



The DFSA Rulebook

Recognition

(REC)

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1 APPLICATION OF THE RECOGNITION MODULE

1.1 Application

1.1.1 This module (REC) applies to every Person to whom the Regulatory Law applies and to the same extent in relation to every such Person as that Law, except to the extent that a provision of REC provides for a narrower application.

Guidance

1. This module is divided into three parts. REC part 1 (chapters 2 – 5) sets out details of the regulatory framework that applies to Recognised Bodies and applicants for such status. REC part 2 (chapters 6 – 9) sets out details of the process for recognition as a Recognised Member. REC part 3 (chapter 10) sets out general provisions which apply to both Recognised Bodies and Recognised Members (Recognised Persons).
2. References to Articles made in this module are references to Articles in the Regulatory Law 2004 unless otherwise stated.

PART 1 RECOGNISED BODIES

2 INTRODUCTION

2.1 Application

2.1.1 REC part 1, that is chapters 2 - 5, applies to every Recognised Body and every Person who proposes to become a Recognised Body.

[Amended][VER2/08-05

Guidance

1. Recognised Bodies are exchanges, clearing houses and settlement facilities which carry on Financial Services in or from the DIFC without having a physical presence in the DIFC. If those bodies did have a physical presence in the DIFC they would need to be licensed as an Authorised Market Institution. The Recognised Body regime set out in this module provides for those Recognised Bodies to simply be recognised.
2. The effect of the Financial Services prohibition contained in Article 41(1) of the Law is that, subject to certain exceptions, a Person shall not carry on a Financial Service in or from the DIFC. Article 41(6) provides for an exception in respect of Recognised Bodies who are exempt from the Financial Services prohibition in respect of Financial Services specified in their Recognition Notice.
3. Chapter 3 of this module sets out the manner in which an application for a Recognition Notice may be made. Rule 3.2.1 provides that the Recognition Notice may specify either or both of the Financial Services of Operating an Exchange or of Operating a Clearing House.
4. Chapter 4 sets out the Recognition Requirements which all Recognised Bodies must meet while chapter 5 sets out the obligations of Recognised Bodies.
5. The Recognised Body regime is designed to reduce the day-to-day involvement of the DFSA in the supervision of these types of bodies and to allow the DFSA to rely substantially on the supervisory and regulatory arrangements in the country where the applicant's head office is situated.
6. The following parts of the DFSA Rulebook also apply to Recognised Bodies:

Module	Applicable chapters
General (GEN)	1, 2 and 6
Enforcement (ENF)	All chapters

3 RECOGNITION

3.1 Application

3.1.1 This chapter applies to a Recognised Body and an applicant for Recognition as a Recognised Body.

3.2 Application for recognition as a Recognised Body

3.2.1 A Person, referred to in this chapter as an applicant, who intends to carry on either or both of the Financial Services of Operating an Exchange or of Operating a Clearing House as a Recognised Body must apply to the DFSA for Recognition in accordance with the Rules in this chapter.

Guidance

An applicant, or potential applicant, to be a Recognised Body in relation to the activities prescribed by Rule 3.2.1 is advised to contact the DFSA to discuss their application at the earliest possible occasion and prior to the submission of any written documentation. In particular, the appropriateness of such Recognition will be discussed in relation to the proposed business activities.

3.2.2 An applicant for Recognition must be:

(a) licensed or otherwise authorised to operate an exchange, clearing house or settlement facility in a jurisdiction acceptable to the DFSA,

but must not be:

(b) an Authorised Firm or an applicant to be an Authorised Firm; or

(c) an Authorised Market Institution or an applicant to be an Authorised Market Institution.

Guidance

In determining whether the jurisdiction is acceptable to the DFSA, the DFSA will place primary importance on the standard of regulation in that jurisdiction and will consider whether there are adequate arrangements in place for co-operation between the DFSA and the relevant Financial Services Regulator. These arrangements will normally take the form of a memorandum of understanding between the DFSA and the Financial Services Regulator.

3.2.3 An applicant for Recognition must submit a written application to the DFSA demonstrating:

- (a) how the applicant satisfies or intends to satisfy the Recognition Requirements and any other requirements applicable to it;
- (b) a 12 month business plan for the operations in the DIFC; and
- (c) copies of any agreements relied upon to satisfy the Recognition Requirements.

