

Appendix 2

In this Appendix underlining indicates new text and striking through indicates deleted text.

Some text that is not being amended is included for information only.

MARKETS LAW AMENDMENT LAW DIFC LAW No. [X] of 2022

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8. The DFSA powers to make Rules

- (1) The DFSA may make Rules for the purposes of this Law pursuant to the power conferred upon it under Article 23 of the Regulatory Law 2004.
- (2) Without limiting the generality of Article 23 of the Regulatory Law 2004, the DFSA shall make the following Rules:
 - (a) in relation to the offer of Securities or Crypto Tokens in or from the DIFC;
 - (b) in relation to the licensing and supervision of Authorised Market Institutions, including requirements and procedures in the event of default by members of an Authorised Market Institution;
 - (c) in relation to the maintenance of Official Lists of Securities;
 - (d) in relation to the governance of Reporting Entities including corporate governance and related party transactions;
 - (e) in relation to takeovers, mergers and acquisitions of Reporting Entities;
 - (f) for the prevention of market abuse, including any code of market conduct; and
 - (g) in relation to recognised persons.
- (3) Where any legislation made for the purposes of this Law purports to be made in the exercise of a particular power, it shall be taken also to be made in the exercise of all powers under which it may be made.
- (4) The DFSA shall publish draft Rules in the manner prescribed in Article 24 of the Regulatory Law 2004.

9. The DFSA powers to waive or modify the Law

- (1) The DFSA may where it considers it appropriate or desirable in the interests of the DIFC to do so:
 - (a) on the application of a person; or
 - (b) with the consent of a person;by means of a written notice provide that one or more provisions of this Law either:
 - (c) shall not apply in relation to such person; or
 - (d) shall apply to such person with such modifications as are set out in the written notice.
- (2) A written notice may be given subject to conditions.
- (3) A person to whom a condition specified in a written notice applies shall comply with the condition.
- (4) The DFSA shall take such steps as necessary to bring the notice referred to in Article 9(1) to the attention of:
 - (a) those likely to be affected by it; and
 - (b) others who may be likely to become subject to a similar notice.
- (5) The DFSA may:
 - (a) on its own initiative or on the application of the person to whom it applies, withdraw a written notice issued pursuant to Article 9(1); or
 - (b) on the application of, or with the consent of, the person to whom that notice applies, vary such a written notice.
- (6) The DFSA may make Rules in connection with the provision of a written notice under this Article, including Rules prescribing procedures for the making of applications and providing of consents.

9A. Application of Law to Crypto Tokens

The following provisions of this Law do not apply in relation to Crypto Tokens:

- (a) Chapter 3 (Prospectus Requirement) of Part 2;
- (b) Chapter 4 (Misleading and Deceptive Statements or Omissions) of Part 2, except for Article 25 (Stop Orders);

- (c) Chapter 2 (Official List of Securities) of Part 3;
- (d) Part 4 (Obligations of Reporting Entities); and
- (e) Part 5 (Takeovers).

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PART 2: OFFER OF SECURITIES OR CRYPTO TOKENS

CHAPTER 1: APPLICATION

10. Application of this Part to Collective Investment Funds

- (1) The provisions in Part 2 of this Law and the Rules made for the purpose of that Part shall not apply to a person in relation to making an Offer of a Unit as defined in Article 19 of the Collective Investment Law 2010.
- (2) The provisions in Part 2 of this Law and the Rules made for the purpose of that Part shall apply to a person who has or intends to have Units admitted to trading on an Authorised Market Institution, or Security Tokens that are Units admitted to trading on an Alternative Trading System, in the manner and circumstances specified in this Law and prescribed in the Rules.

CHAPTER 2: GENERAL PROHIBITIONS AND DEFINITIONS

11. General Prohibition

- (1) A person shall not:
 - (a) make an Offer of Securities or Crypto Tokens to the Public in or from the DIFC; or
 - (b) have Securities or Crypto Tokens admitted to trading on an Authorised Market Institution,except as provided in this Law and the Rules made for the purposes of this Law.
- (2) Without limiting the generality of its powers, the DFSA may, by written notice:
 - (a) exclude the application of any requirements; or
 - (b) deem any Investment which is not a Security to be a Security for the purposes of this Law and the Rules,subject to such terms and conditions as it may consider appropriate.

