



By Email

5 April 2024

To Senior Executive Officers (SEO) of Authorised Firms; Principal Representatives of Representative Offices; Audit Principles of Registered Auditors; and Designated Non-Financial Business or Profession

Dear Stakeholders,

RE: FIXED PENALTY NOTICES

The purpose of this letter is to inform you of the DFSA's new Fixed Penalty Notice (FPN) regime which will come into force on [15 April 2024](#).

Background

In 2023, the DFSA consulted on the introduction of a fixed penalty regime in the Consultation Paper 149 ([CP 149](#)) to deal with certain clear breaches of legislation administered by the DFSA in a simplified way.

As part CP 149, the DFSA proposed to apply the regime to breaches of certain reporting requirements (i.e., a failure to submit regulatory returns by their due date) as receiving regulatory information from firms in a timely manner puts the DFSA in the best position to provide proper and effective oversight of financial services and related business conducted in or from the DIFC. We want this regime to act as a deterrent and to encourage firms to comply with DFSA Rules and DFSA administered legislation. By sanctioning firms who do not meet their reporting obligations, we are seeking to incentivise timely submission of information. At a second stage, the DFSA may expand the scope of the application to other simple breaches of DFSA legislation.

The fixed penalty regime

Changes have been made to the Regulatory Law 2004 ("the Law") which allow the DFSA to issue FPNs if it has reasons to believe that a person has contravened a prescribed provisions without having to follow the decision-making procedures set out in schedule 3 of the Law. Furthermore, the DFSA has been given power to prescribe the provisions subject to the regime, the amount of the penalty to be imposed and the payment period (see Article 91 of the Law and section 14 of the General Module of the DFSA Rulebook 'GEN').



The DFSA will be administering the fixed penalty regime as follows:

(i) *Alleged contravention of rules*

Once the DFSA reasonably believes that a firm has breached a prescribed provision (ie. the firm has failed to submit a regulatory report or return on its due date as per the list in Annex 1), the DFSA may issue a FPN to the firm. The FPN will include information related to the alleged contravention, the amount of the penalty, the payment period including how the penalty is to be paid, and the consequences of complying or not complying with the FPN.

(ii) *Consequences of complying with the FPN*

If the firm pays the amount stated in the FPN within the payment period (i.e. 14 days from the date of receipt of the FPN) **and** the alleged contravention is no longer ongoing after the expiry of that period, no fine or censure may be imposed on the firm under Articles 90(2)(a) or (b) of the Law for that contravention. By paying the penalty, the firm is taken to have committed the contravention.

(iii) *Consequences of failing to comply with the FPN*

A firm may fail to comply with the FPN if the firm:

- a. does not pay the penalty within the payment period mentioned or the alleged contravention is ongoing after expiry of that period; or
- b. pays the penalty but the alleged contravention is ongoing after expiry of that period.

If this is the case, the DFSA may impose a fine or censure under Articles 90(2)(a) or (b) of the Law for the alleged contravention. There is no statutory limit on the amount of a fine that the DFSA may impose under Article 90(2)(a) of the Regulatory Law for the alleged contravention. When determining the amount of a fine, the DFSA will consider all relevant facts and circumstances which will be set out in a new section 6-9 of the DFSA Regulatory Policy and Process Sourcebook.

(iv) *Penalty*

The penalty payable under a FPN will increase with each additional contravention in any single calendar year. The first contravention will incur a penalty of \$2,500. The second contravention a penalty of \$7,500 and the third or any subsequent contravention will incur a penalty of \$15,000 (see GEN Rule 14.1).

Where a firm commits more than three contraventions in any given calendar year, we may deem it as an indication of poor governance and management, or lapses in systems and controls. This is something that we may address further using our supervisory or enforcement powers under



Article 90(2) of the Regulatory Law. Additionally, we may also use our powers under Article 90(2) of the Regulatory Law where a firm commits multiple contraventions over a longer period (for example, if a firm habitually submits annual regulatory returns late).

If you have any questions in relation to this letter, please contact us using the DFSA Supervised Firm Contact Form found on the [DFSA ePortal](#).

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Justin Baldacchino', is written over a light green rectangular background.

Justin Baldacchino
Managing Director, Supervision

CC: Finance Officers
Compliance Officers



Annex

As specified in GEN Chapter 14 on Fixed Penalty Notices in GEN 14.1.1, the following Rules are subject to a Fixed Penalty Notice:

- (a) AMI Rules 8.2.9(1), 9.6.1, 9.6.3 and 9.6.4;
- (b) AML Rule 14.5.1;
- (c) AUD Rule 4.8.1;
- (d) CIR Rules 9.4.2(1), 9.6.2 and 15.1.10(1);
- (e) COB Rules 14.5.1(2)(b) and 15.8.1(2)(b);
- (f) GEN Rules 8.6.2 and 11.8.12(1);
- (g) PIB Rules 2.3.8(1), 2.3.8(2), 6.13.7, 6.13.8, 10.3.2(3) and 10.4.2(3);
- (h) PIN Rules 6.5.1, 6.5.5, 6.5.7, 6.6.2(1), 7.2.3(1), 7.3.5, 8.5.2, 8.5.3 and 9.4.10; and
- (i) REC Rule 3.5.1