



---

**CONSULTATION PAPER NO. 65**

**05 OCTOBER 2009**

---

**DIFC REPRESENTATIVE OFFICE REGIME**

---

## **CONSULTATION PAPER NO 65**

### **DIFC REPRESENTATIVE OFFICE REGIME**

#### **Why are we issuing this paper?**

1. The DFSA proposes to introduce a Representative Office regime in the DIFC. The proposal would permit financial institutions to have a presence in the DIFC for the purposes of limited marketing activities in or from the DIFC.

#### **Who should read this paper?**

2. The proposals in this paper would be of interest to:
  - a. Persons interested in establishing a Representative Office in the DIFC; and
  - b. Authorised Firms which may wish to consider becoming Representative Offices.

#### **How is this paper structured?**

3. In this paper, we set out:
  - a. the background and overview to the proposals and overview (paragraphs 7 to 10);
  - b. a summary of the proposed regime (paragraphs 11 to 35);
  - c. our policy on existing firms moving to Representative Office status (paragraph 31),
  - d. our policy on Representative Offices moving up a prudential category (paragraphs 32 to 33); and
  - e. our policy on supervising Representative Offices and on fees (paragraphs 34 to 35).

The proposed changes to the Rulebook are in Appendices 1 to 10

#### **How to provide comments?**

4. All comments should be in writing and sent to the person specified below. 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 **4 November 2009**. Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to enact the 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:

**Chris Cameron**  
**Policy and Legal Services**  
**DFSA**  
**PO Box 75850**  
**Dubai, UAE**

e-mail: [CCameron@dfsa.ae](mailto:CCameron@dfsa.ae)

## 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 Glossary Module (GLO) 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.

## Background

7. We are consulting stakeholders on a proposal to introduce a Representative Office regime in the DIFC. This new regime will permit financial institutions to have a presence in the DIFC for the purposes of limited marketing activities in or from the DIFC. Our policy is to create a regime that reflects the limited scope of activity of Representative Offices, the fact that they will not have any Clients in the DIFC, and the limited regulatory risks they therefore pose.
8. Representative Office regimes are common in other advanced jurisdictions, especially but not exclusively in the banking sector. The DFSA has received requests from a number of stakeholders to introduce such a regime, and considers that it is now appropriate to do so.

## Overview

9. The DFSA proposes to define the new Financial Service of Operating a Representative Office. This means that Representative Offices will be Authorised Firms, and will attract the DFSA powers provided in the Regulatory Law 2004 for such firms. However, most of the DFSA's Rulebook will be disapplied. We propose instead a new stand-alone module, REP, which will set out the majority of the Rules and Guidance which will apply to Representative Offices. In addition, a limited number of chapters in the Supervision (SUP) and General (GEN) Modules will apply, the relevant fees will be in the Fees Rule Module (FER), and the Enforcement Module (ENF) will apply as it does to all Authorised Firms.
10. The Representative Office regime will be available to firms in all financial services sectors, provided that they are regulated in an acceptable home jurisdiction. Their activities will be confined to marketing of financial services and financial products offered from a location outside the DIFC by its head office or a member of its Group. They will, however, be free also to engage in unregulated activities, for example economic research.

## Proposed regime

11. It is proposed that the Financial Service of Operating a Representative Office will be a stand alone regime. A Representative Office will not be permitted to undertake any other Financial Service and other Authorised Firms will not be able to Operate a Representative Office. Nonetheless, this would not prevent a firm which Advises on Financial Products and Credit and Arranges Credit or Deals in Investments from undertaking activities which would otherwise meet the definition of Operating a Representative Office because the scope of its Licence permits this. However, some Authorised Firms wishing to undertake activities which amount to activities meeting one or more parts of the definition of Operating a Representative Office may need to extend the scope of their Licence to include, for example, arranging or advising, because their

existing Licence does not permit this. An example would be a firm whose Licence was limited to Providing Fund Administration.

