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# The DFSA Rulebook

## Representative Office Module

### **(REP)**

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## **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. The Financial Service of Operating a Representative Office is defined in GEN Rule 2.26.1. By virtue of GEN 2.26.2 and 3.2.6, 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 2.26.2.
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.

### **1.2 Interpretation**

#### **Guidance**

1. Every provision of REP and any other module of the Rulebook should be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.
2. Where this section refers to a provision, this means every type of provision, including Rules and Guidance.

3. Where reference is made in REP to another provision of the Rulebook or to another provision of DIFC legislation, it is a reference to that provision as amended from time to time.
4. Unless the contrary intention appears:
  - a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
  - b. words in the Rulebook in the singular include the plural and words in the plural include the singular.
5. If a provision in the Rulebook refers to a communication, notice, agreement, or other documents 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
6. Any reference to 'dollars' ('\$') is a reference to United States Dollars unless the contrary intention appears.
7. References to Articles made throughout the Rulebook are references to the Regulatory Law 2004 unless otherwise stated.
8. Unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official State holiday in the DIFC, the obligation must take place on the next calendar day which is a business day.

**Defined terms**

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or phrase and are defined in the Glossary (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

## **2 AUTHORISATION**

### **2.1 Licence application**

**2.1.1** A Person, referred to in this chapter as an applicant, who intends to carry on the Financial Service of Operating a Representative Office must apply to the DFSA for a Licence by completing and submitting the appropriate form in AFN.

**2.1.2** (1) An application to Operate a Representative Office may only be made by a Person who is:

- (a) incorporated; and
- (b) regulated by a Financial Services Regulator

in a jurisdiction other than the DIFC.

(2) The DFSA will not consider an application for a Licence from an applicant who intends to operate in the DIFC as a Domestic Firm.

### **2.2 Consideration and assessment of applications**

**2.2.1** An applicant will only be authorised to carry on the Financial Service of Operating a Representative Office if the DFSA is satisfied that the applicant is fit and proper to hold a Licence. In making this assessment the DFSA may consider:

- (a) whether the applicant is subject to supervision by a Financial Services Regulator;
- (b) whether the applicant's Financial Services Regulator in its home state has been made aware of the proposed application and has expressed itself as having no objection to the establishment by the applicant of a Representative Office in the DIFC; and
- (c) any other relevant matters.

#### **Guidance**

Section 2.2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 2.2.1

**2.2.2** In relation to the assessment under Rule 2.2.1:

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;
- (b) the applicant must demonstrate to the DFSA's satisfaction that its Principal Representative is fit and proper;
- (c) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;
- (d) the DFSA will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the DFSA's objectives described under Article 8; and
- (e) the DFSA will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

**2.2.3** A Representative Office applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA with written details of the proposed changes.**Guidance**

A Representative Office applying to change the scope of its Licence should bear in mind that it may have to change its legal structure. The process will involve a fundamental review of the Representative Office by the DFSA to ascertain whether the firm meets all the relevant criteria to enable the proposed change in scope of its Licence.

**2.2.4** For the purposes of Article 9 (2) of the Law Regulating Islamic Financial Business 2004, a Representative Office will not be taken to be holding itself out as conducting Islamic Financial Business in or from the DIFC in circumstances where it:

- (a) does not represent that it provides, in or from the DIFC, any services that are in accordance with Shari'a; and
- (b) acts within the scope of its Licence, that is, does not carry on in or from the DIFC a Financial Service other than Operating a Representative Office.

**Guidance**

The Law Regulating Islamic Financial Business 2004, contains a prohibition against an Authorised Firm holding itself out as conducting Islamic Financial Business without first obtaining an endorsement to its Licence. An Islamic Financial Institution may operate a Representative Office in the DIFC but it is deemed not to be conducting Islamic Financial Business through its Representative Office. This is because of the limited nature of the financial services activity it is permitted to carry on and because it does not enter into client relationships in the DIFC. Accordingly, there is no requirement to obtain an appropriate endorsement to its Licence and the IFR module does not apply.

## **2.3 Withdrawal of a Licence**

**2.3.1** A Representative Office seeking to have its Licence withdrawn must submit a request in writing stating:

- (a) the reasons for the request;
- (b) that it has ceased or will cease to carry on the Financial Service of Operating a Representative Office in or from the DIFC;
- (c) the date on which it ceased or will cease to carry on the Financial Service of Operating a Representative Office in or from the DIFC;
- (d) that it has satisfied, or will satisfy, all obligations owed in respect of its business under the Licence; and
- (e) that there are no other matters relating to its business under the Licence of which the DFSA would reasonably expect to be notified, or might reasonably expect to be resolved, before agreeing to the request.

### **Guidance**

The DFSA may act on its own initiative to withdraw a Representative Office's Licence. The circumstances in which the DFSA will do so are set out in Article 50(3).