12. Definition of an Offer of Securities to the Public

An Offer of Securities to the Public or an Offer of Crypto Tokens to the Public means a communication to any person in any form or by any means, presenting information on the terms of the offer and the Securities or Crypto Tokens (as the case may be) offered, so as to enable an investor to decide to buy the Securities or Crypto Tokens or subscribe to those Securities but excluding:

- (a) any communication in connection with the trading of Securities or Crypto Tokens admitted to trading on an Authorised Market Institution;
- (b) any communication made for the purposes of complying with the on-going reporting requirements of the DFSA or an Authorised Market Institution; or
- (c) any other communication prescribed in the Rules as an Exempt Communication.

13. Exempt Offerors

- (1) The prohibition in Article 11(1) does not apply to any:
 - (a) Securities of an Exempt Offeror; or
 - (b) Securities which are unconditionally and irrevocably guaranteed by an Exempt Offeror.
- (2) For the purposes of Article 13(1), an Exempt Offeror is a recognised government or other person included in the list of Exempt Offerors maintained by the DFSA in the Rules.
- (3) The DFSA may, at its discretion and on its own initiative, include any person in the list of Exempt Offerors maintained by it in circumstances where the requirements prescribed by the DFSA in the Rules are met.

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25. Stop orders

- (1) If the DFSA is satisfied that an Offer of Securities or Crypto Tokens to the Public would contravene or has contravened this Law or the Rules made for the purposes of this Law or it is in the interest of the DIFC, the DFSA may issue a stop order directing that no offer, issue, sale or transfer of the Securities or Crypto Tokens be made for such a period of time as it thinks appropriate.
- (2) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Article.
- (3) If the DFSA decides to exercise its power under this Article, the offeror may refer the matter to the FMT for review.

PART 3: AUTHORISED MARKET INSTITUTIONS

CHAPTER 1: SUPERVISION OF AUTHORISED MARKET INSTITUTION

26. Supervision of Authorised Market Institutions

- (1) Without limiting the application of the Regulatory Law 2004, the DFSA may direct an Authorised Market Institution to do or not do specified things that the DFSA considers are necessary or desirable or to ensure the integrity of the DIFC financial markets, including but not limited to directions:
 - (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution;
 - (b) requiring an Authorised Market Institution to act in a specified manner in relation to a transaction conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or
 - (c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made.
- (2) Without limiting the application of Article 75 of the Regulatory Law 2004, the DFSA may direct an Authorised Market Institution to:
 - (a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period;
 - (b) suspend transactions on the market or through the facilities operated by the Authorised Market Institution;
 - (c) suspend transactions in Investments or Crypto Tokens conducted on the market or through the facilities operated by the Authorised Market Institution;
 - (d) prohibit trading in Investments or Crypto Tokens conducted on the market or through the facilities operated by the Authorised Market Institution;
 - (e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by the Authorised Market Institution;
 - (f) prohibit a specified person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or
 - (g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the DFSA's objectives.

- (3) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Article.
- (4) If the DFSA decides to exercise its power under this Article, the Authorised Market Institution may refer the matter to the FMT for review.

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PART 6: PREVENTION OF MARKET ABUSE

CHAPTER 1 - MARKET ABUSE

54. Fraud and market manipulation

A person shall not, in the DIFC or elsewhere, by any means, directly or indirectly, engage or participate in any act, practice or course of conduct relating to Investments or Crypto Tokens that the person knows or reasonably ought to know:

- (a) results in or contributes to, or may result in or contribute to, a false or misleading impression as to the supply of, demand for or price of one or more Investments or Crypto Tokens;
- (b) creates or is likely to create an artificial price for one or more Investments or Crypto Tokens; or
- (c) perpetrates a fraud on any person.

55. False or misleading statements

A person shall not, in the DIFC or elsewhere, disseminate information by any means which gives, or is likely to give, a false or misleading impression as to one or more Investments or Crypto Tokens when such person knows or could reasonably be expected to know that the information is false or misleading.

56. Use of fictitious devices and other forms of deception

A person shall not, in the DIFC or elsewhere, engage in any activity or conduct in relation to Investments or Crypto Tokens, which consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

57. False or Misleading conduct and distortion

A person shall not, in the DIFC or elsewhere, engage in any activity or conduct in relation to Investments or Crypto Tokens, which does not fall under Articles 54, 55 or 56, that:

- (a) gives a false or misleading impression as to the supply of, or demand for, or as to the price of one or more Investments or Crypto Tokens; or

- (b) would distort, or would be likely to distort, the market for one or more Investments or Crypto Tokens; and
- (c) is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

58. Insider dealing

- (1) A person who is an insider shall not, in the DIFC or elsewhere, directly or indirectly, deal, or attempt to deal, in an Investment, a Crypto Token or in a related investment, on the basis of inside information.
- (2) In this Article “*Investment*” does not include “commodity derivatives.”

