

**ANNEX C**

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



# The DFSA Rulebook

## Supervision Module

### **(SUP)**

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## 7 NOTIFICATIONS

### 7.1 Application

**7.1.1** This chapter applies to every Authorised Person, unless otherwise provided, with respect to the carrying on of Financial Services and any other activities whether or not financial or not.

#### Guidance

1. This chapter sets out Rules on specific events, changes or circumstances that require notification to the DFSA and outlines the process and requirements for notifications.
2. The list of notifications outlined in this chapter is not exhaustive. Other areas of the Rulebook may also detail additional notification requirements.
3. An Authorised Person and its auditor are also required under Article 67 to disclose to the DFSA any matter which may indicate a breach or likely breach, or a failure or likely failure to comply with laws or Rules. An Authorised Person is also required to establish and implement systems and procedures to enable its compliance and compliance by its auditor with notification requirements.

### 7.2 Core information

**7.2.1** An Authorised Person must provide the DFSA with reasonable advance notice of a change in:

- (a) the Authorised Person's name;
- (b) any business or trading name under which the Authorised Person carries on a Financial Service in or from the DIFC;
- (c) the address of the Authorised Person's principal place of business in the DIFC;
- (d) in the case of a Branch, its registered office or head office address;
- (e) its legal structure; and
- (f) an Authorised Individual's name or any material matters relating to his fitness and propriety.

**7.2.2** A Domestic Firm must provide the DFSA with reasonable advance notice of the establishment or closure of a branch office anywhere in the world from which it carries on financial services.

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## Guidance

Authorised Firms should refer to AUT in respect of notification requirements in relation to fitness and propriety and change in control matters.

**7.2.3** When giving notice under Rule 7.2.2 in relation to the establishment of a branch, a Domestic Firm must at the same time submit to the DFSA a detailed business plan in relation to the activities of the proposed branch. [Added][VER4/06-06]

**7.2.4** (1) The DFSA may in its absolute discretion, object to the establishment of a branch office. Upon objecting to the establishment of a branch office, the DFSA must without undue delay, inform the applicant in writing of such objection, and where requested by the Domestic Firm, the reasons for such objection. [Added][VER4/06-06]

(2) If the DFSA objects to the firm establishing a branch anywhere in the world the firm may not proceed with establishment of such a branch. [Added][VER4/06-06]

**7.2.5** A Domestic Firm may appeal to the Regulatory Appeals Committee against the decision of the DFSA to object to the opening of a branch office, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal. [Added][VER4/06-06]

## 7.3 Regulatory impact

**7.3.1** An Authorised Person must advise the DFSA immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

- (a) the Authorised Person's failure to satisfy the fit and proper requirements;
- (b) any matter which could have a significant adverse effect on the Authorised Person's reputation;
- (c) any matter in relation to the Authorised Person which could result in serious adverse financial consequences to the financial system or to other firms;
- (d) a significant breach of a Rule by the Authorised Person or any of its Employees;
- (e) a breach by the Authorised Person or any of its Employees of any requirement imposed by any applicable law;
- (f) subject to Rule 7.3.2, any proposed restructuring, merger, acquisition, reorganisation, or business expansion which could have a significant impact on the Authorised Person's risk profile or resources;
- (g) any significant failure in the Authorised Person's systems or controls, including a failure reported to the Authorised Person by the firm's auditor;

- (h) any action that would result in a material change in the capital adequacy or solvency of the Authorised Firm; or
- (i) non-compliance with Rules due to an emergency outside the Authorised Person's control and the steps being taken by the Authorised Person.

#### Guidance

The DFSA would also require notification of the implementation, or planned implementation of major, new or revised IT systems or new technology affecting the Authorised Person's business, risk profile or resources.