### **3 CORE PRINCIPLES**

#### **3.1 Application of Principles**

- 3.1.1** (1) The four Principles for Representative Offices set out in section 3.2 apply to every Representative Office in accordance with Rule 1.1.1.

##### **Guidance**

1. Under Rule 1.1.1(2), the principles apply, unless otherwise stated, only to the Representative Office in its capacity as a branch in the DIFC and not to the institution as a whole.
2. The Principles for Representative Offices have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules and also in new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of this module or the Rulebook build upon these fundamental principles. Consequently the Rules and Guidance elsewhere should not be seen as exhausting the implications of the Principles.
3. Breaching a Principle for Representative Offices makes a Representative Office liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Financial Service or to hold a Licence and the DFSA may consider withdrawing authorisation or the Licence on that basis.
4. The onus will be on the DFSA to show that the Representative Office has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

#### **3.2 Principles for Representative Offices**

##### **Principle 1 - Integrity**

- 3.2.1** A Representative Office must observe high standards of integrity and fair dealing.

##### **Principle 2 – Due skill, care and diligence**

- 3.2.2** In conducting its business activities a Representative Office must act with due skill, care and diligence.

##### **Principle 3 – Resources**

- 3.2.3** A Representative Office must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs.

##### **Principle 4 - Relations with regulators**

- 3.2.4** A Representative Office must deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Representative Office of which the DFSA would reasonably expect to be notified.

## **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** A Representative Office must not:

- (a) share an office with another Authorised Firm;
- (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.

#### **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.

### **4.2 Fitness and Propriety**

**4.2.1** A Representative Office must at all times be fit and proper to hold a Licence

**4.2.2** (1) A Representative Office must at all times have a Principal Representative who is resident in the UAE and who has satisfied the DFSA as to fitness and propriety.

(2) If the Principal Representative leaves the employment of a Representative Office, the Representative Office must designate a successor as soon as possible, and in any event within 28 days.

(3) If the DFSA considers that a Principal Representative designated under (1) or (2) is not fit and proper to fulfil the role for which he has been designated, it will give the Representative Office written notice to this effect.

(4) On receipt of a notice under (3), a Representative Office must within 28 days designate a new Principal Representative and notify the DFSA accordingly.

**4.2.3** A Representative Office must ensure, as far as reasonably practical, that its Employees are fit and proper.

#### **Guidance**

1. Section 2.3 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 4.2.3.

2. Where a Representative Office is no longer fit and proper or where its Principal Representative is no longer fit and proper, it will be in breach of the relevant Rule and the DFSA may take steps to withdraw its Licence. Section 2.3 of the RPP

Sourcebook sets out matters which the DFSA takes into consideration when assessing fitness and propriety of a Principal Representative.

### **4.3 Dealing with property**

- 4.3.1** 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.

### **4.4 Solvency**

- 4.4.1** A Representative Office must notify the DFSA immediately upon becoming aware that it is unlikely to remain solvent in the near future or that it is insolvent.

#### **Guidance**

The requirement to notify is in respect of the institution of which the Representative Office forms a part.

### **4.5 Disclosure of regulatory status**

- 4.5.1** A Representative Office must not:
- (a) hold itself out as able to carry on a Financial Service other than Operating a Representative Office; or
  - (b) otherwise misrepresent its status expressly or by implication.
- 4.5.2** (1) A Representative Office must take reasonable care to ensure that every key business document which is in connection with the Representative Office carrying on the Financial Service of Operating a Representative Office in or from the DIFC includes one of the disclosures under this Rule.
- (2) A key business document includes letterhead whether issued by post, fax or electronic means, written promotional materials, business cards, and websites but does not include compliment slips, or text messages.
- (3) The disclosure required under (1) is:
- (a) 'Regulated by the Dubai Financial Services Authority as a Representative Office'; or
  - (b) 'Regulated by the DFSA as a Representative Office'.
- 4.5.3** The DFSA logo must not be reproduced by a Representative Office without express written permission from the DFSA and in accordance with any conditions for use.

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## **4.6 Clear, fair and not misleading**

### **General**

- 4.6.1** In this section, a “financial product” 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 effecting introductions 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 is in the form of an insurance proposal, banking services proposal, prospectus or other offering document, which is capable of acceptance in due course, it must contain 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.

**4.6.6** A Representative Office must take reasonable steps to ensure that no Person communicates or otherwise uses the marketing material on behalf of the Representative Office in a manner that amounts to a breach of the requirements in this section.

#### **Past performance and forecasts**

**4.6.7** A Representative Office must ensure that any marketing material containing information or representations relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to a Person is clear, fair and not misleading and contains a prominent warning that past performance is not necessarily a reliable indicator of future results.

### **4.7 Marketing of Foreign Funds**

**4.7.1** (1) A Representative Office must not market a Unit of a Foreign Fund unless the Fund meets the criteria either for a Designated Fund under Rule 4.7.2 or for a non-Designated Fund under Rule 4.7.3.

(2) In this section “market” has the meaning prescribed to “marketing” under GEN Rule 2.26.1.

