

Appendix 7

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 2004, a “Financial Product” in Article 41B of the Law is prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance.

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 Requirements for an endorsement

Carrying on service with or for 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 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.¹

¹ Note, these proposed rules are based on the current Guidance in RPP which sets out factors the DFSA will take into account in deciding whether or not to grant the Retail Client endorsement. Elevation from Guidance to Rules is considered appropriate to ensure requirements for the DFSA exercising discretion are clearly set out in binding requirements.

Acting as a Trade Repository

7.3.2 The requirements in App 5 must be met by an Authorised Person for the grant of an endorsement to act as a Trade Repository.²

Guidance

Requirements for an Authorised Market Institution to obtain an endorsement to operate an Alternative Trading System can be found in AMI 2.3.1.

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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
 - (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

² Note, the requirements in this Rule were previously in AMI 2.3.4 but have been moved to GEN as both a Firm and an AMI may seek endorsement to act as a Trade repository

Institution as directed by the DFSA under Article 88 of the Regulatory Law 2004 .

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11 SUPERVISION

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11.5 Changes to an authorised individual status

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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 28.

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).~~

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).~~

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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 2004 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.~~ ³ ~~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 2004 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 ~~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,~~

³ This amendment is proposed by the DFSA to ensure consistency between the wording in (1) and (2). That is, it is for clarification and consistency.

~~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 2004 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.