Dubai Financial Services Authority

DECISION NOTICE

To: Clements (Dubai) Limited

DFSA Reference No.: F002007

Address: Clements (Dubai) Limited
Unit 509, Floor 5, Gate Precinct Building 3
Dubai International Financial Centre
Dubai
UNITED ARAB EMIRATES

Date: 21 September 2016

1. DECISION

1.1. For the reasons given in this Decision Notice and pursuant to Article 90(2) of the Regulatory Law 2004 (DIFC Law 1 of 2004) (the Regulatory Law), the Dubai Financial Services Authority (DFSA) has decided to impose on Clements (Dubai) Limited (CDL) a financial penalty of US$85,191 (the Fine). The Fine consists of the following elements:

a. US$17,191 (including interest of US$2,029) disgorgement of benefit; and

b. a penalty amount of US$68,000.

1.2. In deciding to take action in this matter, the DFSA acknowledges that: CDL self-reported, to the DFSA, its conduct and the concern that it may have breached DFSA administered legislation; and has dealt with the DFSA in an open and cooperative manner during the DFSA's investigation.

1.3. CDL agreed to settle this matter at an early stage following the conclusion of the DFSA's investigation. Pursuant to the DFSA's policy for early settlement, CDL therefore qualified for a 20% discount on the penalty element. Were it not for this discount, the DFSA would have imposed a penalty element of US$85,000, which would have resulted in a total fine of US$102,191.

2. DEFINITIONS

2.1. Defined terms are identified in this Decision Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined either in this Decision Notice or in the DFSA Rulebook Glossary Module (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

2.2. Terms defined in this Decision Notice are listed in Annex B.

3. SUMMARY OF REASONS

3.1. Between 8 January 2014 and 8 July 2014, CDL intermediated 21 Contracts of Insurance for customers with risks situated in the U.A.E. and outside the DIFC, which were not contracts of re-insurance. In doing so, CDL contravened legislation administered by the DFSA.

3.2. As an Insurance Intermediary in the DIFC, CDL is restricted by Rule 7.2.2(b) of the Conduct of Business Module of the DFSA Rulebook (COB) from acting in relation to a Contract of Insurance for a risk situated in the U.A.E., unless:

a. the risk is situated in the DIFC; or

b. the contract is one of re-insurance.

3.3. However, CDL operated its business in such a way that allowed prohibited Insurance Intermediation activities to occur and it failed to have in place adequate systems and controls to detect, monitor and prevent such Insurance Intermediation activities from occurring.

3.4. Further, CDL did not classify its customers, provide key information, enter into Client Agreements, conduct AML customer risk assessments or undertake Customer Due Diligence (CDD) for its customers as required under the relevant DFSA Rules.

3.5. As set out in this Decision Notice, by engaging in this conduct, CDL failed to comply with a number of specific provisions of COB and the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook (AML). As a result, over the period from 8 January 2014 to 11 September 2014, CDL contravened the following Principles for Authorised Firms:

a. Principle 2 – Due skill, care and diligence - in that CDL failed to conduct its business activities with due skill, care and diligence, contrary to Rule 4.2.2 of the General Module of the DFSA's Rule Book (GEN); and

b. Principle 3 – Management, systems and controls - in that CDL failed to ensure that its affairs were managed effectively and responsibly and did not have adequate systems and controls to ensure, as far is reasonably practicable, that it complied with legislation applicable in the DIFC, contrary to GEN Rule 4.2.3.

3.6. The DFSA has therefore decided to impose the Fine on CDL.

4. FACTS AND MATTERS RELIED UPON

Background

4.1. On 2 April 2013, CDL was licensed by the DFSA as a PIB Category 4 Authorised Firm, to provide the Financial Services of Insurance Intermediation and Insurance Management.

4.2. CDL is a wholly owned subsidiary of Clements Europe Limited, a company based in the UK and regulated by the UK Financial Conduct Authority. Clements Europe Limited is a subsidiary of Clements & Company Inc. which is based in Washington DC, USA. Each of these companies is in the group of companies known as Clements Worldwide.

Legal restrictions on insurance business and intermediation in the U.A.E.

4.3. Article 4(4) of the U.A.E. Federal Law No.8 of 2004 Regarding the Financial Free Zones (the Federal FFZ Law) restricts firms in Financial Free Zones from carrying out insurance in the U.A.E. and outside the Financial Free Zone (such as the DIFC), to re-insurance.

4.4. Consistent with the Federal FFZ Law, DFSA COB Rule 7.2.2(b) restricts Insurance Intermediaries, which are DFSA Authorised Firms, from acting in relation to a Contract of Insurance for a risk situated in the U.A.E., unless:

a. the risk is situated in the DIFC; or

b. the contract is one of re-insurance.

4.5. CDL, as a DFSA authorised Insurance Intermediary, was limited to intermediating re-insurance for risks situated in the U.A.E (and outside the DIFC).

Events leading up to DFSA investigation

4.6. On 27 April 2014, the DFSA met with CDL to discuss the concern that CDL's website may enable persons in the U.A.E. to directly purchase insurance policies online. The DFSA was concerned that CDL may not be complying with the Federal FFZ Law restriction against intermediating direct insurance in the U.A.E. (and outside the DIFC). At the meeting, CDL confirmed to the DFSA that it was not intermediating insurance for risks situated in the U.A.E.

