

Appendix 3

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



The DFSA Rulebook

Authorised Market Institutions

(AMI)

2 APPLICATION FOR A LICENCE

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2.2 Licence application

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- 2.2.4** (1) An applicant will only be authorised to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House if the DFSA is satisfied that the applicant:
- (a) has satisfied or will satisfy the Licensing Requirements in relation to the nature of the Financial Services concerned;
 - (b) if applicable, will maintain an Official List of Securities, in a proper and independent manner;
 - (c) is fit and proper; and
 - (d) will conduct and manage its affairs in a sound and prudent manner.
- (2) In making the assessment as to whether an applicant is fit and proper, the DFSA will consider:
- (a) the fitness and propriety of the members of its Governing Body;
 - ~~(a)~~ (b) the suitability of the applicant's connection with its Controllers or any other Person;
 - (c) the likely impact a Controller might have on the applicant's ability to comply with the applicable requirements;
 - ~~(b)~~ (d) the Financial Services concerned;
 - ~~(e)~~ (e) any matter which may harm or may have harmed the integrity or the reputation of the DIFC;
 - ~~(d)~~ (f) the activities of the applicant, the associated risks and accumulation of risks, that those activities pose to the DFSA's objectives;
 - ~~(e)~~ (g) 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; and
 - ~~(f)~~ (h) any other relevant matters.
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6 CONTROLLERS

6.1 Application

6.1.1 This chapter applies to:

- (a) an Authorised Market Institution; ~~or~~ and
- (b) a Person who ~~, or is proposing to become,~~ is a Controller as defined in Rule 6.1.2.

Definition of a Controller

- 6.1.2 (1) A Controller is a Person who, either alone or with any Associate:
- (a) holds 10% or more of the shares in either the an Authorised Market Institution's shares or a Holding Company of that institution;
 - (b) is entitled to exercise, or controls the exercise, of, 10% or more of the voting rights in ~~respect of an~~ either the Authorised Market Institution or a Holding Company of that institution; or
 - (c) is able to exercise significant management influence over the management via a shareholding in an Authorised Market Institution; or of the Authorised Market Institution as a result of holding shares or being able to exercise voting rights in the Authorised Market Institution or a Holding Company of that institution or having a current exercisable right to acquire such shares or voting rights.
 - (d) ~~meets one or more of conditions of (a), (b), or (c) in respect of a Holding Company of an Authorised Market Institution.~~
- (2) ~~In (1) a share means:~~
- (a) ~~in relation to an Authorised Market Institution or a Holding Company of an Authorised Market Institution with share capital, allotted shares;~~
 - (b) ~~in relation to an Authorised Market Institution or a Holding Company of an Authorised Market Institution with capital but no share capital, rights to a portion of the capital of an Authorised Market Institution or a Holding Company of an Authorised Market Institution; or~~
 - (c) ~~in relation to an Authorised Market Institution or a Holding Company of an Authorised Market Institution without capital interests;~~
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- ~~(i) conferring any right to share in the profits, or liability to contribute to the losses, of the Authorised Market Institution or a Holding Company of an Authorised Market Institution; or~~
- ~~(ii) giving rise to any obligation to contribute to the debt or expenses of an Authorised Market Institution Firm or a Holding Company of an Authorised Market Institution in the event of a winding up of the Authorised Market Institution or a Holding Company of the Authorised Market Institution.~~

(2) A reference in this chapter to:

(a) a share means:

- (i) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution which has a share capital, its allotted shares;
- (ii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution with capital but no share capital, rights to a share in its capital; and
- (iii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up.

(b) “a holding” means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Market Institution or a Holding Company of that institution held by that Person either alone or with any Associate.

Guidance

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the DIFC Companies Law. That definition provides when one body corporate is considered to be a holding company or a subsidiary of another body corporate and extends that concept to the ultimate holding company of the body corporate.
2. Pursuant to Rule 6.1.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over an Authorised Market Institution. The ability to exert significant management influence can arise even where a Person, alone or with Associates, controls less than 10% of the shares or voting rights of the Authorised Market Institution or a Holding Company of that institution. Similarly, a Person may be able to exert significant management influence where such Person does not hold shares or voting rights but has exercisable rights to acquire shares or voting rights, such as under Options.

