

EFFECTA'S ESSENTIAL INSIGHTS: A REGULATORY UPDATE

UAE, July 2023

Welcome to EFFECTA's Essential Insights, a quarterly newsletter aimed at providing its readers with succinct overviews of some of the key regulatory issues currently faced by Firms.

2023 continues to be a busy year, with the Regulators focusing on the regulation of crypto assets and the aftermath of Brexit. With an increasing number of Firms looking to operate between the UK and the UAE, EFFECTA has been perfectly positioned to support Firms, providing advice on how to set up in the UAE and operate global models covering the critical time zones of Europe/US and Middle East/Far East.

As always, our newsletter reflects our consultants, diverse in background and knowledge base. We all enjoy assisting firms with their regulatory questions, but also hold very different areas of expertise, enabling us to cover a wide client base and bring more than one perspective to the table.

More information about our individual consultants can be found on our [website](#), but if you would like to discuss any of the topics covered in this newsletter and what implications they may have to your business, please do reach out to us on info@effectacompliance.com.

To review Effecta UK's Newsletter, [please click here](#).

In this newsletter Effecta Middle East ("Effecta ME") will cover the following topics:

1. UAE Supervisory Authority Sub-Committee's Thematic Reviews 2023

On 11 April 2023, the National Anti-Money Laundering and Combating Financing of Terrorism and Financing of Illegal Organisation Committee of the Central Bank of UAE published the outcome of the Suspicious Activity and Transaction Reporting Thematic Review. Following this, the Abu Dhabi Global Market ("ADGM") Financial Services Regulatory Authority ("FSRA") and Dubai Financial Services Authority ("DFSA") issued notices to Firms highlighting the findings of the UAE Supervisory Authority Sub-Committee's thematic review on Suspicious Activity and Transaction Reporting. Firms are required to conduct internal analysis and report any gaps and risk mitigation plans to the relevant Supervisory Authority.

Has your Firm completed the required gap analysis and do you need support with remediation?

2. The Financial & Cyber Crime Prevention ("FCCP") Unit of the FSRA issued a Dear SEO Letter

The FCCP of the FSRA issued a Dear SEO/MLRO/RP Letter on 17 April 2023, concerning the obligation for all Firms to conduct Institutional Terrorist Financing ("TF") and Proliferation Financing ("PF") Risk Assessments.

Has your Firm identified, assessed, understood, and mitigated your TF and PF risks?

3. DFSA Consultation Paper No. 151 – Proposed Changes to the DFSA's Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module

On 23 June 2023, the DFSA published Consultation Paper No. 151 'Proposed Changes to the DFSA Anti Money Laundering, Counter Terrorist Financing and Sanctions' Module.'

The proposals aim to align the DFSA with current regulations and guidelines issued at the UAE Federal level, and to address several issues identified by the DFSA's supervision of Firms' money laundering systems and controls.

Has your Firm reviewed the recent proposals and assessed their potential impact?

4. Dubai International Financial Centre ("DIFC") Consultation Paper No. 2 of 2023 – Amendment to Data Protection Regulations

The DIFC issued Consultation Paper No. 2 of 2023 on 19 April 2023. The purpose of the consultation paper was to seek public comment on the revised data protection regulations that would introduce additional areas of regulation enabling the effective execution of the Data Protection Law, DIFC Law No. 5 of (The "DPL") 2020.

Will the proposed changes have any impact on your Firm?

5. The FSRA Enhances its Regulatory Framework for Private Credit Funds

Following the publication of its Consultation Paper No. 8 of 2022 on Private Credit Funds, the FSRA has announced the enactment of its regulatory framework enabling collective investment funds based in the ADGM to invest in credit facilities.

Amendments that allow Private Credit Funds to operate in or from ADGM have been introduced to several FSRA rulebooks.

Would your Firm benefit from the new private credit funds regulatory framework?



6. ADGM implements its sustainable finance regulatory framework

Following the launch of the DFSA's Sustainable Finance Roadmap 2021-2024, the UAE's sustainable finance agenda will further accelerate in 2023 ahead of, and after, COP28, which will be hosted by the UAE in November in Dubai. The UAE intends to align with the United Nations Sustainable Development Goals that focus on making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

To help achieve this, on 4 July 2023, the ADGM put in place its sustainable finance regulatory framework which creates the region's most comprehensive ESG disclosure requirements and a regulatory framework for funds, discretionary managed portfolios, bonds and sukuk designed to accelerate the transition of the UAE to net zero greenhouse gas emissions.

