

Appendix 2

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



The DFSA Rulebook

General Module

(GEN)

2 FINANCIAL SERVICES

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2.28 Definition of Financial Product (for misleading and deceptive conduct prohibition)

2.28.1 Pursuant to Article 41B(2) of the Regulatory Law, a “Financial Product” in Article 41B of that Law is prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account or a Contract of Insurance.

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7 AUTHORISATION

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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.~~

7.3 Applications for endorsements

Carrying on service with or for a Retail Client

7.3.1 The following requirements must be met by an Authorised Firm for the grant of an endorsement to carry on a Financial Service with or for a Retail Client:

- (a) the applicant must have adequate systems and controls for carrying on Financial Services with or for a Retail Client;
- (b) the applicant must have adequate systems and controls (including policies and procedures) to ensure compliance with the requirements in COB relevant to Retail Clients;
- (c) the applicant must have adequate systems and controls to ensure that its Employees remain competent and capable to perform the functions which are assigned to them, in particular, functions that involve dealing with Retail Clients; and
- (d) the applicant must have adequate Complaint handling policies and procedures.

Acting as a Trade Repository

7.3.2 The requirements in App 5 must be met by an Authorised Firm for the grant of an endorsement to act as a Trade Repository.

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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 as an Authorised Individual to carry out that Licensed Function for that Authorised Firm.~~
- (23) ~~The prohibition in (2) does not apply to a~~ A Licensed Function shall not include 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
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- (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.
- (34) ~~The prohibition in (2) does not apply to~~ A Licensed Function shall not include a function performed by an 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 .

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8 ACCOUNTING AND AUDITING

8.1 Application

- 8.1.1** (1) This chapter applies ~~subject to (2)~~ to every:
 - (a) ~~—Authorised Person other than a Representative Office;~~
 - (b) ~~—applicant for registration as an auditor with the DFSA; and~~
 - (c) ~~—Auditor registered with the DFSA.~~
- (2) ~~This chapter does not apply to applicants for registration as Auditors in relation to Public Listed Companies.~~

Guidance

- 1 ~~—Chapter 4 of the Islamic Finance Rules (IFR) contains additional accounting and audit requirements that are specific to Islamic Financial Business.~~
- 2 ~~—Chapter 5 of the Markets Rules (MKT) contains the audit requirements that are specific to a Public Listed Company including registration criteria etc.~~

- 8.1.2** ~~In this chapter in relation to an Authorised Person which is a Domestic Firm a reference to “auditor” include references to an “Auditor”. Pursuant to Article 99(5) of the Regulatory Law, an Authorised Person which is a Representative Office is hereby exempt from the requirements in Article 99 of the Regulatory Law relating to the appointment of an Auditor.~~

Guidance

The DFSA has exercised its power under Article 99(5) of the Regulatory Law to exempt an Authorised Person which is a Representative Office from the requirements in that Article. As a result, in accordance with the terms of Article 99(5), the Representative Office also does not need to comply with other requirements in chapters 4, 5 and 6 of Part 8 of that Law.

8.2 Financial statements and financial reporting Accounting standards

8.2.1 An Authorised Person must prepare financial statements for each financial year of the Authorised Person.

Guidance

1. Chapter 4 of the Islamic Finance Rules (IFR) sets out specific disclosures an Authorised Person must include in its financial statements when carrying on Islamic Financial Business.
2. The financial statements prepared by an Authorised Person which is a Branch may be the financial statements prepared for the Authorised Person's head office.

8.2.12 An Authorised Person must, except as provided under Rule 8.2.3, prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards (IFRS).

8.2.3 (1) An Authorised Firm specified in (2) may prepare and maintain its financial statements in accordance with IFRS for Small and Medium-Sized Entities (SMEs) where that standard applies to it.

(2) Authorised Firms specified for the purposes of (1) are:

- (a) an Authorised Firm in Category 3B, Category 3C or Category 4, which does not hold or control Client Assets or Insurance Monies; and
- (b) an Authorised Firm in Category 4 which is not authorised under its Licence to carry on the Financial Service of Operating an Alternative Trading System.