59. Providing inside information

- (1) An insider shall not, in the DIFC or elsewhere, otherwise than in the proper course of the exercise of his employment, profession or duties, disclose inside information to another person.
- (2) An insider shall not, in the DIFC or elsewhere, procure another person to deal in the Investments, Crypto Tokens or related investments in which the insider has inside information.
- (3) In this Article:

“*procure*” includes where a person induces or encourages another person by direct or indirect means.

60. Inducing persons to deal

A person shall not, in the DIFC or elsewhere, induce another person to deal in Investments or Crypto Tokens:

- (a) by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive;
- (b) by a concealment of material facts; or
- (c) by recording or storing information that the person knows to be false or misleading in a material respect or may be materially misleading.

61. Misuse of information

A person shall not, in the DIFC or elsewhere, engage in any activity or conduct in relation to Investments or Crypto Tokens, which does not fall under Articles 58, 59 or 60:

- (a) by using information which is not generally available to market participants which, if available to a market participant, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in Investments or Crypto Tokens should be effected; and
- (b) is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

62. Application of provisions

Articles 54 to 61 do not apply to conduct which occurs outside the DIFC unless the conduct affects the DIFC markets or users of the DIFC markets.

63. Definitions for this Part

- (1) In this Part, in relation to Investments, Crypto Tokens or related investments,
 - (a) “inside information” means information of a precise nature which:
 - (i) is not generally available;
 - (ii) relates, directly or indirectly, to one or more Reporting Entities or the issuer of the Investments or Crypto Tokens concerned or to one or more of the Investments or Crypto Tokens; and
 - (iii) would, if generally available, be likely to have a significant effect on the price of the Investments or Crypto Tokens or on the price of related investments; and
 - (b) “insider” means a person who has inside information:
 - (i) as a result of his membership of the board of Directors, or the Governing Body of the relevant Reporting Entity;
 - (ii) as a result of his holding in the capital of the relevant Reporting Entity;
 - (iii) as a result of having access to the information through the exercise of his employment, profession or duties;
 - (iv) as a result of his criminal activities; or
 - (v) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.
- (2) In Article 63(1)(a) information is precise if it:

- (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and
 - (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of Investments, Crypto Tokens or related investments.
- (3) In Article 63(1)(a)(iii), information would be likely to have a significant effect on price if and only if it is information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.
- (4) For the purposes of Article 63(1)(a), information about a person's pending orders in relation to an Investment, Crypto Token or related investment is also inside information.
- (5) In Article 63(1)(a)(i), information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Part, as being generally available to them.
- (6) In this Part, in relation to an Investment (the "First Investment") or Crypto Token, a "related investment" means another Investment whose price or value depends, in whole or in part, on the price or value of the First Investment or the Crypto Token.

CHAPTER 2 – DEFENCES

64. Defences for market manipulation, insider dealing and providing inside information

- (1) A person shall not be found to have contravened Article 54 if the person establishes that the conduct or practice the person engaged in was carried out in the performance of:
- (a) permitted price stabilisation; or
 - (b) a purchase of the person's own shares,
- in accordance with the Rules.
- (2) A person shall not be found to have contravened Article 58 if:
- (a) the person establishes that he reasonably believed that the inside information had been disclosed to the market in accordance with this Law or the Rules;
 - (b) the dealing occurred in the legitimate performance of an underwriting agreement for the Investments, Crypto Tokens or related investments in question;

- (c) the dealing occurred in the legitimate performance of its functions as a liquidator or receiver;
 - (d) the dealing is undertaken solely in the course of the legitimate performance of his functions as a market maker;
 - (e) the person executes an unsolicited client order in Investments, Crypto Tokens or related investments while in possession of inside information without contravening Article 59 or otherwise advising or encouraging the client in relation to the transaction;
 - (f) the dealing is undertaken legitimately and solely in the context of that person's public takeover bid for the purpose of gaining control of that Reporting Entity or proposing a merger with that Reporting Entity; or
 - (g) the sole purpose of the Reporting Entity acquiring its own shares was to satisfy a legitimate reduction of share capital or to redeem Securities in accordance with the Rules.
- (3) A person shall not be found to have contravened Article 59 if:
- (a) the person establishes that the information was disclosed by him in accordance with any requirement of the law or a court order; or
 - (b) the person establishes that he reasonably believed that the inside information had been disclosed to the market in accordance with this Law or the Rules.

