



Markets Brief

The DIFC Listing Regime

Issue No.1 – January 2012

(Updated June 2015)

Introduction

This Markets Brief updates the first edition of the Markets Brief on the subject of the DIFC listing regime.

The purpose of this updated Markets Brief is to provide general information about the DFSA's listing regime and procedures related to listing for companies intending to issue Securities in or from the DIFC, their Sponsors and other advisors.

We have updated Markets Brief No.1 because, since it was first published in January 2012, there have been changes to the DFSA Rules and to our processes and procedures for listing. We have also published further issues of the Markets Brief, some addressing in greater detail topics only touched on in Markets Brief No. 1. In this issue, for ease of use we cross-refer to other Markets Briefs where appropriate. Finally, given the number of Securities which are now admitted to the Official List the DIFC capital markets are no longer "nascent" as they were described in our original Markets Brief No.1.

Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the Regulatory Law 2004 and should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

We recommend that you seek independent legal advice if you are unsure about any aspect of the DFSA Markets regime which may apply to you.

Defined terms are identified in this publication by the capitalisation of the initial letter of a word or each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

Listing regime structure

The DFSA listing regime is set out in the Markets Law 2012 and the Markets Rules. To make an Offer of Securities to the Public and to have Securities admitted to the Official List of Securities (the "List") a company must produce a DFSA-approved Prospectus.

A company that has Securities admitted to the List or which has made an Offer of Securities to the Public is referred to under the DFSA listing regime as a "Reporting Entity". A company that is preparing to issue or is in the process of issuing its Securities is referred to in our Rules as an "Issuer" and in certain instances as an "applicant". In this Markets Brief we refer to each of the above persons as an "Issuer".

Under the DFSA listing regime, admission to the List is a precondition for admission to trading on an Authorised Market Institution (AMI). In order to obtain admission to the List, an Issuer must meet the requirements of the Markets Rules and have published an approved Prospectus.

Under the Markets Rules, listing is a two stage process:

- the Issuer makes an application to the DFSA to have its Securities admitted to the List; and
- the Issuer makes an application to an AMI for its Securities to be admitted to trading.

The DFSA is responsible for admitting Securities to the List and for the regulation of Issuers once listed. An AMI is responsible for admitting Securities to trading on its market and may have its own criteria for admission to trading.

What is the structure of the DFSA Markets Rules?

The structure of the Markets Rules is set out below.

- Chapter 1 – Introduction
- Chapter 2 – Offer of Securities
- Chapter 3 – Governance
- Chapter 4 – Market disclosure
- Chapter 5 – Financial information
- Chapter 6 – Listed Funds
- Chapter 7 – Sponsors
- Chapter 8 – Systems and controls
- Chapter 9 – Listing rules
- Appendices – Prospectus content and continuing obligations

What is the process for listing?

Should I meet with the DFSA prior to submitting my application?

It is generally advisable to meet with us for a preliminary review meeting before you make your first document submission and application for Prospectus approval, especially in case of an equity issuance and/or listing. A preliminary review meeting is a meeting with the DFSA to discuss your proposed transaction, any associated risks, Prospectus contents, the proposed timetable and any possible risks to meeting your expected timeline. Please contact us if you wish to make an appointment for such a meeting.

Am I eligible for listing?

A listings eligibility review is performed in parallel with the Prospectus review and approval process. Although final confirmation of a company's eligibility for listing can only be given once its Prospectus has been approved, the DFSA will generally try to resolve any major eligibility issues

prior to starting its review of a company's Prospectus. The DFSA published a Markets Brief on Eligibility for listing (No. 9) which can be found on our website.

When do I need an approved Prospectus?

You will need an approved Prospectus if you wish to make an Offer of Securities to the Public in or from the DIFC or if you wish to have Securities admitted to trading on an AMI, unless an exemption applies under the Markets Rules.

Securities must be admitted to the List to be able to be admitted to trading on an AMI. The admission to trading should occur as soon as possible following admission to the List. In practice, both occur almost simultaneously. The DFSA published a Markets Brief on Offers of Securities (No.3) which can be found on the DFSA website.

A Prospectus is an approved Prospectus if it has been approved by the DFSA in accordance with the requirements prescribed in the Markets Rules. The DFSA will approve a Prospectus if it:

- (i) is satisfied that the Prospectus complies with all applicable (predominantly disclosure) requirements in the Markets Law and Markets Rules; and
- (ii) has received all relevant ancillary documentation in final form, which in case of equity Securities includes the signed Sponsor declaration form.