- 7.3.2** (1) Subject to (2), an Authorised Firm which makes or proposes to make a Major Acquisition as defined in (3) must:
- (a) if it is a Domestic Firm, comply with the requirements in Rule 7.3.3; and
  - (b) if it is not a Domestic Firm, comply with the requirements in Rule 7.3.4.
- (2) The requirement in (1) does not apply to an Authorised Firm which is in, Category 3 (as defined in PIB Rule 1.3.3) or Category 4 (as defined in PIB Rule 1.3.4).
- (3) Subject to (4), an Authorised Firm makes a Major Acquisition if it makes or proposes to directly or indirectly acquire a shareholding in a Body Corporate where that acquisition:
- (a) is to of a value (whether by one acquisition or a series of acquisitions) of 10% or more of:
    - (i) the Authorised Firm's Capital Resources, if it is a Domestic Firm which is a Category 1 Authorised Firm (as defined in PIB Rule 1.3.1), Category 2 Authorised Firm (as defined in PIB Rule 1.3.2) or Category 5 Authorised Firm (as defined in PIB Rule 1.3.5); or
    - (ii) the Authorised Firm's Adjusted Capital Resources, if it is a Domestic Firm conducting Insurance Business; or
    - (iii) the capital resources of the Authorised Firm calculated in accordance with the requirements of the Financial Services Regulator in its home jurisdiction, if it is not a Domestic Firm; or
  - (b) even if it does not exceed the 10% threshold referred to in (a), it is reasonably likely to have a significant regulatory impact on the Authorised Firm's activities.
- (4) An acquisition is not a Major Acquisition for the purposes of (3) if it is an investment made by an Authorised Firm:

- (a) in accordance with the terms of a contract entered into by the Authorised Firm as an incidental part of its ordinary business; or
- (b) as a routine transaction for managing the Authorised Firm's own investment portfolio and therefore can reasonably be regarded as made for a purpose other than acquiring management or control of a Body Corporate either directly or indirectly.

### **Guidance**

1. Examples of the kind of investments referred to in Rule 7.3.2(3)(b) include an acquisition of a stake in a small specialised trading firm that engages in high risk trades or other activities that could pose a reputational risk to the Authorised Firm.
2. The onus is on an Authorised Firm proposing to make an acquisition to consider whether it qualifies as a Major Acquisition under Rule 7.3.2(3)(b). Generally, in the case of an Authorised Firm that is not a Domestic Firm (i.e. a Branch operation in the DIFC), the significant regulatory impact referred to in Rule 7.3.2(3)(b) should be prudential risk to the Authorised Firm as a whole. If an Authorised Firm is uncertain about whether or not a proposed acquisition qualifies as a Major Acquisition under Rule 7.3.2(3)(b), the Authorised Firm may seek guidance from the DFSA.
3. Examples of contractual arrangements of the kind referred to in Rule 7.3.2(4)(a) include enforcement of a security interest in the securities of the investee Body Corporate or a loan workout pursuant to a loan agreement entered into between a bank and its client.
4. Examples of the kind of investments referred to in Rule 7.3.2(4)(b) include temporary investments, such as investments included in the Authorised Firm's trading book or are intended to be disposed of within a short term (e.g. within 12 months).

### **7.3.3 (1) An Authorised Firm which is a Domestic Firm must:**

- (a) before making a Major Acquisition:
  - (i) notify the DFSA in writing of the proposed Major Acquisition at least 45 calendar days prior to the proposed date for effecting the Major Acquisition; and
  - (ii) give to the DFSA all the relevant information relating to that Major Acquisition to enable the DFSA to assess the impact of the proposed Major Acquisition on the Authorised Firm; and
- (b) not effect the proposed Major Acquisition unless:
  - (i) the Authorised Firm has either received written advice from the DFSA that it has no objection to that Major Acquisition or has not received any written objection or request for

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additional information from the DFSA within 45 calendar days after the date of the notification; and

- (ii) if the DFSA has imposed any conditions relating to the proposed Major Acquisition, it has complied with, and has the on-going ability to comply with, the relevant conditions.

### **Guidance**

1. An Authorised Firm should provide to the DFSA information that would enable the DFSA to consider factors noted in Rule 7.3.3(3) below. Although the DFSA does not prescribe the form in which such information is to be provided to the DFSA, Authorised Firms should consider any relevant industry and international practices when providing information to the DFSA for similar purposes.
  2. The 45 calendar day period referred to above commences to run from the first business day after the date on which the DFSA receives the notification. However, if any critical information that the DFSA requires in order to assess the notification has not been provided to the DFSA at the time of the notification, the relevant period for considering that notification will only commence to run after the Firm has provided to the DFSA that information upon a request made by the DFSA under its powers in Rule 7.3.5(1).
  3. Upon the request of an Authorised Firm, the DFSA may, at its sole discretion, agree to consider a notification within a shorter period than the 45 calendar days referred to above. The onus is on an Authorised Firm which wishes to obtain a DFSA decision under this Rule within a shorter period to make a request to that effect to the DFSA and provide all the information that the DFSA requires to enable the DFSA to process the notification within a shorter timeframe.
  4. Where the DFSA exercises its powers under this provision to object to a proposed Major Acquisition or impose any conditions relating to such an Major Acquisition, a Person affected by such a decision may make an appeal relating to that decision to the DFSA's Regulatory Appeals Committee. Appeal provisions are in Rule 7.3.6.
- (2) The DFSA may only object to a proposed Major Acquisition if it is of the view that the proposed Major Acquisition is reasonably likely to have a material adverse impact on the Authorised Firm's ability to comply with its applicable regulatory requirements or on the financial services industry in the DIFC as a whole. The DFSA may also impose any conditions it considers appropriate to address any concerns it may have in relation to the proposed Major Acquisition.
- (3) Without limiting the generality of its powers, the factors that the DFSA may take into account for the purposes of (2) include:
- (a) the financial and other resources available to the Authorised Firm to carry out the proposed Major Acquisition;
  - (b) the possible impact of the proposed Major Acquisition upon the Authorised Firm's resources, including its capital, both at the time of the acquisition and on an on-going basis;

