

**Appendix 4**

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****2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS**

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**Close Links**

**2-2-7** GEN section 6.6 concerns Close Links. The DFSA should be satisfied that the existence of Close Links do not prevent the effective supervision of the Authorised Person by the DFSA.

**Legal status of Authorised Firms**

**2-2-8** The DFSA will only consider an application for authorisation where the legal status of the proposed entity meets the requirements set out in section 7.2 of the GEN module or chapter 7 of the AMI module. In the case of non-DIFC firms other than companies limited by shares, the DFSA will consider whether the legal form is appropriate for the activities proposed.

**2-2-9** In respect of Effecting Contracts of Insurance, Carrying Out Contracts of Insurance, Acting as the Trustee of a Fund, or Operating a Collective Investment Fund, an Authorised Firm has to be a Body Corporate in accordance with GEN Rules 7.2.2(2) and 7.2.2(4) respectively.

**2-2-10** In respect of Accepting Deposits or seeking to Accept Deposits, an Authorised Firm has to be a Body Corporate or Partnership in accordance with GEN Rule 7.2.2(3).

**Ownership and Group**

**2-2-11** In respect of the ownership and Group structure of an Authorised Person, the DFSA may have regard to:

- (a) the Authorised Person's position within its Group, including any other relationships that may exist between the Authorised Person's affiliates, Controllers, Associates or other Persons that may be considered a Close Link (see section 2.2.12 for considerations relating to Controllers and section 2.2.7 for considerations relating to Close Links);
- ~~(e)~~ (b) the financial strength ~~of a Controller and other members~~ of the Group and its implications for the Authorised Person;
- (c) whether the Group has a structure which makes it possible to:
  - (i) exercise effective supervision;
  - (ii) exchange information among regulators who supervise Group members; and

- (iii) determine the allocation of responsibility among the relevant regulators;
- ~~(b) (d)~~ any information provided by other regulators or third parties in relation to the Authorised Person or any entity within its Group; and
- ~~(c)~~ the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Group, and the degree of influence that they are, or may be, able to exert over the Authorised Person and/or its activities;
- ~~(d)~~ the reputation and experience of a Controller or any other Person who will exert significant management influence over the Authorised Person;
- (f) ~~(e)~~ whether the Authorised Person or its Group is subject to any adverse effect or considerations arising from its a country or countries of incorporation or the country (or countries) of incorporation or other relevant jurisdiction of its Controllers, establishment and operations of any member of its Group. In considering such matters, the DFSA may also have regard to the type and level of regulatory oversight in the relevant country or countries of incorporation, or other relevant jurisdiction referred to above, of the Group members, the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

### **Controllers**

**2-2-12** In respect of the Controllers of an Authorised Person, the DFSA may, taking into account the nature, scale and complexity of the firm's business and organisation, have regard to:

- (a) the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Authorised Person, and the degree of influence that they are, or may be, able to exert over the Authorised Person and/or its activities;
- (b) where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller;
- (c) the financial strength of a Controller and its implications for the Authorised Person's ability to ensure the sound and prudent management of its affairs, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Firm; and
- (d) whether the Authorised Person is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a Controller. In considering such matters, the DFSA may have regard to, among other things, the type and level of regulatory oversight which the Controller is subject to in the relevant country or countries and the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

**2-2-13** Where the DFSA has any concerns relating to the fitness and propriety of an applicant for a licence stemming from a Controller of such a person, the DFSA may consider imposing licence conditions designed to address such concerns. For example, the DFSA may impose, in the case of a start-up, a licence condition that there should be shareholder agreement to resort to an effective shareholder dispute resolution mechanism.

