

Appendix 3

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

The DFSA Sourcebook



Regulatory Policy and Process (RPP Sourcebook)

2 AUTHORISATION - BECOMING REGULATED

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2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS

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Authorised Firms - Collective suitability of individuals or other persons connected to the Authorised Firm

2-2-13 Notwithstanding that individuals performing Licensed Functions are required to be Authorised Individuals and that an Authorised Firm is required to appoint certain Authorised Individuals to certain functions as stated in chapter 7 of the GEN module, the DFSA ~~may~~ will also consider:

- (a) the collective suitability of all of the Authorised Firm's staff taken together, and whether there is a sufficient range of individuals with appropriate knowledge, skills and experience to understand, operate and manage the Authorised Firm's affairs in a sound and prudent manner;
- (b) the composition of the Governing Body of the Authorised Firm, ~~including the presence of non-executive members, taking into consideration the nature, size and complexity of the Authorised Firm's activities, the generally accepted standards of corporate governance applicable to the relevant industry, and the position of the Authorised Firm in any Group to which it belongs;~~ The factors that would be taken into account by the DFSA in this context include, depending on the nature, scale and complexity of the firm's business and its organisational structure, whether:
 - (i) the Governing Body has a sufficient number of members with relevant knowledge, skills and expertise among them to provide effective leadership, direction and oversight of the Authorised Firm's business. For this purpose, the members of the Governing Body should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the firm's business to be able to fulfil their roles;
 - (ii) the individual members of the Governing Body have the commitment necessary to fulfil their roles, demonstrated, for example, by a sufficient allocation of time to the affairs of the firm and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Firm and its customers and stakeholders; and

- (iii) there is a sufficient number of independent members on the Governing Body. The DFSA will consider a member of the Governing Body to be "Independent" if he is found, on reasonable grounds by the Governing Body, to be independent in character and judgement and able to make decisions in a manner that is consistent with the best interests of the Authorised Firm;
- (c) the position of the Authorised Firm in any Group to which it belongs;
- ~~(e)~~ (d) the individual or collective suitability of any Person or Persons connected with the Authorised Firm;
- ~~(d)~~ (e) the extent to which the Authorised Firm has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities; and
- ~~(e)~~ (f) whether the Authorised Firm has appointed auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the Authorised Firm's activities; and
- (g) whether the remuneration structure and strategy adopted by the Authorised Firm is consistent with the requirements in Rule GEN 5.3.31(1).

Authorised Market Institutions – Other Considerations

2.2.14 In determining whether an Authorised Market Institution has satisfied its Licensing Requirements set out in section 7.2.2 of the AMI module, the DFSA ~~may~~ will, in addition to the matters raised in this chapter, consider:

- (a) its arrangements, policies and resources for fulfilling its obligations under the Licensing Requirements;
- (b) its arrangements for managing conflicts and potential conflicts between its commercial interest and applicable regulatory requirements;
- ~~(b)~~ (c) the extent to which its constitution and organisation provide for effective governance;
- ~~(e)~~ (d) the arrangements made to ensure that the Governing Body has effective oversight of its Regulatory Functions;
- ~~(d)~~ (e) the access the Key Individuals have to the Governing Body;
- ~~(e)~~ (f) the size and composition of the Governing Body including:
- (i) the number of independent members on ~~Directors in~~ the Governing Body;
 - (ii) the number of members of the Governing Body who represent Members of the Authorised Market Institution or other persons and the types of persons whom they represent; and

- (iii) the number and responsibilities of any members of the Governing Body with executive roles within the Authorised Market Institution.
- ~~(f)~~ (g) the structure and organisation of its Governing Body, including any distribution of responsibilities among its members and committees;
- (h) the integrity, relevant knowledge, skills and expertise of the members of the Governing Body to provide effective leadership, direction and oversight of the Authorised Market Institution's business. For this purpose, such individuals should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the Authorised Market Institution's business to be able to fulfil their roles;
- (i) the commitment necessary by the members of the Governing Body to fulfil their roles effectively, demonstrated, for example, by a sufficient allocation of time to the affairs of the Authorised Market Institution and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Market Institution and its stakeholders;
- ~~(g)~~ (j) the integrity, qualifications and competence of its ~~Governing Body and~~ Key Individuals;
- ~~(h)~~ (k) its arrangements for ensuring that it employs individuals who are honest and demonstrate integrity; ~~and~~
- ~~(i)~~ (l) the independence of its regulatory and listings departments from its commercial departments; and
- (m) whether the remuneration structure and strategy adopted by the Authorised Market Institution is consistent with the requirements in Rule GEN 5.3.31(1).

