



The DFSA Rulebook

General Module

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5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

- 5.1.1** (1) Subject to (5), this chapter applies to every Authorised Person with respect to the Financial Services carried on in or from the DIFC.
- (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
- (3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch's activities wherever they are carried on.
- (4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance. [Added][VER3/04-05]
- (5) Rules 5.3.13, 5.3.14, 5.3.15, 5.3.23, and 5.3.24 do not apply to an Authorised Firm that is an Authorised ISPV.

Guidance

1. The purpose of this chapter is:
 - a. to set out the requirements for senior management within an Authorised Person to take direct responsibility for their Authorised Person's arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA's objectives or they affect the DFSA's functions under the legislation applicable in the DIFC; and
 - b. to require an Authorised Firm to vest responsibility in senior management for effective and responsible organisation and to have effective systems and controls.
2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module. [Amended][VER3/04-05]
3. In relation to an Authorised Firm which is an Operator or the Trustee, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates or for which it acts as the Trustee. [Added][VER8/04-06]
[Amended][VER11/08-06]

5.2 Senior management arrangements

Apportionment of significant responsibilities

5.2.1 An Authorised Person must apportion significant responsibilities among its senior management and maintain such apportionment in such a way that:

- (a) it is appropriate with regard to:
 - (i) the business and affairs of the Authorised Person; and
 - (ii) the ability and qualifications of the responsible individuals;
- (b) it is clear who is responsible for which matters; and
- (c) the business and affairs of the Authorised Person can be adequately monitored and controlled by the Authorised Person's Governing Body and senior management.

5.2.2 An Authorised Person must allocate to the Senior Executive Officer or to the individual holding equivalent responsibility for the conduct for the Authorised Person's business or the Governing Body, the functions of:

- (a) dealing with the apportionment of responsibilities; and
- (b) overseeing the establishment and maintenance of systems and controls.

Recording of apportionment

5.2.3 (1) An Authorised Person must establish and maintain an up-to-date record of the arrangements it has made to comply with Rules 5.2.1 and 5.2.2.

(2) The record must show that the relevant senior management are aware of and have accepted the responsibilities apportioned in accordance with Rule 5.2.1.

(3) Where a responsibility has been allocated to more than one individual, the record must show clearly how that responsibility is allocated between the individuals.

(4) The record must be retained for six years from the date on which it was established or superseded by a more up-to-date record.

5.3 Systems and controls

General requirement

- 5.3.1** (1) An Authorised Person must establish and maintain systems and controls that ensure that its affairs are managed effectively and responsibly by its senior management.
- (2) An Authorised Person must undertake regular reviews of its systems and controls.

Guidance

The nature and extent of the systems and controls of an Authorised Person will depend upon a variety of factors including the nature, size and complexity of its business. While all Authorised Persons, irrespective of size, legal structure or organisation need to comply with this chapter, the DFSA will take into account these factors and the differences that exist between Authorised Persons when assessing the adequacy of an Authorised Person's systems and controls. Nevertheless, neither these factors nor the differences relieve an Authorised Person from compliance with its regulatory obligations.

Organisation

- 5.3.2** An Authorised Person must implement clear reporting lines that take into account the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, must be communicated to all Employees and documented within the Authorised Person. If it is an Authorised Firm, it must also clearly identify the Employees who will be delivering Financial Services to its customers, and their respective lines of accountability and supervision. [Amended][VER10/06-06]
- 5.3.3** An Authorised Person must ensure that key duties and functions are segregated so as to avoid the situation where the allocation of duties and functions to be performed by the same individual could result in undetected errors or be vulnerable to abuse and thus expose the Authorised Person or its customers or users to inappropriate risks.

Risk management

- 5.3.4** An Authorised Person must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks.
- 5.3.5** An Authorised Person must develop, implement and maintain policies and procedures to manage the risks to which the Authorised Person and where applicable, its customers or users, are exposed.