4.7. On or shortly after 25 August 2014, the Chairman of CDL became aware of the existence of insurance policies issued to U.A.E. residents (outside the DIFC) and intermediated by CDL. CDL took steps to restrict its business pending a review of its operations carried out by a law firm (the Review).

4.8. On 4 November 2014, the law firm provided Clements Worldwide with a report containing its preliminary findings of the Review (the Report). The Report raised, among other things, the concern that CDL may have carried out a limited number of insurance activities in breach of COB Rule 7.2.2 and potentially other regulatory

requirements. On 13 November 2014, CDL provided a copy of the Report to the DFSA.

4.9. On 2 February 2015, the DFSA commenced an investigation pursuant to Article 78 of the Regulatory Law into suspected contraventions of DFSA administered legislation (the Investigation).

DFSA FINDINGS

4.10. The findings of the Investigation and contraventions by CDL of legislation administered by the DFSA are set out in paragraphs 4.11 to 4.37 below.

Insurance Intermediation by CDL

4.11. Pursuant to COB Rule 7.2.2(b), CDL needed to ensure it did not act in relation to a Contract of Insurance where the contract was in relation to a risk situated in the U.A.E., unless the risk was situated in the DIFC, or the contract was one of re-insurance.

4.12. In order for CDL to be able to intermediate direct insurance for risks situated in the U.A.E. (and outside the DIFC), it had to be licensed by the U.A.E. Insurance Authority. However, CDL was not licensed by the U.A.E Insurance Authority. Therefore, for risks situated in the U.A.E., CDL was only permitted to intermediate re-insurance.

4.13. Further, to intermediate re-insurance for risks situated in the U.A.E., CDL needed to have had in place an arrangement under which:

a. an insurer licensed by the U.A.E. Insurance Authority (U.A.E. Licensed Insurer) would underwrite direct insurance for customers based in the U.A.E.; and

b. CDL, through Clements Worldwide and its insurance arrangements, would re-insure the insurance risk taken on by the U.A.E. Licensed Insurer.

4.14. However, CDL did not have in place the appropriate arrangements with a U.A.E. Licensed Insurer that would have allowed CDL to intermediate re-insurance in the U.A.E. (outside the DIFC).

4.15. The DFSA reviewed the insurance policies sold to customers by Clements Worldwide and various insurance companies licensed by the U.A.E Insurance Authority. The DFSA's review identified that between 8 January 2014 and 8 July 2014, CDL intermediated 21 Contracts of Insurance for individuals and commercial customers with risks situated in the U.A.E. (and outside the DIFC) (the 21 Contracts of Insurance). In summary, the 21 Contracts of Insurance consisted of:

Type of Insurance	**No. of policies intermediated**
Term Life Insurance	9
Health Insurance	4

Personal Accident Insurance	1
Automobile Insurance	1
Commercial Insurance	6

4.16. CDL arranged for the 21 Contracts of Insurance to be issued in that:

a. CDL's employees communicated directly with the customers;

b. obtained the details required to process the insurance applications on behalf of the customers; and

c. CDL subsequently arranged for the insurance policies to be issued to the customers.

4.17. None of the 21 Contracts of Insurance were underwritten by a U.A.E. Licensed Insurer pursuant to a re-insurance arrangement.

4.18. CDL earned a total commission of US$15,162 for the 21 Contracts of Insurance it intermediated.

4.19. Given the findings outlined in paragraphs 4.11 to 4.18 above, the DFSA considers that, in the period from 8 January 2014 to 8 July 2014, CDL contravened COB Rule 7.2.2(b) in that it intermediated at least 21 Contracts of Insurance for individual and commercial customers whose risks were situated in the U.A.E. (and outside the DIFC), and the contracts were not of re-insurance.

Failure to on-board Clients by CDL

Client classification

4.20. Pursuant to COB Rule 2.3.1, before carrying on a Financial Service with or for a Person, CDL was required to determine whether that Person was a Professional Client in relation to the particular Financial Service or products it offered. If CDL did not determine that a Person was a Professional Client, CDL was required to treat them as a Retail Client.

4.21. Further, pursuant to COB Rule 3.3.2, before carrying on a Financial Service with or for a Person, CDL was required to provide the Person with the key information specified in COB Appendix 2, and enter into a Client Agreement containing the same key information.

4.22. With reference to GEN Rule 2.19.1, Insurance Intermediation includes:

a. advising on insurance;

b. acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or

c. making arrangements with a view to another Person, whether as principal or agent, buying insurance.

4.23. Therefore, in arranging the 21 Contracts of Insurance summarised in paragraph 4.15 above, CDL carried out the Financial Service of Insurance Intermediation as defined in GEN Rule 2.19.1.

4.24. However, before intermediating the 21 Contracts of Insurance, CDL did not undertake any assessment to determine whether customers for which CDL intermediated Contracts of Insurance were Retail Clients or Professional Clients. In so doing, CDL contravened COB Rule 2.3.1.

4.25. Further, before intermediating the 21 Contracts of Insurance and carrying on a Financial Service, CDL did not provide the key information or enter into any Client Agreements with those Clients as required by the DFSA's Rules. In so doing, CDL contravened COB Rule 3.3.2.

Customer risk assessments and CDD

4.26. Pursuant to AML Rule 6.1.1, CDL was required to undertake a risk-based assessment of every customer, and assign the customer a risk rating proportionate to the customer's money laundering risks.