12. The details of our proposals can be found in our draft Rules and Guidance. However, in summary the DFSA proposes a new Representative Office regime with the following attributes:

#### Status

13. A Representative Office will be an Authorised Firm authorised under a License to undertake the Financial Service of Operating a Representative Office. A Representative Office will represent itself and other Group companies only. A Representative Office will not be permitted to act as agent for a Person outside the Group.
14. An Authorised Firm authorised under its Licence to carry on another Financial Service but which also undertakes activities which fall under the definition of Operating a Representative Office will not be required to change the scope of its Licence to add the Financial Service of Operating a Representative Office.

#### Definition

15. We propose to limit the definition of Operating a Representative Office to the activities of marketing and the provision of information relating to financial services and financial products. Effecting introductions to its business in its home jurisdiction or to another Group member in another jurisdiction is also included. We do not intend to regulate firms whose activities are limited solely to conducting economic research, gathering financial, economic or commercial information or those firms which are a representative office of a non-financial institution.
16. The Financial Service of Operating a Representative Office will include one or more of the following activities:
  - (a) the marketing of financial services which are provided in a jurisdiction other than the DIFC, by either the Person conducting the marketing or by a member of that Person's Group;
  - (b) the marketing of financial products which are offered in a jurisdiction other than the DIFC, by either the Person conducting the marketing or by a member of that Person's Group; or
  - (c) introducing potential customers or investors to either the introducer's business in a jurisdiction other than the DIFC or to a member of that introducer's Group in such a jurisdiction.
17. In (a) and (b) above, 'marketing' means:
  - (a) *providing information on one or more financial products or services; or*
  - (b) *engaging in promotions in relation to (a);*

*provided that such activities do not constitute Advising on Financial Products or Credit.*

18. 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 the Financial Services Prohibition, under Article 41 of the Regulatory Law 2004, is not breached. The DFSA will, for example, consider activities amounting to order routing or passing in relation to Investments, Deposits, Contracts of Insurance or Profit Sharing Investment Accounts as outside the scope of a Representative Office's authorised activities.
19. For the purposes of the definition, 'financial product' means an Investment, Credit Facility, Deposit, Profit Sharing Investment Account or Contract of Insurance.
20. Excluded from the above is any communication which amounts to marketing in respect of a financial service or financial product issued by or on behalf of a government or a non-commercial government entity. Furthermore, a government or non-commercial government entity would not, for the purpose of the definition, be conducting introducing of the type specified. We have not excluded government entities with a commercial purpose because the exclusion for governments is designed to carve out the non-commercial arms of government, not those persons connected with the government which undertake commercial activities or financial institutions which have recently become connected to a government because of the financial crisis.

#### Authorisation

21. It is proposed that in assessing an application for authorisation as a Representative Office the DFSA will consider at least the following factors:
  - i) Business model – the DFSA proposes to review the proposed activities to ensure they are within the scope of a Representative Office licence;
  - ii) Legal form – the DFSA will only accept applications where the Representative Office comprises a place of business within the DIFC:
    - (a) which has no separate legal personality;
    - (b) forms a legally dependant part of the applicant whose principal place of business and head office is in a jurisdiction other than the DIFC; and
    - (c) through which the applicant will carry on the Financial Service of Operating a Representative Office in or from the DIFC.DIFC incorporated firms will not be considered;
  - iii) Fitness and propriety – We propose to require consent from the home state regulator for establishing a Representative Office in the DIFC and confirmation of the head office's good standing. We will also need to be satisfied with the quality of the regulation which applies to the head office. Consideration will be given to the location of the head office and the perceived AML risks of this country;

- iv) Solvency – the DFSA will review the applicant's most recent audited accounts to ensure its solvency and capacity to fund the proposed Representative Office;
- v) Controllers – the DFSA will require information on the applicant's controllers as part of the authorisation process and background checks will be conducted to ensure that no adverse information is identified; and
- vi) Premises – the DFSA will need to be satisfied with the Representative Office's proposed premises. The activities of a Representative Office will need to be kept separate from those of any other Authorised Firm and "brass plate" operations will not be acceptable. Representative Offices will, however, be permitted to use serviced offices inside the DIFC.