(3) The DFSA may by written notice direct that a particular Authorised Firm or a specified class of Authorised Firm specified in (2) must prepare and maintain financial statements in accordance with IFRS rather than IFRS for Small and Medium Sized Entities.

(4) The DFSA may by written notice vary or revoke a direction under (3).

(5) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to give a direction under (3) to a particular Authorised Firm.

(6) If the DFSA decides to give a direction under (3) to a particular Authorised Firm, the Authorised Firm may refer the matter to the FMT for review.

8.2.4 An Authorised Person must:

- (a) if it is a Body Corporate, have its financial statements approved by the Directors and signed on their behalf by at least one of the Directors; or

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- (b) if it is a Partnership, have its financial statements approved by the Partners and signed on their behalf by at least one of the Partners.

8.3 Accounting records and regulatory returns

8.3.1 Every Authorised Person must keep Accounting Records which are sufficient to show and explain transactions and are such as to:

- (a) be capable of disclosing the financial position of the Authorised Person on an ongoing basis; and
- (b) record the financial position of the Authorised Person as at its financial year end.

8.3.2 Accounting Records must be maintained by an Authorised Person such as to enable its Governing Body to ensure that any ~~accounts~~ financial statements prepared by the Authorised Person comply with the legislation applicable in the DIFC.

8.3.3 An Authorised Person's Accounting Records must be:

- (a) retained by the Authorised Person for at least ~~ten~~ six years from the date to which they relate;
- (b) at all reasonable times, open to inspection by the DFSA or the Auditor of the Authorised Person; and
- (c) if requested by the DFSA capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.

8.3.4 All regulatory returns prepared by the Authorised Firm must be prepared and submitted in accordance with the requirements set out in PIB or PIN as applicable.

Changes to the financial year end Financial years

8.3.5 (1) The first financial year of an Authorised Firm which is a Domestic Firm starts on the day on which it is incorporated and lasts for such period not exceeding 18 months as may be determined by its Directors or Partners.

(2) An Authorised Firm which is a Domestic Firm must as soon as practicable after it has made a determination under (1) notify the DFSA of the end date determined for its first financial year.

(3) The second and any subsequent financial year of an Authorised Firm which is a Domestic Firm shall, except as provided in Rule 8.3.6, start at the end of the previous financial year and shall last for 12 months or such other period which is within 7 days either shorter or longer than 12 months as may be determined by its Directors or Partners.

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- 8.3.56** (1) ~~If an An~~ Authorised Firm which is a Domestic Firm may only and intends to change its financial year end from a period provided for under Rule 8.3.5(3) with, it must obtain the DFSA's prior consent before implementing the change.
- (2) The application for consent must be in writing and include the reasons for the change.
- (3) The DFSA may require the Authorised Firm to obtain written confirmation from its Aauditor that the change of financial year end would not result in any significant distortion of the financial position of the Authorised Firm.
- 8.3.67** If an Authorised Firm is not a Domestic Firm and intends to change its financial year, it must provide the DFSA with reasonable advance notice prior to the change taking effect.

8.4 Appointment and termination of aAuditors

8.4.1 An Authorised Person must:

- (a) notify the DFSA of the appointment of an Aauditor by completing and submitting the appropriate form in AFN, including the name and business address of the auditor and the date of the commencement of the appointment;
- (b) prior to the appointment of the Aauditor, take reasonable steps to ensure that the Aauditor has the required skills, resources and experience to audit the business of the Authorised Person for which the Auditor has been appointed; and
- (c) if it is a Domestic Firm, ensure that the Aauditor, at the time of appointment and for the duration of the engagement ~~as an auditor~~, is registered with the DFSA as a Registered Auditor.

8.4.2 An Authorised Person must notify the DFSA immediately if the appointment of the Aauditor is or is about to be terminated, or on the resignation of its Aauditor, by completing and submitting the appropriate form in AFN giving the reasons for the cessation of the appointment.

8.4.3 An Authorised Person must appoint an Aauditor to fill any vacancy in the office of Aauditor and ensure that the replacement Aauditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

- 8.4.4** (1) An Authorised Person must take reasonable steps to ensure that the Auditor and the relevant audit staff of the Aauditor are independent of and not subject to any conflict of interest with respect to the Authorised Person.
- (2) An Authorised Person must notify the DFSA if it becomes aware, or has reason to believe, that the Auditor or the relevant audit staff of the Auditor are no longer independent of the Authorised Person, or have a
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conflict of interest which may affect their judgement in respect of the Authorised Person.

