

Appendix 5

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



The DFSA Rulebook

Representative Office Module

(REP)

in relation to Consultation Paper No. 86

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 disapplied 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 AML, GEN chapters 1 to 3 and 11, 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.

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4.9 Relevant UN Resolutions and Sanctions

- ~~**4.9.1** (1) A Representative Office must establish and maintain effective systems and controls to obtain and make appropriate use of relevant resolutions or sanctions issued by the United Nations Security Council~~
- ~~(2) In relation to an activity which is restricted or prohibited by a relevant sanction or resolution issued by the United Nations Security Council, a Representative Office must immediately notify the DFSA when it becomes aware that it is carrying on or about to carry on a service, for or on behalf of a Person, and such carrying on constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.~~
- ~~(3) A Representative Office must ensure that the notification stipulated in (2) includes the following information:~~
- ~~(a) a detailed description of the relevant activity; and~~
- ~~(b) the action proposed to be taken or has been taken by the Representative Office with regard to the matters specified in the notification.~~

Guidance

1. In relation to the term “make appropriate use” in Rule 4.9.1 (1), this may mean that a Representative Office cannot provide a service for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. Relevant resolutions or sanctions mentioned in Rule 4.9.1 may, inter alia, relate to money laundering or terrorist financing or financing of weapons of mass destruction or otherwise may be relevant to the services provided by, or business activities of, the Representative Office. For example, a Representative Office should exercise due care to ensure that it does not provide any service to a Person engaged in money laundering or terrorist financing or financing of weapons of mass destruction.

4.109 Communication with the DFSA

4.109.1

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6 ANTI MONEY LAUNDERING

6.1 Introduction

6.1.1 A Representative Office must comply with the relevant Anti Money Laundering Laws and Rules which apply to its business.

Guidance

1. By virtue of Article 3(1) of Federal Law No. 8 of 2004, U.A.E. Law No. 4 of 2002 — Criminalisation of Money Laundering of the U.A.E. (U.A.E Law No. 4), the Federal Law No. 1 of 2004 regarding anti-terrorism, the U.A.E. Penal Code and any other Federal Law of the U.A.E. as applicable in the DIFC in relation to anti money laundering compliance apply to all operations in the DIFC.
2. The defined term of 'Money Laundering' in these Rules follows that in the U.A.E. Law No.4. The legal definition of the offence of 'Money Laundering' is set out in Article 1 of that law.
3. Representative Offices are reminded that the failure to report suspicions of Money Laundering may constitute a criminal offence that is punishable under the laws of the U.A.E.

6.2 Co-operation with regulators

6.2.1 A Representative Office which receives a request for information from a regulator or agency responsible for anti money laundering regarding enquiries into potential money laundering must promptly inform the DFSA in writing.

6.3— AML Responsibilities of a Representative Office

~~6.3.1 A Representative Office must ensure that its Principal Representative is responsible for all of its anti money laundering measures as they affect its activities carried on in or from the DIFC.~~

Guidance

~~Where a Representative Office has adequate systems and controls the DFSA may permit a Representative Office's head office or another Group company to be responsible for its compliance with all or some of its obligations in this chapter.~~

~~6.3.2 A Representative Office must ensure that its Principal Representative carries out and is responsible for the following:~~

- ~~(a) compliance with applicable anti money laundering legislation applicable in the DIFC;~~
- ~~(b) acting as the point of contact to receive notifications of suspicious transactions from the Representative Office's Employees ;~~
- ~~(c) taking appropriate action following the receipt of a notification of a suspicious transaction from the Representative Office's Employees;~~
- ~~(d) making, in accordance with U.A.E. Law No. 4, Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. (if appropriate) and sending corresponding copies to the DFSA; and~~
- ~~(e) acting as the point of contact within the Representative Office for competent U.A.E. authorities and the DFSA regarding money laundering issues.~~

~~6.3.3 A Representative Office must have appropriate arrangements to ensure that whenever any Employee, acting in the ordinary course of his employment, either:~~

- ~~(a) knows or suspects; or~~
- ~~(b) has reasonable grounds for knowing or suspecting;~~

~~that a Person is engaged in Money Laundering, the Employee notifies the Representative Office's Principal Representative of the suspicious transaction.~~

~~6.3.4 If a Representative Office's Principal Representative is notified or becomes aware of a suspicious transaction he must without delay:~~

- ~~(a) investigate the circumstances in relation to the suspicious transaction;~~
- ~~(b) determine whether in accordance with U.A.E. Law No. 4 a Suspicious Transaction Report must be made to the AMLSCU (if appropriate);~~
- ~~(c) if required, make such an Suspicious Transaction Report to the AMLSCU; and~~

~~(d) provide a copy of such an Suspicious Transaction Report to the DFSA at the time of provision under U.A.E. Law No. 4.~~

~~**6.3.5** All relevant details in relation to suspicious transactions and Suspicious Transaction Reports must be kept for at least six years.~~

~~**6.3.6** A Representative Office must ensure that its Employees receive regular training on their obligations under this Chapter.~~

Guidance

- ~~1. The requirement for Employees to make a suspicious transaction notification include situations when no business relationship was developed because the circumstances were suspicious.~~
- ~~2. A Suspicious Transaction Report should be made when there is knowledge or suspicion of money laundering. Suspicion is a personal and subjective assessment. Suspicion of money laundering requires a degree of satisfaction although this may not amount to belief, it should at least extend beyond mere speculation and should be based upon some foundation that money laundering has occurred or is about to occur.~~
- ~~3. An Employee who considers a transaction to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.~~
- ~~4. Rule 0 makes reference to 'reasonable grounds for knowing or suspecting' which introduces an objective test rather than a subjective test of suspicion by assessing whether or not 'suspicion' was not reported because of a person:

 - ~~a. wilfully turning a blind eye or ignoring a suspicious matter;~~
 - ~~b. being negligent, that is wilfully and recklessly failing to make the adequate enquiries; or~~
 - ~~c. failing to assess adequately the facts and information that are either presented or available.~~~~
- ~~5. Circumstances that might give rise to suspicion or reasonable grounds for suspicion may be:

 - ~~a. transactions which have no apparent purpose and which make no obvious economic sense;~~
 - ~~b. transactions requested by a Person without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of a Representative Office in relation to a particular Person;~~
 - ~~c. the size or pattern of transactions, without reasonable explanation, is out of line with any pattern that has previously emerged;~~
 - ~~d. a Person refuses to provide the information requested without reasonable explanation;~~
 - ~~e. a Person who has just entered into a relationship uses the relationship for a single transaction or for only a very short period of time;~~
 - ~~f. an extensive use of offshore accounts, companies or structures in circumstances where the customer's economic needs do not support such requirements;~~
 - ~~g. unnecessary routing of funds through third party accounts; or~~~~

~~h. ———unusual transactions without an apparently profitable motive.~~

~~6. ———Representative Offices are reminded that in accordance with Article 16 of the U.A.E. Law No. 4, Representative Offices or any of their Employees must not tip off any Person, that is, inform any Person that his transaction is being scrutinised for possible involvement in suspicious Money Laundering operations, or that any other competent authority is investigating his possible involvement in suspicious Money Laundering operations.~~