**4.7.2** A Representative Office may market a Unit of a Foreign Fund where:

- (a) the Fund is a Designated Fund in a Recognised Jurisdiction; and
- (b) if the Fund is a Property Fund, the requirements in Rule 4.7.4 are satisfied.

**Guidance**

In relation to the requirements of Rules 4.7.2 and 4.7.3, in respect of Recognised Jurisdictions and Designated Funds, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

- 4.7.3** (1) A Representative Office may market a Unit of a Foreign Fund where:
- (a) one or more of the following apply:
    - (i) the custodian of the Fund meets one of the requirements in (4) and the investment manager of the Fund meets one of the requirements in (5);
    - (ii) both the custody and investment management activities of the Fund are performed by a Person who meets the requirements in (6); or
    - (iii) the Fund has been rated in accordance with the requirement in (7);

and
  - (b) if the Fund is a Property Fund, the requirements in Rule 4.7.4 are satisfied.
- (2) For the purposes of (1)(a), the “custodian” is a Person who is retained by the Fund, the Fund Manager or the Fund’s Directors or Partners under a commercial arrangement which is not an employee contract of service to safeguard the Fund’s assets.
- (3) For the purposes of (1)(a), the “investment manager” is a Person who is retained by the Fund, the Fund Manager or the Fund’s Directors or Partners under a commercial arrangement which is not an employee contract of service to manage the Fund’s assets.
- (4) For the purposes of (1)(a)(i), the custodian must be:
- (a) an Eligible Custodian;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;
  - (c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or

- (d) a Person as to whom the Representative Office is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
  - (i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;
  - (ii) the extent of segregation of assets;
  - (iii) independence and management of conflicts of interests;
  - (iv) the terms of the safe custody agreement; and
  - (v) periodic reporting requirements.
  
- (5) For the purposes of (1)(a)(i), the investment manager must be a Person who is:
  - (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.
  
- (6) For the purposes of (1)(a)(ii), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
  - (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.
  
- (7) The requirement in (1)(a)(iii) in respect of the Foreign Fund is that the Fund has been rated or graded as at least “investment grade” by

Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the DFSA.

- 4.7.4** (1) A Representative Office must ensure that it does not market a Unit of a Foreign Fund which is a Property Fund unless:
- (a) the Fund is a closed-ended structure; and
  - (b) the Fund is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction, unless the Units are to be Offered, issued or sold by means only of Private Placement.
- (2) For the purposes of (1), a "Property Fund" is a Foreign Fund in respect of which 60% or more of the Fund's assets comprise Real Property, Property Related Assets or Units in another Property Fund.

**Guidance**

A closed ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund.

## **4.8 Record keeping**

- 4.8.1** A Representative Office must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Representative Office. These must include, where applicable any marketing material (as defined under Rule 4.6.4) issued, distributed or otherwise communicated by, or on behalf of, the Representative Office.

## **4.9 Communication with the DFSA**

- 4.9.1** A Representative Office must ensure that any communication with the DFSA is conducted in the English language.

## **5 REGULATORY PROCESSES**

### **5.1 Notifications**

**5.1.1** A Representative Office must notify the DFSA as soon as reasonably practical of any change in its:

- (a) name;
- (b) legal status;
- (c) Controller(s); or
- (d) address.

**5.1.2** A Representative Office must notify the DFSA as soon as reasonably practical of:

- (a) any breach of a Rule or of a provision of DFSA-administered legislation by the Representative Office; and
- (b) any materially adverse information which would on reasonable grounds be considered likely to affect the fitness and propriety of the Representative Office or Principal Representative.

### **5.2 Lead regulation**

**5.2.1** If requested by the DFSA, a Representative Office must provide the DFSA with information that it or another member of its Group has provided to a Financial Services Regulator.

#### **Guidance**

1. Under Article 39 the DFSA may exercise its powers for the purpose of assisting other regulators or agencies.
2. The DFSA may also delegate functions and powers to representatives of other regulators or agencies as prescribed in Article 40.

### **5.3 Accuracy of information**

**5.3.1** A Representative Office must take reasonable steps to ensure that all information that it provides to the DFSA in accordance with any legislation applicable in the DIFC is:

- (a) factually accurate or, in the case of estimates and judgements, fairly and properly based; and
- (b) complete, in that it should include anything of which the DFSA would reasonably expect to be notified.

- 5.3.2** (1) A Representative Office must notify the DFSA immediately if it becomes aware, or has information that reasonably suggests:
- (a) that it has or may have provided the DFSA with information which was or may have been false, misleading, incomplete or inaccurate; or
  - (b) that information previously provided to the DFSA has or may have changed in a material particular.
- (2) Subject to (3), the notification in (1) must include details of the information which is or may be false or misleading, incomplete or inaccurate, or has or may have changed and an explanation of why the information was or may have been provided and the correct information.
- (3) If the correct information in (2) cannot be submitted with the notification it must be submitted as soon as reasonably possible.