Guidance

[Deleted][VER4/12-07][RM52/07]

3.2.4 An applicant will only be granted Recognition to carry on either or both of the Financial Services of Operating an Exchange or of Operating a Clearing House if the DFSA is satisfied that the applicant:

- (a) has satisfied the Recognition Requirements in relation to the nature of the Financial Services concerned;
- (b) is fit and proper, taking into account amongst all other factors, the ownership and control of the applicant; and
- (c) will conduct and manage its affairs in a sound and prudent manner.

3.2.5 In assessing an application for Recognition the DFSA may:

- (a) carry out any enquiries which it considers appropriate including enquiries independent of the applicant;
- (b) require the applicant to submit additional information;
- (c) require any information submitted by the applicant to be verified in such manner as the DFSA may specify; and
- (d) take into account any information which the DFSA considers appropriate in relation to the applicant.

3.2.6 If an applicant becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application which is under consideration by the DFSA, it must inform the DFSA of the change, in writing, without delay.

3.2.7 [Deleted][VER4/12-07][RM52/07]

3.3 Change of scope of recognition

3.3.1 A Recognised Body applying to change the scope of its Recognition, or to have a condition or restriction varied or withdrawn, must provide the DFSA with sufficient written details for it to be able to consider the change, variation or withdrawal in respect of the Recognition Requirements.

Guidance

Where a Recognised Body applies to change the scope of its Recognition, it should provide a revised business plan describing the basis of, and rationale for, the proposed change and evidence that the Recognition Requirements will still be satisfied.

3.3.2 A Recognised Body seeking to have its Recognition revoked must submit a request in writing stating:

- (a) the reasons for the request;
- (b) that it has ceased or will cease to carry on Financial Services in or from the DIFC;
- (c) the date on which it ceased or will cease to carry on Financial Services in or from the DIFC; and
- (d) that it has discharged, or will discharge, all obligations owed to its direct and indirect users in respect of whom the Recognised Body has carried on, or will cease to carry on Financial Services in or from the DIFC.

3.4 Determination of applications and appeals

Guidance

Determination of applications

1. Article 61(7) states the DFSA may refuse to grant Recognition or a change to the scope of an existing Recognition
2. Article 61(8) states that the DFSA may grant an application for Recognition or a change to the scope of Recognition, with or without conditions and restrictions either with an applicant's agreement or by imposition.
3. Under Article 61(9), the DFSA may revoke Recognition on its own initiative by means of a Revocation Notice or at the request of a Recognised Body. Pursuant to Article 61(11), the DFSA will provide a Recognised Body with an opportunity to make representations prior to issuing a revocation notice unless, in accordance with Article 61(12) any delay would be prejudicial to the interests to the DIFC.

4. Upon determination of an application under Articles 61(7) (8) or (9), as referred to above, the DFSA will without undue delay notify the applicant or Recognised Body in writing of its decision.

Appeals

5. Under Article 27, an applicant or a Recognised Body may appeal against any determination by the DFSA in relation to:
 - a. an application for Recognition or for an extension of Recognition;
 - b. an imposition, variation or withdrawal of a condition or restriction to a Recognition; and
 - c. the exercise of the DFSA's power to revoke Recognition.
6. Under Article 28, an applicant or Recognised Body wishing to appeal must submit a written notice of appeal within 30 days of the notification of the relevant decision, or within a further period not exceeding 30 days as approved by the Regulatory Appeals Committee.
7. The form of submission that an appeal must take is specified in the rules of procedures of the Regulatory Appeals Committee.

4 RECOGNITION REQUIREMENTS

4.1 Application

- 4.1.1** This chapter applies to a Recognised Body and an applicant for Recognition as a Recognised Body.

4.2 Recognition requirements

- 4.2.1** A Recognised Body must satisfy the Recognition Requirements contained in the Rules in this section to the satisfaction of the DFSA at the time of Recognition and at all times thereafter while Recognised.

Guidance

In addition to satisfying the Recognition Requirements, the DFSA expects that a Recognised Body will comply with all anti money laundering requirements to which it is subject in its home jurisdiction.