Guidance

1. An Authorised Person should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Auditor or any of the relevant Employees of the Auditor that may affect the judgement of the Auditor when conducting an audit of the Authorised Person or complying with all its legal obligations, including the Regulatory Law, AUD, AML and other relevant modules of the DFSA Rulebook. The relevant staff of an auditor are independent if their appointment or retention by an Authorised Person is not contrary to any applicable ethical guidance issued by the professional supervisory body.
2. An Authorised Person should consider rotating the appointed relevant staff of the Auditor on a regular basis every five years to ensure that the relevant staff of the Auditor remains independent.
3. ~~Additional requirements relevant to Auditors appointed for a Fund (see CIR Rule 9.3.4) apply independently of the requirements in the Rules in this Chapter.~~

8.4.5 If requested by the DFSA, an Authorised Person which carries on Financial Services through a Branch must provide the DFSA with information on its appointed or proposed Auditor with regard to the Auditor's skills, experience and independence.

~~**8.4.6** Where an auditor has not been appointed by an Authorised Person, the DFSA may direct an Authorised Person to appoint an auditor in accordance with the requirements in this chapter.~~

~~**8.4.7** Where an auditor appointed by an Authorised Person is in the opinion of the DFSA not suitable to audit that Authorised Person, the DFSA may direct that auditor to remove itself as the auditor of that Authorised Person.~~

~~**8.4.8** The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a direction made under Rule 8.4.7.~~

8.5 Co-operation with Auditors

8.5.1 An Authorised Person must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Auditor that its Auditor reasonably requires, or is entitled to receive as Auditor ~~such assistance as the auditor reasonably requires to discharge its duties;~~
- (b) give the Auditor right of access at all reasonable times to relevant records and information within its possession;
- (c) allow the Auditor to make copies of any records or information referred to in (b);
- (ed) do not interfere with the Auditor's ability to discharge its duties;

- ~~(d) do not provide false or misleading information to the auditor; and~~
- (e) report to the Aauditor any matter which may significantly affect the financial position of the Authorised Person; and
- (f) provide such other assistance as the Auditor may reasonably request it to provide.

8.6 ~~Function of the auditor~~ Audit reports

8.6.1 ~~An Authorised Firm or Authorised Market Institution, as applicable, An Authorised Person~~ must, in writing, require its Aauditor to:

- (a) conduct an audit of and produce a Financial Statement Auditor's Report on the Authorised Person's financial statements in accordance with the International Standards on Auditing;
- (b) produce a Regulatory Returns Auditor's Report in accordance with the Rules in AUD App1 as relevant;
- (c) produce, if the Authorised Firm is permitted to control or hold Client Money, a Client Money Auditor's Report in accordance with the Rules in AUD App2;
- (d) produce, if the Authorised Firm is permitted to control or hold Insurance Monies, an Insurance Monies Auditor's Report in accordance with the Rules in AUD App3; and
- (e) produce, if the Authorised Firm is permitted to hold or control Client Investments, Arrange Custody or Provide Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, in accordance with the Rules in AUD App4.

Guidance

For the purposes of Rule 8.6.1(a) the financial statements of an Authorised Person which is a Branch may be the financial statements prepared for the Authorised Person's head office.

- ~~(a) conduct an audit of the Authorised Person's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of its financial business;~~
- ~~(b) produce a report on the audited accounts which states:

