

Q&A – The DFSA Representative Office Regime

This document is not intended to be a complete guide to the DFSA's Representative Office regime. It merely addresses a number of queries. Accordingly, we recommend that you read the Representative Office related Rules which can be found on the DFSA website, and especially the amended GEN Rules and the new REP Module. Please see Question 2 below for navigation to these rules.

Implementation of the new regime

1. When does the Representative Office regime come into effect?

The new Representative Office regime will go live on Sunday 3 January 2010.

2. When will the new Representative Office regime rules be available?

The new rules are available now (see link below). They are currently located under 'rule making instruments' on the DFSA website. As of 3 January 2010 they will of course be located under the 'rule book modules' section of the DFSA website.

http://www.complinet.com/dfsia/display/display.html?rbid=1547&record_id=21036

Permitted Activities of a Representative Office

3. Can a Representative Office make Arrangements in regard to Credit, Investments or Insurance?

No, a Representative Office can merely make referrals or introductions.¹ If the Representative Office wished to receive and transmit orders it would need to upgrade its Licence to include the Financial Service of Arranging credit or deals in Investments or, in the case of insurance products, the Financial Service of Insurance Intermediation.

4. Can a Representative Office provide Advice in regard to Credit, Investments or Insurance?

No, a Representative Office can only provide mere information². If it wished to provide opinions, recommendations, or specific investment advice it would need to upgrade its Licence to include the Financial Service of advising on financial products or credit³ or, in the case of insurance products, the Financial Service of Insurance Intermediation⁴.

¹ See GEN Rule 2.26.1(2)

² See GEN Rule 2.26.1(2)

³ See GEN Rule 2.11.

⁴ See GEN Rule 2.19

5. Can a Representative Office distribute investment research?

A Representative Office wishing to distribute investment research will need to ensure either that:

- (a) the investment research does not contain advice on financial products or credit as defined in GEN Rule 2.11.1 (including any recommendation, explicit or implicit, to buy sell or hold a particular investment); or
- (b) where investment research does contain advice (or a recommendation described in (a) above), one solution might be to include a clear warning on the face of the investment research that the investment research is provided for information purposes only, that it should not be relied or acted on by the recipient, and that it is not a recommendation for the recipient to buy sell or hold a particular investment.

6. Can a Representative Office distribute a Prospectus?

Yes. If a Representative Office wishes to distribute a Prospectus from its premises in the DIFC, it should ensure that in doing so it does not advise on the financial product or credit which is the subject matter of the Prospectus. It should consider placing a disclosure on the face of the Prospectus that the Prospectus is provided for information purposes only, that it should not be relied or acted on by the recipient, and that it is not a recommendation to buy sell or hold a particular investment. It should also take reasonable steps to ensure that the recipient cannot otherwise assume that the investment prospectus is intended to be acted upon for example by removing from any Prospectus the associated application forms.

7. Can a Representative Office market funds under its Licence?

Yes. As with question 6 above, a Representative Office which markets a fund should ensure that in doing so it does not provide advice (as defined in GEN Rule 2.11.1). It must also ensure that it only markets funds that meet the criteria set out under section 4.7 of REP.

8. Can a Representative Office fill in or assist another person in filling in, an application form for a Credit, a Financial Product or Insurance?

No. A Representative Office may not fill in or assist in filling in an application form for financial products⁵ as this would amount to the Financial Service of arranging credit or deals in Investments or Insurance Intermediation, as the case may be, and the Representative Office would be acting beyond the scope of its Licence in doing so. The core business of a Representative Office is to make referrals or introductions to another Person and provide mere information.

9. Can a Representative Office provide a service to a person by forwarding forms to the provider of the financial product?

Under GEN Rule 2.26.1, a Representative Office is prohibited from receiving and transmitting orders in relation to a financial product.⁶ Accordingly, if it does provide a mailing service it will need to take reasonable steps to ensure that it does not breach this Rule.

⁵ See GEN Rule 2.6.1(3) for meaning of Financial Product

⁶ See GEN Rule 2.26.1(3) for meaning of Financial Products

Staff

10. Is there a maximum number of staff that can work in a DIFC Representative Office?

No. We have not prescribed a maximum number of staff for Representative Offices. This is because we expect the number of staff in any Representative Office to reflect, for example, the nature of the business of the head office and that of any Group companies. A large, multi-national firm with many Group companies may need more representatives on the ground than a small single office firm. A Representative Office may also be conducting non-regulated activities in the DIFC, for example economic research.