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- 5.3.6** (1) An Authorised Person must appoint an individual to advise its Governing Body and senior management of such risks.
- (2) An Authorised Person which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

Compliance

- 5.3.7** An Authorised Firm must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.
- 5.3.8** An Authorised Firm must document the organisation, responsibilities and procedures of the compliance function.
- 5.3.9** An Authorised Firm must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.
- 5.3.10** An Authorised Firm must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Firm's Governing Body and senior management.
- 5.3.11** An Authorised Firm must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.
- 5.3.12** An Authorised Firm must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

Guidance

Similar requirements to those in Rules 5.3.7 to 5.3.12 are set out in the AMI module in relation to Authorised Market Institutions. [Added][VER3/04-05]

Internal audit

- 5.3.13** (1) An Authorised Person must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.
- (2) The internal audit function must be independent from operational and business functions.
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5.3.14 An Authorised Person must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the Authorised Person's Governing Body or the relevant committee, established by its Governing Body for this purpose.

5.3.15 An Authorised Person must document the organisation, responsibilities and procedures of the internal audit function.

Business plan and strategy

5.3.16 (1) An Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its customers are exposed.

(2) The business plan must take into account the Authorised Person's current business activities and the business activities forecast for the next twelve months.

(3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in the business of the Authorised Person.

Management information

5.3.17 An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise and control its activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

Staff and agents

5.3.18 An Authorised Person must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

5.3.19 (1) An Authorised Firm must ensure, as far as reasonably practical, that its Employees are: [Amended][VER10/06-06]

(a) fit and proper;

(b) appropriately trained for the duties they perform; and

(c) trained in the requirements of the legislation applicable in the DIFC.

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- (2) An Authorised Firm must establish and maintain systems and controls to comply with (1). An Authorised Firm must be able to demonstrate that it has complied with these requirements through appropriate measures, including the maintenance of relevant records. [Amended][VER10/06-06]

Guidance [Amended][VER10/06-06]

1. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in AUT section A1.3 and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.
2. In particular, when assessing the competence of Employees, an Authorised Firm should;
 - a. obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
 - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained; and
 - c. determine, in light of the individual's relevant qualifications, knowledge and experience, that the person is capable of fulfilling the duties of the role to be assigned to the person.
3. An Authorised Firm should also satisfy itself that an Employee:
 - a. continues to be competent in his proposed role;
 - b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the Employee's role; and
 - c. is able to apply his knowledge.

Conduct

5.3.20 An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market misconduct;
- (b) money laundering; or
- (c) a financial crime under any applicable U.A.E. laws.

Outsourcing

- 5.3.21** (1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to third party providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.
- (2) The outsourced function under this Rule shall be deemed as being carried out by the Authorised Person itself.
- (3) An Authorised Person which uses such third party providers must ensure that it:
- (a) has undertaken due diligence in choosing suitable third party providers;
 - (b) effectively supervises the outsourced functions or activities; and
 - (c) deals effectively with any act or failure to act by the third party provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

Guidance

1. An Authorised Person's outsourcing arrangements should include consideration of:
 - a. applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or
 - b. any equivalent principles or regulations the Authorised Person is subject to in its home country jurisdiction.
2. As a minimum, the DFSA expects an Authorised Person which has material outsourcing arrangements to:
 - a. establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;
 - b. enter into an appropriate and written outsourcing contract; and
 - c. ensure that outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder the supervision by the DFSA.

- 5.3.22** An Authorised Person must inform the DFSA about any material outsourcing arrangements.

Business continuity and disaster recovery

- 5.3.23** (1) An Authorised Person must have in place adequate arrangements to ensure that it can continue to function and meet its obligations under the legislation applicable in the DIFC in the event of an unforeseen interruption.
- (2) These arrangements must be kept up to date and regularly tested to ensure their effectiveness.

