

**Appendix 3**

In this annex underlining indicates new text and striking through indicates deleted text.



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## Notice of Amendments

to the DFSA Rulebook in relation to the  
Regulatory Policy and Process Sourcebook  
and Enhancements to DFSA's Rulebook

(See Consultation Paper No. 73 for more details)

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**GENERAL MODULE (GEN)**

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**5 MANAGEMENT, SYSTEMS AND CONTROLS**

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**5.3 Systems and controls**

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**Outsourcing**

- 5.3.21** (1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to ~~third party providers~~ service providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.
- (2) The outsourced function or activity under this Rule shall be deemed as being carried out by the Authorised Person itself.
- (3) An Authorised Person which uses such service providers must ensure that it:
- (a) has undertaken due diligence in choosing suitable ~~third party providers~~ service providers;
  - (b) effectively supervises the outsourced functions or activities; and
  - (c) deals effectively with any act or failure to act by the ~~third party provider~~ service provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

**Guidance**

1. ~~An Authorised Person's outsourcing arrangements should include consideration of:~~
- a. ~~applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or~~
  - b. ~~any equivalent principles or regulations the Authorised Person is subject to in its home country jurisdiction.~~
2. ~~As a minimum, the DFSA expects an Authorised Person which has material outsourcing arrangements to:~~
- a. ~~establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;~~
  - b. ~~enter into an appropriate and written outsourcing contract; and~~
  - c. ~~ensure that outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder the supervision by the DFSA.~~

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- 5.3.22** (1) An Authorised Person must inform the DFSA about any material outsourcing arrangements.
- (2) An Authorised Person which has a material outsourcing arrangement must:
- (a) establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;
  - (b) enter into an appropriate and written outsourcing contract; and
  - (c) ensure that the outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder supervision of the Authorised Person by the DFSA.
- (3) An Authorised Person must ensure that the terms of its outsourcing contract with each service provider under a material outsourcing arrangement require the service provider to:
- (a) provide for the provision of information under section 11.1 in relation to the Authorised Person and access to their business premises; and
  - (b) deal in an open and co-operative way with the DFSA.

**Guidance**

1. An Authorised Person's outsourcing arrangements should include consideration of:
  - a. applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or
  - b. any equivalent principles or regulations the Authorised Person is subject to in its home country jurisdiction.
2. An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of that service would cast serious doubt on the Authorised Person's continuing ability to remain fit and proper or to comply with DFSA administered Laws and Rules.

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## 8 ACCOUNTING AND AUDITING

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### 8.6 Function of the auditor

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#### 8.6.1 .....

##### Guidance

In producing a Safe Custody Auditor's Report an auditor will need to consider which parts of COB App6 are relevant to the Authorised Firm and only include an opinion to the extent relevant to the Authorised Firm's activity. For example, the application of COB App6 to an Authorised Firm carrying on the Financial Service of Arranging Custody is much more limited than its application to an Authorised Firm carrying on the Financial Service of Providing Custody. In this particular instance an auditor producing a Safe Custody Auditor's Report for an Authorised Firm carrying on the Financial Service of Arranging Custody, will generally only need to consider COB App Rules 6.5.1(1), 6.5.1(2), 6.5.1(3), 6.5.2 and 6.7.1(1).

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## 7 AUTHORISATION

### 7.1 Application

- 7.1.1 (1) Subject to (2), this chapter applies to every Person who is:
- (a) an Authorised Firm;
  - (b) an applicant for a Licence to be an Authorised Firm;
  - (c) an Authorised Individual; or
  - (d) an applicant for Authorised Individual status.
- (2) This chapter does not apply to a Person intending to:
- (a) Operate an Exchange;
  - (b) Operate a Clearing House; or
  - (c) Operate a Representative Office.

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### Guidance

1. This chapter outlines DFSA's authorisation requirements for an Authorised Firm and Authorised Individual.
2. The DFSA's requirements for authorisation of :
  - a. Authorised Market Institutions are covered by the AMI module;
  - b. Representative Offices are covered by the REP module; and
  - c. Ancillary Service Providers are covered by the ASP module.
4. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA's general regulatory policy and processes. Some additional processes may be outlined in other chapters of this module.
5. Chapter 2 of the RPP Sourcebook sets out DFSA's approach to the authorisation of undertakings and individuals to conduct Financial Services or Licensed Functions, as the case may be.

## **7.2 Application for a Licence**

**7.2.1** A Person, who intends to carry on one or more Financial Services in or from the DIFC must apply to the DFSA for a Licence, in accordance with the Rules in this section.

**7.2.2** (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2), (3), and (4), is:

- (a) a Body Corporate;
- (b) a Partnership; or
- (c) an unincorporated association;

and who is not an Authorised Market Institution.

(2) If the application is in respect of either or both of the following Financial Services:

- (a) Effecting Contracts of Insurance; or
- (b) Carrying Out Contracts of Insurance.

the applicant must be a Body Corporate.

(3) If the application is in respect of the Financial Service of Accepting Deposits, the applicant must be a Body Corporate or a Partnership.

(4) If the application is in respect of the Financial Service of Managing a Collective Investment Fund or Acting as the Trustee of a Fund, the applicant must be a Body Corporate.

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**7.2.3** A Person licensed by the Emirates Securities and Commodities Authority to trade on an U.A.E. exchange will not be granted a Licence by the DFSA unless that Person has the prior approval of the Emirates Securities and Commodities Authority.

**7.2.4** A Person applying for a Licence must complete and submit the appropriate form or forms in AFN.

**Guidance**

A Person submitting an application under Rule 7.2.4 is required to pay the appropriate application fee as set out in FER.

**Consideration and assessment of applications**

**7.2.5** In order to become authorised to carry on one or more Financial Services, the applicant must satisfy the DFSA that it has adequate resources, including financial resources. In making this assessment, the DFSA will consider:

- (a) how the applicant will comply with the applicable provisions of PIB or PIN;
- (b) the provision the applicant makes in respect of any liabilities, including contingent and future liabilities;
- (c) the means by which the applicant and members of its Group manage risk in connection with their business; and
- (d) the rationale for, and basis of, the applicant's business plan.

**7.2.6** An applicant will only be authorised to carry on one or more Financial Services if the DFSA is satisfied that the applicant is fit and proper to hold a Licence. In making this assessment the DFSA will consider:

- (a) the applicant's connection with its Controllers or any other Person;
- (b) the Financial Services concerned;
- (c) whether the applicant's affairs will be conducted and managed in a sound and prudent manner; and
- (d) any other relevant matters.

**Guidance**

Section 2.2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 7.2.6.

**7.2.7** When the DFSA is considering an application for a Licence, then in respect of the fitness and propriety of the applicant:

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;

- (b) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;
- (c) the DFSA will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the DFSA's objectives described under Article 8 of the Regulatory Law 2004; and
- (d) the DFSA will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

**7.2.8** An applicant must be able to demonstrate that it has compliance arrangements, including processes and procedures that will enable it to comply with all applicable Rules.

**7.2.9** In assessing an application for a Licence, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (b) require the applicant to provide additional information;
- (c) require the applicant to have information on how it intends to ensure compliance with a particular Rule;
- (d) require any information provided by the applicant to be verified in any way that the DFSA specifies; and
- (e) take into account any information which it considers relevant.

**7.2.10** (1) In assessing an application for a Licence the DFSA may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.

(2) Where the DFSA thinks it appropriate it may treat an application made by one legal form or Person as having been made by the new legal form or Person.

**7.2.11** In assessing an application for a Licence authorising the applicant to Operate an Alternative Trading System, the DFSA will have regard to, but is not limited to, considering the following matters:

- (a) whether the establishment of an Alternative Trading System is, or is likely to be, in the interests of the Financial Services and Markets industry;
- (b) whether the Alternative Trading System will or is likely to lead to more efficient price discovery of, or deepen liquidity in, an Investment; and
- (c) whether there is any risk of market fragmentation, loss of liquidity or inefficiency in price discovery as a result of the proposed Alternative Trading System operation.

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### **7.3 Application for an endorsement for Retail Clients**

- 7.3.1** (1) An Authorised Firm may apply to the DFSA for an endorsement on its Licence, including variation of such an endorsement, to carry on a Financial Service with or for a Retail Client.
- (2) The DFSA may in its absolute discretion refuse to grant an endorsement or a variation of an endorsement pursuant to an application under (1).
- (3) Upon refusing to grant an endorsement or a variation to an endorsement, the DFSA must without undue delay inform the applicant in writing of such refusal and, if requested by the applicant, the reasons for such refusal.
- (4) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to refuse an application for an endorsement or a variation to an endorsement made under this section.