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- (c) the managerial capacity of the Authorised Firm to ensure that the activities of the investee Body Corporate are conducted in a prudent and reputable manner;
  - (d) the place of incorporation or domicile of the investee Body Corporate and whether or not the laws applicable to that entity are consistent with the laws applicable to the Authorised Firm. In particular, whether there are any secrecy constraints that are likely to create difficulties in relation to the DFSA requirements including those relating to consolidated supervision by the DFSA where applicable; and
  - (e) any other undue risks to the Authorised Firm or the financial services industry in the DIFC as a whole arising from the proposed Major Acquisition.

#### **Guidance**

Factors which the DFSA may take into account in assessing whether there are any undue risks arising from the proposed Acquisition include the size and nature of the business of the investee Body Corporate, its reputation and standing, its present and proposed management structure and the quality of management, the reporting lines and other monitoring and control mechanisms available to the Authorised Firm and the past records of the Authorised Firm relating to acquisitions of a similar nature.

#### **7.3.4 (1) An Authorised Firm which is not a Domestic Firm must:**

- (a) notify the DFSA in writing of any Major Acquisition in accordance with the notification requirement applying to the Authorised Firm under the requirements of the Financial Services Regulator in its home jurisdiction (the home regulator); and
- (b) if there is no notification requirement applying to the Authorised Firm under (a), comply with the requirements in Rule 7.3.3 as if it were a Domestic Firm. The DFSA must follow the same procedures, and shall have the same powers, as set out in Rule 7.3.3 in relation to such a notification.

#### **(2) An Authorised Firm which gives to the DFSA a notification under (1)(a) must:**

- (a) notify the DFSA of the Major Acquisition at the same time as it notifies the home regulator;
- (b) provide to the DFSA the same information as is required to provide to the home regulator; and
- (c) provide to the DFSA copies of any communications it receives from the home regulator relating to the notification it has provided to the home regulator as soon as practicable upon receipt.

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### Guidance

1. The home regulator's requirements relating to notification of major acquisitions may differ from the requirements relating to Major Acquisitions under these Rules. For example, under the home regulator's requirement, the threshold for a major acquisition may be a lower percentage of the regulatory capital of the Authorised Firm (as opposed to the 10% threshold under these Rules). Where the home regulator's threshold for major acquisitions is lower than the 10% threshold, notification to the DFSA is not required, unless that acquisition is reasonably likely to have a significant regulatory impact on the Authorised Firm's activities.
2. Where the DFSA receives a notification under Rule 7.3.4(1)(b), to the extent necessary, it will liaise with the home regulator in taking any appropriate action relating to the proposed Major Acquisition.

**7.3.5** (1) The DFSA may, for the purposes of the requirements in this section, require from an Authorised Firm, any additional information relating to the Major Acquisition as it may consider appropriate. An Authorised Firm must provide any such additional information to the DFSA promptly.

(2) The DFSA may, where it considers appropriate, withdraw its no objection position or modify or vary any condition it has imposed or any remedial action it has required under the Rules in this section. Where it forms the view that such an action is required, the DFSA will first give to the Authorised Firm affected by that decision prior written notice of its proposed actions and its reasons.

### Guidance

The DFSA will generally not withdraw a no objection position it has conveyed to an Authorised Firm, except in very limited circumstances. An example of such a situation is where the Authorised Firm is found to have provided to the DFSA inaccurate or incomplete information and that commission or omission has a material impact on the DFSA's no objection decision.

**7.3.6** An Authorised Firm may make an appeal to the Regulatory Appeals Committee for the review of a decision of the DFSA under Rules 7.3.3, 7.3.4(b) or 7.3.5(2) and the Regulatory Appeals Committee has the jurisdiction to hear any such appeal.