 - ~~(i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;~~~~

- ~~(ii) in particular, whether the accounts give a true and fair view of the financial position of the Authorised Person for the financial year and of the state of the Authorised Person's affairs at the end of the financial year end; and~~
 - ~~(iii) any other matter or opinion relating to the requirements of this chapter;~~
 - ~~(c) produce an Auditor's Annual Report which states whether:~~
 - ~~(i) the auditor has audited the Authorised Person's annual financial statements in accordance with the IAASB;~~
 - ~~(ii) the auditor has carried out any other procedures considered necessary, having regard to the IAASB;~~
 - ~~(iii) the auditor has received all necessary information and explanations for the purposes of preparing this report to the DFSA;~~
 - ~~(iv) (in the case of an Authorised Firm) in the auditor's opinion, the regulatory returns specified by the applicable Rules in PIN or PIB have been properly prepared by the Authorised Firm and provide a true and fair representation of the financial position of the Authorised Firm, as at the date of the Authorised Firm's financial year end;~~
 - ~~(v) in the auditor's opinion, the Authorised Person's regulatory returns to the DFSA have been properly reconciled with the appropriate audited accounts;~~
 - ~~(vi) in the case of an Authorised Firm, in the auditor's opinion, that an Authorised Firm which is subject to an expenditure based requirement has calculated the expenditure based requirement in accordance with the Rules;~~
 - ~~(vii) in the auditor's opinion, the Authorised Person's financial resources as at its financial year end have been properly calculated in accordance with the Rules and are sufficient to meet the relevant prudential requirements or minimum financial resources requirement; and~~
 - ~~(viii) in the case of an Authorised Firm, in the auditor's opinion, the Authorised Firm has kept proper accounting records, in compliance with the applicable Rules in PIN or PIB;~~
 - ~~(d) produce, if the Authorised Firm controls or holds Client Money, a Client Money Auditor's Report which states whether, in the opinion of the auditor:~~
 - ~~(i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB chapter 6 and, if applicable, COB App 5;~~
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- ~~(ii) — the Authorised Firm's controls are such as to ensure that Client Money is identifiable and secure at all times;~~
 - ~~(iii) — any of the requirements in COB chapter 6 and the Client Money Provisions have not been met;~~
 - ~~(iv) — if applicable, Client Money belonging to Segregated Clients has been segregated in accordance with the Client Money Provisions;~~
 - ~~(v) — if applicable, the Authorised Firm was holding and controlling an appropriate amount of Client Money in accordance with COB chapter 6 and with the Client Money Provisions as at the date on which the Authorised Firm's audited balance sheet was prepared; and~~
 - ~~(vi) — if applicable, there have been any material discrepancies in the reconciliation of Client Money;~~
 - ~~(e) — produce, if the Authorised Firm controls or holds Insurance Monies, an Insurance Monies Auditor's Report which states whether, in the opinion of the auditor:

 - ~~(i) — the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB section 7.12;~~
 - ~~(ii) — the Authorised Firm's controls are such as to ensure that Insurance Monies are identifiable and secure at all times;~~
 - ~~(iii) — any of the requirements in COB section 7.12 have not been met;~~
 - ~~(iv) — if applicable, the Authorised Firm was holding and controlling an appropriate amount of Insurance Monies in accordance with COB section 7.12 as at the date on which the Authorised Firm's audited balance sheet was prepared; and~~
 - ~~(v) — if applicable, there have been any material discrepancies in the reconciliation of Insurance Monies;~~~~
 - ~~(f) — produce, if the Authorised Firm holds or controls Client Investments, Arranges Custody or Provides Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, which states whether, in the opinion of the auditor:

 - ~~(i) — the Authorised Firm has, throughout the year, maintained systems and controls to enable it to comply with the Safe Custody Provisions in COB App6;~~
 - ~~(ii) — the Safe Custody Investments are registered, recorded or held in accordance with the Safe Custody Provisions;~~
 - ~~(iii) — there have been any material discrepancies in the reconciliation of Safe Custody Investments; and~~~~
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- ~~(iv) any of the requirements of the Safe Custody Provisions have not been met;~~
- ~~(g) submit the reports produced pursuant to Rules 8.6.1(b)–8.6.1(f) above to the Authorised Person; and~~
- ~~(h) notify the DFSA in writing if he resigns due to significant concerns which have previously been raised with senior management of the Authorised Person and which have not been addressed.~~

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).~~

8.6.2 ~~An Authorised Person must submit any auditor’s reports produced by its Auditor that are and financial statements required by this chapter to the DFSA within four months of the Authorised Person’s financial year end.~~

8.6.3 ~~(1) If requested, a~~An Authorised Person must, subject to (2), upon request by any Person, provide to any Person a copy of its most recent audited accounts financial statements, together with the Financial Statement Auditor’s Report to the Person auditor’s report referred to in Rule 8.6.1(b). If the copy is made available in printed form, the Authorised Person may make a charge to cover reasonable costs incurred in providing the copy.