4.27. Further, pursuant to AML Rule 7.1.1, CDL was required to undertake CDD for each of its customers.

4.28. CDL did not conduct AML customer risk assessments, nor did it undertake CDD before establishing a business relationship with the customers for which CDL arranged the 21 Contracts of Insurance. Accordingly, CDL contravened AML Rules 6.1.1 and 7.1.1. Its failure to conduct any CDD for each of its customers in accordance with AML Rule 7.1.1 resulted in CDL being unable to comply with specific CDD requirements under Chapter 7 of the AML Module.

Inadequate compliance systems and controls

4.29. The Investigation also found that CDL's compliance systems and controls were inadequate to prevent CDL from breaching its obligations under DFSA administered legislation.

4.30. Although CDL had in place certain arrangements that were designed to monitor its insurance activities, these did not operate effectively in practice. In particular:

a. CDL's Regulatory Business Plan (RBP) contained a section confirming the restriction about conducting insurance business in the U.A.E. and required CDL to produce a "development report" to its board of directors each month to enable CDL to monitor its business activities. However, no such reports were ever produced;

b. CDL was required to undertake "periodic on-site reviews" of CDL's business activities. However, it did not do so and CDL's compliance function did not

adequately review the records concerning the business activities undertaken by CDL;

c. rather than conducting its own independent testing and file reviews to monitor business activities, CDL's compliance function relied on assurances that CDL had no new clients. This was not sufficient to enable compliance to properly assess the extent to which CDL was carrying on Insurance Intermediation; and

d. every quarter, CDL's sales staff were required to sign declarations whether they had provided Insurance Intermediation or management services in the UAE and outside the DIFC. Despite the activities described in paragraphs 4.15 to 4.16 above, the quarterly conduct declarations provided by staff in the period from Q4 2013 to Q2 2014 did not disclose the full extent of CDL's Insurance Intermediation services over this period.

4.31. CDL also had a compliance manual and an AML manual – both of which were approved by CDL's board of directors in November 2013. These contained sections on the restriction about Insurance Intermediation in the U.A.E. and the relevant AML and COB requirements. Additionally, CDL's employees:

a. were required to read the compliance manual and sign a "Compliance Acknowledgement and Undertaking" certifying that they had read the manual and understood the policies and procedures included within it; and

b. received training in November 2013 on compliance and AML-related issues. This training included CDL's client on-boarding process and requirements, the COB restriction about Insurance Intermediation in the U.A.E. and relevant requirements under the AML Rulebook.

4.32. Despite attending the training and signing the compliance acknowledgement and undertakings, CDL staff engaged in the Insurance Intermediation activities, and failed to on-board customers properly, as described in this Decision Notice.

4.33. Further, on or around 27 April 2014, the DFSA made CDL aware of the concern that insurance policies could be directly purchased by U.A.E. residents via CDL's website. However, CDL failed to change its compliance systems and controls to address this concern and CDL did not change its website to restrict U.A.E. residents from purchasing insurance online until around 11 September 2014.

4.34. Between 27 April 2014, when CDL was alerted of the concern with its website, and 11 September 2014, CDL intermediated 6 of the 21 Contracts of Insurance through its website.

4.35. As a result of the failings referred to in paragraphs 4.29 to 4.34 above, CDL failed to ensure that:

a. its affairs were managed effectively and responsibly by its senior management; and

b. it had in place adequate systems, controls and compliance arrangements to detect, monitor and prevent it from:

i. acting in relation to a Contract of Insurance where the contract was for a risk situated within the U.A.E. (which was not in the DIFC and the contract was not one of re-insurance); and

ii. breaching its client on-boarding obligations.

CONTRAVENTIONS

4.36. For the reasons set out in paragraphs 4.11 to 4.35 above, the DFSA considers that CDL contravened a number of specific COB and AML provisions.

4.37. Further, the DFSA considers that, in the period from 8 January 2014 to 11 September 2014, CDL contravened the following Principles for Authorised Firms:

a. Principle 2 (GEN Rule 4.2.2) - Due skill, care and diligence - in that CDL did not conduct its business activities with due skill, care and diligence; and

b. Principle 3 (GEN Rule 4.2.3) - Management, systems and controls - in that CDL failed to ensure:

i. that its affairs were managed effectively and responsibly by its senior management; and

ii. it had in place adequate systems and controls to ensure, as far is reasonably practicable, that it complied with legislation applicable in the DIFC.

5. SANCTION

5.1. In deciding to take the action set out in this Decision Notice, the DFSA has taken into account the factors and considerations set out in sections 6-2 and 6-3 of the DFSA's Regulatory Policy and Process Sourcebook (RPP).

5.2. Annex A sets out extracts from statutory and regulatory provisions and guidance relevant to this Decision Notice.

5.3. The DFSA considers that the action set out in this Decision Notice supports the DFSA's objectives to:

a. prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions (Article 8(3)(d) of the Regulatory Law);

b. protect direct and indirect users and prospective users of the financial services industry in the DIFC (Article 8(3)(e) of the Regulatory Law); and

c. promote public understanding of the regulation of the financial services industry in the DIFC (Article 8(3)(f) of the Regulatory Law).

