

Appendix 1

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



The DFSA Rulebook

Authorisation Module

(AUT)

3.2.4 A Person applying for a Licence must complete and submit the appropriate form or forms in AFN.

Guidance

A Person submitting an application under Rule 3.2.4 is required to pay the appropriate application fee as set out in ~~GEN chapter 7~~ FER.

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10.3 Mandatory appointments

10.3.1 An Authorised Firm must make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer;
- (c) Compliance Officer; and
- (d) Money Laundering Reporting Officer.

Guidance

1. This Guidance addresses a range of circumstances:
 - a. one individual performing more than one function in a single firm, as contemplated in Rule 10.3.1;
 - b. more than one individual performing one function in a single firm, not addressed by that Rule;
 - c. one individual performing a single function in more than one firm, also not addressed by that Rule.
- ~~1.~~ 2. The DFSA will only authorise an individual to perform more than one Licensed Function or combine Licensed Functions with other functions where it is satisfied that the individual is fit and proper to perform each Licensed Function or combination of Licensed Functions concerned.
- ~~2.~~ 3. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.
- ~~3.~~ 4. Notwithstanding this Rule, an Authorised Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not be expected to be combined with any other functions unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Authorised Firm. This may be possible in the

case of a Branch, where monitoring and controlling of the individual (carrying out more than one role in the Branch) is conducted from the firm's home state by an appropriate individual for each of the relevant Licenced Functions. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible.

5. In what it considers to be exceptional circumstances, the DFSA may register more than one individual to perform the Licensed Function of Compliance Officer in respect of different internal business divisions within a large Authorised Firm. In this regard the DFSA may consider, amongst other things, the nature, scale and complexity of the activities of the firm, the clarity of demarcation between areas of responsibility, the potential for gaps in responsibility, and processes of communication with the DFSA.
6. The DFSA may also register an individual as the Compliance Officer for more than one Authorised Firm. The DFSA will only do this where it is satisfied that the individual is able to carry out his functions effectively in each firm taking into consideration factors such as the amount and nature of business conducted by the firms. Each Authorised Firm has a duty under GEN 5 to monitor its compliance arrangements to ensure, as far as reasonably practicable, that it complies with all legislation applicable in the DIFC.

10.3.2 The Authorised Individuals referred to in Rule 10.3.1(a), (c) and (d) must be ordinarily resident in the U.A.E.

Guidance

1. In appropriate circumstances, the DFSA may waive the requirement for a Compliance Officer or MLRO to be resident in the UAE. In determining whether to grant a waiver, the DFSA will consider a range of factors on a case by case basis focused on whether the firm can demonstrate that it has appropriate compliance arrangements (see GEN 5.3). These factors may include, but are not limited to: the nature, scale and complexity of the activities of the firm; the ability of a remote officer to carry out his functions in differing time zones and a differing working week; the size, resourcing and capabilities of a remote compliance function; the ability of a remote officer to liaise and communicate readily with the DFSA; and the ability of a remote officer and whether the remote officer is able effectively to undertake or supervise regular compliance monitoring and keep up to date with applicable Rules.
2. The DFSA will also take into account factors such as the relevant regulatory experience of the proposed Authorised Individual and whether the applicant firm has previously been subject to financial services regulation.

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15 CHANGE IN CONTROL

15.1 Application

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- 15.1.2** (1) A Controller is a Person who, either alone or with any Associate:
- (a) holds 10% or more of an Authorised Firm's shares;
 - (b) is entitled to exercise, or control the exercise, of, 10% or more of the voting rights in respect of an Authorised Firm;
 - (c) holds shares or voting rights of an Authorised Firm which enables the Person to exercise significant management influence over the management of the Authorised Firm ~~over management via a shareholding in an Authorised Firm;~~ or
 - (d) meets one or more of the conditions of (a), (b), or (c) in respect of a Holding Company of an Authorised Firm.
- (2) In (1), a share means:
- (a) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with share capital, allotted shares;
 - (b) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with capital but no share capital, rights to a share in the capital of the Authorised Firm or a Holding Company of an Authorised Firm; or
 - (c) in relation to an Authorised Firm or a Holding Company of an Authorised Firm without capital:
 - (i) interests conferring any right to share in the profits, or liability to contribute to the losses, of the Authorised Firm or a Holding Company of an Authorised Firm; or
 - (ii) giving rise to any obligation to contribute to the debt or expenses of an Authorised Firm or a Holding Company of an Authorised Firm in the event of a winding up of the Authorised Firm or a Holding Company of the Authorised Firm.