### **7.4 Licensed Functions and Authorised individuals**

- 7.4.1** (1) Pursuant to Article 43 of the Regulatory Law 2004, the functions specified in Rules 7.4.2 to 7.4.9 are Licensed Functions.
- (2) An individual must not, subject to, (3), (4) and Rule 11.6.1, carry out a Licensed Function for an Authorised Firm unless he is authorised by the DFSA to carry out that Licensed Function for that Authorised Firm.
- (3) The prohibition in (2) does not apply to a function performed by a registered insolvency practitioner (subject to the restrictions defined within Article 88 of the Insolvency Law 2009) if the practitioner is:
- (a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;
  - (b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;
  - (c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;
  - (d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or
  - (e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article 58 and 59 of the Insolvency Law 2009.



- (4) The prohibition in (2) does not apply to individuals appointed to act as managers of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law 2004.

#### **Senior Executive Officer**

**7.4.2** The Senior Executive Officer function is carried out by an individual who:

- (a) has, either alone or jointly with other Authorised Individuals, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Firm's Financial Services carried on in or from the DIFC; and
- (b) is a Director, Partner or Senior Manager of the Authorised Firm.

#### **Licensed Director**

**7.4.3** Subject to Rule 7.5.4, the Licensed Director function is carried out by an individual who is a Director of an Authorised Firm which is either a Body Corporate or an unincorporated association.

#### **Licensed Partner**

**7.4.4** Subject to Rule 7.5.5, the Licensed Partner function is carried out by an individual who is a Partner of an Authorised Firm which is either a Partnership or Limited Liability Partnership.

#### **Finance Officer**

**7.4.5** The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for the Authorised Firm's compliance with the applicable Rules in PIN or PIB.

#### **Compliance Officer**

**7.4.6** The Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for compliance matters in relation to the Authorised Firm's Financial Services.

#### **Senior Manager**

**7.4.7** The Senior Manager function is carried out by an individual who is responsible either alone or jointly with other individuals for the management, supervision or control of one or more parts of an Authorised Firm's Financial Services who is:

- (a) an Employee of the Authorised Firm; and
- (b) not a Director or Partner of the Authorised Firm.

**Guidance**

In respect of a Fund, the DFSA would expect the Fund Manager to appoint at least one individual other than the Senior Executive Officer to carry out Senior Manager functions in relation to the Fund such as managing operational risk and other internal controls.

**Money Laundering Reporting Officer**

**7.4.8** The Money Laundering Reporting Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm and who has responsibility for the Authorised Firm's compliance with the Rules in AML and any relevant anti money laundering legislation applicable in the DIFC.

**Responsible Officer**

**7.4.9** The Responsible Officer function is carried out by an individual who:

- (a) has significant responsibility for the management of one or more aspects of an Authorised Firm's affairs;
- (b) exercises a significant influence on the firm as a result of (a); and
- (c) is not an Employee of the Authorised Firm.

**Guidance**

- 1. The Licensed Function of Responsible Officer applies to an individual employed by a Controller or other Group company who is not an Employee of the Authorised Firm, but who has significant responsibility for, or for exercising a significant influence on, the management of one or more aspects of the Authorised Firm's business.
- 2. Examples of a Responsible Officer might include an individual responsible for the overall strategic direction of an Authorised Firm or a regional manager to whom a Senior Executive Officer reports and from whom he takes direction.

**7.4.10** An Authorised Individual may perform one or more Licensed Functions for one or more Authorised Firms.

**Guidance**

- 1. In considering whether to grant an individual Authorised Individual status with respect to more than one Authorised Firm, the DFSA will consider each Licensed Function to be carried out and the allocation of responsibility for that individual among the Authorised Firms.
- 2. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

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## **7.5 Mandatory appointments**

**7.5.1** An Authorised Firm must make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer;
- (c) Compliance Officer; and
- (d) Money Laundering Reporting Officer.

### **Guidance**

1. This Guidance addresses a range of circumstances:
  - a. one individual performing more than one function in a single firm, as contemplated in Rule 7.5.1;
  - b. more than one individual performing one function in a single firm, not addressed by that Rule;
  - c. one individual performing a single function in more than one firm, also not addressed by that Rule.
2. The DFSA will only authorise an individual to perform more than one Licensed Function or combine Licensed Functions with other functions where it is satisfied that the individual is fit and proper to perform each Licensed Function or combination of Licensed Functions.
3. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.
4. Notwithstanding this Rule, an Authorised Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not be expected to be combined with any other functions unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Authorised Firm. This may be possible in the case of a Branch, where monitoring and controlling of the individual (carrying out more than one role in the Branch) is conducted from the firm's home state by an appropriate individual for each of the relevant Licenced Functions. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible.
5. In what it considers to be exceptional circumstances, the DFSA may register more than one individual to perform the Licensed Function of Compliance Officer in respect of different internal business divisions within a large Authorised Firm. In this regard the DFSA may consider, amongst other things, the nature, scale and complexity of the activities of the firm, the clarity of demarcation between areas of responsibility, the potential for gaps in responsibility, and processes of communication with the DFSA.

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6. The DFSA may also register an individual as the Compliance Officer for more than one Authorised Firm. The DFSA will only do this where it is satisfied that the individual is able to carry out his functions effectively in each firm taking into consideration factors such as the amount and nature of business conducted by the firms. Each Authorised Firm has a duty under GEN 5 to monitor its compliance arrangements to ensure, as far as reasonably practicable, that it complies with all legislation applicable in the DIFC.

**7.5.2** The Authorised Individuals referred to in Rule 7.5.1(a), (c) and (d) must be resident in the U.A.E.

**Guidance**

1. In appropriate circumstances, the DFSA may waive the requirement for a Compliance Officer or MLRO to be resident in the UAE. In determining whether to grant a waiver, the DFSA will consider a range of factors on a case by case basis focused on whether the firm can demonstrate that it has appropriate compliance arrangements (see GEN section 5.3). These factors may include, but are not limited to: the nature, scale and complexity of the activities of the firm; the ability of a remote officer to carry out his functions in differing time zones and a differing working week; the size, resourcing and capabilities of a remote compliance function; the ability of a remote officer to liaise and communicate readily with the DFSA; and the competency and capability of a remote officer and whether the remote officer is able effectively to undertake or supervise regular compliance monitoring and keep up to date with applicable Rules.
2. The DFSA will also take into account factors such as the relevant regulatory experience of the proposed Authorised Individual and whether the applicant firm has previously been subject to financial services regulation.

**7.5.3** In the case of a Trust Service Provider, the Authorised Individuals referred to in Rule 7.5.1 (c) and (d) must not act also as trustees on behalf of the Trust Service Provider.

**7.5.4** An Authorised Firm which is a Body Corporate (other than a Limited Liability Partnership) whose head office and registered office are located in the DIFC, must register with the DFSA all of its Directors as Licensed Directors.

**7.5.5** An Authorised Firm which is a Partnership (including a Limited Liability Partnership) whose head office is located in the DIFC must register each Partner as a Licensed Partner.

**7.6 Application for Authorised Individual status**

**7.6.1** In submitting applications for Authorised Individual status, both the individual and Authorised Firm must complete and submit the appropriate form in AFN.

**7.6.2** When an individual and an Authorised Firm apply to the DFSA for that individual to be an Authorised Individual, the individual must satisfy the DFSA that he is a fit and proper person to carry out the role.

**Consideration and assessment of applications**

**7.6.3** An individual will only be authorised to carry on one or more Licensed Functions if the DFSA is satisfied that the individual is fit and proper to be an Authorised Individual. In making this assessment, the DFSA will consider:

- (a) the individual's integrity;
- (b) the individual's competence and capability;
- (c) the individual's financial soundness;
- (d) the individual's proposed role within the Authorised Firm; and
- (e) any other relevant matters.

**Guidance**

Section 2.3 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 7.6.3.

**7.6.4** In Rule 7.6.3, an individual may not be considered as fit and proper where:

- (a) he is bankrupt;
- (b) he has been convicted of a serious criminal offence; or
- (c) he is incapable, through mental or physical incapacity, of managing his affairs.

**7.6.5** In assessing an application for Authorised Individual status, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (b) require the individual or Authorised Firm to provide additional information;
- (c) require any information provided by the individual or Authorised Firm to be verified in any way specified by the DFSA; and
- (d) take into account any information which it considers appropriate.

**7.6.6** An Authorised Firm must not permit an individual to perform a Licensed Function on its behalf, except as permitted by section 11.6, unless that individual is an Authorised Individual who has been assessed by the Authorised Firm as competent to perform that Licensed Function in accordance with Rule 7.6.7.