The Fine

Factors considered in imposing the Fine

5.4. With reference to RPP Section 6-2, the DFSA considers the following factors to be of particular relevance in deciding to impose the Fine on CDL:

a. the deterrent effect of the action and the importance of deterring CDL and other Authorised Firms from committing further or similar contraventions; and

b. CDL's conduct after the contraventions – in particular, the DFSA notes that CDL fully cooperated with the DFSA's investigation and has taken steps to remediate the issues in this Decision Notice.

Determination of the Fine

5.5. The DFSA adopts a five-step approach to determine the appropriate level of financial penalty. In determining the appropriate level of financial penalty to impose in this matter, the DFSA has taken into account the factors and considerations set out in Sections 6-4 and 6-5 of the RPP as follows:

Step 1 – Disgorgement

5.6. The DFSA's investigation found that CDL earned US$15,162 in commission from the 21 Contracts of Insurance it intermediated for risks situated in the U.A.E. (and outside the DIFC).

5.7. The DFSA considers the commission earned by CDL to be an economic benefit gained from its contraventions and accordingly disgorges this amount.

5.8. With reference to RPP 6-5-1, the DFSA ordinarily charges interest on such a benefit. In this particular matter, the DFSA considers it appropriate to impose a fine of US$2,029 to represent the simple interest calculated to 12 July 2016, at a rate of 5.89% p.a., on the commission earned by CDL.

5.9. The figure after Step 1 is therefore US$17,191, including interest.

Step 2 – The seriousness of the contraventions

5.10. The DFSA considers CDL's contraventions to be serious because:

a. intermediating direct insurance for risks situated in the U.A.E. (and outside the DIFC) without being licensed to do so is not only a breach of DFSA administered legislation but is also a breach of the Federal FFZ Law;

b. CDL failed to ensure that its employees were carrying out their business activities in accordance with DFSA administered legislation; and

c. CDL failed to ensure that it had in place adequate systems, controls and compliance arrangements to prevent CDL from intermediating direct insurance for risks situated in the U.A.E. (and outside the DIFC).

5.11. Taking the above factors into account, the DFSA considers that a financial penalty of US$100,000 appropriately reflects the seriousness of the contraventions.

Step 3 – Mitigating and aggravating factors

5.12. In considering the appropriate level of the financial penalty, the DFSA had regard to the circumstances of this matter and the factors set out in RPP 6-5-8.

5.13. The DFSA considers the following factors have a mitigating effect on the contraventions:

a. in the Report, CDL self-reported to the DFSA its conduct and the concern that it may have breached DFSA administered legislation;

b. on the basis of the Report, CDL ceased its business activities and commenced remediating its business model;

c. CDL dealt with the DFSA in an open and cooperative manner throughout the investigation; and

d. CDL and its current senior management have taken steps towards remediating the issues in this Decision Notice, including:

i. appointing independent legal advisers to assist in remediating their business model;

ii. appointing a new SEO and Compliance Officer;

iii. reviewing and updating their internal policies and procedures; and

iv. taking proactive measures to report regularly to the DFSA on the steps taken to remediate its business model.

5.14. As result of these mitigating factors, the DFSA considers it appropriate to adjust the figure after Step 2. Accordingly, the DFSA has decided to reduce the figure by 15%. The figure after Step 3 is therefore US$85,000.

Step 4 – Adjustment for deterrence

5.15. Under RPP 6-5-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-5-9 sets out the circumstances where the DFSA may do this.

5.16. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring CDL and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.

5.17. Accordingly, the figure after Step 4 is US$85,000.

Step 5 – Settlement discount

5.18. Where the DFSA and the firm on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-5-10 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.

5.19. In this matter, DFSA and CDL have reached agreement on the relevant facts and matters relied on and the amount of the Fine to be imposed. Having regard to the stage at which this agreement has been reached and in recognition of the benefit of this agreement to the DFSA, the DFSA has applied a 20% discount to the level of Fine which the DFSA would have otherwise imposed.

5.20. Accordingly, the figure after Step 5 is US$68,000.

The level of the Fine

5.21. Given the factors and considerations set out in paragraphs 5.4 to 5.20 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on CDL a fine of US$85,191, comprising:

a. disgorgement of US$17,191 (including interest) in commission earned by CDL from the 21 Contracts of Insurance it intermediated for risks situated in the U.A.E. (and outside the DIFC); and

b. a penalty amount of US$68,000.

6. PROCEDURAL MATTERS

Decision Making Committee

6.1. The Decision Making Committee of the DFSA, in its delegated capacity as a decision maker on behalf of the DFSA, made the decision which gave rise to the obligation to give this Decision Notice.

6.2. This Decision Notice is given to CDL under Paragraph 5 of Schedule 3 to the Regulatory Law.

Evidence and other material considered

6.3. CDL is entitled to a copy, or access to a copy, of the relevant materials that were considered in making the decision

Right of review of decision by Financial Markets Tribunal (FMT)

6.4. Pursuant to Article 90(5) of the Regulatory Law, CDL has the right to refer this matter to the FMT for review. However, in deciding to settle this matter and in agreeing to the action set out in this Decision Notice, CDL has agreed that it will not refer this matter to the FMT.

Manner and time for payment

6.5. The Fine must be paid by CDL by no later than 14 days from the date on which this Decision Notice is given to CDL.

If the fine is not paid

6.6. If any or all of the Fine is outstanding on the day after the date in paragraph 6.5 above, the DFSA may seek to recover the outstanding amount as a debt owed by CDL and due to the DFSA.