Disregarded holdings

6.1.3 For the purposes of determining whether a Person is a Controller, shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with an Associate, in an Authorised Market Institution or a Holding Company of that institution are disregarded if:

- (a) the shares are held for the sole purpose of clearing and settling within a short settlement cycle;
- (b) the shares are held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or
- (c) the Person is an Authorised Firm or a Regulated Financial Institution and it:
 - (i) acquires a holding of shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;
 - (ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and
 - (iii) retains the holding for a period less than one year.

6.2 Applications and notifications concerning a cChanges in relating to control

Guidance

1. ~~In considering an application for approval of, or a notification, of a change in control, the DFSA must be satisfied that an Authorised Market Institution continues to satisfy the Licensing Requirements and remains fit and proper in light of any changes in control.~~
2. ~~Where the DFSA deems a Controller to be unacceptable and the Authorised Market Institution fails to ensure the Controller is removed or take other specified action to the DFSA's satisfaction, the DFSA may withdraw the Authorised Market Institution's Licence under Article 64.~~

6.2.1 ~~A Person must not act as a Controller of an Authorised Market Institution unless it, or the Authorised Market Institution, has:~~

- (a) ~~obtained prior approval in accordance with Rule 6.2.3(2); or~~
- (b) ~~made a prior notification in accordance with Rule 6.2.3(3) or Rule 6.2.5(2), as may be applicable.~~

6.2.2 ~~An Authorised Market Institution must take reasonable steps to monitor changes or proposed changes concerning:~~

- (a) ~~its Controllers;~~

- ~~(b) — the level of control of existing Controllers; and~~
- ~~(c) — significant changes in the circumstances of existing Controllers which might reasonably be considered to affect the fitness and propriety of the Authorised Market Institution.~~

Guidance

- ~~1. — Steps taken by an Authorised Market Institution to comply with Rule 6.2.2 must have regard to the approval and notification requirements set out in this chapter.~~
- ~~2. — Reasonable steps in Rule 6.2.2 should include, but are not limited to, the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.~~

~~**6.2.3** (1) — Where the Authorised Market Institution is incorporated under DIFC law and a Person proposes to become a Controller or, in respect of an existing Controller, the level of control changes in regard to the kind of shareholding and influence set out in Rule 6.1.2(1), as a result of the events described in (2) or (3) below, the Authorised Market Institution must submit a notification or application to the DFSA as applicable.~~

~~(2) — The events mentioned in (1) which trigger a written application for prior approval are as follows:~~

- ~~(a) — a Person becomes a Controller;~~
- ~~(b) — when a holding is increased from below 10% to 10% or more;~~
- ~~(c) — when a holding is increased from below 30% to 30% or more;~~
- ~~(d) — when a holding is increased from below 50% to 50% or more;~~
~~or~~
- ~~(e) — when any significant management influence as identified under Rule 6.1.2(1)(c) or (d), occurs which has not previously been disclosed to the DFSA.~~

~~(3) — The event mentioned in (1) which triggers a written notification is when a holding is decreased from more than 50% to 50% or less.~~

~~(4) — An application for prior approval or notification must be submitted to the DFSA using the appropriate form in AFN.~~

~~**6.2.4** (1) — An Authorised Market Institution must submit the notification or application required in Rule 6.2.3(1) not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.~~

~~(2) — Where an Authorised Market Institution is not reasonably able to comply with (1), the Person identified in Rule 6.1.1(b) must submit the required notification or application for approval.~~

~~(3) In the event of (2), an Authorised Market Institution must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in (2) of their obligations under this chapter.~~

~~**6.2.5** (1) Where the Authorised Market Institution is incorporated other than under DIFC law and a Person proposes to become a Controller or, in respect of an existing Controller, the level of control changes in regard to the kind of shareholding and influence set out in Rule 6.1.2(1), as a result of the events described in (2) or (3) below, the Authorised Market Institution must submit a notification to the DFSA.~~

~~(2) The events mentioned in (1) which trigger a notification are as follows:~~

~~(a) a Person becomes a Controller;~~

~~(b) when a holding is increased from below 10% to 10% or more;~~

~~(c) when a holding is increased from below 30% to 30% or more;~~

~~(d) when a holding is increased from below 50% to 50% or more;~~

~~(e) when a holding is decreased from more than 50% to 50% or less; or~~

~~(f) when any significant management influence as identified under Rule 6.1.2(1)(c) or (d), occurs which has not previously been disclosed to the DFSA.~~

