

ANNEX A

In this Annex, underlining indicates new text and striking through indicates deleted text.



GENERAL (GEN)

2 FINANCIAL SERVICES

2.3 By way of business

- 2.3.4** (1) A Person who is an Exchange does not carry on any of the other activities, save for the activity of Operating a Clearing House, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity, is carried on as a necessary part of the Exchange's business as an exchange.
- (2) A Person who is a Clearing House does not carry on any of the other activities, save for the activity of Operating an Exchange, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity is carried on for the purpose of, or in connection with the provision of clearing services by the Clearing House.
- (3) A Person who is an Authorised Market Institution and authorised to operate both as an Exchange and as a Clearing House does not carry on any of the other activities specified under Rule 2.2.2 by way of business in circumstances where the relevant activity:
- (a) is carried on as a necessary part of the Authorised Market Institution's business as an Exchange; or
 - (b) is carried on for the purposes of, or in connection with, the provision of clearing services by the Exchange.

2.17 Operating an exchange

2.17.1 In Rule 2.2.2, Operating an Exchange means operating a facility:.....

Guidance

The effect of the exemption in relation to the by way of business 'test' set out in Rule 2.3.3(1) is that the activity in Rule 2.17.1 of Operating an Exchange also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating a Clearing House, if the activity is carried on as part of an Exchange's business as an Exchange. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution's Licence to remove such authorisation. Rule 2.3.34(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

2.18 Operating a clearing house

2.18.1 (1) In Rule 2.2.2 Operating a Clearing House means operating a facility:.....

Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.3(2) in that the activity in Rule 2.18.1 of Operating a Clearing House also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating an Exchange, if the activity is carried on for the purpose of, or in connection with, the provision of clearing services by a Clearing House. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.34(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

- 5.1.1** (1) This chapter applies to every ~~Authorised Firm~~Authorised Person with respect to the Financial Services carried on in or from the DIFC.
- (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
- (3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch’s activities wherever they are carried on.
- (4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance.

Guidance

1. _____ The purpose of this chapter is:
- a. _____ to set out the requirements for senior management within an ~~Authorised Firm~~Authorised Person to take direct responsibility for their ~~Authorised Firm~~Authorised Person’s arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA’s objectives or they _____ affect the DFSA’s functions under the legislation applicable in the DIFC; and

_____ b. _____ to require an Authorised Firm to vest responsibility in senior management for _____ effective and responsible organisation and to have effective systems and _____ controls.

2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module.

5.2 Senior management arrangements

Apportionment of significant responsibilities

5.2.1 An ~~Authorised Firm~~Authorised Person must apportion significant responsibilities among its senior management and maintain such apportionment in such a way that:

(a) it is appropriate with regard to:

(i) the business and affairs of the ~~Authorised Firm~~Authorised Person; and

(ii) the ability and qualifications of the responsible individuals;

(b) it is clear who is responsible for which matters; and

(c) the business and affairs of the ~~Authorised Firm~~Authorised Person can be adequately monitored and controlled by the ~~Authorised Firm~~Authorised Person's Governing Body and senior management.

5.2.2 An ~~Authorised Firm~~Authorised Person must allocate to the Senior Executive Officer or to the individual holding equivalent responsibility for the conduct for the ~~Authorised Firm~~Authorised Person's business or the Governing Body, the functions of:

(a) dealing with the apportionment of responsibilities; and

(b) overseeing the establishment and maintenance of systems and controls.

Recording of apportionment

5.2.3 (1) An ~~Authorised Firm~~Authorised Person must establish and maintain an up-to-date record of the arrangements it has made to comply with Rules 5.2.1 and 5.2.2.

- (2) The record must show that the relevant senior management are aware of and have accepted the responsibilities apportioned in accordance with Rule 5.2.1.
- (3) Where a responsibility has been allocated to more than one individual, the record must show clearly how that responsibility is allocated between the individuals.
- (4) The record must be retained for six years from the date on which it was established or superseded by a more up-to-date record.

5.3 Systems and controls

General requirement

- 5.3.1 (1) An ~~Authorised Firm~~ Authorised Person must establish and maintain systems and controls that ensure that its affairs are managed effectively and responsibly by its senior management.
- (2) An ~~Authorised Firm~~ Authorised Person must undertake regular reviews of its systems and controls.

Guidance

The nature and extent of the systems and controls of an ~~Authorised Firm~~ Authorised Person will depend upon a variety of factors including the nature, size and complexity of its business. While all ~~Authorised Firm~~ Authorised Persons, irrespective of size, legal structure or organisation need to comply with this chapter, the DFSA will take into account these factors and the differences that exist between ~~Authorised Firm~~ Authorised Persons when assessing the adequacy of an ~~Authorised Firm~~ Authorised Person's systems and controls. Nevertheless, neither these factors nor the differences relieve an ~~Authorised Firm~~ Authorised Person from compliance with its regulatory obligations.