Publicity

6.7. Under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

6.8. In accordance with Article 116(2) of the Regulatory Law, the DFSA intends to publicise the action taken in this Decision Notice and the reasons for that action. This may include publishing this Decision Notice itself, in whole or in part.

6.9. The DFSA will notify CDL of the date on which the DFSA intends to publish information about this Decision Notice.

DFSA contacts

6.10. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1500, or by email at DMC@dfsa.ae.

Signed:

……..
Bryan Stirewalt
Managing Director, Supervision
On behalf of the Decision Making Committee of the DFSA

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

DIFC Law No. 1 of 2004 – The Regulatory Law 2004

Part 2, Chapter 5 – Proceedings in the Financial Markets Tribunal

Article 29 – References:

(1) The FMT has jurisdiction to hear and determine any reference where a provision of legislation administered by the DFSA or a provision in or made under a DIFC Law provides that a matter may be referred to the FMT for review.

(2) A person may commence a reference to the FMT only in circumstances where the FMT has jurisdiction to hear and determine the reference under this Article.

(3) A reference must be commenced:

(a) within 30 days of the relevant decision of the DFSA; or

(b) within such further period not exceeding 30 days as may be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances.

(4) At the conclusion of a reference, the FMT may do one or more of the following:

(a) affirm the original decision of the DFSA which is the subject of the reference;

(b) vary that original decision;

(c) set aside all or part of that original decision and make a decision in substitution;

(d) decide what, if any, is the appropriate action for the DFSA to take and remit the matter to the Chief Executive;

(e) make such order in respect of any matter or any of the parties which it considers appropriate or necessary in the interests of the DFSA's regulatory objectives or otherwise in the interests of the DIFC; or

(f) issue directions for giving effect to its decision, save that such directions may not require the DFSA to take any step which it would not otherwise have the power to take.

Part 7: Enforcement

90 – Sanctions and direction

(1) Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.

(…)

(2) For the purposes of Article 90(1) the DFSA may:

(a) fine the person such amount as it considers appropriate in respect of the contravention;

(b) censure the person in respect of the contravention;

(c) make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct;

(d) make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;

(e) make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;

(f) make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or

(g) make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.

(…)

(5) If the DFSA decides to exercise its power under this Article in relation to a person, the person may refer the matter to the FMT for review.

Part 10: Miscellaneous

116. Publication by the DFSA

(…)

(2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

(…)

Schedule 3: Decision-Making Procedures

Paragraph 5 – Decision Notice

(1) If the DFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a "Decision Notice") specifying:

(a) the decision;

(b) the reasons for the decision, including its findings of fact;

(c) the date on which the decision is to take effect;

(d) if applicable, the date by which any relevant action must be taken by the person; and

(e) the person's right to seek review of the decision by the FMT (where applicable).

(2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.

(3) For the purposes of sub-paragraph (2), the DFSA:

(a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and

(b) is not required to provide material that is the subject of legal professional privilege.

2. REGULATORY PROVISIONS

The DFSA Rulebook

General Module (GEN)

Chapter 2 – Financial Services

Rule 2.19.1

(1) In Rule 2.2.2, Insurance Intermediation means:

(a) advising on insurance;

(b) acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or

(c) making arrangements with a view to another

Chapter 4 – Core Principles

Principle 2 (Rule 4.2.2) - Due skill, care and diligence

In conducting its business activities an Authorised Firm must act with due skill, care and diligence.

Principle 3 (Rule 4.2.3) – Management, systems and controls.

An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

Conduct of Business Module (COB)

Chapter 2 – Client Classification

Rule 2.3.1

(1) Subject to (2), before carrying on a Financial Service with or for a Person, an Authorised Firm must determine whether such a Person is a Professional Client in accordance with Rule 2.3.2, in respect of all or particular Financial Services or products offered by the Authorised Firm.

(2) An Authorised Firm is not required to comply with (1) in relation to a particular Person where it:

(a) treats that Person as a Retail Client; or

(b) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing with that Person and provides no other Financial Service to that Person.

(3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person (the 'second person') in relation to a particular Transaction then, unless the Client

is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat that second person as its Client in relation to that Transaction.

Professional Client

2.3.2

(1) An Authorised Firm may classify a Person as a Professional Client only if such a Person:

(a) either:

(i) has net assets of at least $500,000 calculated in accordance with Rule 2.4.1; or

(ii) is, or has been in the previous 2 years:

(A) an Employee of the Authorised Firm; or

(B) an Employee in a professional position in another Authorised Firm;

(b) subject to (2), appears, on reasonable grounds, to the Authorised Firm, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks following the analysis specified in Rule 2.5.1; and

Retail Client

2.3.5

A Client is a Retail Client to the extent he is not a Professional Client.

Chapter 3 – Core Rules – Investment Business, Accepting Deposits, Providing Credit and Providing Trust Services

Rule 3.3.2

(1) Subject to (2), an Authorised Firm must not carry on a Financial Service with or for a Person unless:

(a) there is a Client Agreement containing the key information specified in App2 which is either entered into:

(i) between the Authorised Firm and that Person; or

(ii) in accordance with the requirements in Rule 3.3.4; and

(b) before entering into the Client Agreement with the Person, the Authorised Firm has provided to that Person the key information referred to in (a) in

good time to enable him to make an informed decision relating to the relevant Financial Service.