**7.6.7** In assessing the competence of an individual, an Authorised Firm must:

- (a) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;

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- (b) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
  - (c) determine whether the individual holds any relevant qualifications with respect to the Licensed Function or Licensed Functions performed, or proposed to be performed, within the Authorised Firm;
  - (d) determine the individual's relevant experience; and
  - (e) determine the individual's knowledge of the Authorised Firm's relevant systems and procedures with respect to the type of business that is to be, or is being, conducted by the individual on behalf of the Authorised Firm.

**7.6.8** An Authorised Firm must be satisfied that an Authorised Individual:

- (a) continues to be competent in his proposed role;
- (b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
- (c) is able to apply his knowledge.

**7.6.9** The Authorised Firm is responsible for the conduct of its Authorised Individuals and for ensuring that they remain fit and proper to carry out their role.

**Guidance**

In considering whether an Authorised Individual remains fit and proper, the Authorised Firm should consider those matters in section 3.2 of the RPP Sourcebook and the notification requirements in section 11.10 of this module.

**7.6.10** Before lodging an application with the DFSA, an Authorised Firm must make reasonable enquiries as to an individual's fitness and propriety to carry out a Licensed Function.

**7.6.11** An Authorised Firm must not lodge an application if it has reasonable grounds to believe that the individual is not fit and proper to carry out the Licensed Function.

**Systems and controls**

**7.6.12** An Authorised Firm must have appropriate arrangements in place to ensure that an individual assessed as being competent under Rule 7.6.6 maintains his competence.

**7.6.13** An Authorised Firm must ensure, in the case of individuals seeking to perform the Licensed Functions of Senior Executive Officer, Money Laundering Reporting Officer or Compliance Officer, that such individuals are able to demonstrate sufficient knowledge of relevant anti money laundering requirements.

**Guidance**

In considering whether individuals have sufficient knowledge of relevant anti money laundering requirements, the DFSA may be satisfied where the individual can demonstrate receipt of appropriate training specifically relevant to such requirements. See AML section 3.9.

**7.6.14** An Authorised Firm must establish and maintain systems and controls which will enable it to comply with Rules 7.6.6 to 7.6.9.

**7.6.15** (1) An Authorised Firm must keep records of the assessment process undertaken for each individual under this chapter.

(2) These records must be kept for a minimum of six years from the date of the assessment.

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**11 SUPERVISION**

**Introduction**

**Guidance**

1. This chapter outlines DFSA’s supervisory requirements for an Authorised Person.
2. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA’s general regulatory policy and processes.

**11.1 Information gathering and DFSA access to information**

**11.1.1** This section applies to an Authorised Person other than a Representative Office with respect to the carrying on of all of its activities.

**11.1.2** An Authorised Person must where reasonable:

- (a) give or procure the giving of specified information, documents, files, tapes, computer data or other material in the Authorised Person’s possession or control to the DFSA;
- (b) make its Employees readily available for meetings with the DFSA;
- (c) give the DFSA access to any information, documents, records, files, tapes, computer data or systems, which are within the Authorised Person’s possession or control and provide any facilities to the DFSA;
- (d) permit the DFSA to copy documents or other material on the premises of the Authorised Person at the Authorised Person’s expense;
- (e) provide any copies as requested by the DFSA; and

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(f) answer truthfully, fully and promptly, all questions which are put to it by the DFSA.

**11.1.3** An Authorised Person must take reasonable steps to ensure that its Employees act in the manner set out in this chapter.

**11.1.4** An Authorised Person must take reasonable steps to ascertain if there is any secrecy or data protection legislation that would restrict access by the Authorised Person or the DFSA to any data required to be recorded under the DFSA's Rules. Where such legislation exists, the Authorised Person must keep copies of relevant documents or material in a jurisdiction which does allow access in accordance with legislation applicable in the DIFC.

### **Lead regulation**

**11.1.5** (1) If requested by the DFSA, an Authorised Person must provide the DFSA with information that the Authorised Person or its auditor has provided to a Financial Services Regulator.

(2) If requested by the DFSA, an Authorised Person must take reasonable steps to provide the DFSA with information that other members of the Authorised Person's Group have provided to a Financial Services Regulator.

## **11.2 Waivers**

**11.2.1** This section applies to every Authorised Person.

**11.2.2** Throughout the Rulebook reference to the written notice under Article 25 will be referred to as a 'waiver'.

**11.2.3** If an Authorised Person wishes to apply for a waiver, it must apply in writing and the application must be delivered to the DFSA as outlined in section 11.11.

### **Guidance**

Waiver application forms are contained in AFN and the RPP Sourcebook sets out the DFSA's approach to considering a waiver.

**11.2.4** The application must contain:

(a) the name and Licence number of the Authorised Person;

(b) the Rule to which the application relates;

(c) a clear explanation of the waiver that is being applied for and the reason why the Authorised Person is requesting the waiver;

(d) details of any other requirements; for example, if there is a specific period for which the waiver is required;



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- (e) the reason, if any, why the waiver should not be published or why it should be published without disclosing the identity of the Authorised Person; and
  - (f) all relevant facts to support the application.

**11.2.5** An Authorised Person must immediately notify the DFSA if it becomes aware of any material change in circumstances which may affect the application for a waiver.

#### **Continuing relevance of waivers**

**11.2.6** An Authorised Person must immediately notify the DFSA if it becomes aware of any material change in circumstances which could affect the continuing relevance of a waiver.

### **11.3 Application to change the scope of a Licence**

**11.3.1** This section applies to an Authorised Firm applying to change the scope of its Licence or, where a condition or restriction has previously been imposed, to have the condition or restriction varied or withdrawn.

**11.3.2** The provisions relating to permitted legal forms, fitness and propriety, adequate resources, compliance arrangements, enquiries and the provision of additional information set out in section 7.2 also apply to an Authorised Firm making an application under this chapter, and are to be construed accordingly.

**11.3.3** An Authorised Firm applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA, with written details of the proposed changes.

### **11.4 Withdrawal of a Licence at an Authorised Firm's request**

**11.4.1** An Authorised Firm seeking to have its Licence withdrawn must submit a request in writing stating:

- (a) the reasons for the request;
- (b) that it has ceased or will cease to carry on Financial Services in or from the DIFC;
- (c) the date on which it ceased or will cease to carry on Financial Services in or from the DIFC;
- (d) that it has discharged, or will discharge, all obligations owed to its customers in respect of whom the Authorised Firm has carried on, or will cease to carry on, Financial Services in or from the DIFC; and

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- (e) if it is providing Trust Services, that it has made appropriate arrangements for the transfer of business to a new Trust Service Provider and the appointment, where necessary, of new trustees.

**Guidance**

When considering a withdrawal of a Licence, the DFSA takes into account a number of matters including those outlined in the RPP Sourcebook.

## **11.5 Changes to an authorised individual status**

**Guidance**

This section addresses applications or requests regarding Authorised Individuals with respect to Article 53(3), 57(2), 58(3) and 58(4).

- 11.5.1** An application to extend the scope of an Authorised Individual status to other Licensed Functions may be made by the Authorised Individual and Authorised Firm by the completion and submission of the appropriate form in AFN.

- 11.5.2** An Authorised Firm or Authorised Individual requesting:

- (a) the imposition, variation or withdrawal of a condition or restriction;
- (b) withdrawal of Authorised Individual status; or
- (c) withdrawal of authorisation in relation to one or more Licensed Functions;

must, subject to Rule 11.5.3, for (a) submit such request in writing to the DFSA, and for (b) and (c) submit a request by completing the appropriate form in AFN.

- 11.5.3** A request for the variation or withdrawal of a condition or restriction may only be made after the expiry of any period within which an appeal to the Regulatory Appeals Committee relating to the relevant condition or restriction may commence under Article 28.

**Guidance**

1. Notification of the determination of an application under Rule 11.5.1 or request under Rule 11.5.2 will be made in accordance with Articles 55 and 57.
2. In considering the suitability of such an application or request the DFSA may take into account any matter referred to in RPP with respect to fitness and propriety for Authorised Individuals.

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## **11.6 Temporary cover**

**11.6.1** (1) An Authorised Firm may, subject to (2), appoint an individual, who is not an Authorised Individual, to carry out the functions of an Authorised Individual where the following conditions are met:

(a) the absence of the Authorised Individual is temporary or reasonably unforeseen;

(b) the functions are carried out for 12 weeks maximum in any consecutive 12 months; and

(c) the Authorised Firm has assessed that the individual has the relevant skills and experience to carry out these functions.

(2) An Authorised Firm may not appoint under (1) an individual to carry out the Licensed Functions of a Licensed Director or Licensed Partner.

(3) The Authorised Firm must take reasonable steps to ensure that the individual complies with all the Rules applicable to Authorised Individuals.

