

Appendix 2

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



The DFSA Rulebook

General Module

(GEN)

1 INTRODUCTION

1.1 Application

- 1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law 2012 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

Guidance

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive and sections 11.2, 11.3, 11.11, 11.12 and 11.13 of GEN apply to a Representative Office.

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2.3 By way of business

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- 2.3.3** A Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an Investment Company or Investment ~~Limited Liability~~ Partnership, provided that:

- (a) such Shares carry at least 50% of the voting rights or the acquisition will take an existing holding to at least 50%; or
- (b) the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the Body Corporate; and
- (c) he is to enter as principal into the transaction

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3.4 Scope of the Financial Promotions Prohibition

- 3.4.1** (1) A Person shall not, subject to (2), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.

- (2) A Person other than an Authorised Person may make a Financial Promotion in or from the DIFC if, and only to the extent that, the Person:
 - (a) is licensed and supervised by a Financial Services Regulator in the UAE;
 - (b) is a Recognised Body or External Fund Manager;
 - (c) is a Reporting Entity and makes a Financial Promotion in or from the DIFC exclusively for the purpose of discharging its mandatory disclosure requirements; or
 - (d) makes an exempt Financial Promotion as specified in (3).
- (3) For the purposes of (2)(d), a communication is an “exempt Financial Promotion” if it is:
 - (a) approved by an Authorised Firm;
 - (b) directed at and capable of acceptance exclusively by a Person who appears on reasonable grounds to be a Professional Client of the type specified in COB Rule 2.3.42(2);
 - (c) made to a Person in the DIFC (the “recipient”) as a result of an unsolicited request by the recipient to receive the Financial Promotion;
 - (d) made or issued by or on behalf of a government or non-commercial government entity; or
 - (e) made in the DIFC by a Person in the course of providing legal or accountancy services and which may reasonably be regarded as incidental to and a necessary part of the provision of such services.

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6.5 Location of offices

- 6.5.1 (1) Where an Authorised Person ~~or a Person who has submitted an application for authorisation to carry on one or more Financial Services~~, is a Body Corporate incorporated in the DIFC, its head office and registered office must be in the DIFC.
- (2) Where an Authorised Person ~~or a Person who has submitted an application for authorisation to carry on one or more Financial Services~~, is

a partnership established under the ~~DIFC~~-Limited Partnership Law 2004 or the ~~DIFC~~ General Partnership Law 2006, its head office and registered office must be in the DIFC.

- (3) Where an Authorised Person operates in the DIFC through a Branch:
- (a) it must have a place of business in the DIFC where it carries on the activities for which it is authorised by the DFSA; and
 - (b) that place of business must be its address in the DIFC to which communications and notices may be addressed.
- (4) An applicant for authorisation to carry on one or more Financial Services must demonstrate to the satisfaction of the DFSA that it will meet the requirements in this Rule when the authorisation is granted.
- (5) In this Rule:
- (a) “head office” means the principal place where an Authorised Person carries on:
 - (i) the day-to-day management and control of its business; and
 - (ii) the activities for which it is authorised by the DFSA; and
 - (b) “registered office” has the meaning given in the Companies Law 2009, Limited Partnership Law 2004 or General Partnership Law 2006, as applicable.

Guidance

1. In considering the location of an Authorised Firm’s or Authorised Market Institution’s head office, the DFSA will have regard to the location of its directors, partners and senior management and to the main location of its day-to-day operational, control, management and administrative arrangements and will judge matters on a case by case basis.
2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect to the location of its offices will, on this point alone not be considered fit and proper or able to satisfy the Licensing Requirements.
3. The DFSA expects all Authorised Persons to have a physical presence, including Employees, in the DIFC. The DFSA does not permit ‘brass plate’ operations i.e. offices with the name of the entity but with no staff or where no meaningful activity takes place.

4. The Companies Law, Limited Partnership Law and General Partnership Law of the DIFC also require entities to which they apply, to have a registered office in the DIFC, and to carry on their principal business activity in the DIFC.

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11 SUPERVISION

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

- 11.4.1 An Authorised Firm other than a Representative Office seeking to have its Licence withdrawn must submit a request in writing stating:

- (a)

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11.12 Requirement to provide a report

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

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12 BUSINESS TRANSFER SCHEMES

Guidance

1. Part 9 of the Regulatory Law ("Part 9") sets out provisions relating to financial services business transfer schemes ("transfer schemes"). Article 106 provides that no transfer scheme is to have effect unless a Court order has been made in relation to the scheme. Article 108 provides that the Court may make an order sanctioning a transfer scheme.
2. The DFSA may under Article 113 of the Regulatory Law make Rules providing for provisions of Part 9 to have effect in specified cases with modifications. This chapter sets out such Rules.
3. The intended effect of the Rules in this chapter when read with Part 9 is that:
 - (a) a Banking transfer scheme and an Insurance transfer scheme (as defined in this chapter) must continue to comply with all relevant requirements in Part 9 and such a scheme does not take effect unless a Court order has been made in relation to it under Article 108; and
 - (b) a transfer scheme, other than a scheme referred to in (a), is not required to be sanctioned by a Court order under Article 108 if certain conditions set out in Rule 12.1.4 are met.