Chapter 7 – Core Rules - Insurance

Rule 7.2.2

An Authorised Firm must ensure that it does not:

(a) if it is an Insurer, Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC; or

(b) if it is an Insurance Intermediary, act in relation to a Contract of Insurance;

where the contract is in relation to a risk situated within the U.A.E, unless the risk is situated in the DIFC, or the contract is one of re-insurance.

COB App 2

A2.1.1 The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

(a) the core information set out in:

(i) Rule A2.1.2 (1) if it is a Retail Client; and

(ii) Rule A2.1.2(2) if it is a Professional Client; and

(b) where relevant, the additional information required under Rules A2.1.3 and A2.1.4.

A2.1.2 (1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:

(a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;

(b) the regulatory status of the Authorised Firm;

(c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;

(d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;

(e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;

(f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);

(g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and

(h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11.

A2.1.1 (2) In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML)

Chapter 6 – Customer Risk Assessment

Rule 6.1.1

(1) A Relevant Person must:

(a) undertake a risk-based assessment of every customer; and

(b) assign the customer a risk rating proportionate to the customer's money laundering risks.

(2) The customer risk assessment in (1) must be completed prior to undertaking Customer Due Diligence for new customers, and whenever it is otherwise appropriate for existing customers.

(3) A Relevant Person may assign a low risk rating to a Prescribed Low Risk Customer without the need to undertake the risk-based assessment of the customer under (1)(a).

(4) Where a Relevant Person has assigned a customer a low risk rating under (3) and the customer ceases to meet the criteria to be a Prescribed Low Risk Customer the Relevant Person must undertake the risk-based assessment of the customer under (1)(a).

(5) When undertaking a risk-based assessment of a customer under (1)(a) a Relevant Person must:

(a) identify the customer and any beneficial owner;

(b) obtain information on the purpose and intended nature of the business relationship;

(c) take into consideration the nature of the customer, its ownership and control structure, and its beneficial ownership (if any);

(d) take into consideration the nature of the customer business relationship with the Relevant Person;

(e) take into consideration the customer's country of origin, residence, nationality, place of incorporation or place of business;

(f) ake into consideration the relevant product, service or transaction; and

(g) take into consideration the outcomes of business risk assessment

Chapter 7 – Customer Due Diligence

Rule 7.1.1

(1) A Relevant Person must:

(a) undertake Customer Due Diligence under Rule 7.3.1 for each of its customers; and

(b) in addition to (a), undertake Enhanced Customer Due Diligence under Rule 7.4.1 in respect of any customer it has assigned as high risk.

(2) A Relevant Person may undertake Simplified Customer Due Diligence in accordance with Rule 7.5.1 by modifying Customer Due Diligence under Rule 7.3.1 for any customer it has assigned as low risk.

Regulatory Policy and Process Sourcebook Module – RPP

Chapter 5 - Enforcement

Section 5-8 – Fines

Paragraph 5-8-1

The DFSA may seek to impose a fine under Article 90 on a Person whom it considers has contravened a provision of the Law. The DFSA may impose a fine in any amount considered appropriate.

Paragraph 5-8-2

In determining whether to impose a fine and the quantum of the fine, the DFSA will take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in chapter 6 of the RPP.

Paragraph 5-8-3

The decision to impose a fine on a Person will be made by the DMC.

Paragraph 5-8-4

Prior to making a decision, the DMC will follow the procedures set out in Schedule 3 of the Regulatory Law (see also chapter 7 of the RPP).

Paragraph 5-8-5

If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

Section 5-17 – Publicity

Paragraph 5-17-7

The DMC will generally be the decision maker for enforcement decisions under Article 90 of the Regulatory Law. Information about matters before the DMC (e.g. a Preliminary Notice) are not normally published prior to the issuing of a notice of decision (see RPP 5-17-9 to 5-17-11). Reasons for this include:

(a) oral and written submissions in regard to a matter before a Decision Making Committee are confidential and made in private;

(b) DMC hearings are held in private; and

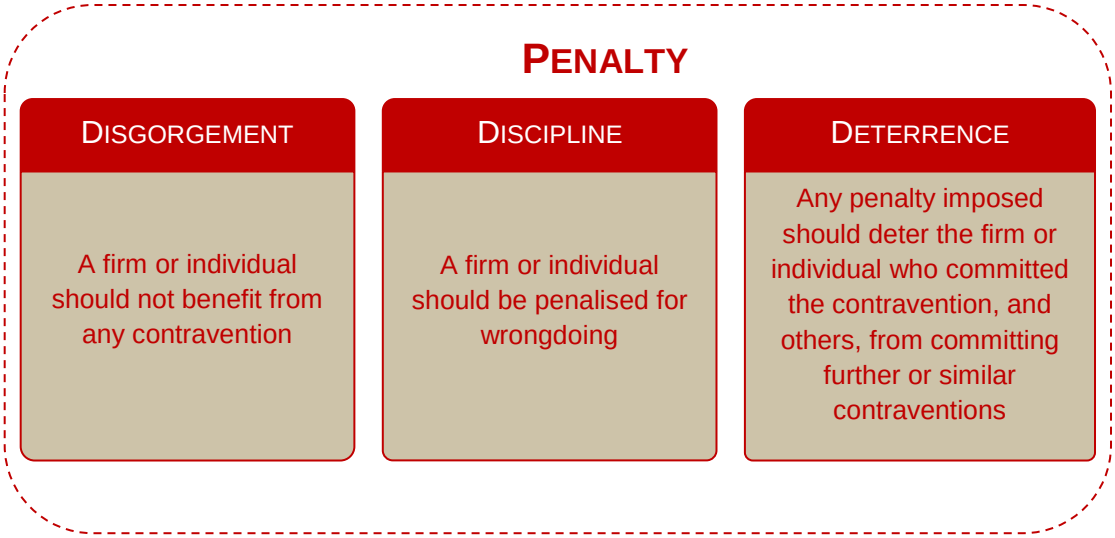
(c) the release of information by the DMC prior to a full and complete consideration of all submissions and facts may be contrary to the DFSA's objectives or not in the public interest.

