

E-BOOK



Apex Compliance Solutions

# Dubai International Financial Centre (DIFC)

Issue 1 - July 2022



## In this edition:

1. DFSA Reminder- Being Regulated and Group entities..... 3
2. FATF Adds UAE to Increased Monitoring List ..... 3
3. DIFC Whistleblowing Regime..... 4
4. DFSA Consultation on Crypto-Assets ..... 4
5. DFSA Credit Fund Regime comes into force June 2022 ..... 4
6. DFSA Dear SEO Letter- Role of MLRO's ..... 4
7. DIFC ITL Licensing ..... 5
8. DFSA acts to protect Integrity of Islamic Finance ..... 6

If you would like a copy of our previous update, please let us know.

## 1. DFSA Reminder- Being Regulated and Group entities

In March 2022, the Dubai Financial Services Authority (“DFSA”) reminds all firms authorised by the DFSA (“Authorised Firms”) of their obligation to use the phrase “Regulated by the Dubai Financial Services Authority” or “Regulated by the DFSA”. Authorised Firms were reminded to include this phrase across all their key documents including websites, promotional material, client agreements, text messages, and so on, as required in the General Module (“GEN”) Rule 6.4 of the DFSA Rulebook.

Firms were also reminded about the scope of the licence granted. The DFSA licence applies only to the firm that receives it and, if the licensed firm is operating as part of a corporate group, not to any other entity in that group.

All firms that are regulated by the DFSA are subject to financial services rules and regulations. Adherence to these rules ensures integrity in the financial centre.

## 2. FATF Adds UAE to Increased Monitoring List, March 2022

Further to the decision by The Financial Action Task Force (“FATF”) to add the United Arab Emirates (“UAE”) to the increased monitoring list, the UAE made a high-level political commitment to work with the FATF and MENAFATF to strengthen the effectiveness of its Anti-money Laundering and Counter Terrorist financing (“AML/CFT”) regime.

Since the adoption of its Mutual Evaluation Report (“MER”) in February 2020, the UAE has made significant progress in implementing its MER’s recommended actions to improve its system by finalising a Terrorism Financing (“TF”) Risk Assessment, creating an AML/ CFT coordination committee, establishing an effective system to implement targeted financial sanctions without delay, and

significantly improving its ability to confiscate criminal proceeds and engage in international cooperation. Additionally, the UAE has addressed or largely addressed more than half of the key recommended actions from the MER.

The UAE will work to implement its FATF action plan by:

- demonstrating a sustained increase in outbound Mutual Legal Assistance (“MLA”) requests through case studies and statistics to aid in the investigation of Terrorist Financing (“TF”), Money Laundering (“ML”), and high-risk predicates
- identifying and maintaining a shared understanding of ML/TF risks among the various Designated Non-Financial Business and Professions (“DNFBP”) sectors and institutions
- showing an increase in the number of Suspicious Transaction Reports (STRs) filed by Financial Institutions (“FIs”) and DNFBPs
- achieving a more granular understanding of the risk of abuse of legal persons and, where applicable, legal arrangements, for ML/TF
- providing additional resources to the Financial Intelligence Unit (“FIU”) to strengthen its analysis function and improve the use of financial intelligence in pursuing high-risk ML threats, such as proceeds of foreign predicate offenses, trade-based ML, and third-party laundering.
- demonstrating a sustained increase in effective investigations and prosecutions of different types of ML cases consistent with UAE’s risk profile
- proactively identifying and combating sanctions evasion by using detailed Targeted Financial Sanctions (“TFS”) guidance in sustained awareness-raising with the private sector, as well as demonstrating a better understanding of sanctions evasion among the private sector.

### 3. DIFC introduces 'Whistleblowing' regime- April 2022

The DFSA introduced a new Whistleblowing regime, which came into force on 7 April 2022 and will apply to all DFSA Regulated Entities. This regime builds on existing requirements, and aims to help:

- provide better legal protection for persons who report concerns;
- improve the Whistleblowing culture in Entities and increase transparency around how Entities will handle regulatory concerns;
- encourage more disclosures of concerns; and
- deter wrongdoing, promote better compliance and an ethical culture, by increasing awareness that there is a higher likelihood that wrongdoing will be reported.

Changes will be made to the Regulatory Law to enshrine legal protection for whistleblowers.

### 4. DFSA Consults on Crypto-Assets

The DFSA released its consultation relating to the regulation of crypto tokens with consumer protection, market integrity, custody, and financial resources for service providers in mind.