~~(3) A notification must be submitted to the DFSA using the appropriate form in AFN.~~

~~**6.2.6** (1) An Authorised Market Institution must submit the notification required in Rule 6.2.5(1) not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.~~

~~(2) Where an Authorised Market Institution is not reasonably able to comply with (1), the Person identified in Rule 6.1.1(b) must submit the required notification.~~

~~(3) In the event of (2), an Authorised Market Institution must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in (2) of his obligations under this chapter.~~

Guidance

~~1. In determining an application for approval made in accordance with Rule 6.2.3 the DFSA will consider all relevant information.~~

- ~~2. The DFSA will endeavour to determine applications made in accordance with Rule 6.2.3 within 28 days of receipt of all the required information being submitted, or such shorter time as may be agreed in exceptional circumstances.~~
- ~~3. The DFSA will only respond to a notification made in accordance with Rules 6.2.3 or 6.2.5 if it requires further information in light of the changes referred to in the notification.~~
- ~~4. Rules 6.2.3 or 6.2.5 also applies in certain circumstances where a change in control has occurred, without a Controller having taking any action. This may arise, for example, after a capital re-organisation.~~

Requirement for prior approval of Controllers of an Authorised Market Institution incorporated under DIFC law

- 6.2.1** (1) In the case of an Authorised Market Institution which is incorporated under DIFC law, a Person must not:
- (a) become a Controller of the Authorised Market Institution; or
 - (b) increase the level of control which that Person has in the Authorised Market Institution beyond a threshold specified in (2).
- unless that Person has obtained the prior written approval of the DFSA to do so.
- (2) For the purposes of (1)(b), the thresholds at which the prior written approval of the DFSA is required are when the relevant holding is increased:
- (a) from below 30% to 30% or more; or
 - (b) from below 50% to 50% or more.

Guidance

See Rule 6.1.2 for the circumstances in which a Person becomes a Controller of an Authorised Market Institution.

Approval process

- 6.2.2** (1) A Person who is required to obtain the prior written approval of the DFSA pursuant to Rule 6.2.1(1) must make an application to the DFSA using the appropriate form in AFN.
- (2) Where the DFSA receives an application under (1), it may:
- (a) approve the proposed acquisition or increase in the level of control;

- (b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or
- (c) object to the proposed acquisition or increase in the level of control.

Guidance

1. A Person intending to acquire or increase control in an Authorised Firm should submit an application for approval in the appropriate form in AFN sufficiently in advance of the proposed acquisition to be able to obtain the DFSA approval in time for the proposed acquisition.
2. Section 3.6.7 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when exercising its powers under Rule 6.2.2 to approve, object to or impose conditions of approval relating to a proposed Controller or an increase in the level of control of an existing Controller.

6.2.3 (1) Where the DFSA proposes to approve a proposed acquisition of or an increase in the level of control in an Authorised Market Institution pursuant to Rule 6.2.2(2)(a), it must:

- (a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different period is considered appropriate by the DFSA and notified to the applicant in writing; and
- (b) issue to the applicant, and where appropriate to the Authorised Market Institution, an approval notice as soon as practicable after making that decision.

(2) An approval, including a conditional approval granted by the DFSA pursuant to Rule 6.2.2(2)(a) or (b), is valid for a period of one year from the date of the approval, unless an extension is granted by the DFSA in writing.

Guidance

1. If the application for approval lodged with the DFSA does not contain all the required information, then the 90 day period runs from the date on which all the relevant information is provided to the DFSA.
2. If a Person who has obtained prior DFSA approval for an acquisition of or an increase in the control in an Authorised Market Institution is unable to effect the acquisition before the end of the period referred to in Rule 6.2.3(2), it will need to obtain fresh approval from the DFSA.

Objection or conditional approval process

6.2.4 (1) Where the DFSA proposes to exercise its objections or conditional approval power pursuant to Rule 6.2.4(2)(b) or (c) in respect of a proposed acquisition or an increase in the level of control in an

Authorised Market Institution, 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; 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.

(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.

