

DFSA Conduct Supervision
Representative Office Sectoral Review 2023
Outreach

3 October 2023

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Principal Representatives

Conduct Compliance

Financial Crime Compliance

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Opening Remarks - Chris Cameron

The Representative Office Regime



- As at 30 September 2023, the DFSA supervises 60 Representative Offices, representing 9% of the total Authorised Firm population in the DIFC.
- Since the beginning of 2020 4 Rep Offices have withdrawn from the Centre.
- There is typically a reasonable turnover of Rep Offices with many going on to upgrade their licence to permit more activities in the Centre.

Introduction



The scope of the 2023 Sectoral Review was the same as the 2021-22 Review and was conducted to assess whether Representative Offices:

- operate within the scope of their licence;
- have a sound understanding of their obligations under applicable DFSA Rules; and
- have implemented an appropriate control framework to monitor and ensure compliance with applicable DFSA Rules.

We would like to take this opportunity to thank the Representative Offices that participated in the Review. Your co-operation in providing documentation and access to relevant employees made this Review more effective and efficient, and facilitated our observations summarised in this Outreach.

Please note, that the observations are thematic and therefore common to multiple, but not all firms (rather than being isolated instances).

Sectoral Review - Methodology



- The Sectoral Review was conducted in early 2023 and was comprised of six stages:
 - 1. Survey creation
 - 2. Survey sent
 - 3. Desk-based reviews
 - 4. Follow up emails and calls
 - 5. Internal assessments and reports
 - 6. Dear SEO Letter / Outreach

Findings



Our findings fall under three broad headings:

- Scope of activities
- Documentation and disclosures
- Financial Crime Compliance

Findings – Scope of Activities (1)



REP Rule 4.7.4

- (1) A Representative Office must ensure that it does not market a Unit of a Foreign Fund which is a Property Fund unless: (a) the Fund is a closed-ended structure; and
- (b) the Fund is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction, unless the Units are to be Offered, issued, or sold by means only of Private Placement.
- (2) For the purposes of (1), a "Property Fund" is a Foreign Fund in respect of which 60% or more of the Fund's assets comprise Real Property, Property Related Assets or Units in another Property Fund.

Findings – Scope of Activities (1)



Observation:

A small number of Rep Offices were found to be marketing Open-Ended Property funds.

Since this is a key restriction for Rep Offices, we are concerned that there have been instances of non-compliance with this rule (albeit in a small number of firms).

DFSA Expectation:

We expect all Rep Offices to understand the scope of their licence and ensure that they remain within their permitted scope of activities at all times (see REP Rules 1.3).

Findings – Scope of Activities (2)



GEN Rule 2.26.1(4)

A Person must not Operate a Representative Office that markets a Crypto Token or a Financial Service relating to a Crypto Token.

Findings – Scope of Activities (2)



Observation:

A small number of Rep Offices were found to be marketing digital asset funds.

GEN 2.26.1(4) came into force on 1 November 2022.

DFSA Expectation:

- As before, we expect all Rep Offices to understand the scope of their licence and ensure that they remain within their permitted scope of activities at all times.
- Further: Rep Offices and their Principal Representatives must ensure they are alert to DFSA Rule changes that may apply to their operations and/or permitted activities.
- To be clear: Rep Offices are prohibited from any marketing activities relating to Crypto Tokens; this includes marketing or referring business to a Group Company in respect of CFDs on Crypto Tokens.

Findings – Documentation and Disclosures (1)



REP Rule 4.5.2

- (1) A Representative Office must take reasonable care to ensure that every key business document which is in connection with the Representative Office carrying on the Financial Service of Operating a Representative Office in or from the DIFC includes one of the disclosures under this Rule.
- (2) A key business document includes letterhead whether issued by post, fax, or electronic means, written promotional materials, business cards, and websites but does not include compliment slips, or text messages.
- (3) The disclosure required under (1) is: (a) 'Regulated by the Dubai Financial Services Authority as a Representative Office'; or
- (b) 'Regulated by the DFSA as a Representative Office'.

REP Rule 4.6.3

A Representative Office must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the Regulatory Law, Rules or any other relevant legislation.

Findings – Documentation and Disclosures (1)



Observation:

A common observation was that Rep Offices did not include the relevant disclosures on their business documents (both physical and digital).

Furthermore, where some Rep Offices did make the correct disclosures these were insufficiently visible and sometimes located only towards the end of the document.

DFSA Expectation:

- Before issuing any documentation Rep Offices should ensure that the correct regulatory disclosures are included and clearly state that the regulatory status as being "regulated by the DFSA as a Representative Office".
- Rep Offices should not use Head Office key business documents when operating in the DIFC – there should be a clear distinction between Rep Office and Head Office materials.

Findings – Documentation and Disclosures (2)



REP Rule 4.6.3 - Observation:

Another fairly common observation was that Rep Offices did not include the name of the Rep Office that was communicating via marketing material. Furthermore, we noted that letterheads, email templates and email signatures referred to the Head Office rather than the Rep Office.

We also observed that some Rep Offices attempted to avoid or limit liability in respect of prospective clients.