The new regulations will take effect immediately, reflecting the critical importance of advancing the green agenda in Abu Dhabi, the UAE and globally.

How will your Firm be affected by the issuance of these regulations?

7. DFSA issue Dear SEO Letter – Arranging v Referrals

On 20 June 2023, the DFSA issued a Dear SEO letter clarifying the business activities of 'arranging' and 'referring' in and from the DIFC. The DFSA provided feedback on a number of Authorised Firms that believed one of the activities they had been engaging in was the referral of business. However, after further analysis of the activities and related documentation, the DFSA concluded that these activities instead constituted arranging.

Do you require clarification on your business activities?



1. UAE Supervisory Authority Sub-Committee's Thematic Reviews 2023

What was the focus of the thematic reviews?

Two Thematic Review Reports were published in April 2023 by the UAE Supervisory Authority Sub-Committee, highlighting findings on Suspicious Activity and Transaction Reporting and Targeted Financial Sanctions ("TFS"). The reviews were undertaken by the DFSA, FSRA, Central Bank of the UAE, Ministry of Justice and Ministry of Economy, collectively the "Supervisory Authorities" and focused on Financial Institutions and Designated Non-Financial Businesses and Professions ("DNFBPs").

The reports set out the following key findings and regulatory expectations:

- Senior management must set the tone from the top, oversee systems and controls, and receive suitable management information on an ongoing basis. Compliance teams should be appropriately staffed, and Money Laundering Reporting Officers ("MLRO") must be suitably experienced, senior and independent;
- AML Business Risk Assessments must cover control effectiveness and mitigation measures and include qualitative and quantitative components;
- Policies and procedures must be formally documented, reviewed, and updated in line with current and applicable regulations. Policies and procedures must be approved and communicated to staff;
- Firms should register for TFS updates and document their sanctions screening methodology, ensuring matches are reported in a timely manner;
- Client data must be consistent and complete;
- Internal monitoring tools and processes must be established and maintained to detect money laundering and terrorist financing risks;
- Suspicious transaction reports and suspicious activity reports ("STR/SAR") must be submitted in a timely manner and firms must have a process post-STR/SAR; and
- Employees must receive appropriate and regular training at regular intervals.

What actions are Firms required to take now?

Firms are required to review the findings of the UAE Supervisory Authority Sub-Committee's thematic reviews and conduct an internal gap analysis of these reports against internal AML policies and procedures.

Firms must disclose any identified issues to the relevant Supervisory Authority, accompanied by a detailed Risk Mitigation Plan.

If you require assistance with a review of your Firm's AML policies and procedures against the relevant findings or with subsequent remediation, please contact us at info@effectacompliance.com.



2. The Financial & Cyber Crime Prevention ("FCCP") Unit of the FSRA issued a Dear SEO Letter

Background to the 'Dear SEO' Letter

The Financial Action Task Force ("FATF") recently revised its Standards (R.1 and INR.1) to require countries, financial institutions, DNFBPs and virtual asset service providers ("VASPs") to identify, assess, understand and mitigate their proliferation of financing risks.

The Dear SEO Letter outlined the obligations for Firms:

- Document TF/PF risk assessments
- Keep assessments up-to-date
- Establish appropriate processes to provide TF/PF risk assessment information to supervisory authorities, when required
- Obtain senior management approval for policies, procedures, systems and controls
- Ensure frameworks are consistent with national requirements and guidance in accordance with TF/PF risks identified
- Ensure adequate controls are implemented, and enhance them where necessary
- Manage and mitigate the risks where higher TF/PF risks are identified
- Ensure that measures to manage and mitigate the risks are proportionate with the level of risk while still ensuring full implementation of the targeted financial sanctions related to TF/PF.

What should be the next steps?

The nature and extent of the assessment of TF and PF risks should be appropriate to the nature and size of your business. Conducting a risk assessment is an ongoing process and should be reviewed regularly.

If you would like assistance to identify, assess, understand, and mitigate your TF and PF risk exposure in line with the FATF Standards, please contact us at info@effectacompliance.com.



3. DFSA Consultation Paper No. 151 – Proposed Changes to the DFSA's Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module ("AML Module")

What is the rationale for the changes proposed in the Consultation Paper ("CP")?