(4) Where an individual is appointed under this Rule, the Authorised Firm must notify the DFSA in writing of the name and contact details of the individual appointed.

**11.6.2** Where an individual is appointed under this section, the DFSA may exercise any powers it would otherwise be entitled to exercise as if the individual held Authorised Individual status.

## **11.7 Dismissal or resignation of an Authorised Individual**

**11.7.1** An Authorised Firm must request the withdrawal of an Authorised Individual status within seven days of the Authorised Individual ceasing to be employed by the Authorised Firm to perform a Licensed Function.

**11.7.2** In requesting the withdrawal of an Authorised Individual status, the Authorised Firm must submit the appropriate form in AFN, including details of any circumstances where the Authorised Firm may consider that the individual is no longer fit and proper.

**11.7.3** If an Authorised Individual is dismissed or requested to resign, a statement of the reason, or reasons, for the dismissal or resignation must be given to the DFSA by the Authorised Firm.

**11.7.4** If the Authorised Individual was acting as a trustee, the Trust Service Provider must confirm to the DFSA in writing that a new trustee has been appointed in place of the trustee in question.

## **11.8 Changes relating to control**

**11.8.1** This chapter applies to:

- (a) an Authorised Firm; or
- (b) a Person who is, or is proposing to become, a Controller specified in Rule 11.8.3.

**11.8.2** An Authorised Firm must take reasonable steps to monitor changes or proposed changes concerning:

- (a) its Controllers;
- (b) the level of control of existing Controllers; and
- (c) significant changes in the circumstances of existing Controllers which might reasonably be considered to affect the fitness and propriety of the Authorised Firm.

### **Guidance**

1. Steps taken by an Authorised Firm to comply with Rule 11.8.2 must have regard to the approval and notification requirements set out in this chapter.
2. Reasonable steps in Rule 11.8.2 should include, but are not limited to, the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

**11.8.3** (1) A Controller is a Person who, either alone or with any Associate:

- (a) holds 10% or more of an Authorised Firm's shares;
- (b) is entitled to exercise, or control the exercise, of 10% or more of the voting rights in respect of an Authorised Firm;
- (c) holds shares or voting rights of an Authorised Firm which enables the Person to exercise significant influence over the management of the Authorised Firm; or
- (d) meets one or more of the conditions of (a), (b), or (c) in respect of a Holding Company of an Authorised Firm.

(2) In (1), a share means:

- (a) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with share capital, allotted shares;
- (b) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with capital but no share capital, rights to a share in the capital of the Authorised Firm or a Holding Company of an Authorised Firm; or

- (c) in relation to an Authorised Firm or a Holding Company of an Authorised Firm without capital:
  - (i) interests conferring any right to share in the profits, or liability to contribute to the losses, of the Authorised Firm or a Holding Company of an Authorised Firm; or
  - (ii) giving rise to any obligation to contribute to the debt or expenses of an Authorised Firm or a Holding Company of an Authorised Firm in the event of a winding up of the Authorised Firm or a Holding Company of the Authorised Firm.

**11.8.4** (1) Subject to (2) and (3), a Person specified in Rule 11.8.1(b) must not act as a Controller of an Authorised Firm unless he, or the Authorised Firm, has:

- (a) obtained prior approval pursuant to Rule 11.8.5; or
- (b) made a prior notification pursuant to Rule 11.8.5 or Rule 11.8.7, as may be applicable.

(2) The requirement in (1) does not apply to a Person who becomes a Controller by virtue of:

- (a) having acquired Shares for the sole purpose of clearing and settling within a short settlement cycle; or
- (b) holding Shares in a custodian capacity, provided that the Person can only exercise the voting rights attached to the Shares under instructions given in writing.

(3) The requirement in (1) does not apply to an Authorised Firm or a Regulated Financial Institution that becomes a Controller by virtue of holding Shares or holding or exercising voting rights as a result of:

- (a) providing the underwriting of financial instruments; or
- (b) placing financial instruments on a firm commitment basis,

provided that voting rights are not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

**11.8.5** (1) Where the Authorised Firm is:

- (a) a Body Corporate incorporated under the Companies Law 2004 or the Limited Liability Partnership Law 2004;
- (b) a Partnership established under the General Partnership Law 2004; or
- (c) an unincorporated association formed within the jurisdiction of the DIFC;

and a Person becomes a Controller or the level of control changes as set out in Rule 11.8.3(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 11.8.1(b) must submit a notification or application to the DFSA as applicable.

- (2) The events mentioned in (1) which trigger a written application for prior approval are as follows:
- (a) when a holding is increased from below 10% to 10% or more;
  - (b) when a holding is increased from below 30% to 30% or more;
  - (c) when a holding is increased from below 50% to 50% or more;  
or
  - (d) when any significant management influence as identified under Rule 11.8.3(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.
- (3) The event mentioned in (1) which triggers a written notification is when a holding is decreased from more than 50% to 50% or less.
- (4) An application for prior approval or notification must be submitted to the DFSA using the appropriate form in AFN.

**11.8.6** (1) An Authorised Firm must submit the notification or application required in Rule 11.8.5(1) not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.

(2) Where an Authorised Firm is not reasonably able to comply with (1), the Person identified in Rule 11.8.1(b) must submit the required notification or application for approval.

(3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in (2) of their obligations under this chapter.

**11.8.7** (1) Where the Authorised Firm does not fall within Rule 11.8.5(1)(a), (b) or (c) and a Person becomes a Controller, or the level of control changes as set out in Rule 11.8.3(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 11.8.1(b) must submit a notification to the DFSA.

(2) The events mentioned in (1) which trigger a notification are as follows:

- (a) when a holding is increased from below 10% to 10% or more;
- (b) when a holding is increased from below 30% to 30% or more;
- (c) when a holding is increased from below 50% to 50% or more;
- (d) when a holding is decreased from more than 50% to 50% or less; or

(e) when any significant management influence as identified under Rule 11.8.3(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.

(3) A notification must be submitted to the DFSA using the appropriate form in AFN.

**11.8.8** (1) An Authorised Firm must submit the notification required in Rule 11.8.7 not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.

(2) Where an Authorised Firm has not complied with (1), the Person identified in Rule 11.8.1(b) must submit the required notification.

(3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in Rule 11.8.1(b) of his obligations under this chapter.

### **Annual reporting of controllers**

**11.8.9** An Authorised Firm must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

**11.8.10** The Authorised Firm's annual report on its Controllers must include:

(a) the name of each Controller;

(b) the current holding of each Controller, expressed as a percentage; and

(c) any other Controller specified in Rule 11.8.3(1)(c) or (d).

### **Guidance**

1. An Authorised Firm may satisfy the requirements of Rule 11.8.10 by submitting a corporate structure diagram containing the relevant information.

2. Where the DFSA deems that a Controller is unacceptable, it will notify the Authorised Firm in writing to remove the Controller without undue delay, or take other specified action to the satisfaction of the DFSA.

## **11.9 Creation of additional cells of a protected cell company for an Insurer**

**11.9.1** This section applies to Insurers that are Protected Cell Companies.

### **Guidance**

1. An Insurer that is a Protected Cell Company is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the DIFC Company Regulations.

2. Under the provisions of the DIFC Company Regulations dealings or transactions between Cells in relation to an Insurer may take place only with the approval of the Court.
3. An Authorised Firm which intends to apply to the Court for approval under the provisions is invited to consult with the DFSA before making the necessary application to the Court.

**11.9.2** An Insurer that is a Protected Cell Company may not create a new Cell unless approval has been granted by the DFSA.

**11.9.3** An application to the DFSA for the approval for the creation of a new Cell must be made on the appropriate form in AFN, and shall be accompanied by such documents and information and verified in such manner, as the DFSA may require.

**11.9.4** The DFSA may:

- (a) grant approval;
- (b) grant approval with conditions or restrictions; or
- (c) refuse approval;

for the creation of a new Cell.

#### **Notice of the DFSA's decision**

- 11.9.5** (1) Where the DFSA grants approval of a new Cell, the DFSA will without undue delay give the Insurer a written notice of its decision.
- (2) Where the DFSA grants approval of a new Cell with conditions or restrictions, the DFSA will without undue delay give the Insurer a written notice of its decision and, where requested by the Insurer, the reasons for the conditions.
- (3) Where the DFSA refuses approval of a new Cell, the DFSA will without undue delay give a written notice of its decision to the Insurer and, where requested by the Insurer, the reasons for such refusal.

#### **Rights of representation and appeal**

**11.9.6** The DFSA may only exercise its power to refuse an application for a new Cell, or to grant approval with conditions or restrictions, if it has given the Insurer a suitable opportunity to make representations in person and in writing in relation to the proposed refusal or the proposed conditions or restrictions.