However, the DFSA will closely monitor Representative Offices which employ, on a permanent or temporary basis, a significant number of staff apparently out of keeping with the limited marketing activities they are allowed to conduct.

11. Will a Representative Office require a compliance officer or MLRO?

No. The Principal Representative will be responsible for the day to day operation of the Representative Office, including compliance and anti-money laundering. However, a Representative Office's head office (or appropriate Group office) may undertake the Representative Office's AML responsibilities in certain conditions⁷

12. Will a Representative Office's overseas staff be able to undertake marketing visits to the DIFC?

As long as the visits by relevant overseas staff are occasional and limited to the activities which the Representative Office itself is permitted to do under its Licence, then such visits will be permitted. A Representative Office should be mindful to ensure that its overseas staff are made fully aware of the relevant rules applying to the Representative Office when undertaking marketing visits to the DIFC so as not to breach those rules or the Financial Services Prohibition under Article 41 of the Regulatory Law 2004.

Premises

13. Can a Representative Office share an office with another Authorised Firm?

No. However, the DFSA would not consider that an Authorised Firm is sharing an office if that firm were located in serviced offices which were also the place of business of another Authorised Firm.⁸

Process

14. What will be the DFSA's supervisory approach to Representative Offices?

The DFSA expects to undertake ad hoc visits to Representative Offices as well as periodic visits as part of the usual approach to supervising Authorised Firms. The DFSA also expects to include Representative Offices in some thematic visits going forward.

⁷ See REP Rule 6.3.1 and Guidance note

⁸ See REP Rule 4.2.1 and Guidance note

How to apply to be a new Representative Office

15. How do I get authorised?

An applicant should follow the existing approach for Authorised Firms by contacting DIFCA and DFSA Authorisation Enquiries Team.

16. I will be regulated for the first time by DFSA. Which application form should I use and when will the form be available?

The Form AUT- REP will be available for applicants to use from 23rd December 2009 and the DFSA will accept such applications on or after 3 January 2010.

17. Do you only accept Representative Office applications from the banking sector only?

No, as well as the banking sector we also accept applications from securities, asset management and insurance sectors.⁹

18. How much will the fees be for operating a Representative Office?

The application fee for a Representative Office will be \$2,000 along with an initial annual fee pro rata for the first year of authorisation. Thereafter, annual fees will be \$4,000.¹⁰

Application for a Variation of License

19. I am currently regulated by DFSA, which application form should I use and when will the form be available?

The Variation of Licence should be used by an existing Authorised Firm wishing to downgrade / upgrade its Licence. The current Variation of Licence Form has been revised slightly to incorporate Representative Office terminology. This form will be available for applicants to use from mid 23rd December 2009 and the DFSA will accept such applications on or after 3 January 2010.

20. Can I only downgrade my Licence from Category 4 to Representative Office status?

No, you can downgrade from any type of Licence to Representative Office status. However, if you have any existing Clients, you will need to bring your relationships with them to an end as part of the downgrade. A Representative Office does not have Clients.

21. I am a Category 4 firm but only carry on the activities of a Representative Office. Will I be forced to downgrade my licence?

No, but you can downgrade your licence if you wish to do so. However if you wish to retain the ability to carry on Financial Services (such as Advising or Arranging) with or for your Clients you should not downgrade.(See paragraph 20 above)

⁹ See GEN Rule 2.26.1(3)

¹⁰ See the FER module

22. I am an existing Authorised Firm which currently markets group services / products. Do I need to apply to DFSA to be granted a licence for Operating a Representative Office?

No, any Authorised Firm can carry on these marketing activities in addition to or as part of the other Financial Services it is currently licensed to carry on.¹¹

23. Will an Authorised Firm which is currently constituted as a subsidiary need to be reconstituted as a Branch if it were to convert to a REP Office

Yes.¹²

24. Will an Authorised Firm which converts to a Representative Office be given a rebate on their fees?

The DFSA has discretion to give firms which convert to a Representative Office a pro-rata rebate on their fees from the end of the month in which their status converts.¹³

DFSA Contacts

If you have a question regarding the new DFSA Representative Office regime that is not answered above please provide your written question to ccameron@dfsae.ae and we will endeavour to answer it.

Please direct all applications to become a Representative to rolson@dfsae.ae unless your firm is already authorised in which case you should direct your change of scope application to your usual Relationship Manager.

¹¹ See GEN Rule 2.26.2 and 3.2.7

¹² See REP Rule 2.1.1(2)

¹³ See FER Rule 1.2.5