Organisation

- 5.3.2 An ~~Authorised Firm~~ Authorised Person must implement clear reporting lines that take into account the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, must be communicated to all Employees and documented within the ~~Authorised Firm~~ Authorised Person.
- 5.3.3 An ~~Authorised Firm~~ Authorised Person must ensure that key duties and functions are segregated so as to avoid the situation where the allocation of duties and functions to be performed by the same individual could result in undetected errors or be vulnerable to abuse and thus expose the ~~Authorised Firm~~ Authorised Person or its customers or users to inappropriate risks.

Risk management

- | **5.3.4** An ~~Authorised Firm~~Authorised Person must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks.
- | **5.3.5** An ~~Authorised Firm~~Authorised Person must develop, implement and maintain policies and procedures to manage the risks to which the ~~Authorised Firm~~Authorised Person and where applicable, its customers or users, are exposed.
- | **5.3.6** (1) An ~~Authorised Firm~~Authorised Person must appoint an individual to advise its Governing Body and senior management of such risks.
- | (2) An ~~Authorised Firm~~Authorised Person which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

Compliance

- 5.3.7** An Authorised Firm must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.
- 5.3.8** An Authorised Firm must document the organisation, responsibilities and procedures of the compliance function.
- 5.3.9** An Authorised Firm must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.
- 5.3.10** An Authorised Firm must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Firm's Governing Body and senior management.
- 5.3.11** An Authorised Firm must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.
- | **5.3.12** An Authorised Firm must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

Guidance

Similar requirements to those in Rules 5.3.7 to 5.3.12 are set out in the AMI module in relation to Authorised Market Institutions.

Internal audit

- 5.3.13** (1) An ~~Authorised Firm~~Authorised Person must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.
- (2) The internal audit function must be independent from operational and business functions.
- 5.3.14** An ~~Authorised Firm~~Authorised Person must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the ~~Authorised Firm~~Authorised Person's Governing Body or the relevant committee, established by its Governing Body for this purpose.
- 5.3.15** An ~~Authorised Firm~~Authorised Person must document the organisation, responsibilities and procedures of the internal audit function.

Business plan and strategy

- 5.3.16** (1) An ~~Authorised Firm~~Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its customers are exposed.
- (2) The business plan must take into account the ~~Authorised Firm~~Authorised Person's current business activities and the business activities forecast for the next twelve months.
- (3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in the business of the ~~Authorised Firm~~Authorised Person.

Management information

- 5.3.17** An ~~Authorised Firm~~Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise and control its activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

Staff and agents

| **5.3.18** An ~~Authorised Firm~~Authorised Person must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

5.3.19 (1) An Authorised Firm must ensure, as far as reasonably practical, that its staff are:

- (a) fit and proper;
- (b) appropriately trained for the duties they perform; and
- (c) trained in the requirements of the legislation applicable in the DIFC.

(2) An Authorised Firm must establish and maintain systems and controls to comply with (1).

Guidance

When assessing the fitness and propriety of individuals, the Authorised Firm should satisfy itself that the conditions set out in AUT section A1.3 continue to apply as appropriate and should monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.

Conduct

| **5.3.20** An ~~Authorised Firm~~Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the ~~Authorised Firm~~Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market misconduct;
- (b) money laundering; or
- (c) a financial crime under any applicable U.A.E. laws.

Outsourcing

| **5.3.21** (1) An ~~Authorised Firm~~Authorised Person which outsources any of its functions or activities directly related to Financial Services to third party providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.

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- (2) The outsourced function under this Rule shall be deemed as being carried out by the ~~Authorised Firm~~Authorised Person itself.
 - (3) An ~~Authorised Firm~~Authorised Person which uses such third party providers must ensure that it:
 - (a) has undertaken due diligence in choosing suitable third party providers;
 - (b) effectively supervises the outsourced functions or activities; and
 - (c) deals effectively with any act or failure to act by the third party provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

Guidance

- 1. An ~~Authorised Firm~~Authorised Person's outsourcing arrangements should include consideration of:
 - a. applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or
 - b. any equivalent principles or regulations the ~~Authorised Firm~~Authorised Person is subject to in its home country jurisdiction.
- 2. As a minimum, the DFSA expects an ~~Authorised Firm~~Authorised Person which has material outsourcing arrangements to:
 - a. establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;
 - b. enter into an appropriate and written outsourcing contract; and
 - c. ensure that outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder the supervision by the DFSA.

5.3.22 An ~~Authorised Firm~~Authorised Person must inform the DFSA about any material outsourcing arrangements.

Business continuity and disaster recovery

- 5.3.23** (1) An ~~Authorised Firm~~Authorised Person must have in place adequate arrangements to ensure that it can continue to function and meet its obligations under the legislation applicable in the DIFC in the event of an unforeseen interruption.

- (2) These arrangements must be kept up to date and regularly tested to ensure their effectiveness.