CP No. 151 proposes to align the DFSA's AML Module with a number of new regulations and guidelines issued at the UAE Federal level, and to address a number of issues identified by the DFSA's supervision of Firms' money laundering systems and controls.

What are the proposed changes?

CP No. 151 includes the following proposed changes:

- MLRO qualities and suitability – Fitness and propriety, competence and capability requirements relating to MLRO's will apply to DNFBPs and Registered Auditors where it previously did not. Additionally, DNFBPs will be required to notify the DFSA in advance of appointing an MLRO to enable the DFSA to consider whether a proposed MLRO meets the expected standards.
- Thresholds for DNFBPs beneficial owners – Based on international practice, the threshold for direct and indirect holdings in a DNFBP will be set to 10%, to align with the threshold set for notifications regarding Controllers of Authorised Firms.
- DNFBP definition – Dealers of precious metals and precious stones (DPMS) will only be required to register with the DFSA, if the DPMS carries out any single cash transaction or several transactions that appear to be connected, equal to, or exceeding the value of USD 15,000.
- Continuous fitness and propriety for DNFBPs – To ensure that fitness and propriety is a continuing obligation, the DFSA may suspend or withdraw the registration of a DNFBP where it no longer meets the criteria for the initial DFSA registration.

- Firm-tailored policies and procedures – To avoid Firms implementing generic policies and procedures, Firms will be required to ensure that systems and controls are appropriately tailored to the nature, scale and complexity of their operations and activities.
- Customer's name – The removal of the requirement to obtain and verify an alias and the provision of additional guidance as to the DFSA's expectations for identifying and verifying any current legally recognised name(s).
- Sanctions screening – The removal of overlapping requirements in the Rules concerning obligations under Cabinet Decision No. 74 of 2020. Namely, reporting requirements. Instead, new guidance notes will highlight obligations under the Cabinet Decision, including requirements to register with the EOCN, screen databases and transactions, apply or cancel freezing orders, report to regulatory authorities, set up internal controls and procedures, implement policies, and cooperate with the EOCN and regulatory authorities.
- Amendment to the definition of Senior Management – Where the current Rules require senior management approval, a broader definition may be applied to include a committee or executive management. For example, where a customer, or Beneficial Owner of a customer is a Politically Exposed Person (PEP) Senior Management approval may now be given by a member of executive management.

Next Steps

The deadline for the provision of comments to CP 151 is 23rd August 2023.

If you require advice on the consultation paper and how it may impact your business, please contact us at info@effectacompliance.com.



4. DIFC Consultation Paper No. 2 of 2023 – Amendment to Data Protection Regulations

Purpose

The proposed amendments are aimed at enhancing the current data protection framework in the DIFC and providing better, safer, and more ethical management of personal data processing and operations.

The proposed amendments give further clarity on topics such as personal data breach obligations, the use and collection of personal data for electronic marketing and digital communications, and personal data processing through digital, generative technology systems.

What enhancements were proposed?

Key points in the proposals were as follows:

- Identify steps for assessing whether a personal data breach has occurred regarding inadvertently obtained information and what follow up actions are required to report a breach.
- Enhancements to provide clear collection, use and lawful basis for digital communications and services allowing data subjects more control of the use of their personal data.
- Implementing technical, organisational, and ethical obligations for the processing of data in new ways, including platforms built through digital enablement technology systems such as artificial intelligence.

What should Firms do now?

Firms are advised to review the proposed changes and upcoming amendments, to determine whether the changes have any impact on their operations and if so, take appropriate action.

If you require Effecta to conduct a review of your existing data protection framework, please contact us at info@effectacompliance.com.



5. The FSRA Enhances its Regulatory Framework for Private Credit Funds

Background

Following Consultation Paper No. 8 of 2022 on Private Credit Funds, the FSRA has enacted changes to its regulatory framework enabling collective investment funds based in the ADGM to invest in credit by originating and participating in credit facilities. The framework is designed to improve access to alternative financing for private enterprises, driving innovation, productivity growth and competitiveness in the small and medium-sized business sector.

What are the details of the amendments to the framework?

The regulatory framework allows fund managers to create Private Credit Funds in the ADGM, providing investors with access to opportunities to finance dynamic, growth-stage companies. The new rules mean Private Credit Funds and Private Credit Fund Managers will not require separate permission to provide credit or arrange credit, and therefore will not be required to satisfy a specified Base Capital Requirement related to those permissions.