#### Principal Representative

- 22. Representative Offices will be required to have an individual acting as "Principal Representative" to oversee the Representative Office and undertake a number of other key functions. It is not proposed that the role of Principal Representative will be a Licensed Function. However, the DFSA will need to be satisfied that the nominated individual is fit and proper.
- 23. The DFSA would expect the Principal Representative to be suitably skilled and experienced, ordinarily resident in the UAE, and the individual would not be permitted to have day-to-day responsibilities for either another Authorised Firm or another Regulated Financial Institution outside of the DIFC. This would be to avoid potential conflicts of interests and perimeter issues, for example where a person is wearing two hats, one as an employee of a Representative Office, and the other as an employee of an Authorised Firm. Two or more Representative Offices will not be permitted to share a single Principal Representative.

#### Employees

- 24. The Representative Office will be responsible for ensuring that its employees remain fit and proper.

#### Principles

- 25. We propose four high-level principles with which a Representative Office must comply. These relate to integrity, management, adequate resources, conflicts of interest and relations with regulators.

#### Regulatory status

- 26. A Representative Office will be required to disclose its regulatory status. For example, "Regulated by the DFSA as a Representative Office".

### Notifications

27. A Representative Office will be required to notify the DFSA of any Rule breaches, and of changes to the Representative Office's name, legal status, address, controllers or Principal Representative. Further, the DFSA will need to be notified of any adverse information which would affect the Representative Office's or the Principal Representative's fitness and propriety.

### AML and UN Sanctions

28. We propose anti-money laundering requirements for Representative Offices which reflect the fact that they will not have any Clients in the DIFC. The primary focus of the AML rules will be on reporting suspicious transactions. Similarly we propose requirements in regard to observation of relevant UN sanctions.

### Solvency

29. Under our proposals, a Representative Office will be required to notify the DFSA in circumstances where it may no longer be able to remain solvent. We do not propose that a Representative Office is required to submit a copy of its annual accounts but if we have concerns we will request a copy from the firm or address the matter as part of a supervisory visit.

### Communications

30. We propose a Rule that will stipulate that any communications issued by the Representative Office should be clear, fair and not misleading.

### **Authorised Firms moving to Representative Office status**

31. The DFSA is aware that some Authorised Firms may wish to amend the scope of their existing Licences to Representative Office status on either a permanent or temporary basis. For these firms the normal procedures for Licence amendment will apply. The DFSA will want to be satisfied that any such firm will not be carrying on any Financial Service other than Operating a Representative Office and, in particular, that it will no longer have an on-going client relationship with its existing Clients but will refer all its clients and potential investors/clients to its (or Group members) place of business outside the DIFC.

### **Representative Offices moving up in category**

32. Some firms may decide to become Representative Offices in the DIFC as a way of "testing the waters" with a view to establishing a more substantive presence at a later date. A firm wishing to move from Operating a Representative Office to undertake other Financial Services, and thereby move into one of our prudential categories will be required to seek a change to its Licence. This will require the DFSA to consider issues, for example in the firm's systems and controls, that were not considered initially or not considered to the same degree. It may, therefore, take longer than most Licence upgrades.

33. In some cases, a Representative Office may be required to change its legal form, to become a DIFC-incorporated firm, before it can upgrade.

### **Supervising Representative Offices**

34. Because the activities of a Representative Office will be limited, the risks that it poses to the DIFC's objectives will be limited. In general, the principal risks are likely to be in the area of Anti Money Laundering controls, and the risk that the office conducts financial services activities outside those permitted by its Licence, for example by giving tailored advice or by directly arranging transactions. The DFSA therefore expects to undertake regular supervisory visits to Representative Offices, with a particular focus on these matters.

### **Fees**

35. In light of the limited nature of the Financial Service of Operating a Representative Office the DFSA proposes to set the fee level for Representative Offices below that for other Authorised Firms. However, in setting an appropriate fee level, the DFSA has taken into consideration the costs of authorising and supervising Representative Offices. It is proposed that an application fee of \$2,000 (similar to that for Ancillary Service Providers) and an annual fee of \$4,000 would be appropriate for Representative Offices. The Rules in respect of fees are set out in Consultation Paper No.64.

#### **Issues for consideration**

Do you have any concerns or comments about our proposed Rules and requirements for firms wishing to establish a Representative Office in the DIFC?

Do you consider that the proposed Representative Office regime is appropriate for the DIFC?