DFSA Expectation:

 Principal Representatives must understand the disclosure requirements for Rep Offices and ensure that appropriate and adequate disclosures are made.

Findings – Financial Crime Compliance (1)



AML Rule 1.3

Application table Guidance

Relevant Person	Applicable Chapters	
Authorised Person	1-14	
Representative Office	<mark>1-5*</mark>	<mark>10-14</mark>
Registered Auditor	1-8	10-14
DNFBP	1-8	10-15

^{*} Chapters 6-9 are unlikely to apply to a Representative Office as such an office is only permitted to carry on limited activities in the DIFC and therefore must not have Customers.

Findings – Financial Crime Compliance (1)



Observations:

- Some Rep Offices did not have a Business AML Risk Assessment (BARA).
- For most of those that did have a BARA, this document did not assess the risks of the DIFC entity.
- Most BARAs failed to reference the 2019 UAE National Risk Assessment.
- Most Rep Offices relied on group AML Policies and Procedures that did not consider DFSA or UAE rules applicable to Rep Offices in the DIFC.
- Many AML Manuals referenced policies that are not applicable to Rep
 Offices such as CDD, EDD, client risk assessments and other on-boarding
 related material.

Findings – Financial Crime Compliance (1)



DFSA Expectations:

- The DFSA expects all firms including Rep Offices to comply with the requirements of AML Chapter 5 – taking appropriate steps to identify and assess the money laundering and terrorist financing risks relevant to their activities and implement appropriate systems and controls to mitigate those risks.
- The BARA should consider recent UAE National Risk Assessment results.
- The BARA should consider new products and services, business practices or the use of new technologies.
- Compliance with AML Chapters 1-5 and 10-14 include, but is not limited to, maintaining effective policies, procedures, systems and controls to prevent opportunities for money laundering and terrorist financing in relation to the Rep Office and its activities.

Findings – Financial Crime Compliance (2)



AML Rule 11.4.1

A Relevant Person must ensure that its MLRO implements and has oversight of and is responsible for the following matters:

- (a) the day-to-day operations for compliance by the Relevant Person with its AML policies, procedures, systems, and controls;
- (b) acting as the point of contact to receive notifications from the Relevant Person's Employees under Rule 13.2.2;
- (c) taking appropriate action under Rule 13.3.1 following the receipt of a notification from an Employee;
- (d) making Suspicious Activity Reports in accordance with UAE Federal AML legislation;
- (e) acting as the point of contact within the Relevant Person for competent U.A.E. authorities and the DFSA regarding money laundering issues;
- (f) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;
- (g) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices, or other conclusions described in chapter 10; and
- (h) establishing and maintaining an appropriate money laundering training programme and adequate awareness arrangements under chapter 12.

Findings – Financial Crime Compliance (2)



Observation:

Most Principal Representatives:

- Were unfamiliar with applicable DFSA and UAE Federal requirements.
- Displayed minimal awareness regarding their role as MLRO and were unable to clearly articulate their MLRO responsibilities.
- Deferred responsibility to Head Office or a Group Compliance function.
- Were partially, or entirely, unaware of the Suspicious Activity Reports (SARs) process.
- Were unable to articulate their Head Office sanction screening process.
- Were unable to identify the lists against which sanction screening was performed by Head Office.
- Could not provide proof of registration on GoAML and subscription to the EOCN notification system.

Findings – Financial Crime Compliance (2)



DFSA Expectation:

- Rep Offices are required to comply with AML Rule 11.2.2, with ultimate responsibility of its implementation resting with the Principal Representative.
- Rep Offices may choose to have their Head Office screen prospective clients. However, the Principal Representative must still have some highlevel knowledge of the Rep Office or Group's screening procedures, and which lists clients are screened against.
- Principal Representatives must be sufficiently versed in their responsibilities as MLRO.
- Head Office support is acceptable but there is no exception to AML Rule
 11.4.1 the Principal Representative remains solely accountable.

Findings – Financial Crime Compliance (3)



UAE Cabinet Decision No 74 of 2020 and AML Chapter 10

Rep Offices are required to screen against UAE and UN Sanctions Lists.

Findings – Financial Crime Compliance (3)



Observations:

- Some Rep Offices could not provide evidence of screening against the UAE Sanctions List and/or the UN Sanctions List.
- Many Principal Representatives were unable to identify the lists against which their Head Office performed screening.
- AML Manuals did not identify the lists against which screening should be performed.

DFSA Expectation:

- All relevant persons (including Principal Representatives) should be aware of Cabinet Decision No.74 of 2020.
- Rep Offices need to ensure that screening is conducted regularly, and also immediately, on any updates to the Local Terrorist List or UN Consolidated List.

Next Steps



- This presentation has highlighted the observations from our 2023 Sectoral Review of Representative Offices.
- The Dear Principal Representative letter issued in September asked all Representative Offices to consider the observations of this Sectoral Review and perform a self-review of their compliance against their obligations under applicable DFSA Rules.
- Where this gap analysis identified any shortfalls we asked that these be reported to the DFSA along with a related remediation programme no later than 30 October 2023.
- The DFSA will be performing sample testing in respect of the findings from the Sectoral Review.



Questions