Chapter 6 – Penalty Guidance

Section 6-4 Determining the Appropriate Level of Financial Penalty

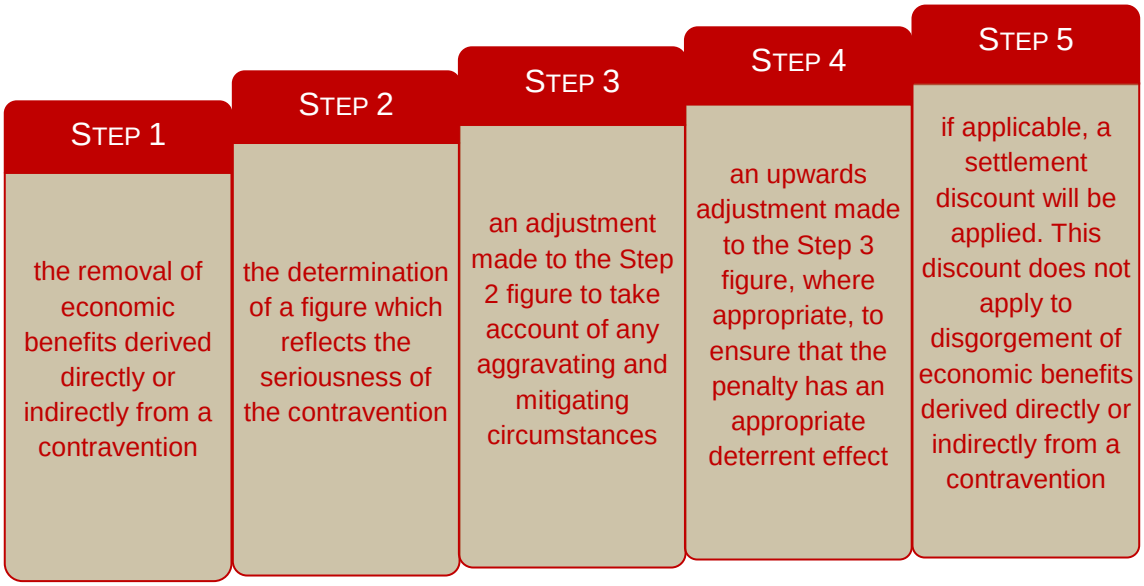
Paragraph 6-4-1

The DFSA's penalty-setting regime is based on three principles:



Paragraph 6-4-2

The total amount payable by a Person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the contravention; and (ii) a financial penalty reflecting the seriousness of the contravention. These elements are incorporated in a five-step framework, which can be summarised as follows:



Paragraph 6-4-3

The DFSA recognises that a penalty must be proportionate to the contravention. These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (section 6-5), and cases against individuals (section 6-6).

Paragraph 6-4-5

The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

Paragraph 6-4-6

The DFSA will not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

Section 6-5 Financial Penalties Imposed on a firm

Step 1: Disgorgement

Paragraph 6-5-1

The DFSA will seek to deprive an individual of the economic benefits derived directly or indirectly from the contravention (which may include the profit made or loss avoided) where it is possible to quantify this. The DFSA will ordinarily also charge interest on the benefit.

Step 2: The seriousness of the contravention

Paragraph 6-5-2

The DFSA will determine a financial penalty figure that reflects the seriousness of the contravention. In determining such a figure, the DFSA will take into account various factors, which will usually fall into the following four categories:

(a) factors relating to the impact of the contravention;

(b) factors relating to the nature of the contravention;

(c) factors tending to show whether the contravention was deliberate; and

(d) factors tending to show whether the contravention was reckless.

Paragraph 6-5-3

Factors relating to the impact of a contravention committed by a firm include:

(a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the contravention, either directly or indirectly;

(b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general;

(c) the loss or risk of loss caused to individual consumers, investors or other market users;

(d) whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;

(e) the inconvenience or distress caused to consumers; and

(f) whether the contravention had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.

