan and jailed to 15 years for fraud and embezzlement, the London High Court has clarified aspects of the "Politically Exposed Person (PEP)" definition in the Fourth Money Laundering Directive (4MLD).

Within 4MLD's PEP definition, Article 3(9) includes a member of the "administrative, management or supervisory bodies of state-owned enterprises", a provision which was not previously interpreted by the High Court.

Following the UWO that the NCA issued, it was argued that the UWO should be discharged on eight grounds. These include a contention that that Jahangir Hajiyev was not a PEP because the bank was not a state-owned enterprise within Article 3(9)(g) of 4MLD and, as chairman of the bank, was not entrusted with prominent public functions "by an international organization or by a state".

Jonathan Hall QC, representing the NCA, said that the natural ordinary meaning of "state-owned enterprise" meant an enterprise in which the state had a shareholding, a construction consistent with Article 3 (6) of 4MLD, which defines "beneficial owners" as "any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted."

The directive further provides that a shareholding of 25 percent plus one share or an ownership interest of more than 25 percent in the customer held by a natural person shall be an indication of direct ownership.

The judge said he was satisfied on the evidence that the NCA had established the bank was a state-owned enterprise and therefore both Jahangir Hajiyev and his wife should be classified as PEPs.

Further information
If you have any questions or concerns regarding any International developments, please contact Clare Curtis (CCurtis@cclcompliance.com)

4.0 ENFORCEMENT ACTION

4.1 €1.3m Irish Fine for Citibank

Citibank Europe has been fined €1.3m by the Central Bank for a series of lending code breaches, including unapproved lending to senior management.

The breaches stretch back five years and were identified and notified to the Central Bank after Citibank Europe's head office moved from London to Dublin in 2016. The Central Bank stated that the firm had failed to put in place the necessary governance policies and procedures to implement its lending code, until nearly 3 years after the code came into effect.

Citibank have stated that the matter did not affect clients and that there was no evidence that the management loans were made on more favourable terms than to customers.

Further information
If you have any questions or concerns regarding enforcement action, please contact Clare Curtis (CCurtis@cclcompliance.com)

ABOUT CCL

CCL has been providing a comprehensive range of regulatory compliance service 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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