65. Chinese wall arrangements

A person does not contravene Article 58 by dealing in Investments, Crypto Tokens or related investments if:

- (a) it had in operation at that time an effective information barrier which could reasonably be expected to ensure that the inside information was not communicated to the person or persons who made the decision to deal and that no advice with respect to the transaction or agreement was given to that person or any of those persons by an insider; and
- (b) the information was not communicated and no such advice was given.

PART 7: PROCEEDINGS

66. Deleted

67. Deleted

68. Orders in the interests of the DIFC

- (1) The Court, on the application of the DFSA, may make one or more of the following orders in relation to a person, irrespective of whether a contravention of this Law or the Rules made for the purposes of this Law has occurred, if it is satisfied that it is in the interest of the DIFC to make such an order:
 - (a) an order restricting any conduct on such conditions or terms as the Court thinks fit;
 - (b) an order that trading in any Investments or Crypto Tokens cease permanently or for such period as is specified in the order;
 - (c) an order that any exemptions contained in the Law or the Rules do not apply permanently or for such period as is specified in the order;
 - (d) an order that a person submit to a review by the DFSA of his practices and procedures and institute such changes as may be directed by the DFSA;
 - (e) an order in relation to activities relating to a Takeover Offer within the DIFC;
 - (f) an order that a disclosure be made to the market;
 - (g) an order that a person resign one or more positions that the person holds as a director or officer of a company;
 - (h) an order that a person is prohibited from becoming or acting as a director or officer of any company;
 - (i) an order that a person is prohibited from making offers of Securities or Crypto Tokens in or from the DIFC;
 - (j) an order that a person is prohibited from being involved in Reporting Entities, Listed Funds, ~~or~~ Securities or Crypto Tokens within the DIFC;
 - (k) an order requiring a person to disgorge to the DFSA any amounts obtained as a result of the non-compliance with the Law or the Rules;
 - (l) an order that a release, report, Prospectus, return, financial statement or any other document described in the order:

- (i) be provided by a person described in the order,
 - (ii) not be provided by a person described in the order; or
 - (iii) be amended by a person to the extent that amendment is practicable;
- (m) any order that the Court thinks fit, in order to maintain the integrity of the DIFC and ensure an efficient, honest, fair and transparent market; or
- (n) an order that a person must comply with a condition of a written notice referred to in Article 9(2) in a specified way.
- (2) The Court, on the application of the DFSA, may make interim and ex parte orders specified in Article 68(1) (a), (b), (c), (d), (e), (f), (l) and (m).
- (3) An order under Article 68(1) and (2) may be subject to such terms and conditions as the Court may impose.

69. **Deleted**

PART 8: THE FINANCIAL MARKETS TRIBUNAL

70. Jurisdiction of the FMT

- (1) The FMT has jurisdiction to hear and determine any regulatory proceedings in relation to:
 - (a) an issue arising out of the supervision of an Authorised Market Institution other than a direction under Article 26(2);
 - (b) an issue arising out of an offer of Securities or Crypto Tokens arising under this Law;
 - (c) an issue arising out of a takeover, takeover offer, merger or acquisition of shares; or
 - (d) any matter that may be prescribed by law or the Rules for the purpose of this Article.
- (2) At the conclusion of such proceedings, the FMT may make a finding or declaration of unacceptable circumstances or a contravention of the Law or Rules, and may make one or more of the following orders, in addition to any orders it may make under Article 30 of the Regulatory Law 2004:
 - (a) an order requiring a person to comply with this Law or the Rules;
 - (b) an order in relation to the control or acquisition of Investments in or relating to a Reporting Entity;
 - (c) an order in relation to the rights of shareholders or minority shareholders in a Reporting Entity; or
 - (d) any consequential orders as the FMT sees fit following a finding or the making of a declaration.

71. Deleted

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SCHEDULE

INTERPRETATION

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3. Defined Terms

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Term	Definition
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<u>Crypto Token</u>	<u>Has the meaning prescribed in the Rules made under the Regulatory Law 2004.</u>
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Security Token	has the meaning prescribed in the Rules made under the Regulatory Law 2004.
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