~~(2) The requirement in (1) does not apply to an Authorised Firm which:~~

- ~~(a) is in Category 3B, Category 3C or Category 4; and~~
- ~~(b) does not hold or control Client Assets or Insurance Monies.~~

Guidance

~~An Authorised Person should be aware that there may be other legislation applicable to it that may require the Authorised Person to provide access to all or part of its financial statements.~~

8.7 Registration of Auditors

Registration of an Auditor

~~**8.7.1** A Person intending to audit Authorised Firms and Authorised Market Institutions (that are Domestic Firms), or Domestic Funds must apply to the DFSA for registration in accordance with the Rules in this Chapter.~~

Guidance

~~Applicants and Auditors are required to pay fees as prescribed in FER.~~

~~8.7.2~~ An applicant for registration must complete and submit the appropriate form in AFN, supported by such additional material as may be required by the DFSA.

Guidance

Applicants and Auditors are required to pay fees as prescribed in FER.

Consideration of the application

~~8.7.3~~ (1) An applicant for registration must be able to demonstrate to the DFSA's satisfaction that:

- ~~(a)~~ it is fit and proper as provided in (2);
- ~~(b)~~ it has professional indemnity insurance as required under Section 8.17;
- ~~(c)~~ it has adequate systems, procedures and controls to ensure due compliance with:
 - ~~(i)~~ the International Standards on Auditing;
 - ~~(ii)~~ the International Standards on Quality Control; and
 - ~~(iii)~~ the Code of Ethics for Professional Accountants;
- ~~(d)~~ where applicable, it has adequate systems, procedures and controls to ensure due compliance with:
 - ~~(i)~~ the Islamic Accounting and Auditing Standards; and
 - ~~(ii)~~ the Code of Ethics for Accountants and Audit Firms of Islamic Financial Institutions;
- ~~(e)~~ it is controlled by Persons each of whom hold a Recognised Professional Qualification from a Recognised Professional Body; and
- ~~(f)~~ it has complied with any other requirement as specified by the DFSA.

~~(2)~~ For the purposes of assessing whether an applicant for registration meets the fit and proper requirement under (1)(a), the DFSA will consider:

- ~~(a)~~ the application and submissions;
- ~~(b)~~ background and history;
- ~~(c)~~ the ownership and the Group structure;
- ~~(d)~~ resources, including human and technological;

- ~~(e) whether the applicant's affairs are likely to be conducted and managed in a sound and prudent manner; and~~
- ~~(f) any other matter considered relevant by the DFSA.~~
- ~~(3) For the purposes of (1)(e):~~
 - ~~(a) "control" means:~~
 - ~~(i) in a body corporate, a majority of the directors and a majority of the votes of the shareholders; or~~
 - ~~(ii) in a partnership (except a limited partnership) means a majority of the partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote; and~~
 - ~~(iii) in a limited partnership means a majority of the general partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote;~~
 - ~~(b) "majority" means:~~
 - ~~(i) where under the Auditor's constitution matters are decided on by the exercise of voting rights, a majority of the rights to vote on all, or substantially all, matters; or~~
 - ~~(ii) in any other case a majority of the Persons having rights under the constitution of the Auditor to enable them to direct its overall policy or alter its constitution.~~

~~8.7.4 The DFSA may impose in its absolute discretion any terms or conditions on the registration.~~

~~8.8 Regulatory appeals~~

~~8.8.1 An applicant may appeal to the Regulatory Appeals Committee against any refusal to grant registration, or any condition of registration imposed under Rule 8.7.4 and the Regulatory Appeals Committee has jurisdiction to hear any such appeal.~~

~~Guidance~~

~~Under Article 98 of the Regulatory Law 2004, the DFSA may in its absolute discretion grant or refuse to grant registration.~~

~~8.9 Obligations of Auditors and Audit Principals~~

8.9.1 ~~An Auditor must:~~

- ~~(a) — continue to comply with all its obligations including those in Chapter 8;~~
- ~~(b) — comply with the applicable International Standards of Auditing, Quality Control and Codes of Ethics referred to in Rule 8.7.3(c) and (d);~~
- ~~(c) — Appoint an Audit Principal in accordance with the International Standards on Quality Control; and~~
- ~~(d) — ensure that each Audit Principal is fit and proper to conduct audit work on behalf of the Auditor.~~