Guidance

1. In considering the adequacy of an Authorised Person's business continuity arrangements, the DFSA will have regard to the Authorised Person's management of the specific risks arising from interruptions to its business including its crisis management and disaster recovery plans.
2. The DFSA expects an Authorised Person to have:
 - a. arrangements which establish and maintain the Authorised Person's physical security and protection for its information systems for business continuity purposes in the event of planned or unplanned information system interruption or other events that impact on its operations;
 - b. considered its primary data centres' and business operations' reliance on infrastructure components, for example transportation, telecommunications networks and utilities and made the necessary arrangements to minimise the risk of interruption to its operations by arranging backup of infrastructure components and service providers; and
 - c. considered, in its plans for dealing with a major interruption to its primary data centre or business operations, its alternative data centres' and business operations' reliance on infrastructure components and made the necessary arrangements such that these do not rely on the same infrastructure components and the same service provider as the primary data centres and operations.

Complaints

- 5.3.24** An Authorised Person must establish and maintain a register of Customer Complaints and their resolutions. Records of the complaints must be maintained for a minimum of six years.

Guidance

Depending on the nature, size and complexity of its business, it may be appropriate for an Authorised Person to have a suitable complaint handling procedure in place in order to ensure that Customer Complaints are properly handled and that remedial action is taken promptly. Such complaint handling procedures would be expected to include provisions about the independence of staff investigating the complaint and bringing the matter to the attention of senior management.

Records

- 5.3.25** (1) An Authorised Person must make and retain records of matters and dealings, including accounting records which are the subject of requirements and standards under the legislation applicable in the DIFC.
- (2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding 3 business days.
[Amended][VER13/02-07][RM42/07]
- 5.3.26** Subject to Rule 5.3.27, the records required by Rule 5.3.25 or by any other Rule in this Rulebook must be maintained by the Authorised Person in the English language.
- 5.3.27** If an Authorised Person's records relate to business carried on from an establishment in a territory outside the DIFC, an official language of that territory may be used instead of the English language as required by Rule 5.3.26.
- 5.3.28** An Authorised Person must have systems and controls to fulfil the Authorised Person's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

App 5 FEES

A5.1 Fees table

A5.1.1 The fees table.

[Amended] [VER2/10-04] [Amended]VER3/04-05] [Amended]VER4/08-05]

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| (a) Accepting Deposits or Providing Credit | \$50,000 |
| (b) Dealing in Investments as Principal | \$30,000 |
| (c) (i) Dealing in Investments as Agent; or (ii) Arranging Credit or Deals in Investments; or (iii) Managing Assets; or (iv) Advising on Financial Products or Credit; or (v) Providing Custody; or (vi) Arranging Custody; or (vii) Insurance Intermediation; or (viii) Insurance Management; or (ix) Effecting Contracts of Insurance or Carrying out Contracts of Insurance: (A) where the applicant is intending to carry on business as a Captive Insurer <u>or as an ISPV</u> ; or (B) where the Authorised Firm is carrying on business as a Captive Insurer <u>or as an ISPV</u> ; or | \$10,000 |

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| | <ul style="list-style-type: none"> (x) Managing a Profit Sharing Investment Account; or [Amended][VER11/08-06] (xi) Providing Trust Services; or [Added][VER7/01-06] (xii) Providing Fund Administration; or [Added][VER8/04-06] [Amended][VER11/08-06] (xiii) Acting as the Trustee of a Fund. [Added][VER11/08-06] | |
| (d) | <ul style="list-style-type: none"> (i) Operating an Alternative Trading System; or (ii) Operating a Collective Investment Fund. [Added][VER8/04-06] | \$30,000 |
| (e) | <p>Effecting Contracts of Insurance or Carrying out Contracts of Insurance:</p> <ul style="list-style-type: none"> (i) where the applicant is not also intending to carry on business as a Captive Insurer; or (ii) where the Authorised Firm is not carrying on business as a Captive Insurer. | \$50,000 |