2.2.15 The DFSA will consider a Director to be "independent" if the Director is found, on the reasonable determination by the Governing Body, to:

- (a) be independent in character and judgement; and
- (b) have no relationships or circumstances which are likely to affect or could appear to affect the Director's judgement in a manner other than in the best interests of the Authorised Market Institution.

2.2.16 In forming a determination the Governing Body should consider the length of time the Director has served as a member of the Governing Body and whether the relevant Director:

- (a) has been an employee of the Authorised Market Institution or group within the last five years;

- (b) has or has had, within the last three years, a material business relationship with the Authorised Market Institution, either directly or as a Partner, shareholder, Director or senior employee of a body that has such a relationship with the Authorised Market Institution;
- (c) receives or has received, in the last three years, additional remuneration or payments from the Authorised Market Institution apart from a Director's fee, participates in the Authorised Market Institution's share option, or a performance-related pay scheme, or is a member of the Authorised Market Institution's pension scheme;
- (d) is or has been a Director, Partner or Employee of a firm which is the Authorised Market Institution's auditor;
- (e) has close family ties with any of the Authorised Market Institution's advisors, Directors or senior employees;
- (f) holds cross directorships or has significant links with other Directors through involvement in other bodies; or
- (g) represents a significant shareholder.

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3 SUPERVISION - BEING REGULATED

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3-2 SUPERVISION OF AUTHORISED FIRMS

Introduction

3-2-1 Section 3.2 provides additional information in relation to DFSA's approach to the supervision of an Authorised Firm. Where relevant, some of these requirements may apply to a Representative Office.

3-2-2 In supervising an Authorised Firm, the DFSA expects an Authorised Firm to comply with a number of high level principles in relation to its activities.

3-2-3 An Authorised Firm, other than a Representative Office, must comply with the twelve ~~eleven~~ principles set out in section 4.2 of the GEN module. In brief, these are:

- (a) Principle 1 – Integrity;
- (b) Principle 2 – Due skill, care and diligence;
- (c) Principle 3 – Management, systems and controls;
- (d) Principle 4 – Resources;
- (e) Principle 5 – Market Conduct;
- (f) Principle 6 – Information and Interests;
- (g) Principle 7 – Conflicts of Interest;
- (h) Principle 8 – Suitability;
- (i) Principle 9 – Customer assets and money;
- (j) Principle 10 – Relations with regulators; ~~and~~
- (k) Principle 11 – Compliance with high standards of corporate governance; and
- (l) Principle 12 – Remuneration practices.

3-2-4 A Representative Office must comply with the four principles set out in section 3.2 of the REP module. In brief, these are:

- (a) Principle 1 – Integrity;
- (b) Principle 2 – Due skill, care and diligence;
- (c) Principle 3 – Resources; and

(d) Principle 4 – Relations with regulators

Group supervision

3-2-5 When the DFSA licenses an Authorised Firm, it takes into consideration the relationship with any wider Group to which the firm may belong or with other Persons closely linked to it. The DFSA may also take into account lead or consolidated supervision to which an Authorised Firm or its Group may be subject in another jurisdiction.