Maintenance of standards

- 4.2.2** A Recognised Body must operate to a standard which would satisfy the Licensing Requirements for Authorised Market Institutions set out in AMI, insofar as the Licensing Requirements are applicable to the Recognised Body.

Guidance

1. The Licensing Requirements for Authorised Market Institutions are set out in AMI and include requirements relating to:
 - a. financial resources;
 - b. systems and controls;
 - c. general safeguards for investors; and
 - d. transaction recording.
2. In particular, the DFSA will consider how the Recognised Body is able and willing to promote high standards of integrity and fair dealing. In this consideration, the DFSA will have regard to:
 - a. the extent to which a Recognised Body seeks to promote and encourage such standards through its rules, procedures and practices; and
 - b. any other applicable rules and principles which apply to the carrying on of business on its facilities

3. The DFSA will pay special attention to the systems and controls in place within the Recognised Body designed to ensure the Recognised Body has an effective anti money laundering regime. The Recognised Body should be able to demonstrate at all times that it complies with any relevant anti money laundering laws and regulations which apply to it in its home jurisdiction.

Relations with regulators

4.2.3 A Recognised Body must:

- (a) deal with the DFSA and Financial Services Regulators in an open and co-operative manner; and
- (b) keep the DFSA promptly informed of significant events or anything else relating to the Recognised Body of which the DFSA would reasonably expect to be notified.

Guidance

In assessing the ability and willingness of a Recognised Body to co-operate with the DFSA and other Financial Services Regulators, the DFSA may have regard to:

- a. the agreements in place between persons granted access to the facilities and the Recognised Body for obtaining information;
- b. the extent to which the Recognised Body is open and co-operative with the DFSA and other Financial Services Regulators with regards to regulatory matters; and
- c. how diligently the Recognised Body responds to enquiries from the DFSA or other regulatory authorities.

5 SUPERVISION

5.1 Application

5.1.1 This chapter applies to every Recognised Body.

5.2 General approach

5.2.1 Supervisory approach and the reporting statement

Guidance

1. The DFSA will rely upon the lead Financial Services Regulator to act as the primary regulator of the Recognised Body. The focus of DFSA's interest will be on activities carried on in the DIFC or those activities of the Regulated Body that may have an impact on the DIFC. This section sets out the DFSA's supervisory approach in that regard.
2. Many of the requirements contained in this section are likely to be equivalent to requirements to which a Recognised Body is subject in its home jurisdiction. Therefore, the DFSA may accept copies of submissions or information provided to the other Financial Services Regulator in satisfaction of the requirement in this chapter.

5.2.2 A Recognised Body must notify the DFSA immediately of any event that may cause it to be unable to satisfy the Recognition Requirements.

Guidance

1. An example of an event that may immediately cause a Recognised Body to be unable to satisfy the Recognition Requirements is where a Recognised Body is served notice that its relevant permission in its home jurisdiction has been or is about to be:
 - a. withdrawn or revoked; or
 - b. modified in any way which would materially restrict the Recognised Body in performing a financial service in the DIFC or its home territory.
2. Other examples which may cause a Recognised Body to be unable to meet the requirements include significant changes to any relevant law or regulation in its home territory, which:
 - a. governs exchanges or clearing houses;
 - b. is designed to prevent Market Misconduct or money laundering;
 - c. affects the ability of the Recognised Body to seek information from its users or to provide information to the DFSA; or

- d. requires significant changes to the Recognised Body's organisation, structure or practices.

5.2.3 (1) A Recognised Body must provide the DFSA with a reporting statement at least once a year, at a date or dates agreed during the application process or thereafter, which contains, in relation to the period to which the reporting statement relates:

- (a) confirmation that the Recognised Body is licensed or authorised as required by Rule 3.2.2;
- (b) confirmation that the Recognised Body is satisfying the Recognition Requirements and has satisfied the Recognition Requirements throughout the period;
- (c) particulars of changes to its:
 - (i) memorandum and articles of association or any similar constitutional documents;
 - (ii) organisation, structure and practices; and
 - (iii) governing body; and
- (d) particulars of any disciplinary action, or any other action, taken against it by any supervisory authority in any jurisdiction to which it is subject, whether or not that action has been made public, where such action:
 - (i) relates to conduct carried in or from the DIFC; or
 - (ii) is of such a nature that the DFSA would reasonably expect to be notified.

