

DIFC non-regulated entities - DFSA's merciless cut down on Financial Crime

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Financing of terrorism, on the other hand, “involves the raising and processing of funds to supply terrorists with resources to carry out their attacks” (IMF), (“FT”).

Both ML and FT are crimes committed in relation to financial transactions and have economic results.

As Min Zhu, Deputy Managing Director of the IMF said on 31 August 2011:

“(…) Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse.”

In response to the global combat against ML and FT and in addition to its existing legislation in this area, the Dubai Financial Services Authority (“DFSA”) has recently adopted Designated Non-Financial Business and Professionals Module, DFSA Rulebook (“DNF Module”) that applies to designated non-financial businesses and professionals registered and operating in the DIFC (“DNFBP(s)”).

DNF Module - General Considerations

The DNF Module sets anti-ML (“AML”) and combating FT (“CFT”) requirements for DNFBPs.

Until recently, DNFBPs were supervised for AML/CFT compliance by the DIFC Authority.

From now on, however, DNFBPs are going to be supervised by the DFSA as far as AML and CFT matters are concerned.

The DFSA has been granted powers of supervision and enforcement and the power to obtain information and to conduct investigations into possible breaches of the DNF Module, by DNFBPs.

The DFSA has been further authorised to impose fines for breaches of the DNF Module.

Who Does it Apply to?

The DNF Module applies to all DNFBPs other than single family offices (which are the subject of separate requirements not dealt with in this article).

Provided that the business (or profession) is carried out in or from the DIFC, DNFBPs are:

- a. real estate developers and agents who carry out transactions with customers who are concerned in the buy and selling of real property;
- b. dealers in precious metals and stones which engage in cash transactions (or number of transactions) with a customer equal to or above USD 15,000;
- c. dealers in high-value goods which engage in any cash transaction (or number of transactions) with a customer equal to or above USD15,000;

d. law firms, notary firms, other legal independent businesses and accounting, audit and insolvency firms which prepare or carry out transactions for a customer in respect of: (i) Buying and selling of real property; (ii) Managing of client money, securities or other assets; (iii) Managing of bank, savings or securities accounts; (iv) Organization of contributions for the creation, operation or management of companies; or (v) Creation, operation or management of legal persons or arrangements, and buying and selling of business entities; or

e. company service providers which carry out the following activities for customers: (i) Acting as formation agents of legal persons; (ii) Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to legal persons; (iii) Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; or (iv) Acting as (or arranging for another person to act as) a nominee shareholder for another person.

What Obligations has it Introduced?

Under the DNF Module, all DNFBPs must, in particular:

- a. register with the DFSA by completing the appropriate form;
- b. notify the DFSA of any change to its name, legal status or address;
- c. notify the DFSA of any proposal to cease relevant business activities by completing the appropriate form;
- d. promptly inform the DFSA in writing if it receives a request for information from a regulator or agency responsible for AML regarding enquiries into potential money laundering related to its DIFC activities carried on, in or from the DIFC; and
- e. adopt adequate policies, procedures, systems and controls in place to prevent the activity of money laundering as per those adopted by the Government of the UAE, the Central Bank of the UAE, the Financial Action Task Force and the DFSA.

A DNFBP may be criminally liable for the offence of money laundering if such an activity is intentionally committed in its name or for its accounts.

Money Laundering Reporting Officer (“MLRO”)

A DNFBP shall appoint an MLRO (and notify the DFSA of the same) who shall be mainly responsible for:

- a. DNFBP’s anti money laundering activities carried on, in or from the DIFC;
- b. establishing and maintaining the DNFBP’s anti money laundering policies, procedures, systems and controls and compliance with anti money laundering legislation applicable in the DIFC; and
- c. day- to- day operations for compliance with the DNFBP’s anti money laundering policies.

Policies and Procedures

The Rules require DNFBP’s to have adequate policies, procedures, systems and controls in place to prevent the activity of money laundering which must be adhered to by all employees of the DNFBP, non-compliance with which may result in criminal liability.

Customer Identification

Under the DNF Module, a DNFBP should adopt a risk based approach for the customer identification and

verification process. This extends to the assessment of customers (and customers acting on behalf of third parties) and the level of detail of customer identification and verification that needs to be performed in relation to individual customers, e.g. a DNFBP must not establish a relationship with a shell bank nor establish anonymous accounts or accounts in false names.

Documentation and records

All relevant information, correspondence and documentation used by a DNFBP to verify a customer's identity and conduct the ongoing due diligence and scrutiny required must be kept for at least six years from the date on which the business relationship with a customer has ended.

Internal and External Reporting Requirements

A DNFBP must have appropriate arrangements to ensure that whenever any employee knows or suspects or has reasonable grounds for knowing or suspecting that a legal person is engaged in ML, that employee makes an internal suspicious transaction report to the DNFBP's MLRO.

A DNFBP shall also comply with suspicious transactions reporting requirements towards the MLRO (internally) and the DFSA (externally), the failure of which may constitute a criminal offence that is punishable under the laws of the UAE.

Training and Awareness

Finally, under the DNF Module, a DNFBP must have arrangements to provide periodic information and training to all relevant employees to ensure that they are aware of identity and responsibility of DNFBP's MLRO and applicable legislation relating to anti money laundering.

Final Remarks

Min Zhu, Deputy Managing Director of the IMF said on 31 August 2011 that ML and FT “ (...) can threaten the stability of a country's financial sector or its external stability more generally. (...) Action to prevent and combat money laundering and the financing of terrorism thus responds not only to a moral imperative, but also to an economic need.”

It is comforting to see that the DFSA treat financial crime very seriously by being continuously involved in developing and improving legal framework in the DIFC by educating local business community as well as combating and punishing financial crime.