3-2-6 An Authorised Firm is expected to provide information as required or reasonably requested under legislation applicable in the DIFC relating to the Authorised Firm and, where applicable, its consolidated or lead regulatory arrangements. This information may include prudential information, reports on systems and controls relating to an Authorised Firm's Group, internal and external audit reports, details of disciplinary proceedings or any matters which may have financial consequences, reputational impact or pose any significant risk to the DIFC or to the Authorised Firm and the group-wide corporate governance practices and policies and the remuneration structure and strategies adopted. This information may initially be taken into account as part of DFSA's fit and proper test as set out in section 2.2 AUT and may subsequently be utilised in the supervision of the Authorised Firm. Further Rules and Guidance with regard to obtaining information from an Authorised Firm's lead regulator are set out in GEN Rule 11.1.6.

3-2-7 The DFSA has an interest in the relationship of an Authorised Firm with other regulators, particularly in order to determine the level of reliance the DFSA may place on a regulator in another jurisdiction concerning any lead supervision arrangements. Depending on the legal structure of an Authorised Firm and the relationship of the DFSA with the regulator in question, the DFSA may place appropriate reliance on the supervision undertaken by this regulator.

Domestic firm's group with DIFC head office

3-2-8 The DFSA will usually be the lead and consolidated regulator of any Group headed by a Domestic Firm. Members of the Group, that is any of the Authorised Firm's Subsidiaries or branches, will be either subject to DFSA's exclusive supervision or, where members of the Group are located in a jurisdiction outside the DIFC, generally subject to lead or consolidated supervision by the DFSA in co-operation with another regulator.

Subsidiary of a non-DIFC firm

3-2-9 The DFSA will routinely be the lead regulator for the purpose of prudential supervision of an Authorised Firm which is a DIFC incorporated Subsidiary of a non-DIFC firm.

3-2-10 Where the Authorised Firm is a Subsidiary of a regulated non-DIFC parent company, the DFSA may have regard to any consolidated prudential supervision arrangements to which the Subsidiary is subject and will liaise with other regulators as necessary to ensure that these are adequately carried out, taking into account the

Subsidiary's activities. The DFSA may place appropriate reliance on the Subsidiary's consolidated regulator in another jurisdiction if it is satisfied that it meets appropriate regulatory criteria and standards.

3-2-11 An Authorised Firm carrying on Financial Services as a Subsidiary of an unregulated non-DIFC parent company may be subject to DFSA's consolidated prudential supervision, taking into account the parent's activities.

Branch of a non-DIFC firm

3-2-12 An Authorised Firm carrying on Financial Services through a Branch will be subject to supervision by both the DFSA and the regulator in its head office jurisdiction.

3-2-13 The DFSA will have regard to any lead or consolidated prudential supervision arrangements to which a Branch is subject. The DFSA may place appropriate reliance on a Branch's lead regulator in another jurisdiction and, where appropriate, its consolidated prudential regulator if it is satisfied that it meets appropriate regulatory criteria and standards. Where an Authorised Firm is subject to lead regulation arrangements with a foreign regulator, the DFSA will usually not seek to impose consolidated prudential supervision on the Authorised Firm's Group.

3-2-14 During the authorisation process the DFSA will take into account the nature and scope of the regulation and supervision to which the applicant is subject in its head office jurisdiction. Notwithstanding that an Authorised Firm may be subject to lead or consolidated regulatory arrangements, the DFSA requires it to remain fit and proper in respect of its Group and Controllers. Certain changes or events will require notification to, or prior approval from, the DFSA.

3-2-15 The DFSA will determine the level of regulatory and supervisory oversight which is subsequently required for a specific Branch. As part of DFSA's risk assessment process, during the authorisation process the DFSA undertakes a two-tier approach to the risks to its objectives posed by the Branch, thereby taking into account the characteristics of the applicant and its head office. The first part of this assessment includes a judgement on the degree of home country supervision and considers the strength of support, both financial and managerial, which the head office is capable of providing to the Branch, taking into account the Branch's activities and the adequacy of, among other things, the corporate governance framework and practices and remuneration structure and strategies adopted at the head office. The second part of the assessment considers the risk and control mechanisms within the Branch itself.

3-2-16 As a result of the assessment, the DFSA may consider granting a waiver or modification notice in respect of specific prudential or other regulatory requirements relating to a Branch.