Guidance

1. In considering the adequacy of an ~~Authorised Firm~~ Authorised Person's business continuity arrangements, the DFSA will have regard to the ~~Authorised Firm~~ Authorised Person's management of the specific risks arising from interruptions to its business including its crisis management and disaster recovery plans.
2. The DFSA expects an ~~Authorised Firm~~ Authorised Person to have:
 - a. arrangements which establish and maintain the ~~Authorised Firm~~ Authorised Person's physical security and protection for its information systems for business continuity purposes in the event of planned or unplanned information system interruption or other events that impact on its operations;
 - b. considered its primary data centres' and business operations' reliance on infrastructure components, for example transportation, telecommunications networks and utilities and made the necessary arrangements to minimise the risk of interruption to its operations by arranging backup of infrastructure components and service providers; and
 - c. considered, in its plans for dealing with a major interruption to its primary data centre or business operations, its alternative data centres' and business operations' reliance on infrastructure components and made the necessary arrangements such that these do not rely on the same infrastructure components and the same service provider as the primary data centres and operations.

Complaints

- 5.3.24** An ~~Authorised Firm~~ Authorised Person must establish and maintain a register of Customer Complaints and their resolutions. Records of the complaints must be maintained for a minimum of six years.

Guidance

Depending on the nature, size and complexity of its business, it may be appropriate for an ~~Authorised Firm~~ Authorised Person to have a suitable complaint handling procedure in place in order to ensure that Customer Complaints are properly handled and that remedial action is taken promptly. Such complaint handling procedures would be expected to include provisions about the independence of staff investigating the complaint and bringing the matter to the attention of senior management.

Records

- 5.3.25** (1) An ~~Authorised Firm~~ Authorised Person must make and retain records of matters and dealings, including accounting records which are the subject of requirements and standards under the legislation applicable in the DIFC.

- (2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding three days.
- 5.3.26** Subject to Rule 5.3.27, the records required by Rule 5.3.25 or by any other Rule in this Rulebook must be maintained by the ~~Authorised Firm~~Authorised Person in the English language.
- 5.3.27** If an ~~Authorised Firm~~Authorised Person's records relate to business carried on from an establishment in a territory outside the DIFC, an official language of that territory may be used instead of the English language as required by Rule 5.3.26.
- 5.3.28** An ~~Authorised Firm~~Authorised Person must have systems and controls to fulfil the ~~Authorised Firm~~Authorised Person's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

6 GENERAL PROVISIONS

6.1 Application

- 6.1.1 (1) Sections 6.1, ~~6.2~~, ~~6.3~~ and ~~6-26.9~~ apply to every Person to whom any provision in the Rulebook applies.
- (2) Sections ~~6.3 and 6.4~~ applyies to every Authorised ~~Firm and Authorised Market Institution~~Person.
- (3) Sections 6.5 and 6.6 apply to every Authorised Firm, Authorised Market Institution and Person who has submitted an application for authorisation to carry on one or more Financial Services.
- (4) Section 6.7 applies to any Person who has been affected by the activities of the DFSA.
- (5) Section 6.8 applies to the DFSA.

6.2 Interpreting the rulebook

Guidance

Interpretation

1. Every provision in the Rulebook must be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.
2. When this section refers to a provision, this means every type of provision, including Rules and Guidance.
3. Where reference is made in the Rulebook to another provision of the Rulebook or other DIFC legislation, it is a reference to that provision as amended from time to time.
4. Unless the contrary intention appears:
 - a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
 - b. words in the Rulebook in the singular include the plural and words in the plural include the singular.

5. If a provision in the Rulebook refers to a communication, notice, agreement, or other document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
6. Any reference to 'dollars' or '\$' is a reference to United States Dollars unless the contrary intention appears.
7. References to Articles made throughout the Rulebook are references to Articles in the Regulatory Law 2004 unless otherwise stated.
8. Unless the contrary intention appears, a day or business day refers to:
 - a. in relation to anything done or to be done in (including to be submitted to a place in) the U.A.E. any day which is not a Friday or Saturday or an official U.A.E. bank holiday; and
 - b. in relation to anything done or to be done by reference to a market outside the U.A.E. any day on which that market is normally open for business.

Defined Terms

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

6.3 Emergency

- 6.3.1** (1) If an Authorised ~~Firm or Authorised Market Institution~~ Person is unable to comply with a particular Rule due to an emergency which is outside its or its Employees' control and could not have been avoided by taking all reasonable steps, the Authorised ~~Firm or Authorised Market Institution~~ Person will not be in contravention of that Rule to the extent that, in consequence of the emergency, compliance with that Rule is impractical.
- (2) This Rule applies only for so long as the consequences of the emergency continue and the Authorised ~~Firm or Authorised Market Institution~~ Person is able demonstrate that it is taking all practical steps to deal with those consequences, to comply with the Rule, and to mitigate losses and potential losses to its customers or users.
- (3) An Authorised ~~Firm or Authorised Market Institution~~ Person must notify the DFSA as soon as practical of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.

Guidance

1. Procedures for notification to the DFSA are set out in SUP chapter 7.
2. The Rules in section 6.3 do not affect the powers of the DFSA under Article 9 of the Markets Law 2004.

6.4 Disclosure of regulatory status

6.4.1 An Authorised ~~Firm or Authorised Market Institution~~ Person must not misrepresent its status expressly or by implication.

6.4.2 (1) An Authorised ~~Firm or Authorised Market Institution~~ Person must take reasonable care to ensure that every key business document which is in connection with the Authorised ~~Firm or Authorised Market Institution~~ Person carrying on a Financial Service in or from the DIFC includes one of the disclosures under this Rule.