The proposed scope of the proposed regime is as follows:

In Scope	Investment Token	Security Token Derivative Token
	Accepted Crypto Token	Defined based on an eligibility criterion and application process
Excluded Token	<ul style="list-style-type: none"> <li>• Non-Fungible Token (NFT)</li> <li>• Central Bank Digital Currency</li> <li>• Utility Token</li> </ul>	

Prohibited Token	<ul style="list-style-type: none"> <li>• Privacy Token</li> <li>• Algorithmic Token</li> </ul>
Financial Services that can be conducted with Accepted Crypto Tokens	<ul style="list-style-type: none"> <li>• Authorised Market Institutions</li> <li>• MTF</li> <li>• Dealing as Principal</li> <li>• Dealing as Agent</li> <li>• Asset Manager</li> <li>• Fund Manager</li> <li>• Providing Custody</li> <li>• Arranging Custody</li> <li>• Arranging Deals</li> <li>• Advising</li> </ul>

<https://www.apexgroup.com/insights/dfsa-consults-on-the-regulation-of-crypto-tokens-consultation-paper-143/>

### 5. DFSA Credit Funds - Regime comes into force June 2022

Following the end of the consultation period on numerous proposed legislative changes set out in Consultation Paper No.142 – Credit Funds. The amendments come into force on 1 June 2022.

<https://www.apexgroup.com/insights/dubai-financial-services-authority-proposes-a-new-credit-funds-class/>

### 6. DFSA takes action to protect the integrity of Islamic Finance- June 2022

The DFSA withdrew the Authorised Individual status and imposed a restriction on Trevor Conway, a Senior Executive Officer at a DFSA- authorised firm ("Firm"), following an investigation into his conduct in relation to the Firm's Commodity Murabaha Broking Desk (the Desk).

The Desk facilitated the purchase and supply of title to metal commodities (Warrants), sourced from suppliers for use by the Desk's clients, who are mainly banks, to substantiate their Murabaha-based transactions with their respective customers.

The DFSA's investigation found that for two years and nine months, the Desk made available Warrant numbers taken from Warrants they had previously used, thereby not providing its clients with current title to metal commodities-holding Warrants representing title to metal commodities was a precondition for entering into Murabaha transactions by clients and that the Desk had not held any valid Warrants over the relevant period after losing its Warrant supplier. No steps were taken to stop the Desk's misleading practice.

## 7. DFSA SEO Letter-Role of MLRO's- June 2022

The DFSA issued a 'Dear SEO' letter to reiterate certain elements of the DFSA's Rule requirements and accompanying guidance concerning individuals performing the role of Money Laundering Reporting Officer ("MLRO") as Relevant Persons and to make clear the DFSA's expectations in determining compliance with these Rules.

### Qualities of a MLRO

Firms are reminded to ensure quality of the Money Laundering Reporting Officers in light of the feedback from the Dubai Financial Services Authority (DFSA) in terms of the profiles of MLRO's that have been submitted to the regulator:

- The MLRO was unable to describe the firm's business and risk profile in respect of money laundering, terrorist financing, proliferation financing and targeted financial sanctions risk.
- The MLRO was unable to outline the core legal and regulatory requirements applicable in the DFSA Rulebook or the related UAE Federal AML Legislation.

- The MLRO did not have a sufficient level of seniority and independence within the firm, and was unable to demonstrate satisfactorily they could perform the role on their own authority.
- The MLRO had little or no relevant experience and could not provide any reasonable assurance about how they would manage their responsibilities.
- The MLRO was unable to demonstrate their competence and capacity to perform the function (e.g., no evidence of appropriate qualification or professional development).

### Outsourcing the MLRO role

Where a Firm outsources the role, the Firm must ensure that the outsourced MLRO remains fit and proper for the function.

Over the past 12 months, the DFSA had noted instances where Firms outsource the role of MLRO without carrying out a proper assessment of the candidate's capability to carry out the role of the MLRO adequately, taking into account the profile of the firm(s) that the applicant will be acting for.

### Appointment of a MLRO & Use of Temporary Cover

The MLRO function is a mandatory appointment. There have been a number of occasions where Firms have failed to appoint an MLRO on a timely basis. Where the MLRO function has remained vacant, it has done so in contravention of the DFSA's Rules.

Firms are reminded that the DFSA's general expectations for the appointment of MLROs also apply to appointments for other Authorised Individual roles, such as the Compliance Officer role.

## 8. DFSA moves to accept ITL applications - July 2022

The DFSA will accept applications from local and international firms interested to join its Innovation Testing Licence (ITL) Programme. Launched in 2017, the ITL is a licensed regulatory sandbox which enables approved firms to test new and innovative financial products, services, and business models in and from the Dubai International Financial Centre (DIFC). Previously, the DFSA accepted applications via cohort process. The DFSA will now move to an open window format where interested firms may apply as soon as they are ready to test their product. Firms must provide a clear explanation of their planned business model and the proposed innovative product or service.

## How Apex can help

1. Assistance with DFSA Compliance and AML Services
2. Managed due diligence- investee/ portfolio level diligence solutions
3. ESG & Sustainability Finance
4. Crypto-assets support
5. Apex ESG Training Modules
6. AML/CFT Training

## Staying ahead

If you think any of your colleagues would also find this information useful, they can subscribe to our updates [here](#).

Apex Group has also created an interactive hub that allows you to easily keep track of the regulatory and compliance updates that matter, both past and present. You can access our Global Regulations Tracker [here](#).

For further information about our compliance services, please [contact the team here](#).