4. The Rules in this chapter do not prevent an Authorised Firm or transferee applying for a Court order sanctioning a transfer scheme under Part 9 if they consider it appropriate to do so, for example, if the scheme is complex, is likely to be contentious or if additional legal certainty is sought.
5. The Rules in this chapter do not modify requirements for a transfer scheme relating to a Domestic Fund (as such a transfer scheme is already subject to modifications in CIR chapter 16).

Modifications applying to transfer schemes

12.1.1 The Rules in this chapter are prescribed under Article 113 of the Regulatory Law and Part 9 of that Law is to be read as if it was modified, in relation to the cases set out in Rule 12.1.4, as specified in this chapter.

12.1.2 In this chapter:

- (a) “Banking transfer scheme” means a transfer scheme where the whole or part of the business to be transferred relates to the Authorised Firm’s business of Accepting Deposits;
- (b) “Fund transfer scheme” means a transfer scheme relating to the Fund Property of a Domestic Fund or of a sub-fund of an Umbrella Fund that is a Domestic Fund;
- (c) “Insurance transfer scheme” means a transfer scheme where the whole or part of the business to be transferred relates to the Authorised Firm’s Insurance Business;
- (d) “the Law” means the Regulatory Law; and
- (e) “transfer scheme” has the meaning given in Article 106 of the Law.

12.1.3 The Rules in this chapter do not modify the provisions of Part 9 of the Law so far as they apply to any of the following:

- (a) a Banking transfer scheme;
- (b) an Insurance transfer scheme; or
- (c) a Fund transfer scheme.

12.1.4 A transfer scheme, other than a scheme referred to in Rule 12.1.3, is not required to be sanctioned by a Court order under Article 108 of the Law to be effective if:

- (a) all of the Clients of the Authorised Firm who will be affected by the transfer scheme have consented to it;

- (b) the transfer scheme is expressly permitted under agreements between the Authorised Firm or transferee and the Clients of the Authorised Firm who will be affected by the scheme and any procedures in the agreements for giving effect to the scheme have been complied with; or
- (c) the DFSA has consented in writing to the transfer scheme under Rule 12.1.5.

12.1.5 (1) An Authorised Firm or transferee may apply in writing to the DFSA seeking its consent to a transfer scheme.

(2) The DFSA may consent in writing to the transfer scheme if it is reasonably satisfied that:

(a) the scheme is not a transfer scheme referred to in Rule 12.1.3;

(b) it is more appropriate and proportionate, and in the overall interests of Clients affected by the scheme, for the Authorised Firm or transferee to seek the DFSA's consent rather than applying to the Court for an order sanctioning the scheme;

(c) the Authorised Firm or transferee has taken all reasonable steps to pursue other options for giving effect to the scheme;

(d) the scheme is not likely to result in any material prejudice to the interests of Clients of the Authorised Firm; and

(e) implementation of the scheme will not result in the Authorised Firm or transferee contravening any applicable law or Rule.

(3) The procedures in Schedule 3 to the Law apply to a decision of the DFSA under (2) to refuse to give its consent to a transfer scheme.

(4) If the DFSA decides to refuse to give its consent under this Rule, the Authorised Firm may refer the matter to the FMT for review.

Guidance

1. The DFSA expects to receive applications seeking its consent to a transfer scheme only in limited circumstances, and if the scheme is not complex or contentious. If a scheme is likely to be contentious or complex, then it is more appropriate for an application to be made to the Court.
 2. The DFSA will not give its consent unless the applicant can demonstrate that it has taken all reasonable steps to pursue other options for implementing the scheme, such as seeking the consent of affected Clients or using existing agreements with Clients.
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3. The DFSA is also unlikely to give its consent to a transfer scheme in cases such as where:
- (a) it is likely to result in materially prejudice to the interests of Clients;
 - (b) due to the complexity of the transfer scheme it is unclear what the precise impact of the scheme will be on Clients or whether it will be legally effective; or
 - (c) implementation of the scheme will result in the Authorised Firm or transferee breaching a requirement in a law or Rule, for example, if the transferee does not have the necessary authorisation to conduct that business or if the transfer will result in the Authorised Firm or transferee breaching a prudential requirement.
4. The type of case where the DFSA anticipates giving its consent to a transfer scheme is where the scheme is relatively simple and the applicant has taken all reasonable steps to pursue other options but has been unable to complete the necessary processes because, for example, a small number of Clients do not respond.

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