(2) A key business document includes letterhead whether issued by post, fax or electronic means, terms of business, client agreements, written promotional materials, business cards, prospectuses and websites but does not include compliment slips, account statements or text messages.

(3) The disclosure required under this Rule is:

- (a) 'Regulated by the Dubai DIFC Financial Services Authority'; or
- (b) 'Regulated by the DFSA'.

(4) The DFSA logo must not be reproduced without express written permission from the DFSA and in accordance with any conditions for use.

(5) Rules 6.4.2(1) – (4) also apply to the operation and administration of an Official List of Securities by an Authorised Market Institution.

6.5 Location of offices

6.5.1 (1) Where an Authorised ~~Firm or Authorised Market Institution~~ Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a Body Corporate incorporated under the Companies Law 2004, its head office and registered office must be in the DIFC.

- (2) Where an Authorised ~~Firm or Authorised Market Institution~~ Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a Partnership established under the Limited Liability Partnership Law 2004 or the General Partnership Law 2004, its head office must be in the DIFC.
- (3) Where an Authorised ~~Firm or Authorised Market Institution~~ Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services is an unincorporated association formed within the jurisdiction of the DIFC, its head office must be in the DIFC.

Guidance

1. In considering the location of an Authorised Firm's or Authorised Market Institution's head office, the DFSA will have regard to the location of its directors, partners and senior management and to the main location of its day-to-day operational, control, management and administrative arrangements and will judge matters on a case by case basis.
2. Under the fit and proper test for Authorised Firms and the ~~H~~Licensing ~~R~~Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect to the location of its offices will, on this point alone not be considered fit and proper or able to satisfy the Licensing Requirements.

6.6 Close links

- 6.6.1 (1) Where an Authorised ~~Firm or Authorised Market Institution~~ Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services has Close Links with another Person, the DFSA must be satisfied that those Close Links are not likely to prevent the effective supervision by the DFSA of the Authorised ~~Firm or Authorised Market Institution~~ Person.
- (2) If requested by the DFSA the Authorised ~~Firm and Authorised Market Institution~~ Person must submit a Close Links report or notification, in a form specified by the DFSA. This may be requested on an ad hoc or periodic basis.

Guidance

1. Procedures for notification to the DFSA are set out in SUP chapter 7.
2. Under the fit and proper test for Authorised Firms and the ~~H~~Licensing ~~R~~Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect of its Close Links will, on this point alone, not be considered fit and proper or able to satisfy the Licensing Requirements.

6.7 Complaints against the DFSA

Guidance

1. A Person who feels he has been adversely affected by the manner in which the DFSA has carried out its functions may make a complaint to the DFSA about its conduct or the conduct of its Employees.
2. A complaint must be in writing and should be addressed to the Chief Executive of the DFSA. The complaint will be dealt with by the DFSA in a timely manner.

6.8 Public register

Maintenance and publication

- 6.8.1** The registers required to be maintained and published by the DFSA pursuant to Article 62 shall be published and maintained in either or both of the following manners:
- (a) by maintaining hard copy registers which are made available for inspection at the premises of the DFSA during normal business hours; or
 - (b) by maintaining an electronic version of the registers and making the information from those registers available through the DFSA website.

6.9 Communication with the DFSA

- 6.9.1** An Authorised Firm/Person must ensure that any communication with the DFSA is conducted in the English language.

7 FEES

7.1 Application

7.1.1 This chapter applies to every:

- (a) Authorised ~~Firm, Authorised Market Institution~~ Person and applicant for a Licence;
- (b) applicant for registration as an auditor with the DFSA; and
- (c) auditor registered with the DFSA.

7.2 General provisions

7.2.1 Where a fee is payable for any application to the DFSA, the application will not be regarded as submitted until the fee and any supplementary fee has been paid in full.

7.2.2 Where an annual fee or supplementary fee in relation to ongoing supervision is due from any Person under a provision of these Rules, the Person must pay it by the date on which it becomes due. If he fails to do so then, without limiting the right of the DFSA to take any other action, the sum due shall be increased by 1% for each calendar month, or part of a calendar month, that it remains outstanding beyond the due date.

Guidance

If a fee is not paid by the date on which it becomes due, the Person is in breach of a Rule and the DFSA is entitled to take action including, but not limited to, taking steps to withdraw authorisation to conduct one or more Financial Services.

7.2.3 The DFSA may reduce, waive or refund all or part of any fee if it considers that, in the exceptional circumstances of a particular case, it would be equitable to do so.

- 7.2.4
- (1) The DFSA may require a Person to pay to the DFSA a supplementary fee in circumstances where it expects to incur substantial additional costs in dealing with an application or conducting ongoing supervision.
 - (2) In such cases the DFSA will notify the Person as soon as reasonably possible of the amount of the supplementary fee.

Guidance

1. A supplementary fee may be levied by the DFSA because it expects that certain applications will require more intensive scrutiny than others. An example is where the entity is a Branch from a jurisdiction where there are not or are not expected to be in place arrangements for co-operation between the DFSA and the relevant regulators in that jurisdiction. Equally, where the entity is incorporated in the DIFC, a full analysis of the prudential and systems arrangements will be required.
2. A supplementary fee may also be levied by the DFSA in cases where the ongoing supervision of the Authorised ~~Firm or Authorised Market Institution~~ Person appears to the DFSA to be likely to cause it to incur substantial additional costs.