(2) A Recognised Body must provide to the DFSA a copy of its annual report and accounts, including any consolidated annual report and accounts of any Group of which the Recognised Body is a member at the time it provides such documents to its Financial Services Regulator in its home jurisdiction.

Guidance

If a Recognised Body is required to provide a reporting statement in accordance with Rule 5.2.3(1) at or around the same time as it is required to provide an annual report in accordance with Rule 5.2.3(2), the DFSA will accept the annual report as satisfying the requirement in (1) insofar as the information is contained in the annual report.

5.3 General notification requirements

5.3.1 A Recognised Body must provide the DFSA with a copy of any information provided to any Financial Services Regulator to which the Recognised Body is subject and which is relevant to Financial Services carried on in or from the DIFC.

5.4 Core information

5.4.1 A Recognised Body must provide the DFSA with reasonable advance notice of a change in:

- (a) the Recognised Body's name;
- (b) any business name under which the Recognised Body carries on a Financial Service in or from the DIFC;
- (c) the address of the Recognised Body's registered office or head office;
- (d) its legal structure; or
- (e) its financial year.

5.5 Other regulators

5.5.1 A Recognised Body must advise the DFSA immediately upon:

- (a) the granting, modification, variation, withdrawal or refusal of any application for, or revocation of, licensing, recognition or authorisation:
 - (i) in the jurisdiction in which the Recognised Body has its head office or principal business; and
 - (ii) in any other jurisdiction to the extent that the relevant licensing, recognition or authorisation relates to operating an exchange, clearing house or settlement facility;
- (b) the granting, withdrawal or refusal of an application for, or revocation of, membership of the Recognised Body by any regulated exchange or clearing house;
- (c) the Recognised Body becoming aware that a Financial Services Regulator has started an investigation into the affairs of the Recognised Body;

- (d) the appointment of inspectors, howsoever named, by a Financial Services Regulator to investigate the affairs of the Recognised Body; or
- (e) the imposition of disciplinary measures or disciplinary sanctions on the Recognised Body in relation to its financial services by any Financial Services Regulator.

Guidance

The DFSA does not require advice from a Recognised Body for the purposes of Rule 5.5.1(c) or (d) where the activities of the Financial Services Regulator are part of a routine or regular inspection or audit of the affairs of the Recognised Body.

5.6 Insolvency and dissolution provisions

5.6.1 A Recognised Body must notify the DFSA immediately upon:

- (a) the calling of a meeting to consider a resolution for winding up the Recognised Body;
- (b) an application to dissolve the Recognised Body or to strike it from the corporate register in its home jurisdiction;
- (c) the presentation of a petition for the winding up of the Recognised Body;
- (d) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Recognised Body;
- (e) the application by any Person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country; or
- (f) any other event relating to the insolvency of the Recognised Body.

PART 2 RECOGNISED MEMBERS

6 INTRODUCTION

6.1 Application

6.1.1 REC part 2, that is, chapters 6 – 9, applies to every Recognised Member and every Person who proposes to become a Recognised Member.

[Amended][VER2/08-05

Guidance

1. Recognised Members are members of an Authorised Market Institution who have no physical presence in the DIFC. If those Members did have a physical presence in the DIFC they may need to be licensed as an Authorised Firm. The Recognised Member regime set out in this module provides for those Recognised Members to be recognised instead.
2. The Financial Services prohibition contained in Article 41(1) of the Law provides that a Person shall not carry on a Financial Service in or from the DIFC. However, Article 41(7) provides that Recognised Members are exempt from that prohibition in respect of Financial Services as specified by their Recognition Notice.
3. Chapter 7 of this module sets out the manner in which an application for a Recognition Notice may be made. Chapter 8 sets out the information the DFSA requires from Recognised Members for a Recognition Notice to be issued. Chapter 9 sets out the obligations of Recognised Members.
4. The following parts of the DFSA Rulebook also apply to Recognised Members:

Module	Applicable chapters
General (GEN)	1, 2 and 6
Enforcement (ENF)	All chapters

7 RECOGNITION

7.1 Application

7.1.1 This chapter applies to a Recognised Member and an applicant for Recognition as a Recognised Member.

7.2 Application for recognition as a Recognised Member

7.2.1 A Person, referred to in this chapter as an applicant, who intends to carry on Financial Services in the DIFC for the purposes of, or in connection with, trading on or using the facilities of an Authorised Market Institution must apply for Recognition in accordance with the Rules in this chapter.