Paragraph 6-5-4

Factors relating to the nature of a contravention by a firm include:

(a) the nature of the Laws or Rules contravened;

(b) the frequency of the contravention;

(c) whether the contravention revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business;

(d) whether the firm's senior management were aware of the contravention;

(e) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;

(f) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the contravention;

(g) whether the firm failed to conduct its business with integrity; and

(h) whether the firm, in committing the contravention, took any steps to comply with Laws and Rules, and the adequacy of those steps;

Paragraph 6-5-5

Factors tending to show the contravention was deliberate include:

(a) the contravention was intentional, in that the firm's senior management, or a responsible individual, intended, could reasonably have foreseen, or foresaw that the likely or actual consequences of their actions or inaction would result in a contravention;

(b) the firm's senior management, or a responsible individual knew, that their actions were not in accordance with his firm's internal procedures;

(c) the firm's senior management, or a responsible individual sought to conceal his misconduct;

(d) the firm's senior management, or a responsible individual committed the contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;

(e) the firm's senior management, or a responsible individual was influenced to commit the contravention by the belief that it would be difficult to detect;

(f) the individual's actions were repeated.

Paragraph 6-5-6

Factors tending to show the contravention was reckless include:

(a) the firm's senior management, or a responsible individual appreciated there was a risk that his actions or inaction could result in a contravention and failed adequately to mitigate that risk; and

(b) the firm's senior management, or a responsible individual were aware there was a risk that his actions or inaction could result in a contravention but failed to check if he was acting in accordance with internal procedures.

Step 3: Mitigating and aggravating factors

Paragraph 6-5-7

The DFSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (excluding any amount to be disgorged as set out in Step 1), to take into account factors which aggravate or mitigate the contravention. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

Paragraph 6-5-8

The following list of factors may have the effect of aggravating or mitigating the contravention:

(a) the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the contravention to the DFSA's attention (or the attention of other regulatory authorities, where relevant);

(b) the degree of cooperation the firm showed during the investigation of the contravention by the DFSA, or any other regulatory authority allowed to share information with the DFSA;

(c) where the firm's senior management were aware of the contravention or of the potential for a contravention, whether they took any steps to stop the contravention, and when these steps were taken;

(d) the nature, timeliness, and adequacy of the firm's responses to any supervisory interventions by the DFSA and any remedial actions proposed or required by DFSA's supervisors;

(e) whether the firm has arranged its resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;

(f) whether the firm had previously been told about the DFSA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;

(g) whether the firm had previously undertaken not to perform a particular act or engage in particular behaviour;

(h) whether the firm concerned has complied with any requirements or rulings of another regulatory authority relating to the contravention;

(i) the previous disciplinary record and general compliance history of the firm;

(j) action taken against the firm by other domestic or international regulatory authorities that is relevant to the contravention in question;

(k) whether DFSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;

(l) whether the DFSA publicly called for an improvement in standards in relation to the behaviour constituting the contravention or similar behaviour before or during the occurrence of the contravention; and

Step 4: Adjustment for deterrence

Paragraph 6-5-9

If the DFSA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions then the DFSA may increase the financial penalty. Circumstances where the DFSA may do this include:

(a) where the DFSA considers the absolute value of the penalty too small in relation to the contravention to meet its objective of credible deterrence;

(b) where previous DFSA action in respect of similar contraventions has failed to improve industry standards. This may include similar contraventions relating to different products (for example, action for mis-selling or claims handling failures in respect of 'x' product may be relevant to a case for mis-selling or claims handling failures in respect of 'y' product);

(c) where the DFSA considers it is likely that similar contraventions will be committed by the firm or by other firms in the future in the absence of such an increase to the financial penalty; and

(d) where the DFSA considers that the likelihood of the detection of such a contravention is low.

Step 5: Settlement discount

Paragraph 6-5-10

The DFSA and the firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, section 6-8 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the DFSA and the firm concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

ANNEX B

DEFINITIONS

21 Contracts of Insurance	The 21 Contracts of Insurance CDL intermediated for customers with risks situated in the U.A.E. (and outside the DIFC).
AML	Anti-Money Laundering and, interchangeably depending on the context, The DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module, Version 9, in force from July 2013 to June 2014, and Version 10 in force from June 2014 onwards.
CDD	Customer Due Diligence pursuant to AML Rule 7.1.1(1)(a).
CDL	Clements (Dubai) Limited.
COB	The DFSA Rulebook, Conduct of Business Module, Version 22, in force from July 2013 to August 2014.
Decision Notice	This Decision Notice.
DIFC	The Dubai International Financial Centre, the financial free-zone in the Dubai Emirate.
DFSA	The Dubai Financial Services Authority, the financial services regulator in the DIFC.
DMC	The DFSA's Decision Making Committee.
Federal FFZ Law	U.A.E. Federal Law No.8 of 2004 Regarding The Financial Free Zones.
Fine	The fine referred to in paragraph 1.1 of this Decision Notice.
FMT	The Financial Markets Tribunal.
GEN	DFSA Rulebook, General Module, Version 33, in force from July 2013 to June 2014, and Version 34 in force from June 2014 onwards.
Investigation	The DFSA investigation commenced pursuant to Article 78 of the Regulatory Law on 2 February 2015 into suspected contraventions of DFSA administered legislation.
Regulatory Law	Regulatory Law 2004, DIFC Law No. 1 of 2004.
Report	The report submitted by CDL to the DFSA dated 13 November 2014, containing CDL's findings of the Review.

Review	A review of CDL's business operations carried out by an external law firm.
RPP	The DFSA's Regulatory Policy and Process Sourcebook Module.
SEO	Senior Executive Officer, the Licensed Function described in GEN Rule 7.4.2.
U.A.E.	The United Arab Emirates.
U.A.E. Licenced Insurer	An insurance company licenced by the U.A.E Insurance Authority.