15.2 Applications and notifications concerning a change in control

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15.2.1 (1) Subject to (2) and (3), a Person specified in Rule 15.1.1(b) must not act as a Controller of an Authorised Firm unless ~~it~~ he, or the Authorised Firm, has:

- (a) obtained prior approval ~~in accordance with~~ pursuant to Rule 15.2.3(2); or
- (b) made a prior notification approval ~~in accordance with~~ pursuant to Rule 15.2.3(3) or Rule 15.2.5(2) as may be applicable.

(2) The requirement in (1) does not apply to a Person who becomes a Controller by virtue of:

- (a) having acquired Shares for the sole purpose of clearing and settling within a short settlement cycle; or
- (b) holding Shares in a custodian capacity, provided that the Person can only exercise the voting rights attached to the Shares under instructions given in writing.

(3) The requirement in (1) does not apply to an Authorised Firm or a Regulated Financial Institution, that becomes a Controller by virtue of holding Shares or holding or exercising voting rights as a result of:

- (a) providing the underwriting of financial instruments; or
- (b) placing financial instruments on a firm commitment basis,

provided that voting rights are not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

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15.2.3 (1) Where the Authorised Firm is:

- (a) a Body Corporate incorporated under the Companies Law 2004 or the Limited Liability Partnership Law 2004;
- (b) a Partnership established under the General Partnership Law 2004; or
- (c) an unincorporated association formed within the jurisdiction of the DIFC;

and a Person becomes a Controller or the level of control changes in regard to the kind of shareholding and influence as set out in Rule 15.1.2(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 15.1.1(b) must submit a notification or application to the DFSA as applicable.

- (2) The events mentioned in (1) which trigger a written application for prior approval are as follows:
 - (a) when a holding is increased from below 10% to 10% or more;
 - (b) when a holding is increased from below 30% to 30% or more;
 - (c) when a holding is increased from below 50% to 50% or more; or
 - (d) when any significant management influence as identified under Rule 15.1.2(1)(c) or (d), occurs which has not previously been disclosed to the DFSA.
- (3) The event mentioned in (1) which triggers a written notification is when a holding is decreased from more than 50% to 50% or less.
- (4) An application for prior approval or notification must be submitted to the DFSA using the appropriate form in AFN.

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- 15.2.5** (1) Where the Authorised Firm is:
- ~~(a) a Body Corporate incorporated other than under the Companies Law 2004 or the Limited Liability Partnership Law 2004;~~
 - ~~(b) a Partnership established other than under the General Partnership Law 2004; or~~
 - ~~(c) an unincorporated association formed outside of the jurisdiction of the DIFC; does not fall within Rule 15.2.3(1)(a), (b) or (c) and a Person, becomes a Controller, or the level of control changes in regard to the kind of shareholding and influence as set out in Rule 15.1.2(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 15.1.1(b) must submit a notification to the DFSA.~~
- (2) The events mentioned in (1) which trigger a notification are as follows:
- (a) when a holding is increased from below 10% to 10% or more;

- (b) when a holding is increased from below 30% to 30% or more;
- (c) when a holding is increased from below 50% to 50% or more;
- (d) when a holding is decreased from more than 50% to 50% or less; or
- (e) when any significant management influence as identified under Rule 15.1.2(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.

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

15.2.6 (1) An Authorised Firm must submit the notification required in Rule 15.2.5 not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.

(2) Where an Authorised Firm has not complied with (1), the Person identified in Rule 15.1.1(b) must submit the required notification.

(3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in Rule 15.1.1(b) of his obligations under this chapter.

Guidance

1. In determining an application for approval made in accordance with Rule 15.2.3, the DFSA will consider all relevant information.
2. The DFSA will endeavour to determine applications made in accordance with Rule 15.2.3 within 28 days of receipt of all the required information being submitted, or such shorter time as may be agreed in exceptional circumstances.
3. The DFSA will only respond to a notification made in accordance with Rule 15.2.5 if it requires further information to determine the fitness and propriety of the Authorised Firm in light of the changes referred to in the notification.
4. Where the DFSA requires further information in relation to a notification made in accordance with Rule 15.2.5, it will seek to request such information within 28 days of receipt of the original notification.
5. Rules 15.2.3 and 15.2.5 also apply in certain circumstances where a change in control has occurred, without a Controller having taking any action. This may arise, for example, after a capital ~~re-organisation~~ reorganisation.