8.9.2 ~~An Audit Principal must:~~

- ~~(a) — manage the conduct of audit work undertaken by the Auditor;~~
- ~~(b) — sign audit reports on behalf of the Auditor; and~~
- ~~(c) — sign any other report as may be required by the DFSA from time to time.~~

8.9.3 ~~In assessing whether an Audit Principal is fit and proper, the Auditor must ensure that the Audit Principal at a minimum:~~

- ~~(a) — holds a Recognised Professional Qualification;~~
- ~~(b) — has at least five years of prior relevant experience in the past seven years in auditing financial services; and~~
- ~~(c) — is a member in good standing of a Recognised Professional Body.~~

Guidance

~~When assessing a person's suitability to be appointed as an Audit Principal, an Auditor should ascertain matters such as whether any disciplinary action has been taken against that person by a Recognised Professional Body.~~

8.10 ~~Notification of changes~~**8.10.1** ~~An Auditor must notify the DFSA in writing within 30 days:~~

- ~~(a) — of any change of its Audit Principals, including the appointment of any new Audit Principal;~~
- ~~(b) — of any claims made against the Auditor including but not limited to those lodged against the Auditor's professional indemnity insurance;~~
- ~~(c) — of any matter that can reasonably be regarded as having a material adverse effect on the DFSA's registration of the Auditor;~~
- ~~(d) — of a change of name or address of the Auditor; and~~

~~(e) — if it no longer meets the requirements for registration as an Auditor.~~

~~8.11 Books and records~~

~~8.11.1 An Auditor must maintain proper books and records at all times to facilitate the proper performance of its functions and discharge of its duties under these Rules.~~

~~8.11.2 An Auditor must maintain records demonstrating how it established the fitness and propriety of each Audit Principal for the purposes of Rule 8.9.~~

~~8.11.3 An Auditor must:~~

~~(a) — maintain records and all relevant information relating to its professional indemnity insurance including the terms of cover and its duration; and~~

~~(b) — upon a request by the DFSA, provide to the DFSA forthwith evidence of the terms of cover and the validity of those policies.~~

~~8.11.4 An Auditor must maintain records of insurance claims made under its professional indemnity insurance policy. Such records, together with each annual renewal proposal form, must be available for inspection by the DFSA.~~

~~8.11.5 An Auditor must maintain records of proof of continuing professional development undertaken by its Employees, including Audit Principals.~~

~~8.11.6 An Auditor must maintain books and records referred to in the above Rules for a period of at least 6 years. In the case of the books and records referred to in Rule 8.11.1, those records must be kept for at least a period of 6 years after the completion of each audit carried out in respect of each client that is an Authorised Firm, Authorised Market Institution or Domestic Fund.~~

~~8.12 Withdrawal of registration~~

~~Guidance~~

~~Under Article 98(3) of the Regulatory Law 2004, the DFSA may make Rules setting out how and on what grounds registration may be withdrawn.~~

~~8.12.1 (1) — The DFSA may withdraw an Auditor's registration either on its own initiative or at the request of the Auditor.~~

~~(2) — A request for withdrawal by an Auditor must be in writing.~~

~~8.12.2 In considering requests for the withdrawal of an Auditor's registration, the DFSA must be satisfied that:~~

- ~~(a) the Auditor has made appropriate arrangements with respect to its existing customers; and~~
 - ~~(b) any other matter which the DFSA would reasonably expect to be resolved has been resolved;~~
- ~~before granting a request for a withdrawal.~~

~~**8.12.3** An application by an Auditor to withdraw its registration does not in itself result in a cancellation of its registration. Until such time as the DFSA withdraws the registration, the Auditor remains subject to, and must comply with, the Regulatory Law 2004, Rules and any other relevant legislation administered by the DFSA.~~

~~**8.12.4** Once an Auditor applies to withdraw its registration, the Auditor must not accept appointments as an Auditor nor issue any audit reports without obtaining the prior written consent of the DFSA.~~