The Sponsor declaration includes a representation to the DFSA by the Sponsor that the Board of the Issuer has put systems and controls in place to ensure ongoing compliance with the applicable requirements, which is another requirement for approval. In case of non-equity Securities or where we have not required a Sponsor, the DFSA looks for relevant disclosure around how the Issuer (i.e. the obligor/guarantor, not an issuing SPV or other conduit) will be able to comply with the applicable on-going requirements.

Do I need to appoint a Sponsor?

The DFSA may require the Issuer to appoint a Sponsor to help ensure high standards of due diligence for a Prospectus Offer. Generally we will always require a Sponsor to be appointed for an equity listing. We will generally communicate only with the Sponsor throughout the listing process. We have published a Markets Brief on the DFSA Sponsor Regime (No. 4) which can be found on our website.

What does an application for Prospectus approval involve?

The Issuer, or if applicable, a Sponsor on its behalf, should submit the following documents:

- an MKT1 application form for the Approval of a Prospectus and the Admission of Securities to the Official List;
- a substantially complete draft Prospectus (see below) annotated in the margin to indicate where you have complied with the applicable paragraphs of the Markets Rules and items in the checklists;
- completed relevant checklists, containing cross-references to the pages in the Prospectus where the required information is included;
- if applicable, a letter from the Issuer confirming appointment of a Sponsor (no prescribed format), together with the Sponsor's declaration on form MKT3;
- the filing fee in accordance with the Fees Module; and
- any ancillary documents and letters required in the MKT1 form or by the DFSA.

You can find the MKT1 and MKT3 forms as well as the checklists on our website.

Documents submitted for approval should also be accompanied by a covering letter from the Issuer (a "Listings Eligibility Letter") setting out:

- a brief outline of the transaction, drawing attention to potentially difficult issues or significant matters;
- details of a suitably experienced person acting on the Issuer's behalf in relation to the application and any other members of the team that will be liaising with the DFSA;
- an indicative timetable, including a proposed date of publication of the Prospectus and admission to listing and trading; and
- details of any other material issues or matters that should be brought to the DFSA's attention.

For guidance on the expected content of a Listings Eligibility Letter, please see Annex 1 to the Markets Brief on Eligibility for Listing (No. 9), which can be found on the DFSA website.

The draft Prospectus submitted should be substantially complete at the time it is lodged with the DFSA for our review. This means that the information required by the applicable items in the relevant checklists is adequately disclosed. In any case, the DFSA would not normally accept a

document for review that is missing any of the following items:

- the Prospectus summary;
- financial information;
- any applicable expert's report;
- a working capital disclosure;
- the terms and conditions of the transaction;
- disclosure required relating to any actual or pending litigation, material contracts and significant change statements; and
- any other information which is key to understanding the Prospectus.

What does the review and approval process involve and how long does it take?

A review of the draft Prospectus will be undertaken by the DFSA. This involves an iterative process of reviewing and commenting on consecutive drafts of the draft Prospectus until the Issuer satisfies the DFSA that all applicable DFSA regulations have been complied with and issues resolved. In the case of equity Securities, this will also need to be confirmed to the DFSA by the Issuer's Sponsor in its Sponsor declaration.

The amount of time and number of drafts required before we can approve the Prospectus varies. It depends on the complexity of the transaction, on whether the responses to our comments address our concerns and on the quality of the documents submitted. It is also affected by how experienced the Issuer's Sponsor and other advisers are. These facts invariably impact on the time needed by the DFSA to reach the stage at which we have no further comments on the draft Prospectus and are ready to provide our approval.

Submitting a substantially complete draft and addressing our comments fully and in a timely manner will speed up our review process significantly.

We will endeavor to reply with comments on a draft Prospectus and related documents in no more than 10 business days for equity Securities. For standardised debt issuances, significantly shorter turnaround times and approval periods are applied, as set out below.

Should the document change substantially, there is a change in the structure of the transaction, or other matters come to light during the course of the review process which would change the risk profile of the transaction, we reserve the right to amend any indicative review and approval timeline previously discussed. We advise Issuers (or rather the Sponsor/advisers acting on their behalf) to

contact the relevant DFSA staff as soon as they are aware of any such issues.

In case a transaction is put on halt by the working parties during the course of the review process, we would expect the Sponsor, or where there is no Sponsor, the Issuer's advisors, to let us know as soon as possible. At that point, we will stop our review and transmit a general comment to that effect, until such time as we are informed that the transaction has come to life again. Evidently, with the passage of time the Prospectus content will become outdated and incomplete, which will likely impact on the amount of time required to prepare a substantially complete new draft, on the amount of time needed by us for our review, and on the number of comments that can be expected.