7.3 Application fees

7.3.1 The following Persons:

- (a) an applicant for a Licence; and
- (b) an Authorised ~~Firm or Authorised Market Institution~~ Person applying for authorisation to carry on an additional Financial Service, must pay to the DFSA:
 - (c) the applicable fee specified in section A5.2 or A5.3 as appropriate; and
 - (d) any supplementary fee required by the DFSA.

7.3.2 An applicant for registration as an auditor with the DFSA must pay to the DFSA the applicable fee specified in App6.

7.4 Annual fees

- 7.4.1 An Authorised ~~Firm or Authorised Market Institution~~ Person must pay to the DFSA:
 - (a) the applicable fee specified in section A5.4; and
 - (b) any supplementary fee required by the DFSA.

7.4.2 An auditor registered with the DFSA must pay to the DFSA the applicable fee specified in App6.

7.4.3 (1) The initial annual fee must be paid in full to the DFSA within 21 days of the date on which the Licence or registration is granted.

(2) Subsequent annual fees must be paid in full to the DFSA on or before 1 January of any calendar year.

Guidance

In regard to the payment of an annual fee on or before 1 January, invoices will be issued at least 21 days before that date.

7.5 Fees to maintain an official list of securities

7.5.1 An Authorised Market Institution, or an applicant to be an Authorised Market Institution must, to maintain an Official List of Securities, pay to the DFSA the applicable application and annual fees in section A5.5.

8 ACCOUNTING AND AUDITING

8.1 Application

8.1.1 This chapter applies to every:

- | (a) ~~Authorised Firm~~Authorised Person;
- (b) applicant for registration as an auditor with the DFSA; and
- (c) auditor registered with the DFSA.

8.2 Accounting standards

- | 8.2.1 (1) An ~~Authorised Firm~~Authorised Person must prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards (IFRS) unless (2) or (3) applies.
- | (2) If an Authorised Firm is an Islamic Financial Institution it must prepare and maintain all financial accounts and statements in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI).
- | (3) If an ~~Authorised Firm~~Authorised Person operates an Islamic Window it must prepare and maintain all financial accounts and statements in accordance with the IFRS, as supplemented by AAOIFI FAS 18 in respect of its Islamic Financial Business.

Guidance

- 1. AAOIFI FAS 18 sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari'a rules and principles in the financial accounts and statements of conventional financial institutions that offer Islamic financial services, as well as the income generated from these services. The standard also determines the necessary disclosures related to these services.
- | 2. Under AAOIFI FAS 18, ~~Authorised Firm~~Authorised Persons which operate Islamic Windows must disclose (in their relevant financial statements) the following:
 - a. whether or not they co-mingle funds related to Islamic Financial Business with funds relating to conventional financial business;

- b. the sources and applications of funds mobilised and invested through their Islamic Financial Business and the sources of funds used to cover a deficit if it occurs;
- c. any reserves of expenditures prohibited by Shari'a and the disposition of any revenues, the latter shall be determined by the Shari'a Supervisory Board;
- d. any reserves deducted from the funds mobilised according to Shari'a, the purpose of such reserves and to whom the reserves shall revert in the case where the activities in respect of which the reserves were deducted have ceased; and
- e. the percentage amount of funds relating to Islamic Financial Business in comparison with the percentage amount of funds relating to conventional financial business.

8.3 Accounting records and regulatory returns

8.3.1 Every ~~Authorised Firm~~Authorised Person must keep accounting records which are sufficient to show and explain transactions and are such as to:

- (a) be capable of disclosing the financial position of the ~~Authorised Firm~~Authorised Person on an ongoing basis; and
- (b) record the financial position of the ~~Authorised Firm~~Authorised Person as at its financial year end.

8.3.2 Accounting records must be maintained by an ~~Authorised Firm~~Authorised Person such as to enable its Governing Body to ensure that any accounts prepared by the ~~Authorised Firm~~Authorised Person comply with the legislation applicable in the DIFC.

8.3.3 An ~~Authorised Firm~~Authorised Person's accounting records must be:

- (a) retained by the ~~Authorised Firm~~Authorised Person for at least ten years from the date to which they relate;
- (b) at all reasonable times, open to inspection by the DFSA or the auditor of the ~~Authorised Firm~~Authorised Person; and
- (c) if requested by the DFSA capable of reproduction, within a reasonable period not exceeding three days, in hard copy and in English.

8.3.4 All regulatory returns prepared by the Authorised Firm must be prepared and submitted in accordance with the requirements set out in PIB appendix 7 or PIN chapter 6 as applicable.

Changes to the financial year end

- 8.3.5** (1) If an Authorised Firm is a Domestic Firm and intends to change its financial year end, it must obtain the DFSA's prior consent before implementing the change.
- (2) The application for consent must include reasons for the change.
- (3) The DFSA may require the Authorised Firm to obtain written confirmation from its auditor that the change of financial year end would not result in any significant distortion of the financial position of the Authorised Firm.
- 8.3.6** If an Authorised Firm is not a Domestic Firm and intends to change its financial year, it must provide the DFSA with reasonable advance notice prior to the change taking effect.

