

# inBrief



## The Right to be Forgotten

By Stuart Walker | 18 October 2017

Afridi & Angell has recently successfully assisted two individuals in becoming forgotten. Put another way, we were able to convince the Dubai Financial Services Authority (the **DFSA**) that the names of the individuals should be removed from public documents available on the DFSA website. These included published regulatory actions (in the form of enforceable undertakings) and DFSA media releases.

The individuals had been associated with a regulated company in the Dubai International Financial Centre (the **DIFC**). The company had operated in the DIFC for several years, but in 2008 had the unhappy distinction of becoming the first business in the DIFC to be essentially closed down by the DFSA as a result of various regulatory concerns.

Afridi & Angell assisted the company throughout the DFSA investigation and enforcement process. We also assisted in the negotiation of the enforceable undertakings eventually provided by various individuals in late 2008.

The precise terms of the undertakings varied amongst the individuals, but included obligations such as the payment of fines to the DFSA, and the need to refrain from undertaking any sort of licensed activity in the DIFC for a period of time.

In the years following 2008 the individuals complied with the terms of their undertakings, and following the closure of the business, most left the UAE. Such is the nature of the internet, however, that details of the problems in the business, and of the roles of the individuals, followed them wherever they went, and for years afterwards.

The fact that the individuals were still suffering negative consequences in 2017, nearly a decade after the incidents that led to the DFSA's regulatory concerns, prompted the individuals to seek a solution. The negative consequences included social stigma, such as when one of the individuals attempted to enroll his child in a new school, and found that the application was suspended until he could provide the principal with the details regarding the events

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Stuart's primary practice includes financial services regulation. He advises parties during Dubai Financial Services Authority (DFSA) investigations and, where necessary, negotiates settlements on their behalf. Stuart was instructed by the first authorised firm to be fined by the DFSA and has since gone on to advise in connection with a significant number of DFSA investigations. He was admitted as a solicitor in England & Wales in 2001 and moved to Dubai in 2003.

in 2008. There were also more significant financial consequences, such as when one of the individuals failed to secure a particular professional position in part due to concerns over the 2008 events.

By virtue of being on the DFSA website, the undertakings and media releases were public documents.

These ongoing negative consequences were not proportional to the areas of concern that led to the giving of the undertakings in 2008. For this reason, we asked that the DFSA consider removing the undertakings from the DFSA's website. As an alternative, we asked that the DFSA consider replacing the undertakings with a redacted version in which the individuals' names were not disclosed.

Many countries have legislation aimed at the rehabilitation of offenders. Such legislation typically enables some criminal convictions to be ignored after a rehabilitation period. The intention is to prevent people from being punished indefinitely because of a relatively minor offence in their past. Here in the UAE there is a process by which some convicted criminals can apply to the police for their records to be sealed.

In addition to the widespread rehabilitation-of-offenders legislation, the "Right to Erasure" or the "Right to be Forgotten" is a developing legal concept in a number of jurisdictions. The nature of the internet means that information remains readily accessible for far longer than has been the historic norm. It is encouraging to see that the DFSA is willing to take notice of the evolving jurisprudence in this area. ■

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