Guidance

A final decision made by the DFSA pursuant to Rule 6.2.5(4)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

6.2.5 (1) A Person who has been approved by the DFSA as a Controller of an Authorised Market Institution subject to any conditions must comply with the relevant conditions of approval.

(2) A Person who has been notified by the DFSA pursuant to Rule 6.2.4(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Authorised Market Institution.

Guidance

A Person who acquires control of or increases the level of control in an Authorised Market Institution without the prior DFSA approval or breaches a condition of approval is in breach of the Rules. See Rule 6.2.10 for the actions that the DFSA may take in such circumstances.

Notification for decrease in the level of control of an AMI incorporated under DIFC law

6.2.6 A Controller of an Authorised Market Institution which is incorporated under DIFC law must submit, using the appropriate form in AFN, a written notification to the DFSA where that Person:

- (a) proposes to cease being a Controller; or
- (b) proposes to decrease the existing holding from more than 50% to 50% or less.

Notification for changes in control relating to an Authorised Market Institution incorporated under non-DIFC law

6.2.7 (1) In the case of an Authorised Market Institution which is incorporated other than under DIFC law, a written notification to the DFSA must be submitted by a Controller or a Person proposing to become a Controller in accordance with (3) in respect of any one of the events specified in (2).

(2) For the purposes of (1), a notification to the DFSA is required when:

- (a) a Person becomes a Controller;
- (b) an existing Controller proposes to cease being a Controller; or
- (c) an existing Controller's holding is:
 - (i) increased from below 30% to 30% or more;
 - (ii) increased from below 50% to 50% or more; or
 - (iii) decreased from more than 50% to 50% or less.

(3) The notification required under (1) must be made using the appropriate form in AFN and as soon as possible before making the relevant acquisition or disposition.

Obligations of an Authorised Market Institution relating to its Controllers

6.2.8 (1) An Authorised Market Institution must have adequate systems and controls to monitor:

- (a) any change or proposed change of its Controllers; and
- (b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact the fitness and propriety of the Authorised Market Institution or its ability to conduct business soundly and prudently.

- (2) An Authorised Market Institution must, subject to (3), notify the DFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.
- (3) An Authorised Market Institution need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the DFSA or notified the event to the DFSA as applicable.

Guidance

Steps which an Authorised Market Institution may take in order to monitor changes relating to its Controllers include the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

- 6.2.9**
- (1) An Authorised Market Institution must submit to the DFSA an annual report on its Controllers within four months of its financial year end.
 - (2) The Authorised Market Institution's annual report on its Controllers must include:
 - (a) the name of each Controller; and
 - (b) the current holding of each Controller, expressed as a percentage.

Guidance

- 1. An Authorised Market Institution may satisfy the requirements of Rule 6.2.9 by submitting a corporate structure diagram containing the relevant information.
- 2. An Authorised Market Institution must take account of the holdings which the Controller, either alone or with an Associate, has in the Authorised Market Institution or any Holding Company of that institution (see the definition of a Controller in Rule 6.1.2).

Other powers relating to Controllers

- 6.2.10**
- (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 Market Institution where such a Person:
 - (a) has acquired or increased the level of control that Person has in an Authorised Market Institution without the prior written approval of the DFSA as required under Rule 6.2.1;
 - (b) has breached the requirement in Rule 6.2.5 to comply with conditions of approval applicable to that Person;
 - (c) is no longer acceptable to the DFSA as a Controller.
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- (2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Market Institution, 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 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.

Guidance

Refer to section 3.6.1 of the RPP Sourcebook for matters which the DFSA takes into consideration when exercising its powers under Rule 6.2.10. A final decision made by the DFSA pursuant to Rule 6.2.10(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

6.3 — Annual reporting of controllers

6.3.1 — ~~An Authorised Market Institution must submit to the DFSA an annual report on its Controllers within four months of its financial year end.~~

6.3.2 — ~~The Authorised Market Institution's annual report on its Controllers must include:~~

- ~~(a) the name and address of each Controller;~~
- ~~(b) the current holding of each Controller (expressed as a percentage of issued capital); and~~
- ~~(c) where a Person is a Controller by virtue of the operation of Rule 6.1.2(c) or (d), the circumstances that cause it to be such a Controller.~~

Guidance

~~An Authorised Market Institution may satisfy the requirements of Rule 6.3.2 by submitting a corporate structure diagram along with the relevant information.~~