What happens after I lodge my application with the DFSA?

As soon as is practicable following receipt, a senior member of our staff will carry out a high level review of the documents in order to assess the level of complexity and risk associated with the transaction. We will then allocate your submission and documents to a DFSA staff member who will be responsible for managing the approval process. We will inform you as soon as practicable of the name of the relevant staff member. From thereon, all communications between the DFSA and the Sponsor/adviser should only be made through this designated DFSA contact person.

The DFSA staff member assigned to the transaction will, among other things:

- check that you have provided all relevant documents;
- review subsequent drafts of the draft Prospectus to check that it complies with the (predominantly disclosure driven) requirements of the Markets Rules; and
- provide you with comments on the draft Prospectus.

Prospectus approval

When will you approve my Prospectus?

We would only give a Prospectus formal approval once all comments made, and concerns raised by, the DFSA through the relevant reviewing staff member have been fully addressed and there are no sections in the Prospectus which are still subject to completion.

For the purposes of obtaining formal approval, you should submit to the DFSA:

- the Prospectus in final, dated form; and
- all relevant ancillary documentation in final form, including the checklists, and in case of equity Securities the signed Sponsor declaration form.

The complete set of final documents has to be received by us by 2 pm on the business day prior to the business day on which you require our approval (unless specific alternative arrangements have been agreed by the DFSA).

We will generally accept soft copies of the final documents in pdf format for purposes of our approval. However, we may require that a hard copy of the documents is delivered to our offices as well.

Admission to the List

What is the List?

The List is the list of Securities that is maintained by the DFSA as Listing Authority in accordance with the Markets Law. Essentially, it is a list of Securities issued and listed by Issuers for the purpose of those Securities being traded on an AMI and in relation to which we have reviewed and approved a Prospectus. The List can be found on the DFSA website.

What should I do if I wish to be admitted to the List?

Securities are admitted to the List upon application by the Issuer. As part of your final document submission you will need to submit the duly signed MKT1 form. The MKT1 form includes the application for admission to the List.

Subsequent to the approval of the Prospectus the DFSA will grant approval for admission to the List once it has received all supporting documents and information it requires for that purpose, which in the case of equity Securities would include the shareholder statement. These requirements can be found in the MKT1 form.

Will I be admitted to the List immediately after the DFSA grants its approval for admission to the List?

The DFSA approval for admission to the List will be conditional, predominantly on you seeking and obtaining approval with an AMI for admission to trading of the Securities on this AMI as well as on the fulfilment of any other conditions as we may impose. This might include, for example, any

applicable confirmations from a paying agent. You will be admitted to the List as soon as you notify the DFSA that you have successfully obtained the approval for admission to trading from an AMI (typically by sending us a (soft) copy of such approval) and any other requirements having been fulfilled. At that point the DFSA will publish a notification of the admission to the List and the approved Prospectus will be uploaded to the List on the DFSA website.

Standardised debt transactions

The DFSA has the flexibility to review and approve low-risk standardised debt transactions on a fast-track timetable. We aim to return comments on the first draft Prospectus submitted within 5 business days of receipt and each subsequent draft within 3 business days. However, qualifying for fast track processing will depend on the complexity of the transaction and the completeness of the documentation submitted for approval. The appointment of advisers with extensive experience of listing transactions and agreeing the timetable well in advance should help shorten the fast track timetable further if needed.

We have published a Markets Brief (No. 2), and an update thereto (No. 5), on the Listing of Debt in the DIFC which can be found on our website.

DFSA Guide to Listing in the DIFC

We have also published a general Guide to Listing in the DIFC which is primarily targeted at CEOs and CFOs. The guide aims to provide useful guidance on the listing process, together with practical considerations for Issuers. Electronic copies are available on the DFSA website.

Fees

The current fees payable for the submission to the DFSA of a draft Prospectus for our review and approval and the admission to the List depend on the type of document and the Securities offered. Please refer to the Fees Module of the DFSA Rulebook.

Forms, checklists and other documentation

The applicable forms are located in the Application Forms and Notices Module (AFN) of the DFSA Sourcebook and are available on the DFSA website, where you can also find the checklists.

Arabic edition

Every Markets Brief is produced in both English and Arabic and is available on the DFSA website.

Contact us

Visit the DFSA website www.dfsa.ae, and in particular the "Listing Authority" part, for:

- more information on the Prospectus and listing approval process;
- copies of forms and checklists;
- access to DFSA-administered legislation and the DFSA Rulebook;
- a full text of the Markets Law 2012 and Markets Rules; and
- other editions of Markets Brief.

For enquires:

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Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at markets@dfsa.ae