

Appendix 4

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

*Please note that a limited number of Rules in this text are not being amended, but are included for reference.



The DFSA Rulebook

Representative Office Module

(REP)

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.
2. A Representative Office should also ensure that it complies with and has regard to relevant provisions of the Regulatory Law ~~2004~~ and Markets Law 2012. The Regulatory Law ~~2004~~ gives the DFSA a number of important powers in relation to Authorised Firms including powers of supervision and enforcement.
3. GEN Rule 2.26.1 defines tThe Financial Service of Operating a Representative Office and prescribes the activities which a Representative Office is permitted to carry on. By virtue of GEN 2.2.9 and 2.26.2, the Financial Service of Operating a Representative Office is a stand alone financial service activity.
4. Whilst much Representative Office activity will not involve a continuing relationship with the Persons to whom marketing is directed, where such a relationship is necessary, the Representative Office will need to be careful to ensure that it does not carry on any activities other than those prescribed under GEN Rule 2.26.~~12~~.
5. A Representative Office which undertakes a Financial Service which is outside the scope of its Licence will be in breach of Article 42(4) of the Regulatory Law ~~2004~~. If the DFSA believes that a Representative Office is in breach of Article 42(4), it may take steps which may include withdrawal of authorisation and formal enforcement action under the Regulatory Law ~~2004~~.
6. See also Guidance under GEN section 2.26 for further clarification on the activities that a Representative Office is permitted to undertake.

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4 GENERAL PROVISIONS

4.1 General

4.1.1 A Representative Office must have a place of business within the geographical boundaries of the DIFC.

4.1.2 (1) A Representative Office must not:

- (a) share an office with another Authorised Firm, except as provided in (2);
- (b) represent anyone other than itself or a member of its Group; or
- (c) permit any staff member to be an Employee of another Authorised Person.

(2) A Representative Office may share an office with another Authorised Firm that is a member of the same Group.

Guidance

The DFSA would not consider that an Authorised Firm is sharing an office if that firm were located in serviced offices which were also the place of business of another Authorised Firm.

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4.3 Dealing with property

4.3.1 (1) A Representative Office must not hold or control money or other property belonging to another Person except to the extent that this is necessary to deal with its ordinary business operating expenses and the money or property belongs to a related party.

(2) A “related party” in (1) has the meaning given under Gen Rule 2.26.1(3)(b).

Guidance

While a Representative Office is prohibited from holding money or other assets belonging to its customers, it is not prevented from being able to hold ‘money or other property’ belonging to a related party to deal with its ordinary expenses (see GEN Rule 2.26.1(3)(b) for the definition of a related party).

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4.6 Clear, fair and not misleading

General

4.6.1 In this section, a “financial product” has the same meaning as in GEN Rule 2.26.1(3). ~~means an Investment, Insurance Contract, Profit Sharing Investment Account, Deposit or Credit Facility.~~

4.6.2 When communicating information to a Person in relation to a financial product or financial service, a Representative Office must take reasonable steps to ensure that the communication is clear, fair and not misleading.

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 2004, Rules or any other relevant legislation.

Marketing material

4.6.4 In this section, “marketing material” means any material communicated to a Person in the course of marketing financial services or financial products or making effecting introductions or referrals in accordance with where “marketing” and “financial products” have the meaning prescribed in GEN Rule 2.26.1.

4.6.5 (1) A Representative Office must ensure that any marketing material communicated to a Person contains the following information:

- (a) the name of the Representative Office communicating the marketing material and on whose behalf the marketing material is being communicated;
- (b) the Representative Office’s regulatory status as required under Rule 4.5.2; and
- (c) if the marketing material is directed at a specific class or category of investor, a clear statement to that effect and that no other Person should act upon it.

(2) If the marketing material includes is in the form of an standard terms of a contract of insurance proposal or, banking services proposal, or a prospectus or other offering document, which is capable of acceptance in due course, the Representative Office must ensure that such material it must contains in a prominent position, or have attached to it, a statement that clearly:

- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the financial product;
- (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
- (c) describes the regulatory status accorded to the financial product by that Regulator; and
- (d) includes the following warning:

“This document relates to a financial product which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any prospectus or other documents in connection with this financial product. Accordingly, the DFSA has not approved this document or any other associated

documents nor taken any steps to verify the information set out in this document, and has no responsibility for it.

The financial product to which this document relates may be illiquid and/or subject to restrictions on its resale. Prospective purchasers should conduct their own due diligence on the financial product.

If you do not understand the contents of this document you should consult an authorised financial adviser”;

- (3) A Representative Office which must not distribute such marketing material if it becomes aware that the Person offering the financial product or financial service to which the material relates is in breach of a regulatory or legal requirement that applies to that Person in relation to that product or service.

Guidance

See Guidance items 9 and 13 under GEN section 2.26 for the type of general information which a Rep Office is permitted to distribute.

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