Guidance

An applicant, or potential applicant, to be a Recognised Member in relation to the activities prescribed by Rule 7.2.1 is advised to contact the DFSA to discuss their application at the earliest possible notice and prior to the submission of any written documentation. In particular, the appropriateness of such recognition will be discussed in relation to the proposed business activities.

7.2.2 An applicant for Recognition must:

- (a) not be:
 - (i) an Authorised Firm or an applicant to be an Authorised Firm;
or
 - (ii) an Authorised Market Institution or an applicant to be an Authorised Market Institution,
- (b) be able to comply with the requirements in either Rule 7.2.3(a) or Rule 7.2.3(b);
- (c) have its head and registered offices outside of the DIFC; and
- (d) subject to being granted Recognition by the DFSA, be a Member of, or authorised to use the facilities of, an Authorised Market Institution.

[Amended][VER3/01-07][RM39/07]

Guidance

The DFSA will accept an agreement in principle from the Authorised Market Institution for the purposes of the requirement in 7.2.2(d). [Amended][VER3/01-07][RM39/07]

7.2.3 For the purposes of Rule 7.2.2(b), an applicant must:

- (a) be:
 - (i) licensed or authorised to perform the financial services it will be carrying on in the DIFC in a jurisdiction other than the DIFC; and
 - (ii) regulated in respect of those activities in (i) by a Financial Services Regulator to a standard satisfactory to the DFSA; or
- (b) satisfy the DFSA that it:
 - (i) is a Body Corporate of good standing and repute;
 - (ii) will only conduct the Financial Service of Dealing in Investments as Principal in relation to Commodity Derivatives on an Authorised Market Institution, which is licensed to operate a market in Derivatives;
 - (iii) has adequate and relevant expertise relating to dealing in Investments, which are Commodity Derivatives;
 - (iv) has a Person, resident within the DIFC, authorised to accept service of notice and process on behalf of the applicant; and
 - (v) will have in place adequate contractual arrangements to subject itself to the jurisdiction of the DFSA and DIFC Court relating to all matters arising out of its activities in or from the DIFC;

and the DFSA does not otherwise object.

[Added][VER3/01-07][RM39/07]

Guidance

1. In determining whether the Financial Services Regulator is satisfactory to the DFSA for the purposes of Rule 7.2.3(a), the DFSA will consider whether there are adequate arrangements in place for co-operation between the DFSA and the Financial Services Regulator. These arrangements will normally take the form of a memorandum of understanding between the DFSA and the Financial Services Regulator.
2. Recognition under Rule 7.2.3(b) will not be available to persons proposing to conduct the Financial Service of Dealing in Investments as Agent relating to Commodity Derivatives.
3. Matters that the DFSA may take into account when assessing whether an applicant is of good standing and repute for the purposes of Rule 7.2.3(b)(i) include the reputation, high business integrity and good standing of the applicant and its members, directors and employees.

4. Matters that the DFSA may take into account when assessing whether an applicant has adequate and relevant expertise for the purposes of Rule 7.2.3(b)(iii) include any applicable minimum membership requirements of the relevant Authorised Market Institution.

[Added][VER3/01-07][RM39/07]

7.2.4 An applicant for Recognition must submit a written application to the DFSA together with:

- (a) either:
 - (i) evidence of its licensed or authorised status outside of the DIFC jurisdiction, if relying on Rule 7.2.3(a); or
 - (ii) sufficient evidence to demonstrate to the DFSA's satisfaction of its ability to meet the requirements in Rule 7.2.3(b) if relying on that Rule; and
- (b) the information required by chapter 8; and
- (c) any other additional information as required by the DFSA.

[Amended and Renumbered][VER3/01-07][RM39/07]

Guidance

Upon determination of an application for Recognition the DFSA will without undue delay notify the applicant in writing of its decision.