8.4 Appointment and termination of auditors

- 8.4.1** An ~~Authorised Firm~~Authorised Person must:
- (a) notify the DFSA of the appointment of an auditor, including the name and business address of the auditor and the date of the commencement of the appointment;
- (b) prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the business of the ~~Authorised Firm~~Authorised Person for which the auditor has been appointed; and
- (c) if it is a Domestic Firm, ensure that the auditor, at the time of appointment and for the duration of the engagement as auditor, is registered with the DFSA.
- 8.4.2** An ~~Authorised Firm~~Authorised Person must notify the DFSA immediately if the appointment of the auditor is or is about to be terminated, or on the resignation of its auditor, giving the reasons for the cessation of the appointment.
- 8.4.3** An ~~Authorised Firm~~Authorised Person must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.
- 8.4.4** (1) An ~~Authorised Firm~~Authorised Person must take reasonable steps to ensure that the relevant audit staff of the auditor are independent of and

not subject to any conflict of interest with respect to the Authorised Firm/Authorised Person.

- (2) An Authorised Firm/Authorised Person must notify the DFSA if it becomes aware, or has reason to believe, that the relevant audit staff of the auditor are no longer independent of the Authorised Firm/Authorised Person, or have a conflict of interest which may affect their judgement in respect of the Authorised Firm/Authorised Person.

Guidance

1. The relevant staff of an auditor are independent if their appointment or retention by an Authorised Firm/Authorised Person is not contrary to any applicable ethical guidance issued by the professional supervisory body.
2. An Authorised Firm/Authorised Person should consider rotating the appointed relevant staff of the auditor every five years to ensure that the relevant staff of the auditor remains independent.

8.4.5 If requested by the DFSA, an Authorised Firm/Authorised Person which carries on Financial Services through a Branch must provide the DFSA with information on its appointed or proposed auditor with regard to the auditor's, skills, experience and independence.

8.4.6 Where an auditor appointed by an Authorised Firm/Authorised Person is not suitable in the opinion of the DFSA, or where an auditor has not been appointed, the DFSA may direct an Authorised Firm/Authorised Person to replace or appoint an auditor in accordance with the requirements in this chapter.

8.5 Co-operation with auditors

8.5.1 An Authorised Firm/Authorised Person must take reasonable steps to ensure that it and its Employees:

- (a) provide such assistance as the auditor reasonably requires to discharge its duties;
- (b) give the auditor right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the auditor's ability to discharge its duties;
- (d) do not provide false or misleading information to the auditor; and
- (e) report to the auditor any matter which may significantly affect the financial position of the Authorised Firm/Authorised Person.

8.6 Function of the auditor

8.6.1 An Authorised Firm or Authorised Market Institution, as applicable, must in writing require its auditor to:

- (a) conduct an audit of the ~~Authorised Firm~~Authorised Person's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of conventional financial business and the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of any Islamic Financial Business undertaken;
- (b) produce a report on the audited accounts which states:
 - (i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;
 - (ii) in particular, whether the accounts give a true and fair view of the financial position of the ~~Authorised Firm~~Authorised Person for the financial year and of the state of the ~~Authorised Firm~~Authorised Person's affairs at the end of the financial year end; and
 - (iii) any other matter or opinion relating to the requirements of this chapter;
- (c) produce an Auditor's Annual Report which states whether:
 - (i) the auditor has audited the ~~Authorised Firm~~Authorised Person's annual financial statements in accordance with the IAASB or AAOIFI in respect of Islamic Financial Business;
 - (ii) the auditor has carried out any other procedures considered necessary, having regard to the IAASB and to AAOIFI auditing standards in respect of Islamic Financial Business;
 - (iii) the auditor has received all necessary information and explanations for the purposes of preparing this report to the DFSA;
 - (iv) (in the case of an Authorised Firm) in the auditor's opinion, the regulatory returns specified by the applicable Rules in PIN or PIB have been properly prepared by the Authorised Firm and provide a true and fair representation of the financial position of the

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- Authorised Firm, as at the date of the Authorised Firm's financial year end;
- (v) in the auditor's opinion, the ~~Authorised Firm~~Authorised Person's regulatory returns to the DFSA have been properly reconciled with the appropriate audited accounts;
 - (vi) (in the case of an Authorised Firm) in the auditor's opinion, that an Authorised Firm which is subject to an expenditure based requirement has calculated the expenditure based requirement in accordance with the Rules;
 - (vii) in the auditor's opinion, the ~~Authorised Firm~~Authorised Person's financial resources as at its financial year end have been properly calculated in accordance with the Rules and are sufficient to meet the relevant prudential requirements or minimum financial resources requirement; and
 - (viii) (in the case of an Authorised Firm) in the auditor's opinion, the Authorised Firm has kept proper accounting records, in compliance with the applicable Rules in PIN or PIB;
- (d) produce, if the Authorised Firm controls or holds Client Money, a Client Money Auditor's Report which states whether, in the opinion of the auditor:
- (i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB chapter 9 and, if applicable, COB App5;
 - (ii) the Authorised Firm's controls are such as to ensure that Client Money is identifiable and secure at all times;
 - (iii) any of the requirements in COB chapter 9 and the Client Money Provisions have not been met;
 - (iv) if applicable, Client Money belonging to Segregated Clients has been segregated in accordance with the Client Money Provisions;
 - (v) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Client Money in accordance with COB chapter 9 and with the Client Money Provisions as at the date on which the Authorised Firm's audited balance sheet was prepared; and
 - (vi) if applicable, there have been any material discrepancies in the reconciliation of Client Money;