### **Resources, Systems and Controls**

**2-2-124** The DFSA may have regard to whether the Authorised Person has sufficient resources, including the appropriate systems and controls (including those set out in chapter 5 of the GEN module), such as:

- (a) the Authorised Person's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Person appears in a position to be able to continue to comply with such Rules;
- (b) the extent to which the Authorised Person is or may be able to secure additional capital in a form acceptable to the DFSA where this appears likely to be necessary at any stage in the future;
- (c) the availability of sufficient competent human resources to conduct and manage the Authorised Person's affairs, in addition to the availability of sufficient Authorised Individuals to conduct and manage the Authorised Person's Financial Services;
- (d) whether the Authorised Person has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;
- (e) whether the Authorised Person has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering and counter terrorism legislation, and relevant UN Security Council sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;
- (f) the impact of other members of the Authorised Person's Group on the adequacy of the Authorised Person's resources and in particular, though not exclusively, the extent to which the Authorised Person is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator;
- (g) whether the Authorised Firm is able to provide sufficient evidence about the source of funds available to it, to the satisfaction of the DFSA. This is particularly relevant in the case of a start-up entity; and
- (h) ~~the matters specified in section 2.2.12(c). financial soundness of a Controller, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Firm.~~

### 3 SUPERVISION - BEING REGULATED

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#### Application Requirements relating to for a Change in Control

~~3-2-33 Article 64 of the Regulatory Law 2004 and section 11.8 of the GEN Module govern set out the DFSA's requirements governing Controllers of Authorised Firms. relating to a change in control.~~

#### DFSA approval

3-2-34 A Person who proposes to become a Controller of a Domestic Firm or an existing Controller who proposes to increase the level of control which that Person has in a Domestic Firm beyond the threshold of 30% or 50% is required to obtain the DFSA's prior approval before doing so. The DFSA's assessment of a proposed acquisition or increase in control of a Domestic Firm is a review of such a firm's continued fitness and propriety and ability to conduct business soundly and prudently. Accordingly, the DFSA takes into account the considerations specified in section 2.2.12 relating to Controllers when making such an assessment.

3-2-35 Pursuant to GEN Rule 11.8.5(1), a Person who proposes either to acquire or increase the level of control in a Domestic Firm must lodge with the DFSA an application for approval in the appropriate form in AFN. The DFSA may approve of, object to or impose conditions relating to the proposed acquisition or the proposed increase in the level of control of the Authorised Firm. If the information in the application form lodged with the DFSA is incomplete or unclear, the DFSA may in writing request further clarification or information. The DFSA may do so at any time during the processing of such an application. The period of 90 days within which the DFSA will make a decision will not commence until such clarification or additional information is provided to the satisfaction of the DFSA. The DFSA may, in its absolute discretion, agree to a shorter period for processing an application where an applicant requests for such a period, provided all the information required is available to the DFSA.

3-2-36 Where the DFSA proposes to object to or impose conditions relating to a proposed acquisition of or increase in the level of control in a Domestic Firm, the DFSA will first notify the applicant in writing of its proposal to do so and its reasons. The DFSA will take into account any representations made by an applicant before making its final decision.

3-2-37 The DFSA may consider whether a Person has become an unacceptable Controller as a result of any notification given by an Authorised Firm pursuant to Rule 11.8.11(2) or as a result of its own supervisory work. The considerations which the DFSA will take into account in assessing whether a Person is an acceptable Controller are those set out in section 3.2.34 above.

~~3-2-34 Where the DFSA requires further information in relation to a notification made in accordance with GEN Rule 11.8.5, it may seek to request such information within a reasonable period of time of receipt of the original notification.~~

~~3-2-35~~ The DFSA will endeavour to act on an application for prior approval made in accordance with GEN Rule 11.8.6 within 28 days of receipt of all the required information being submitted, or such shorter time as may be agreed in exceptional circumstances.

~~3-2-36~~ The DFSA may require further information relating to an application for approval within 28 days of receipt of the application where such additional information is required in order to determine the fitness and propriety of the Authorised Firm in light of the changes referred to in the application or notification.

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## **3-6 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS**

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### **Application for a Change in Control**

**3-6-7** The AMI module sets out requirements relating to a change in control. These requirements are similar to those for an Authorised Firm which are set out at paragraphs 3-2-33 to 3-2-444 and 3-2-554 to 3-2-596 of this chapter.