**11.9.7** The Insurer has the right to appeal a decision to refuse approval, or to grant approval with conditions or restrictions, to the Regulatory Appeals Committee which has the jurisdiction to hear and determine such an appeal.



## **11.10 Notifications**

**11.10.1** (1) This section applies to every Authorised Person, unless otherwise provided, with respect to the carrying on of Financial Services and any other activities whether or not financial.

(2) This section does not apply to a Representative Office.

### **Guidance**

1. This chapter sets out Rules on specific events, changes or circumstances that require notification to the DFSA and outlines the process and requirements for notifications.
2. The list of notifications outlined in this chapter is not exhaustive. Other areas of the Rulebook may also detail additional notification requirements.
3. An Authorised Person and its auditor are also required under Article 67 to disclose to the DFSA any matter which may indicate a breach or likely breach of, or a failure or likely failure to comply with, laws or Rules. An Authorised Person is also required to establish and implement systems and procedures to enable its compliance and compliance by its auditor with notification requirements.

### **Core information**

**11.10.2** An Authorised Person must provide the DFSA with reasonable advance notice of a change in:

- (a) the Authorised Person's name;
- (b) any business or trading name under which the Authorised Person carries on a Financial Service in or from the DIFC;
- (c) the address of the Authorised Person's principal place of business in the DIFC;
- (d) in the case of a Branch, its registered office or head office address;
- (e) its legal structure; or
- (f) an Authorised Individual's name or any material matters relating to his fitness and propriety.

**11.10.3** A Domestic Firm must provide the DFSA with reasonable advance notice of the establishment or closure of a branch office anywhere in the world from which it carries on financial services.

**11.10.4** When giving notice under Rule 11.10.3 in relation to the establishment of a branch, a Domestic Firm must at the same time submit to the DFSA a detailed business plan in relation to the activities of the proposed branch.

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- 11.10.5** (1) The DFSA may in its absolute discretion, object to the establishment of a branch office. Upon objecting to the establishment of a branch office, the DFSA must without undue delay, inform the applicant in writing of such objection, and where requested by the Domestic Firm, the reasons for such objection.
- (2) If the DFSA objects to the firm establishing a branch anywhere in the world the firm may not proceed with establishment of such a branch.

**11.10.6** A Domestic Firm may appeal to the Regulatory Appeals Committee against the decision of the DFSA to object to the opening of a branch office, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

### **Regulatory impact**

**11.10.7** An Authorised Person must advise the DFSA immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

- (a) the Authorised Person's failure to satisfy the fit and proper requirements;
- (b) any matter which could have a significant adverse effect on the Authorised Person's reputation;
- (c) any matter in relation to the Authorised Person which could result in serious adverse financial consequences to the financial system or to other firms;
- (d) a significant breach of a Rule by the Authorised Person or any of its Employees;
- (e) a breach by the Authorised Person or any of its Employees of any requirement imposed by any applicable law by the Authorised Person or any of its Employees;
- (f) subject to Rule 11.10.8, any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the Authorised Person's risk profile or resources;
- (g) any significant failure in the Authorised Person's systems or controls, including a failure reported to the Authorised Person by the firm's auditor;
- (h) any action that would result in a material change in the capital adequacy or solvency of the Authorised Firm; or
- (i) non-compliance with Rules due to an emergency outside the Authorised Person's control and the steps being taken by the Authorised Person.

**Major acquisitions**

- 11.10.8** (1) Subject to (2), an Authorised Firm which makes or proposes to make a Major Acquisition as defined in (3) must:
- (a) if it is a Domestic Firm, comply with the requirements in Rule 11.10.9; and
  - (b) if it is not a Domestic Firm, comply with the requirements in Rule 11.10.10.
- (2) The requirement in (1) does not apply to an Authorised Firm which is in, Category 3 (as defined in PIB Rule 1.3.3) or Category 4 (as defined in PIB Rule 1.3.4).
- (3) Subject to (4), an Authorised Firm makes a Major Acquisition if it makes or proposes to directly or indirectly acquire a shareholding in a Body Corporate where that acquisition:
- (a) is of a value (whether by one acquisition or a series of acquisitions) of 10% or more of:
    - (i) the Authorised Firm's Capital Resources, if it is a Domestic Firm which is a Category 1 Authorised Firm (as defined in PIB Rule 1.3.1), Category 2 Authorised Firm (as defined in PIB Rule 1.3.2) or Category 5 Authorised Firm (as defined in PIB Rule 1.3.5); or
    - (ii) the Authorised Firm's Adjusted Capital Resources, if it is a Domestic Firm conducting Insurance Business; or
    - (iii) the capital resources of the Authorised Firm calculated in accordance with the requirements of the Financial Services Regulator in its home jurisdiction, if it is not a Domestic Firm; or
  - (b) even if it does not exceed the 10% threshold referred to in (a), it is reasonably likely to have a significant regulatory impact on the Authorised Firm's activities.
- (4) An acquisition is not a Major Acquisition for the purposes of (3) if it is an investment made by an Authorised Firm:
- (a) in accordance with the terms of a contract entered into by the Authorised Firm as an incidental part of its ordinary business; or
  - (b) as a routine transaction for managing the Authorised Firm's own investment portfolio and therefore can reasonably be regarded as made for a purpose other than acquiring management or control of a Body Corporate either directly or indirectly.

**Guidance**

1. Examples of the kind of investments referred to in Rule 11.10.8(3)(b) include an acquisition of a stake in a small specialised trading firm that engages in high risk trades or other activities that could pose a reputational risk to the Authorised Firm.
2. The onus is on an Authorised Firm proposing to make an acquisition to consider whether it qualifies as a Major Acquisition under Rule 11.10.8(3)(b). Generally, in the case of an Authorised Firm that is not a Domestic Firm (i.e. a Branch operation in the DIFC), the significant regulatory impact referred to in Rule 11.10.8 (3)(b) should be prudential risk to the Authorised Firm as a whole. If an Authorised Firm is uncertain about whether or not a proposed acquisition qualifies as a Major Acquisition under Rule 11.10.8 (3)(b), the Authorised Firm may seek guidance from the DFSA.
3. Examples of contractual arrangements of the kind referred to in Rule 11.10.8 (4)(a) include enforcement of a security interest in the securities of the investee Body Corporate or a loan workout pursuant to a loan agreement entered into between a bank and its client.
4. Examples of the kind of investments referred to in Rule 11.10.8(4)(b) include temporary investments, such as investments included in the Authorised Firm's trading book or which are intended to be disposed of within a short term (e.g. within 12 months).

**11.10.9 (1)** An Authorised Firm which is a Domestic Firm must:

- (a) before making a Major Acquisition:
  - (i) notify the DFSA in writing of the proposed Major Acquisition at least 45 days prior to the proposed date for effecting the Major Acquisition; and
  - (ii) give to the DFSA all the relevant information relating to that Major Acquisition to enable the DFSA to assess the impact of the proposed Major Acquisition on the Authorised Firm; and
- (b) not effect the proposed Major Acquisition unless:
  - (i) the Authorised Firm has either received written advice from the DFSA that it has no objection to that Major Acquisition or has not received any written objection or request for additional information from the DFSA within 45 days after the date of the notification; and
  - (ii) if the DFSA has imposed any conditions relating to the proposed Major Acquisition, it has complied with, and has the on-going ability to comply with, the relevant conditions.

- (2) The DFSA may only object to a proposed Major Acquisition if it is of the view that the proposed Major Acquisition is reasonably likely to have a material adverse impact on the Authorised Firm's ability to comply with its applicable regulatory requirements or on the financial

services industry in the DIFC as a whole. The DFSA may also impose any conditions it considers appropriate to address any concerns it may have in relation to the proposed Major Acquisition.

- (3) Without limiting the generality of its powers, the factors that the DFSA may take into account for the purposes of (2) include:
- (a) the financial and other resources available to the Authorised Firm to carry out the proposed Major Acquisition;
  - (b) the possible impact of the proposed Major Acquisition upon the Authorised Firm's resources, including its capital, both at the time of the acquisition and on an on-going basis;
  - (c) the managerial capacity of the Authorised Firm to ensure that the activities of the investee Body Corporate are conducted in a prudent and reputable manner;
  - (d) the place of incorporation or domicile of the investee Body Corporate and whether or not the laws applicable to that entity are consistent with the laws applicable to the Authorised Firm. In particular, whether there are any secrecy constraints that are likely to create difficulties in relation to the DFSA requirements including those relating to consolidated supervision by the DFSA where applicable; and
  - (e) any other undue risks to the Authorised Firm or the financial services industry in the DIFC as a whole arising from the proposed Major Acquisition.