8 INFORMATION REQUIRED FOR RECOGNITION

8.1 Application

8.1.1 This chapter applies to a Recognised Member and an applicant for Recognition as a Recognised Member.

8.2 Information requirements

8.2.1 A Recognised Member or an applicant must provide the DFSA with:

- (a) its name;
- (b) any business name under which it carries on a Financial Service in or from the DIFC;
- (c) the address of its registered office and head office;
- (d) the name of any exchange or clearing house on which it is carrying on financial services;
- (e) the name of the Authorised Market Institution on which it will carry on Financial Services; and
- (f) any unique code or unique identifier it will use when carrying on business on or through the Authorised Market Institution.

9 SUPERVISION

9.1 Application

9.1.1 This chapter applies to a Recognised Member.

9.2 General approach

9.2.1 A Recognised Member must provide the DFSA with reasonable advance notice of:

- (a) any change to the information provided under Rule 8.2.1; or
- (b) the granting, withdrawal or refusal of an application for, or revocation of membership of an exchange or clearing house.

9.3 General notification requirements

9.3.1 A Recognised Member must provide the DFSA with a copy of any information provided to any Financial Services Regulator to which the Recognised Member is subject and which is relevant to Financial Services carried on in or from the DIFC.

PART 3 GENERAL PROVISIONS

10 GENERAL PROVISIONS

10.1 Application

10.1.1 REC part 3, that is, chapter 10 applies to every Person to whom part 1 or part 2 of REC applies. [Amended][VER2/08-05]

10.2 Waivers and modifications

10.2.1 If a Person wishes to apply for a waiver or modification it must apply in writing to the DFSA and the written application must contain:

- (a) the name of the Person;
- (b) the Rule to which the application relates;
- (c) a clear explanation of the waiver or modification that is being applied for and the reason why the Person is requesting the waiver;
- (d) details of any other requirements, for example, if there is a specific period for which the waiver or modification is required;
- (e) if the Person has any reason why the waiver or modification should not be published or why it should be published without disclosing the identity of the Person; and
- (f) all relevant facts to support the submission.

Guidance

1. Under Article 25, the DFSA may by means of a written notice provide that one or more provisions of the Rules either:
 - a. shall not apply to a particular person; or
 - b. shall apply to a particular person with such modifications as are set out in the written notice.
2. Under the Law, unless the DFSA is satisfied that it is inappropriate or unnecessary to do so, the DFSA must publish a waiver or modification in such a way it considers appropriate for bringing the notice to the attention of:

- a. those likely to be affected by it; or
 - b. others who may be likely to become subject to a similar notice.
3. The principal method of publication of waivers or modifications is by publication on the DFSA website.

10.3 Accuracy of information

Guidance

Article 66 of the Law states that a person shall not:

- a. provide information that is false, misleading or deceptive to the DFSA; or
- b. conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

10.3.1 A Person must take reasonable steps to ensure that all information that it provides to the DFSA in accordance with any legislation applicable in the DIFC is:

- (a) factually accurate or, in the case of estimates and judgments, fairly and properly based; and
- (b) complete, in that it should include anything of which the DFSA would reasonably expect to be notified.

10.3.2 (1) A Person must notify the DFSA immediately it becomes aware, or has information that reasonably suggests, that it:

- (a) has or may have provided the DFSA with information which was or may have been false, misleading, incomplete or inaccurate; or
 - (b) has or may have changed in a material particular.
- (2) Subject to (3), the notification in (1) must include details of the information which is or may be false or misleading, incomplete or inaccurate, or has or may have changed and an explanation why such information was or may have been provided and the correct information.
 - (3) If the correct information in (2) cannot be submitted with the notification it must be submitted as soon as reasonably possible.

10.4 Provision of notifications

- 10.4.1** (1) Unless a Rule states otherwise, a Person must ensure that each notification it provides to the DFSA is:
- (a) in writing and contains the Person's name and recognition number; and
 - (b) addressed for the attention of the Markets Division and delivered to the DFSA by:
 - (i) post to the current address of the DFSA;
 - (ii) hand to the current address of the DFSA;
 - (iii) electronic mail to an address provided by the DFSA; or
 - (iv) fax to a fax number provided by the DFSA.
- (2) In (1)(b) confirmation of receipt must be obtained.

10.5 Communication with the DFSA

- 10.5.1** A Recognised Person must ensure that any communication with the DFSA is conducted in the English language.