



CONSULTATION PAPER NO. 101

29 JUNE 2015

PROPOSED MISCELLANEOUS AMENDMENTS

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on the DFSA's proposals to make a variety of amendments to the DFSA's policy framework, as expressed through its Rules. The DFSA has gathered together a number of miscellaneous amendments to the modules of the DFSA Rulebook; each item in this paper is a discrete amendment.

Who should read this paper?

2. The proposals in this Paper would generally be of particular interest to Authorised Persons.
3. The proposals under item 3 of this paper would be of particular interest to Representative Offices and those considering setting up Representative Offices in the DIFC.

How to provide comments?

4. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

5. The deadline for providing comments on the proposals is **29 July 2015**. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We will then proceed to enact the relevant changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.

Comments to be addressed or emailed to:

**Consultation Paper No. 101
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE**

Email: consultation@dfsa.ae

Tel: +971(0)4 3621500

Terminology in this paper

6. In this paper, defined terms are identified throughout by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the [GLO](#) Module or in the proposed amendments. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Structure of this paper

7. The remainder of this Consultation Paper is structured as follows:
- (a) Item 1: Communications of information and marketing material;
 - (b) Item 2: Place of business;
 - (c) Item 3: Application of GEN module to Representative Offices;
 - (d) Item 4: Regulatory Law Part 9 – Transfers of business;
 - (e) Item 5: Definitions of Holding Company, Parent and Subsidiary;
 - (f) Item 6: Errors and cross-referencing;
 - (g) Appendix 1: draft amendments to the COB Module;
 - (h) Appendix 2: draft amendments to the GEN Module;
 - (i) Appendix 3: draft amendments to the REP Module;
 - (j) Appendix 4: draft amendments to the FER Module;
 - (k) Appendix 5: draft amendments to the GLO Module;
 - (l) Appendix 6: draft amendments to the AML Module;
 - (m) Appendix 7: draft amendments to the CIR Module; and
 - (n) Appendix 8: draft amendments to the PIB Module.

ITEM 1 COMMUNICATIONS OF INFORMATION AND MARKETING MATERIAL

8. COB 3.2.2 and COB 7.3.1 set out requirements on communication of information and marketing material. The intention of these Rules is to ensure that an Authorised Firm cannot, in any communication with a Person, limit its duty or liability to that Person under legislation administered by the DFSA.
9. It has become clear to us that some Firms have interpreted the term 'communications' in this rule more narrowly than was our policy intention. A Firm should also not be able to limit its duty or liability under DFSA-administered legislation in an agreement with a Person.
10. We are proposing to amend these Rules to clarify the issues discussed above, and also to add Guidance setting out the DFSA's understanding of how the term 'communications' should be interpreted.
11. The draft Rules and Guidance relating to these proposals can be found in Appendix 1.

Issues for consideration

Q1: Do you have any concerns about our proposals to amend the rules on communications? If so, what are they and how should they be addressed?

ITEM 2 PLACE OF BUSINESS

12. GEN 6.5.1 sets out requirements for Authorised Persons as regards their place of business in the DIFC. Our policy intention with this requirement is that all DFSA-regulated firms should have a physical presence in the DIFC, with Employees, where meaningful activity takes place. The DIFC is not, and has never been, a Centre where 'brass plate' operations are allowed.
13. Further, if the Authorised Person is an entity incorporated or established in the DIFC, it must have its "head office" in the DIFC. The current wording of this Rule, so far as it requires a body incorporated in the DIFC to have a "head office" in the DIFC, has led to difficulties in some particular instances. The applicability of the Rule to Branches is also not entirely clear.
14. We propose to consult on amendments to GEN 6.5.1 which would address the points above. Specifically, we propose to define "head office", for the purposes of this Rule, to make clear our expectations on the type of functions that a Firm should carry out at such an office in the DIFC.
15. The draft Rules relating to these proposals can be found in Appendix 2.

Q2: Do you have any concerns about our proposals to amend the 'place of business' requirements? If so, what are they and how should they be addressed?

ITEM 3 APPLICATION OF GEN MODULE TO REPRESENTATIVE OFFICES

16. Under the current regime, only chapters 1 to 3 of the [GEN](#) Module are specified to apply to a Representative Office. However, there are specific requirements in the [REP](#) Module covering some of the matters that are covered by the other chapters of GEN, such as the authorisation procedure.
17. Our recent experience has suggested that it is appropriate to apply other parts of the DFSA regime to Representative Offices, or to clarify that they apply, largely to ensure that the framework around the flow of information from a Representative Office to the DFSA is clear and that there can be no room for misunderstanding around the obligations of a Representative Office to provide the DFSA with clear and accurate information.
18. Given this, we propose to make clear that the following GEN provisions apply to Representative Offices:
 - (a) 11.2 – Waivers;
 - (b) 11.3 – Application to change the scope of a Licence;
 - (c) 11.11 – Provision of notifications and reports;
 - (d) 11.12 – Requirement to provide a report; and
 - (e) 11.13 – Imposing Restrictions.

Additionally, we propose to introduce new Rules into REP on the obligation of a Representative Office to provide clear and accurate information to the DFSA. We also intend to specify further information that must be provided if a Representative Office seeks to have its Licence withdrawn.

19. The draft Rules relating to these proposals can be found in Appendix 2 (GEN Rule 1.1.1 Guidance and GEN Rules 11.4.1 and 11.12.1) and Appendix 3 (REP Rule 2.3.1 and section 5.3).