**Guidance**

Factors which the DFSA may take into account in assessing whether there are any undue risks arising from the proposed Major Acquisition include the size and nature of the business of the investee Body Corporate, its reputation and standing, its present and proposed management structure and the quality of management, the reporting lines and other monitoring and control mechanisms available to the Authorised Firm and the past records of the Authorised Firm relating to acquisitions of a similar nature.

- 11.10.10** (1) An Authorised Firm which is not a Domestic Firm must:
- (a) notify the DFSA in writing of any Major Acquisition in accordance with the notification requirement applying to the Authorised Firm under the requirements of the Financial Services Regulator in its home jurisdiction (the home regulator); and
  - (b) if there is no notification requirement applying to the Authorised Firm under (a), comply with the requirements in Rule 11.10.9 as if it were a Domestic Firm. The DFSA must follow the same procedures, and shall have the same powers, as set out in Rule 11.10.9 in relation to such a notification.
- (2) An Authorised Firm which gives to the DFSA a notification under (1)(a) must:

- (a) notify the DFSA of the Major Acquisition at the same time as it notifies the home regulator;
- (b) provide to the DFSA the same information as it is required to provide to the home regulator; and
- (c) provide to the DFSA copies of any communications it receives from the home regulator relating to the notification it has provided to the home regulator as soon as practicable upon receipt.

- 11.10.11** (1) The DFSA may, for the purposes of the requirements in this section, require from an Authorised Firm any additional information relating to the Major Acquisition as it may consider appropriate. An Authorised Firm must provide any such additional information to the DFSA promptly.
- (2) The DFSA may, where it considers appropriate, withdraw its no objection position or modify or vary any condition it has imposed or any remedial action it has required under the Rules in this section. Where it forms the view that such an action is required, the DFSA will first give to the Authorised Firm affected by that decision prior written notice of its proposed actions and its reasons.

**Guidance**

The DFSA will generally not withdraw a no objection position it has conveyed to an Authorised Firm, except in very limited circumstances. An example of such a situation is where the Authorised Firm is found to have provided to the DFSA inaccurate or incomplete information and that commission or omission has a material impact on the DFSA's no objection decision.

- 11.10.12** An Authorised Firm may make an appeal to the Regulatory Appeals Committee for the review of a decision of the DFSA under Rules 11.10.9, 11.10.10(b) or 11.10.11(2) and the Regulatory Appeals Committee has the jurisdiction to hear any such appeal.

**Fraud and errors**

- 11.10.13** An Authorised Person must notify the DFSA immediately if one of the following events arises in relation to its activities in or from the DIFC:
- (a) it becomes aware that an Employee may have committed a fraud against one of its customers;
  - (b) a serious fraud has been committed against it;
  - (c) it has reason to believe that a Person is acting with intent to commit a serious fraud against it;
  - (d) it identifies significant irregularities in its accounting or other records, whether or not there is evidence of fraud; or

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- (e) it suspects that one of its Employees who is connected with the Authorised Person's Financial Services may be guilty of serious misconduct concerning his honesty or integrity.

### **Other regulators**

**11.10.14** An Authorised Person must advise the DFSA immediately of:

- (a) the granting or refusal of any application for or revocation of authorisation to carry on financial services in any jurisdiction outside the DIFC;
- (b) the granting, withdrawal or refusal of an application for, or revocation of, membership of the Authorised Person of any regulated exchange or clearing house;
- (c) the Authorised Person becoming aware that a Financial Services Regulator has started an investigation into the affairs of the Authorised Person;
- (d) the appointment of inspectors, howsoever named, by a Financial Services Regulator to investigate the affairs of the Authorised Person;  
or
- (e) the imposition of disciplinary measures or disciplinary sanctions on the Authorised Person in relation to its financial services by any Financial Services Regulator or any regulated exchange or clearing house.

### **Guidance**

The notification requirement in Rule 11.10.14(c) extends to investigations relating to any employee or agent of an Authorised Person or a member of its Group, provided the conduct investigated relates to or impacts on the affairs of the Authorised Person.

### **Action against an Authorised Person**

**11.10.15** An Authorised Person must notify the DFSA immediately if:

- (a) civil proceedings are brought against the Authorised Person and the amount of the claim is significant in relation to the Authorised Person's financial resources or its reputation; or
- (b) the Authorised Person is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion.

### **Winding up, bankruptcy and insolvency**

**11.10.16** An Authorised Person must notify the DFSA immediately on:

- (a) the calling of a meeting to consider a resolution for winding up the Authorised Person;

- (b) an application to dissolve the Authorised Person or to strike it from the register maintained by the DIFC Registrar of Companies, or a comparable register in another jurisdiction;
- (c) the presentation of a petition for the winding up of the Authorised Person;
- (d) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Authorised Person; or
- (e) the application of any person against the Authorised Person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country.

**Accuracy of information**

**11.10.17** An Authorised Person must take reasonable steps to ensure that all information that it provides to the DFSA in accordance with any legislation applicable in the DIFC is:

- (a) factually accurate or, in the case of estimates and judgements, fairly and properly based; and
- (b) complete, in that it should include anything of which the DFSA would reasonably expect to be notified.

**11.10.18** (1) An Authorised Person must notify the DFSA immediately it becomes aware, or has information that reasonably suggests, that it:

- (a) has or may have provided the DFSA with information which was or may have been false, misleading, incomplete or inaccurate; or
- (b) has or may have changed in a material particular.

(2) Subject to (3), the notification in (1) must include details of the information which is or may be false or misleading, incomplete or inaccurate, or has or may have changed and an explanation why such information was or may have been provided and the correct information.

(3) If the correct information in (2) cannot be submitted with the notification it must be submitted as soon as reasonably possible.

**11.10.19** In the case of an Insurer which is a Protected Cell Company, an Insurer must advise the DFSA immediately it becomes aware of any actual or prospective significant change in the type or scale of the business conducted through a Cell, or the ownership of the Cell shares.



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## **11.11 Provision of notifications and reports**

- 11.11.1** (1) Unless a Rule states otherwise, an Authorised Person must ensure that each notification or report it provides to the DFSA is:
- (a) in writing and contains the Authorised Person's name and Licence number; and
  - (b) addressed for the attention of (in the case of an Authorised Firm) the Supervision Department and (in the case of an Authorised Market Institution) the Markets Department and delivered to the DFSA by:
    - (i) post to the current address of the DFSA;
    - (ii) hand delivered to the current address of the DFSA;
    - (iii) electronic mail to an address provided by the DFSA; or
    - (iv) faxed to a fax number provided by the DFSA.
- (2) In (1)(b) confirmation of receipt must be obtained.

## **11.12 Requirement to provide a report**

- 11.12.1** This section applies to every Authorised Person other than a Representative Office.

### **Guidance**

1. Under Article 74, the DFSA may require an Authorised Person to provide it with a report on any matter. The Person appointed to make a report must be a Person nominated or approved by the DFSA. This Person will be referred to throughout the Rulebook as an independent expert.
2. When requesting a report under Article 74, the DFSA may take into consideration the matters set out in the RPP Sourcebook.

### **Independent Expert**

- 11.12.2** (1) The DFSA may, by sending a notice in writing, require an Authorised Person to provide a report by an independent expert. The DFSA may require the report to be in whatever form it specifies in the notice.
- (2) The DFSA will give written notification to the Authorised Person of the purpose of its report, its scope, the timetable for completion and any other relevant matters.
- (3) The independent expert must be appointed by the Authorised Person and be nominated or approved by the DFSA.

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- (4) The Authorised Person must pay for the services of the independent expert.

**Guidance**

1. If the DFSA decides to nominate the independent expert, it will notify the Authorised Person accordingly. Alternatively, if the DFSA is content to approve the independent expert selected by the Authorised Person it will notify it of that fact.
2. The DFSA will only approve an independent expert that in the DFSA's opinion has the necessary skills to make a report on the matter concerned.

**11.12.3** When an Authorised Person appoints an independent expert, the Authorised Person must ensure that:

- (a) the independent expert co-operates with the DFSA; and
- (b) the Authorised Person provides all assistance that the independent expert may reasonably require.