~~**8.12.5** The DFSA must take the necessary steps to withdraw the registration of an Auditor as soon as practicable after an Auditor has applied to withdraw its registration.~~

~~**8.13 Withdrawal on the DFSA's initiative**~~

~~**8.13.1** The DFSA may withdraw the registration of an Auditor on its own initiative if it has reasonable grounds to believe that:~~

- ~~(a) the Auditor is no longer fit and proper; or~~
- ~~(b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.~~

~~**8.13.2** The DFSA may only withdraw the registration of an Auditor on its own initiative if it has given to the Auditor:~~

- ~~(a) a prior written notice setting out the DFSA's reasons for proposing to withdraw its registration; and~~
- ~~(b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed withdrawal.~~

~~**8.13.3** Upon deciding to withdraw the registration of an Auditor, the DFSA must without delay inform the Auditor in writing of:~~

- ~~(a) such decision; and~~
- ~~(b) the date on which the decision is to take effect.~~

~~**Guidance**~~

~~Generally, the DFSA will only consider exercising the power to withdraw the registration of an Auditor on its own initiative after a thorough investigation. For example, the DFSA may receive a notification of termination of that Auditor of a Domestic Fund under CIR Rule 12.2.2. Whether or not the DFSA would exercise its discretion to withdraw registration of the Auditor would depend on the grounds upon which the cessation of the appointment had occurred and the DFSA's investigation.~~

~~**8.13.4** An Auditor may appeal to the Regulatory Appeals Committee against a decision of the DFSA to withdraw its registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.~~

8.14 Suspension by the DFSA

Guidance

~~Under Article 105 of the Regulatory Law, the DFSA may make Rules setting out how and on what grounds registration may be suspended.~~

~~**8.14.1** The DFSA may suspend an Auditor's registration if it has reasonable grounds to believe that:~~

- ~~(a) — the Auditor is no longer fit and proper; or~~
- ~~(b) — the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.~~

~~**8.14.2** Subject to Rule 8.14.3, the DFSA may only suspend the registration of an Auditor after it has given to the Auditor:~~

- ~~(a) — a prior written notice setting out the DFSA's reasons for proposing to suspend its registration; and~~
- ~~(b) — a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed suspension.~~

~~**8.14.3** Where the DFSA forms the view that any delay likely to arise as a result of having to comply with the requirements in Rule 8.14.2 is likely to be prejudicial to the interests of the DIFC, it may suspend an Auditor's registration immediately. In such circumstances, the Auditor may make representations during the suspension period.~~

~~**8.14.4** An Auditor may appeal to the Regulatory Appeals Committee in relation to the DFSA's decision to suspend the Auditor's registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.~~

~~**8.14.5** Upon deciding to exercise its powers under Rule 8.14.1, the DFSA must, without delay, inform the Auditor in writing of:~~

- ~~(a) — its decision;~~
- ~~(b) — the reasons for the suspension; and~~

- ~~(c) — the date on which the decision is to take effect and, if known, the duration of the suspension.~~

Guidance

~~The decision of the DFSA to suspend an Auditor's registration remains in effect until the appeal is heard and a decision is rendered, unless the Regulatory Appeals Committee orders a stay of the suspension decision.~~

8.15 Continuing professional development

~~8.15.1 An Auditor must ensure that all Employees, including Audit Principals, engaged in audit work undertake continuing professional development in accordance with the requirements of:~~

- ~~(a) — the Recognised Professional Body of which the Employee or Audit Principal is a member;~~
- ~~(b) — any applicable internal standards of the Auditor; and~~
- ~~(c) — any direction or order given by the DFSA.~~

8.16 Deleted**8.17 Professional indemnity insurance**

~~8.17.1 An Auditor must hold adequate professional indemnity insurance covering all civil liability arising in connection with the conduct of the Auditor's business by Employees including its Audit Principals.~~

~~8.17.2 An Auditor must, upon request of the DFSA, provide to the DFSA any information relating to the Auditor's professional indemnity insurance policy including the terms and duration of, and any claims made under, such policy.~~

~~8.17.3 An Auditor's professional indemnity insurance may be effected with any reputable insurance company or other underwriter provided that the DFSA may require Auditors not to use certain insurance companies or underwriters or forms of insurance cover.~~

