# Regulatory updates in the DIFC

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**New DFSA Client Classification Rules**

On 15 February 2015, following the end of the consultation period on Consultation Paper No. 97, the DFSA published its changes to the client classification regime contained in chapter 2 of the Conduct of Business Module of its Rulebook.

These changes will come into effect on 1 April 2015 (with one exception that the increase of the asset test applicable to ‘assessed’ Professional Clients from US $500,000 to US $1 million, will not come into effect until 1 April 2016).

The new client classification regime requires Authorised Firms, before providing Financial Services to clients, to classify such clients as “Retail”, “Professional” or “Market Counterparty” clients, so that an appropriate level of protection can be provided to those clients given their level of knowledge, experience and resources.

**Transitional Rules**

Although these changes will inevitably involve Authorised Firms having to update their client classification documentation, client classifications made under the old regime will remain in force and the new regime does not trigger the need to reclassify existing clients.

However if an existing client wishes to obtain a new Financial Service after the new regime has come into force, an Authorised Firm will not be able to rely on the existing client classification relating to that client in respect of the new Financial Service. For any new clients beyond 1 April 2015 the new client classification rules will apply.

**Professional Clients**

After 1 April 2015, new clients of an Authorised Firm are required to be classified according to the new DFSA client classification regime. Set out below is a summary of the three routes through which a person may be classified as a Professional Client:

deemed’ Professional Clients: the DFSA Rules provide a list of the type of entities that can be considered ‘deemed’ Professional Clients without them having to meet any additional net asset and experience tests. The reason for this is that these entities have significant assets under their control, and, therefore, either possess, or have the resources to obtain, the necessary expertise to manage such assets.

- ‘service-based’ Professional Clients: a person to whom the following two types of financial services are provided to can be classified as a ‘service-based’ Professional Client and the Authorised Firm is not required to undertake a detailed assessment of their expertise or net assets (as required in the case of an ‘assessed’ Professional Client);
- credit provided to an undertaking for business purposes; or
- advisory or arranging activities relating to corporate structuring and financing.

However the above two types of financial services must relate to an acquisition, disposal, structuring, restructuring, financing or refinancing of a corporation or other legal entity. Therefore, this sub-category essentially relates to the provision of corporate finance services.

- ‘assessed’ Professional Clients: these persons are either individuals or undertakings which can be classified as a Professional Client only if they meet the specified net assets and expertise requirements set out in the Conduct of Business Rules. Investment vehicles and family member joint account holders of individuals who are themselves Professional Clients can also be classified as Professional Clients where certain conditions are met.

**Market Counterparties**

A ‘deemed’ Professional Client may be classified as a Market Counterparty if they are provided with prior written notification of their classification as a Market Counterparty.

**Retail Clients**

A Person who cannot be classified as a Professional Client or Market Counterparty in accordance with the DFSA Rules is required to be classified as a Retail Client. An Authorised Firm can only provide financial services to a Retail Client if it has a Retail Endorsement on its Licence.

**Group Clients**

Under the new client classification regime, the DFSA has clarified that an Authorised Firm may rely on client classification made by its head office or any other branch of the same legal entity, or by any other member of its group, if it has reasonable grounds to believe that such a client classification is substantially similar to the client classification required under the DFSA Rules.

**DFSA Fees Module Update**

The new DFSA Fees Module came into force on 1 January 2015. Some of the key changes are as follows.

- An application to apply for a Representative Office license has increased to US $4,000 from US $2,000.
- An application to add a Retail Client or Islamic Financial Business endorsement onto an Authorised Firms licence now incurs a fee of US $5,000.
- Applying to add, amend or replace an Authorised Individual now incurs a fee of US $500 for each Authorised Individual for whom the change is being sought.
- A person seeking the consent of the DFSA to bring a regulatory proceeding before the Financial Markets Tribunal must pay a fee of US $5,000.

**DFSA Update the Regulatory Policy and Process Module**

On the 12 February 2015, the DFSA issued a new version of the Regulatory Policy and Process (“RPP”) Module of the DFSA Sourcebook replacing the November 2014 edition of the RPP.

Some of the key updates are as follows:

**Clarification on the DFSA’s approach to risk based supervision**

The DFSA conducts a continuous risk management cycle on regulated firms in the DIFC. The risk management cycle starts with a macro-prudential view of the DIFC as a whole providing the DFSA with an overview of the risk profile of all regulated entities. The DFSA will also conduct an impact and probability rating on each firm and a risk matrix is then used to identify, assess and further prioritise risks, resulting in a risk based classification of a firm.

Risk assessments allow the DFSA to allocate its resources in such a way that its supervisory tools are targeted towards those firms and activities which pose a higher risk to the DFSA's objectives. The DFSA will generally only allocate a Relationship Manager to a firm with a higher level of resultant risk from the combined assessment of impact and probability risk ratings. This means that a significant number of firms will not have a dedicated Relationship Manager, but will be supervised by the Thematic Supervision Team.

**Clarification on the DFSA's use of confidential information**

A new section in the RPP summarises the DFSA's obligations in relation to the handling of confidential information. These obligations are contained in UAE and DIFC laws. Although the DFSA has comprehensive powers under the DIFC Regulatory Law to carry out its authorisation, supervision and enforcement functions there are statutory limitations under UAE and DIFC Law on the way the DFSA uses and deals with information obtained. This new section in the RPP outlines the circumstances under which the DFSA may legally disclose confidential information.

**Clarification on waiver and modification applications to the DFSA**

The DFSA has added a new section to the RPP clarifying the process to be undertaken when applying for a waiver or modification of existing DFSA Rules of the DFSA Rulebook or Articles of the Markets Law 2012.

**Future Regulatory Changes**

At a recent DFSA outreach session the DFSA indicated that this year they will be looking at further potential changes to improve the DIFC funds regime and the regime for insurance activities in the DIFC. Also, the DFSA has indicated that it will be looking at potential regulatory changes resulting from issues identified after the Al Khorafi v Bank Sarasin-Alpen (ME) Limited case and the winding-up of ES Bankers (Dubai) Limited.