

**By E-mail**

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Ms Rohini Tendulkar  
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Dear Ms Tendulkar,

**Comments on IOSCO Task Force Consultation Report on Cross-Border Regulation**

The Dubai Financial Services Authority (DFSA) is grateful for the opportunity to provide its comments on the above IOSCO Consultation Report published on 25 November 2014.

The DFSA is the independent regulator of financial and ancillary services conducted in or from the Dubai International Financial Centre (DIFC), a purpose-built financial free-zone in Dubai, the United Arab Emirates. The DFSA regulates a broad range of financial firms based in the DIFC, including banks, insurers, fund managers, advisory firms and brokers, exchanges and clearing houses. In addition, the DFSA's regulatory remit includes credit rating agencies, auditors and AML/CTF regulation of other designated non-financial business and professionals.

The DFSA is a host regulator for 24 of 31 global systemically important banks (most of which operate in the DIFC through branches), as well as two exchanges and a central clearing counterparty, numerous funds and fund managers. One of the DIFC exchanges, Nasdaq Dubai, is also a venue of choice for sukuk and conventional bond listings.

Please find our comments on the Consultation Report below. If you require any clarification in respect of our comments please do not hesitate to contact me on +971 4362 1660 or by e-mail on [psmith@dfsa.ae](mailto:psmith@dfsa.ae).

Yours faithfully,



**Peter Smith**  
**Head of Policy and Strategy**

## **General Comments**

The DFSA supports the idea of setting up the IOSCO Task Force to analyse typical tools related to cross-border regulation, their practical use and challenges faced by regulators worldwide with a view to potentially streamlining and improving the regulatory processes and co-operation.

For the DFSA, as a predominantly host regulator with a toolbox of cross-border approaches consisting mostly of national treatment and unilateral recognition, the Consultation Report brings a useful comparative perspective on cross-border regulatory practices and challenges. Based on our experience, we believe that IOSCO has comprehensively and correctly identified a variety of cross-border regulatory tools and challenges faced by regulators when using them.

## **Regulatory co-operation - National Treatment**

In relation to National Treatment, whilst we agree with the issues identified in the Consultation Report, we believe that the importance of regulatory co-operation should not be underestimated. This is true especially in respect of branches where strong reliance is often placed on supervision conducted by the home authorities. As a result, on-going cooperation - including in the field of exchange of information, on-site inspections, enforcement and recognition of resolution actions - is particularly important.

## **Regulatory co-operation - Recognition**

In the securities sphere, the DFSA's regulatory framework relies predominantly on the tool of unilateral recognition. In this context, the DFSA broadly follows the methodology used by other regulators in the field of recognition (as described in Section 4.3 and in Example 10 of the Consultation Report). In particular, the DFSA regulatory framework sets out conditions under which the recognition could be granted and the process is usually initiated when a strong interest or an application are received.

The DFSA's experiences and challenges in the area of foreign regulatory assessments resemble those highlighted in Section 4.3.6 in that we, like many other regulators, face resource constraints and, occasionally, difficulties with effective access to information, including the information on strength of regulatory oversight and effective enforcement by other jurisdictions' regulatory authorities.

## **Preliminary suggestions on IOSCO's role regarding cross-border issues**

In today's globalised capital markets, financial regulators face a pressing need to step up their cross-border efforts to facilitate oversight of the financial industry. In recognition of this fact, financial regulatory standards, albeit not formally mandatory, are converging at international level through the work of standard setting bodies such as IOSCO, FSB and the Basel Committee. As a result of this trend, the necessary degree of convergence of cross-border tools and practices amongst regulators and supervisors must go hand in hand. There is a need to expand regulatory and supervisory perspective cross-border even though, for legal reasons, it may be limited by jurisdictional constraints. This is true

for all regulatory tools in the cross-border toolbox, as demonstrated in the Consultation Report, since many shortcomings identified in the IOSCO survey tend to lie in insufficient cross-border co-operation and co-ordination.

In this context, IOSCO's role and its unique position could be instrumental in enhancing the regulatory cross-border co-operation and co-ordination and we support the potential initiatives proposed in Section 8 of the Consultation Report.

We believe that the initiative of **enhancing international dialogue** between policy makers and regulators in various jurisdictions is, in principle, a desirable one in that it could allow for an early identification by interested stakeholders of cross-border implications and possible conflict areas before the proposals become binding laws. We agree with IOSCO that certain national policy choices are, to some extent, predetermined, which could be difficult to avoid even through international dialogue. In addition, the complexity of a domestic legislative process can also play a role in rendering the dialogue more difficult. In this light, the IOSCO proposal would require careful analysis as to the organisation and process of the dialogue to ensure its effectiveness.

On the subject of the **central hub of information**, it would be useful if the envisaged database, which could be subject to the necessary confidentiality requirements, contained information not only on the cross-border regulatory tools but also on the actual regulatory frameworks for selected regulatory areas, including links to relevant applicable legislation as well as data on supervision and enforcement. It could also contain jurisdictions' up-to-date self-assessments against the IOSCO Principles, updated materials on post-FSAP legislative changes and information on recognition granted by other jurisdictions. In addition, a list of regularly updated contact details of individuals at local regulators who could assist in the context of cross-border co-operation would also be useful.

The preceding database would be more efficient if it was additionally combined with an expanded (where suitable) use of the current IOSCO committees (or working groups) or a creation of other targeted permanent structures, such as thematic or regional **fora** open to regulators interested in closer cross-border co-operation. Whilst avoiding unnecessary duplication, these structures should aim to facilitate the establishment of stronger cross-border co-ordination and discussion channels with a view to assisting regulators when using their cross-border regulatory tools. They could serve as a means of sharing experiences and exchanging information on actual regulatory frameworks, supervisory practices and enforcement actions and could, in the long run, facilitate stronger regulatory convergence.

Regarding **the proposal to increase the level of granularity of international standards**, we support the idea of including in them additional chapters addressing their impact on cross-border activities. Whilst we believe that, in some instances, increased granularity and prescriptiveness of international standards could be useful, their effectiveness hinges ultimately on their actual (and faithful) implementation by domestic regulators. In the absence of their mandatory character, close international monitoring of international standards implementation, combined with appropriate peer-pressure, could

bring about the desired increased convergence. We would also note that greater granularity is not appropriate in all areas, particularly where that granularity would bring an unwarranted degree of complexity to the regulatory regime.

We also believe that the proposed **informative guidance on cross-border regulatory tools** for policy makers and regulators, as well as **guidelines for assessing foreign regulatory regimes** to be developed by IOSCO, could significantly assist in this task. Regarding, the latter it would be important that it adds value compared to the current IOSCO Assessment Methodology. These documents, combined with appropriate capacity building and **technical assistance**, could significantly streamline and improve cross-border co-operation.

Lastly, regarding the '**conflict of regulations**' **framework**, we are not certain we fully understand the intended scope of this proposal, so we believe that this suggestion would require further elaboration. In particular, the proposal appears to raise issues as to its feasibility, since it runs counter to the reporting obligations and supervisory powers currently existing in most regulatory frameworks.