Q3: Do you have any concerns about the application of these requirements to Representative Offices? If so, what are they and how should they be addressed?
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ITEM 4 REGULATORY LAW PART 9 – TRANSFERS OF BUSINESS

20. Part 9 of the [Regulatory Law 2004](#) (“the Regulatory Law”) sets out requirements for business transfer schemes, i.e., the transfer of the whole or part of a DFSA-regulated financial services business to another firm. The main requirement is that any proposal for a transfer scheme must be approved by the Court.

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21. Article 113 of the Regulatory Law allows the DFSA to make additional Rules in this area to modify the application of the Part 9 requirements for cases set out in the Rules. For example, Part 8 of the [CIR](#) Module sets out additional requirements for the transfers of Funds.¹
 22. Our regime is based on that in the UK, where the regime applies (largely) to transfers of banking (i.e., deposit taking) or insurance business. The logic behind this is that these are more likely to be businesses with significant numbers of customers, so obtaining the consent of each customer to the business transfer (the normal alternative) would be costly, time-consuming and difficult. Applying to the Court for approval of a transfer scheme is, in such cases, administratively convenient, while also providing a forum for any customer (or other involved party, such as the regulator) to object to the transfer if they so wish.
 23. Under the DFSA regime, the scope of the Part 9 provisions is much broader, covering all types of Financial Services business. This broad scope of application has created work for the DFSA and, in many cases, unnecessary cost and burden for Firms, because there has been no real regulatory benefit, or protection of customers, arising from the need for Court approval of the schemes in question, usually because they have been of very small scale.
 24. Given this, we are proposing to make Rules, under the Article 113 power, to:
 - (a) clarify that banking and insurance transfer schemes need to be approved by the Court; but
 - (b) allow other types of transfer not to require the approval of the Court, provided that:
 - (i) the Firm obtains the consent of affected customers²; or
 - (ii) transfers are expressly permitted under the agreements the Firm has in place with affected customers; or
 - (iii) the Firm obtains the consent of the DFSA.

See Appendix 2, GEN 12.1.3 and 12.1.4

25. It is not our intention that the route of obtaining DFSA consent should be the first option for Firms. So the proposed Rules set out the limited situations in which it would be appropriate for the Firm to apply to the DFSA for its consent. For example, if there are matters of contention between the Firm and affected customers, the DFSA considers that such matters should be settled before the Court. If Firms were to apply to the DFSA for its consent, an application fee is

¹ The proposals in this consultation paper will not affect Funds transfer schemes.

² In some cases, the transfer of business has involved only a handful of clients. Seeking the consent of this number of clients should not be onerous for the firm.

also proposed. See Appendix 2, GEN Rule 12.1.5 and Appendix 4, FER Rule 2.10.1.

26. We believe that these proposals will ensure that any transfers of business by DIFC Firms are conducted in a manner that is proportionate and flexible, but so that customers are adequately protected.

Q4: Do you have any concerns about these proposals on business transfers? If so, what are they and how should they be addressed?

ITEM 5 DEFINITIONS OF HOLDING COMPANY, PARENT AND SUBSIDIARY

27. The current definitions of Holding Company, Parent and Subsidiary in the GLO Module cross-refer to the DIFC Companies Law 2009 (“Companies Law”). The definitions in the Companies Law are not clear about how far up and down (from the DIFC entity) in the corporate structure the definitions extend.
28. The policy intent here is that the DFSA should be able to look upwards in a Group structure as many levels as is necessary for the purposes of our supervision, so from the DIFC entity to any Parent, however far above the DIFC entity it sits in the Group structure. The definition of Group in GLO reflects this, as it refers to ‘any parent’.
29. We propose to clarify the text of the GLO definitions further to make clear that in the Rules the definition of a Group is intended to cover all levels in the corporate structure. To achieve this we propose revised definitions of Group, Holding Company, Parent and Subsidiary, making use of existing text from the Companies Law where appropriate.
30. The draft definitions relating to these proposals can be found in Appendix 5. A consequential change to the AML module arising from the new definitions can be found in Appendix 6.

Q5: Do you have any concerns around our proposals to clarify the definitions of Group, Holding Company, Parent and Subsidiary? If so, what are they and how should they be addressed?

ITEM 6 ERRORS AND CROSS-REFERENCING

31. We have also identified a number of other matters that require clarification or where errors need to be corrected, particularly in cross-referring to other Rules.
32. The proposed changes we are consulting on are:
- (a) to confirm that the [Hedge Fund Code of Practice 2010](#) applies to Qualified Investor Funds (QIFs) that are Hedge Funds (see Appendix 7). This was omitted from the changes proposed in [CP93](#), to introduce QIFs, through an oversight;

- (b) in GEN 2.3.3, to replace “Investment Limited Liability Partnership” with “Investment Partnership”, as the former term is not defined and we believe the reference should be to the latter defined term (see Appendix 2);
- (c) in GEN 3.4.1(3)(b), to refer to a deemed professional client under COB 2.3.4 to reflect the recently revised client categories (see Appendix 2);
- (d) for COB 3.4.2(3), to add a new defined term “Discretionary Portfolio Management Account” to GLO as this expression is not currently defined (see Appendix 5); and
- (e) in PIB A2.4 Table 1 to clarify, in a few cases, who must provide the forms (see Appendix 8).