Key aspects of the regulatory framework include:

- A fund can make investments in 'Credit Facilities', investments in equity of the fund's borrowers and the holding of financial instruments for the purpose of cash management or hedging.
- The fund must be a close-ended Qualified Investor Fund or Exempt Fund that is managed by an Authorised Fund Manager.
- Private Credit Funds must not provide credit to the benefit of natural persons, a person related to its fund, collective investment funds, other lenders or financial institutions and persons intending to use proceeds of the credit facility for speculative investment purposes.
- The fund must limit the maximum exposure to a single borrower or group of connected borrowers to 25% of its capital.
- The fund must maintain appropriate systems and controls through robust documented policies.

- Leverage used by a fund will be limited to 100% of the capital of that fund.
- The fund must issue periodic reports containing breakdowns of the allocated loans and their detailed descriptions, a summary of all committed and undrawn credit facilities, information on relevant exposures and report any material changes pertinent to the fund's credit.
- The fund manager must ensure that a periodic stress testing report, based on comprehensive stress and scenarios, enables the identification and mitigation of possible market risks and exposures.

If you have any queries with regard to the DFSA or the new FSRA private credit regulatory frameworks, then please contact us at info@effectacompliance.com.



6. The ADGM implements its sustainable finance regulatory framework

What is the new regulatory framework?

On 4 July 2023, the ADGM announced the implementation of its sustainable finance regulatory framework designed to accelerate the transition of the UAE to net zero greenhouse gas emissions.

The framework includes rules pertaining to:

- sustainability-orientated investment funds;
- managed portfolios;
- bonds; and
- requirements for environmental, social and governance (ESG) disclosures by ADGM companies.

The ADGM will issue a 'designation mark' for asset managers and companies that meet the framework's requirements – a mark that can be used in marketing materials and client communications.

How can my Firm benefit from the new regulations?

This new framework complements ADGM's existing regulation of carbon offsets. The designation mark, issued to all Firms meeting the benchmark requirements, will provide investors with a level of confidence that those products and services purport to meet ADGM's minimum standards, which will in turn lead investors to channel capital towards the green transition.

If you require advice on how your Firm may benefit from the introduction of the new regulation, please contact us at info@effectacompliance.com



7. The DFSA Dear SEO Letter – Arranging v Referrals

Background

On 20 June 2023, the DFSA issued a Dear SEO letter clarifying the business activities of 'arranging' and 'referring' in and from the DIFC. The DFSA provided feedback on several Authorised Firms that believe one of the activities they have been engaging in was the referral of business however, after further analysis of the activities and related documentation, it was apparent to the DFSA that these activities instead constituted arranging.

What are some of the key differences in the regulated activities?

The two activities are described below.

1. Arranging Activities

"Arranging Deals in Investments" is defined in GEN 2.9.1 as making arrangements with a view to another Person buying, selling, subscribing for, or underwriting an investment, including arrangements that do not bring about the transaction and arrangements comprising or involving the receipt and transmission of Client orders in relation to Investments. Whether a person is "arranging" depends on the activities they carry out.

Activities are likely to constitute arranging if they "facilitate" or "bring about" transactions (Guidance Note 1 to GEN Rule 2.9.1). This covers a wide range of activities and the inclusive list in Guidance Note 2 to GEN Rule 2.9.1 lists example activities that may constitute arranging:

- Introductions;
- Assisting parties with processes including completing of applications;
- Negotiating and settling terms of contracts;
- Collection and processing of payments;
- Transmission of instructions; and
- Confirmation of transactions.
- Impact their ability to retain their Professional Client classification.

2. Referrals

Therefore, from the above, to qualify as a "referral" and not be considered as Arranging under the DFSA GEN Module, an Authorised Firm is limited to making a mere introduction. This means either:

- Providing the customer with the contact details or limited information about a broker or third-party financial services provider; or
- Providing the broker or third-party financial services provider with the contact details of the customer,

In both of the above-mentioned cases, without taking any further steps or involvement with the parties beyond this.

What should Firms be doing now?

Firms should review their business activities regularly to make sure that the activities remain in scope of their regulatory permissions.

If you would like advice your Firm's current or proposed business activities, please contact us at info@effectacompliance.com.