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- (e) produce, if the Authorised Firm controls or holds Insurance Monies, an Insurance Monies Auditor's Report which states whether, in the opinion of the auditor:
- (i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB chapter 14;
 - (ii) the Authorised Firm's controls are such as to ensure that Insurance Monies are identifiable and secure at all times;
 - (iii) any of the requirements in COB chapter 14 have not been met;
 - (iv) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Insurance Monies in accordance with COB chapter 14 as at the date on which the Authorised Firm's audited balance sheet was prepared; and
 - (v) if applicable, there have been any material discrepancies in the reconciliation of Insurance Monies;
- (f) produce, if the Authorised Firm Provides Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business which states whether, in the opinion of the auditor:
- (i) the Authorised Firm has, throughout the year, maintained systems and controls to enable it to comply with the Safe Custody Provisions in COB App6;
 - (ii) the Safe Custody Investments are registered, recorded or held in accordance with the Safe Custody Provisions;
 - (iii) there have been any material discrepancies in the reconciliation of Safe Custody Investments; and
 - (iv) any of the requirements of the Safe Custody Provisions have not been met;
- (g) submit the reports produced pursuant to Rules 8.6.1(b)-8.6.1(f) above to the ~~Authorised Firm~~Authorised Person; and
- (h) notify the DFSA in writing if he resigns due to significant concerns which have previously been raised with senior management of the ~~Authorised Firm~~Authorised Person and which have not been addressed.

8.6.2 An ~~Authorised Firm~~Authorised Person must submit any auditor's reports and financial statements required by this chapter to the DFSA within four months of the ~~Authorised Firm~~Authorised Person's financial year end.

8.6.3 If requested, an ~~Authorised Firm~~Authorised Person must provide to any Person a copy of its most recent audited accounts, together with the auditor's report referred to in Rule 8.6.1(b). If the copy is made available in printed form, the ~~Authorised Firm~~Authorised Person may make a charge to cover reasonable costs incurred in providing the copy.

8.7 Auditor registration and qualification

8.7.1 An auditor applying for registration must use the appropriate form in PFN, supported by such additional material as may be required by the DFSA and pay the prescribed fee in App6.

8.7.2 Before the DFSA grants registration as an auditor, an applicant must satisfy the DFSA that it:

- (a) is fit and proper to be registered as an auditor taking into account the applicant's:
 - (i) background and history;
 - (ii) ownership and Group; and
 - (iii) resources;
- (b) has adequate professional indemnity insurance which provides cover in respect of work undertaken in the DIFC; and
- (c) meets any other requirements prescribed by the DFSA.

8.7.3 An auditor must pay the annual fee prescribed in App6 to remain registered as an auditor.

- 8.7.4** (1) An auditor must file with the DFSA:
- (a) at the time of filing an application for registration; and
 - (b) at the time of payment of the annual fee or by such later time that the DFSA may direct;

an assessment completed within the preceding three months by an independent body and addressing such matters relating to the auditor as notified by the DFSA.

- (2) If upon receiving an annual assessment the DFSA forms the view that the auditor is no longer fit and proper to be on the register of auditors, the DFSA may cancel the registration of the auditor.
- (3) The auditor must pay for the services of the independent body in (1).

8.7.5 If, at any time after registration, an auditor no longer meets the requirements for registration as an auditor, the auditor must immediately inform the DFSA in writing.

8.8 Register of auditors

8.8.1 The DFSA will maintain the register of auditors by recording the following information in respect of current and former registered auditors:

- (a) full name;
- (b) address;
- (c) date of registration as auditor with the DFSA; and
- (d) date of cessation of registration as auditor.

App 5 FEES

A5.1 Fees table

A5.1.1 The fees table.

[Amended] [VER2/10-04]

(a)	Accepting Deposits or Providing Credit	\$50,000
(b)	Dealing in Investments as Principal	\$30,000
(c)	(i) Dealing in Investments as Agent; or (ii) Arranging Credit or Deals in Investments; or (iii) Managing Assets; or (iv) Advising on Financial Products or Credit; or (v) Providing Custody; or (vi) Arranging Custody; or (vii) Insurance Broking; or (viii) Insurance Management; or (ix) Effecting Contracts of Insurance or Carrying out Contracts of Insurance: (A) where the applicant is intending to carry on business as a Captive Insurer; or (B) where the Authorised Firm is carrying on business as a Captive Insurer; or	\$10,000