**11.12.4** When an Authorised Person appoints an independent expert, the Authorised Person must, in the contract with the independent expert:

- (a) require and permit the independent expert to co-operate with the DFSA in relation to the Authorised Person and to communicate to the DFSA information on, or his opinion on, matters of which he has, or had, become aware in his capacity as an independent expert reporting on the Authorised Person in the following circumstances:
- (i) the independent expert reasonably believes that, as regards the Authorised Person concerned:
- (A) there is or has been, or may be or may have been, a contravention of any relevant requirement that applies to the Authorised Person concerned; and
- (B) that the contravention may be of material significance to the DFSA in determining whether to exercise, in relation to the Authorised Person concerned, any powers conferred on the DFSA under any provision of the Regulatory Law 2004;
- (ii) the independent expert reasonably believes that the information on, or his opinion on, those matters may be of material significance to the DFSA in determining whether the Authorised Person concerned satisfies and will continue to satisfy the fit and proper requirements; or
- (iii) the independent expert reasonably believes that the Authorised Firm is not, may not be, or may cease to be, a going concern;
- (b) require the independent expert to prepare a report within the time specified by the DFSA; and

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- (c) waive any duty of confidentiality owed by the independent expert to the Authorised Person which might limit the provision of information or opinion by that independent expert to the DFSA in accordance with (a) or (b).

**11.12.5** An Authorised Person must ensure that the contract required under Rule 11.12.4:

- (a) is governed by the laws of the DIFC;
- (b) expressly provides that the DFSA has a right to enforce the provisions included in the contract under Rule 11.12.4;
- (c) expressly provides that, in proceedings brought by the DFSA for the enforcement of those provisions, the independent expert is not to have available by way of defence, set-off or counter claim any matter that is not relevant to those provisions;
- (d) if the contract includes an arbitration agreement, expressly provides that the DFSA is not, in exercising the right in (b) to be treated as a party to, or bound by, the arbitration agreement; and
- (e) provides that the provisions included in the contract under Rule 11.12.4 are irrevocable and may not be varied or rescinded without the DFSA's consent.

**11.13** **Imposing Restrictions on an Authorised Person's business or on an Authorised Person dealing with property**

**11.13.1** The DFSA has the power to impose a prohibition or requirement on an Authorised Person in relation to the Authorised Person's business or in relation to the Authorised Person's dealing with property under Article 75 or Article 76 in circumstances where:

- (a) there is a reasonable likelihood that the Authorised Person will contravene a requirement of any legislation applicable in the DIFC;
- (b) the Authorised Person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated;
- (c) there is loss, risk of loss, or other adverse effect on the Authorised Person's customers;
- (d) an investigation is being carried out in relation to an act or omission by the Authorised Person that constitutes or may constitute a contravention of any applicable law or Rule;
- (e) an enforcement action has commenced against the Authorised Person for a contravention of any applicable law or Rule;
- (f) civil proceedings have commenced against the Authorised Person;

- (g) the Authorised Person or any Employee of the Authorised Person may be or has been engaged in market abuse;
- (h) the Authorised Person is subject to a merger;
- (i) a meeting has been called to consider a resolution for the winding up of the Authorised Person;
- (j) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country for the Authorised Person;
- (k) there is a notification to dissolve the Authorised Person or strike it from the DIFC register of Companies or the comparable register in another jurisdiction;
- (l) there is information to suggest that the Authorised Person is involved in financial crime; or
- (m) the DFSA considers that this prohibition or requirement is necessary to ensure customers, Authorised Persons or the financial system are not adversely affected.

**GLOSSARY MODULE (GLO)**

**A**

Defined Term	Definition
Associate	<p>(1) In <del>AUT and ASP and Chapter 7 of GEN</del>, means, in respect of a Person 'A' holding Shares or entitled to exercise, or control the exercise of voting power, in an Authorised Firm or a Holding Company of an Authorised Firm means:</p> <ul style="list-style-type: none"> <li>(a) the spouse of A;</li> <li>(b) a child or stepchild of A;</li> <li>(c) the trustee of any settlement, including any disposition or arrangement under which property is held on trust or subject to a comparable obligation, under which A has a life interest in possession;</li> <li>(d) an Undertaking of which A is a Director;</li> <li>(e) a Person who is an Employee or partner of A;</li> <li>(f) where A is an Undertaking: <ul style="list-style-type: none"> <li>(i) a director of A;</li> <li>(ii) a subsidiary or wholly owned subsidiary of A; or</li> <li>(iii) a Director or Employee of such a subsidiary or wholly owned subsidiary; or</li> </ul> </li> <li>(g) a Person who has an agreement or arrangement with A with respect to the acquisition, holding or disposal of Shares or other interests in the Authorised Firm or the Holding Company of an Authorised Firm or under which they undertake to act together in exercising their voting power in relation to an Authorised Firm or the Holding Company of an Authorised Firm that other Person.</li> </ul> <p>(2) Except in <del>AUT and ASP and Chapter 7 of GEN</del>, means in respect of a Person 'A', any Person, including an affiliated company which is:</p> <ul style="list-style-type: none"> <li>(a) an undertaking in the same Group as A; or</li> <li>(b) any other person whose business or domestic relationship with A or his Associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties.</li> </ul>
AUT	The Authorisation module of the Rulebook.

## C

Defined Term	Definition
Compliance Officer	The Licensed Function described in <u>GEN Rule 7.4.6</u> <u>AUT Rule 10.2.2(e)</u> .
Controller	(1) In relation to an Authorised Firm, a Person who, either along or with any Associate fulfils the criteria specified in <u>GEN Rule 11.8.3</u> <u>AUT Rule 15.1.2</u> ; or  (2) in relation to an Authorised Market Institution a Person who, either alone or with any Associate fulfils the criteria specified in AMI Rule 6.1.2.

## F

Defined Term	Definition
Finance Officer	The Licensed Function described in <u>GEN Rule 7.4.5</u> <u>AUT Rule 10.2.2(d)</u> .

## L

Defined Term	Definition
Licensed Director	The Licensed Function described in <u>GEN Rule 7.4.3</u> <u>AUT Rule 10.2.2(b)</u> .
Licensed Function	A function described in <u>GEN section 7.4</u> <u>AUT section 10.2</u> .
Licensed Partner	The Licensed Function described in <u>GEN Rule 7.4.4</u> <u>AUT Rule 10.2.2(c)</u> .
Licensed Representative	The Licensed Function described in <u>AUT Rule 10.2.2(h)</u> .

## M

Defined Term	Definition
Major Acquisition	Has the meaning given in <u>SUP GEN Rule 11.10.8(3)</u> <u>7.3.23</u> .
Money Laundering Reporting Officer (MLRO)	(1) For the purposes of AMI, an individual who is a Director, Partner or other appropriately senior employee of an Authorised Market Institution who has responsibility for the Authorised Market Institution's compliance with the Rules in AMI chapter 11 and any relevant money laundering legislation applicable to the AMI.  (2) For all other purposes the Licensed Function described in <u>GEN Rule 7.4.8</u> <u>AUT Rule 10.2.2(g)</u> .

**R**

Responsible Officer	The Licensed Function described in GEN <u>Rule 7.4.9</u> .
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**S**

<b>Defined Term</b>	<b>Definition</b>
Senior Executive Officer	The Licensed Function described in <u>GEN Rule 7.4.2</u> <u>AUT Rule 10.2.2(a)</u> .
Senior Manager	The Licensed Function described in <u>GEN Rule 7.4.7</u> <u>AUT Rule 10.2.2(f)</u> .
SUP	The Supervision module of the Rulebook.

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## REPRESENTATIVE OFFICE MODULE (REP)

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### 1. APPLICATION

#### 1.1 Application

- 1.1.1** (1) This module (REP) applies to every Person who carries on, or intends to carry on, the Financial Service of Operating a Representative Office in or from the DIFC.
- (2) Unless otherwise stated, the Rules apply to a Representative Office only with respect to activities carried on from an establishment maintained by it in the DIFC.

#### Guidance

1. Because of the limited nature of the Financial Service of Operating a Representative Office much of the DFSA Rulebook has been disappplied for Representative Offices. While most of the key provisions applying to a Representative Office are contained in this module, a Representative Office should ensure that it complies with and has regard to other relevant provisions in other applicable DFSA Rulebook Modules including GEN chapters 1 to 3, ~~SUP chapters 1, 3 and 11 5~~, CIR chapter 2 and sections 3.5 to 3.7 and FER. The application section of each Rulebook module sets out which chapters, if any, apply to a Representative Office. Some modules are of general application to all Authorised Persons such as GLO, ENF and OSR.
2. A Representative Office should also ensure that it complies with and has regard to relevant provisions of the Regulatory Law 2004 and Markets Law 2004. The Regulatory Law 2004 gives the DFSA a number of important powers in relation to Authorised Firms including powers of supervision and enforcement.
3. The Financial Service of Operating a Representative Office is defined in GEN Rule 2.26.1. By virtue of GEN 2.26.2 and 3.2.6, the Financial Service of Operating a Representative Office is a stand alone financial service activity.
4. Whilst much Representative Office activity will not involve a continuing relationship with the Persons to whom marketing is directed, where such a relationship is necessary, the Representative Office will need to be careful to ensure that it does not carry on any activities other than those prescribed under GEN Rule 2.26.2.
5. A Representative Office which undertakes a Financial Service which is outside the scope of its Licence will be in breach of Article 42(4) of the Regulatory Law 2004. If the DFSA believes that a Representative Office is in breach of Article 42(4), it may take steps which may include withdrawal of authorisation and formal enforcement action under the Regulatory Law 2004.