Run-off cover

~~8.17.4 An Auditor, who intends to cease operations in the DIFC, must make appropriate arrangements to cover its liability in connection with past conduct of the Auditor for a period of at least 2 years.~~

8.18 Register of Auditors

~~8.18.1~~ The DFSA must maintain a register of Auditors by recording the following information in respect of current and former Auditors:

- ~~(a) — full name of the Auditor;~~
- ~~(b) — names of the Audit Principals of the Auditor;~~
- ~~(c) — address of the Auditor;~~
- ~~(d) — contact details of the Auditor;~~
- ~~(e) — date of registration of the Auditor;~~
- ~~(f) — date of withdrawal of registration of the Auditor;~~
- ~~(g) — date of any suspensions of registration applicable to an Auditor; and~~
- ~~(h) — date of cessation of suspension or registration.~~

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11 SUPERVISION

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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)~~ 56(3), 58(~~23~~) and 58(34).

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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~~ a reference to the ~~Regulatory Appeals Committee~~ FMT relating to the relevant condition or restriction may commence under Article ~~2928~~.

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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Objection or conditional approval process

- 11.8.7** (1) Where the DFSA proposes to exercise its objection or conditional approval power pursuant to Rule 11.8.5(2)(b) or (c) in respect of a proposed acquisition of, or an increase in the level of control in, an Authorised Firm, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:
- (a) a written notice stating:
 - (i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and
 - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
 - (b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.
- (2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
 - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
 - (c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.
- (3) If the DFSA decides to exercise its power under this Rule not to approve a Person as a Controller or to impose conditions on an approval, the Person may refer the matter to the FMT for review.

Guidance

~~A final decision made by the DFSA pursuant to Rule 11.8.7(2)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).~~

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Other Powers relating to Controllers

- 11.8.13** (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Firm where such a Person:
- (a) has acquired or increased the level of control that Person has in an Authorised Firm without the prior written approval of the DFSA as required under Rule 11.8.4;
 - (b) has breached the requirement in Rule 11.8.8 to comply with the conditions of approval applicable to that Person; or
 - (c) is no longer acceptable to the DFSA as a Controller.
- (2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Firm under (1), the DFSA must provide such a Person with:
- (a) a written notice stating:
 - (i) the DFSA's reasons for objecting to that Person as a Controller; and
 - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
 - (b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.
- (3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
 - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
 - (c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.
- (4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.
- (5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller, that Person must dispose of the relevant holdings within such period as specified in the final notice.

- (6) The DFSA must also notify the Authorised Firm of any decision it has made pursuant to (3).
- (7) If the DFSA decides to exercise its power under this Rule to object to a Person as a Controller, to impose conditions on an approval or to require a Person to dispose of their holdings, the Person may refer the matter to the FMT for review.

Guidance

- ~~1. Sections 3.2.34 and 3.2.37 of the RPP Sourcebook set out the matters which the DFSA takes into consideration when exercising its powers under Rule 11.8.13.~~
- ~~2. A final decision made by the DFSA pursuant to Rule 11.8.13(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).~~

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

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- 11.9.4** (1) The DFSA may:
- (a) grant approval;
 - (b) grant approval with conditions or restrictions; or
 - (c) refuse approval;
- for the creation of a new Cell.
- (2) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (1)(b) and (c).
- (3) If the DFSA decides to exercise its power under (1)(b) and (c), the Insurer may refer the matter to the FMT for review.

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.

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11.10 Notifications

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~~11.10.5~~ (1) The DFSA may in its absolute discretion, object to the establishment by a Domestic Firm of a branch office elsewhere in the world. 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.

(3) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (1).

(4) If the DFSA decides to exercise its power under (1), the Domestic Firm may refer the matter to the FMT for review.

~~11.10.6~~ Deleted 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

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~~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.

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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.~~

- (1) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under Rules 11.10.9, 11.10.10 and 11.10.11 to object to an acquisition or to impose or vary conditions.
- (2) If the DFSA decides to exercise its power under Rule 11.10.9, 11.10.10 or 11.10.11 to object to an acquisition or to impose or vary conditions, the Authorised Firm may refer the matter to the FMT for review.