(x) Managing a Profit Sharing Investment Account.	
(d) Effecting Contracts of Insurance or Carrying out Contracts of Insurance: (i) where the applicant is not also intending to carry on business as a Captive Insurer; or (ii) where the Authorised Firm is not carrying on business as a Captive Insurer.	\$50,000
(e) Operating an Exchange	\$250,000
(f) Operating a Clearing House	\$150,000
(g) Operating an Exchange and Operating a Clearing House	\$250,000

A5.2 Fees in relation to an application for a licence

A5.2.1 An applicant applying for a Licence authorising it to carry on one or more Financial Services specified in the left hand column of the fees table in Rule A5.1.1 must pay:

- (a) the highest of the corresponding fees in the right hand column of the fees table; plus
- (b) \$1,000 for each individual for whom Authorised Individual status is sought, subject to a maximum amount of \$50,000 for such individuals.

A5.2.2 An applicant applying for a Licence authorising it to carry one or more of the Financial Services of Operating an Exchange and Operating Clearing House must pay to the DFSA:

- (a) for Operating an Exchange an application fee of \$125,000;
- (b) for Operating a Clearing House an application fee of \$125,000; and
- (c) for Operating an Exchange and Operating a Clearing House an application fee of \$250,000.

A5.2.3 An applicant under Rule 5.2.2(a) or (c) seeking an endorsement to its Licence authorising it to maintain an Official List of Securities must pay to the DFSA an additional application fee of \$100,000.

A5.3 Fees in relation to an application to carry on additional Financial Services

A5.3.1 An Authorised Firm applying for authorisation to carry on additional Financial Services must pay a fee equal to the difference between:

- (a) the basic fee which would be payable under Rule A5.2.1(a) if it were an applicant for a Licence in the terms currently being sought; and
- (b) the basic fee which would be payable under Rule A5.2.1(a) if it were an applicant for a Licence in the terms of that currently held.

A5.3.2 An Authorised Market Institution applying for authorisation to carry on an additional Financial Service must pay:

- (a) a fee of ~~\$125,50,000~~ for the Financial Service of Operating a Clearing House; or
- (b) a fee of ~~\$125,000~~100,000 for the Financial Service of Operating an Exchange.

A5.4 Annual Fees

Initial annual fee for Authorised Firms and Authorised Market Institutions

- A5.4.1**
- (1) An Authorised Firm or Authorised Market Institution must pay to the DFSA an initial annual fee for the initial period of regulation after the grant of its Licence.
 - (2) The initial annual fee is the fee which was payable at the time of its application for the Licence, multiplied by the number of whole calendar months between the date of the grant of the Licence and the end of the year and divided by 12.

Subsequent annual fees for Authorised Firms

- A5.4.2**
- (1) An Authorised Firm must pay to the DFSA a standard annual fee for any period of regulation after the period described in Rule ,A5.4.1.
 - (2) The standard annual fee is:
 - (a) the highest of the fees specified in the right hand column of the fees table corresponding to the Financial Services which the Authorised Firm is authorised to carry on under its Licence; plus
 - (b) \$1,000 for each Authorised Individual employed by the Authorised Firm at 30 September in the previous year, or on the date of the grant of its Licence, whichever is the later; plus
 - (c) \$1,000 for each complete \$1,000,000 of turnover, where turnover has the meaning given in Rule A5.4.3.
 - (3) The total standard annual fee payable is subject to a maximum total amount of \$150,000.

- A5.4.3**
- (1) For the purposes of this appendix, and subject to (2) and (3) 'turnover' means:
 - (a) in the case of an Authorised Firm to which PIB applies, gross fees and commissions, plus realised gains on the Authorised Firm's Trading Book, if any, plus net interest received, in respect of business carried on in or from the DIFC; or
 - (b) in the case of an Authorised Firm to which PIN applies, Gross Written Premium in respect of business carried on in or from the DIFC;

for the last financial year for which the Authorised Firm has submitted regulatory returns to the DFSA.

- (2) If the last financial year referred to in (1) was not twelve months in duration, the turnover figure shall be increased or decreased on a pro rata basis to produce an equivalent twelve month figure.
- (3) If the Authorised Firm has not yet submitted any ~~their~~ regulatory returns to the DFSA, the turnover figure shall be that forecast in the most recent business plan submitted to the DFSA for the period including 1 January of the year for which the fee is to be charged.

Subsequent annual fees for Authorised Market Institutions

A5.4.4 (1) An Authorised Market Institution carrying on the Financial Service of Operating an Exchange must pay to the DFSA an annual fee of \$60,000.

(2) An Authorised Market Institution carrying on the Financial Service of Operating a Clearing House must pay to the DFSA an annual fee of \$60,000.

(3) An Authorised Market Institution carrying on both of the Financial Services of Operating an Exchange and Operating a Clearing House must pay to the DFSA an annual fee of \$120,000.

A5.4.5 An Authorised Market Institution maintaining an Official List of Securities must pay to the DFSA an annual fee of \$50,000.

App 6 FEES

A6.1 Fees table for in relation to auditors

A6.1.1 The fees table in relation to auditors.

Upon receipt by the DFSA of:	
Application for registration of auditor	\$5,000
Annual fee for registration as an auditor	\$2,000