#### 1.2 Interpretation

#### Guidance

1. Every provision of REP and any other module of the Rulebook should be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.



2. Where this section refers to a provision, this means every type of provision, including Rules and Guidance.
3. Where reference is made in REP to another provision of the Rulebook or to another provision of DIFC legislation, it is a reference to that provision as amended from time to time.
4. Unless the contrary intention appears:
  - a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
  - b. words in the Rulebook in the singular include the plural and words in the plural include the singular.
5. If a provision in the Rulebook refers to a communication, notice, agreement, or other documents 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
6. Any reference to 'dollars' ('\$') is a reference to United States Dollars unless the contrary intention appears.
7. References to Articles made throughout the Rulebook are references to the Regulatory Law 2004 unless otherwise stated.
8. Unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official State holiday in the DIFC, the obligation must take place on the next calendar day which is a business day.

**Defined terms**

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or phrase and are defined in the Glossary (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

**2. AUTHORISATION**

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**2.2 Consideration and assessment of applications**

**2.2.1** An applicant will only be authorised to carry on the Financial Service of Operating a Representative Office if the DFSA is satisfied that the applicant is fit and proper to hold a Licence. In making this assessment the DFSA may consider:

- (a) ~~those matters contained in App1;~~
- (a) (b) whether the applicant is subject to supervision by a Financial Services Regulator;

~~(b)~~ ~~(c)~~ whether the applicant's Financial Services Regulator in its home state has been made aware of the proposed application and has expressed itself as having no objection to the establishment by the applicant of a Representative Office in the DIFC; and

~~(c)~~ ~~(d)~~ any other relevant matters.

**Guidance**

Section 2.2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 2.2.1

**2.2.2** In relation to the assessment under Rule 2.2.1:

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;
- (b) the applicant must demonstrate to the DFSA's satisfaction that its Principal Representative is fit and proper;
- (c) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;
- (d) the DFSA will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the DFSA's objectives described under Article 8; and
- (e) the DFSA will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

**Guidance**

- ~~1. A Person who provides information to the DFSA which is false, misleading or deceptive, or who conceals information where the concealment is likely to mislead or deceive the DFSA, commits a contravention of Article 66.~~
- ~~2. If an applicant becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application which is under consideration by the DFSA, it must inform the DFSA of the change, in writing, without delay.~~
- ~~3. Article 51 enables the DFSA to withdraw a Representative Office's Licence where it is no longer considered fit and proper to hold such a Licence.~~
- ~~4. In considering whether an applicant is fit and proper, the DFSA may take into account those matters contained in App1, which provides information on the DFSA's approach to fitness and propriety for Representative Offices.~~

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## 4. GENERAL PROVISIONS

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### 4.2 Fitness and Propriety

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- 4.2.3** A Representative Office must ensure, as far as reasonably practical, that its Employees are fit and proper.

#### Guidance

1. ~~A1.3 provides information on the DFSA's approach to fitness and propriety. Section 2.3 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 4.2.3.~~
2. Where a Representative Office is no longer fit and proper or where its Principal Representative is no longer fit and proper, it will be in breach of the relevant Rule and the DFSA may take steps to withdraw its Licence. ~~A1.3 provides information on the DFSA's approach to fitness and propriety for Principal Representatives. Section 2.3 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when assessing fitness and propriety of a Principal Representative.~~

## ~~App1~~ **GUIDANCE ON FITNESS AND PROPRIETY**

### ~~A1.1~~ **Introduction**

#### Guidance

1. ~~This appendix provides guidance on the matters which the DFSA may take into account when assessing, for the purpose of REP, the fitness and propriety of:~~
  - a. ~~an applicant for a Licence to be an Authorised Firm (Representative Office);~~
  - b. ~~an Authorised Firm (Representative Office);~~
  - c. ~~a Principal Representative and other staff; and~~
  - d. ~~if applicable, any member of the applicant's or Representative Office's Group.~~
2. ~~In every case, the Person must satisfy the DFSA that he is fit and proper. The DFSA will have regard to current, past and anticipated future factors.~~
3. ~~In this appendix a Representative Office includes an applicant for a Licence to be a Representative Office and (where applicable) any Group Member.~~

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## **A1.2 Representative Office**

### **Guidance**

#### **General**

1. A Representative Office not satisfying the DFSA with respect to the location of its offices, and legal status (as applicable), will not be considered fit and proper.
2. The DFSA will have regard to all relevant matters, whether arising in the DIFC or elsewhere. The DFSA will determine the materiality of any information for the purposes of considering whether a Representative Office has demonstrated, or continues to demonstrate, that it is fit and proper.
3. The DFSA may request or require any information which it considers relevant to its consideration of an application by a Representative Office.

#### **Background and history**

4. The DFSA will have regard to:
  - a. any matter affecting the propriety of the Representative Office's conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. whether a Representative Office has ever been the subject of disciplinary procedures by a government body or agency or any self-regulating organisation or other professional body;
  - c. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self-regulatory organisation, Financial Services Regulator, Authorised Market Institution or regulated exchange or clearing house;
  - d. whether a Representative Office has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
  - e. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by a Representative Office in excess of \$10,000 or awards that total more than \$10,000;
  - f. whether a Representative Office has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; or
  - g. whether a Representative Office has been open and truthful in all its dealings with the DFSA.

#### **Ownership and group**

5. The DFSA will have regard to:
  - a. any information provided by other regulators in relation to the Representative Office or any entity within its Group;

- ~~b. the Representative Office's connection with its Controllers or any other Person; and~~
  - ~~b. whether the Representative Office or its Group is subject to any adverse effect or considerations arising from its country of incorporation or the country (or countries) of incorporation of its Controllers. In considering such matters, the DFSA will also have regard to the type and level of regulatory oversight in the country or countries of incorporation referred to above, the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA has adopted in its Rules.~~
- ~~6. Where a Representative Office also represents another member of its Group, then the DFSA will have regard to all matters mentioned in APP1 as appropriate in the circumstances in relation to determining the fitness and propriety of the relevant Group member or members.~~

### **Resources**

- ~~7. The DFSA will have regard to whether the Representative Office has sufficient resources of all types, including:~~
- ~~a. whether the Representative Office has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner; and~~
  - ~~b. whether the Representative Office has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering legislation, including arrangements to ensure all relevant staff are aware of their obligations.~~

### **Collective suitability of individuals or other persons connected to the Representative Office**

- ~~8. The DFSA will also consider:~~
- ~~a. the collective suitability of all of the Representative Office's staff taken together, and whether there is a sufficient range of individuals with appropriate skills and experience to understand, operate and manage the Representative Office's affairs in a sound and prudent manner; and~~
  - ~~b. the extent to which the Representative Office has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities.~~

### **The DFSA's Rulebook**

- ~~9. In assessing whether a Representative Office is fit and proper, the DFSA will also consider the degree to which the Representative Office is ready, willing and able to conduct the relevant activities in accordance with the Rules and other legislation applicable in the DIFC.~~
- ~~10. A Representative Office which fails to comply with any one or more Rules of the DFSA may also be in breach of one or more of the Principles for Representative Offices. Accordingly, the Representative Office may then be liable for disciplinary or enforcement action. In certain circumstances a breach of a Rule or Principle may call into question whether that Person remains fit and proper.~~

## A1.3 Principal Representative and other staff

### Guidance

#### Integrity

1. In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:
  - a. the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
  - c. whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self-regulatory organisation or other professional body;
  - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self-regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
  - e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - f. a dismissal or a request to resign from any office or employment;
  - g. whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
  - h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
  - i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an Authorised Individual in excess of \$10,000 or awards that total more than \$10,000;
  - j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
  - k. whether an individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that person was connected with that body corporate or within one year of such a connection;
  - l. whether an individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that person was connected with that partnership or within a year of such a connection;

- m. ~~whether an individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;~~
- n. ~~whether an individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any DFSA, or any officially appointed inquiry, or Financial Services Regulator; or~~
- o. ~~whether an individual has been candid and truthful in all his dealings with the DFSA.~~

**Competence and capability**

- 2. ~~In determining the competence and capability of an individual, the DFSA may have regard to any factors, whether in the U.A.E. or elsewhere including, but not limited to whether an individual is capable of performing functions which his Representative Office employs or intends to employ him to perform.~~