

Appendix 1

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

The DFSA Sourcebook



Regulatory Policy and Process

(RPP Sourcebook)

Amendments to Chapters 1, 2 and 3

1-7 DFSA'S REGULATORY STRUCTURE

1-7-1 The DFSA is structured into a number of divisions and departments. For the purpose of this Sourcebook, the most relevant are as follows:

Supervision

- (a) The Supervision Division authorises firms and individuals to conduct Financial Services in or from the DIFC. This Division also registers Ancillary Service Providers and Auditors (see Chapter 2).
- (b) This Division also conducts supervisory oversight on all Authorised Firms, Ancillary Service Providers and Auditors, including by conducting risk assessments. The scope and frequency of such assessments are dictated by the nature of the firm's activities and its perceived risks. From time to time, Supervision carries out thematic reviews inspired by topical events which have both local and international relevance (see Chapter 3).

Markets

- (c) The Markets Division licenses and supervises Authorised Market Institutions in the DIFC (see Chapters 2 and 3).
- (d) The Division also recognises those financial markets who operate an exchange or clearing house outside the DIFC without having a physical presence in the DIFC but make their services available to Persons in the DIFC. Trading and Clearing members of an Authorised Market Institution who operate in a jurisdiction other than the DIFC and do not have a physical presence in the DIFC are also recognised by the Division.
- (e) The Division is also responsible for regulating Offers of Securities in or from the DIFC, and supervises Reporting Entities by monitoring their on-going market disclosures and compliance with Rules.

Enforcement

- (f) The primary function of the Enforcement Division is to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC. Consequently, the Enforcement Division is responsible for:
 - (i) liaising and co-operating with international regulatory and enforcement agencies pursuant to a relevant multilateral memorandum of understanding or bi-lateral arrangement in relation to investigation and enforcement matters;
 - (ii) conducting investigations commenced pursuant to Article 78 of the Regulatory Law 2004 in respect of contraventions of DFSA administered Laws and Rules; and
 - (iii) the taking of enforcement action in circumstances where contraventions of DFSA administered Laws and Rules pose an unacceptable risk to the DIFC.

- (g) The DFSA has a range of remedies to enforce the legislation that we administer (see Chapters 4 and 5).

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2 AUTHORISATION - BECOMING REGULATED

2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS

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Close Links

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

Legal status of Authorised Firms

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

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

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

Ownership and Group

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

- (a) the Authorised Person's position within its Group, including any other relationships that may exist between the Authorised Person's affiliates, Controllers, Associates or other Persons that may be considered a Close Link (see paragraph 2-2-12 for considerations relating to Controllers and paragraph 2-2-7 for considerations relating to Close Links);

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

Controllers

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

- (a) the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Authorised Person, and the degree of influence that they are, or may be, able to exert over the Authorised Person and/or its activities;
- (b) where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller;
- (c) the financial strength of a Controller and its implications for the Authorised Person's ability to ensure the sound and prudent management of its affairs, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Firm; and

- (d) whether the Authorised Person is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a Controller. In considering such matters, the DFSA may have regard to, among other things, the type and level of regulatory oversight which the Controller is subject to in the relevant country or countries and the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

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

Resources, Systems and Controls

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

- (a) the Authorised Person's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Person appears in a position to be able to continue to comply with such Rules;
- (b) the extent to which the Authorised Person is or may be able to secure additional capital in a form acceptable to the DFSA where this appears likely to be necessary at any stage in the future;
- (c) the availability of sufficient competent human resources to conduct and manage the Authorised Person's affairs, in addition to the availability of sufficient Authorised Individuals to conduct and manage the Authorised Person's Financial Services;
- (d) whether the Authorised Person has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;
- (e) whether the Authorised Person has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering and counter terrorism legislation, and relevant UN Security Council sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;
- (f) the impact of other members of the Authorised Person's Group on the adequacy of the Authorised Person's resources and in particular, though not exclusively, the extent to which the Authorised Person is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator;

- (g) whether the Authorised Firm is able to provide sufficient evidence about the source of funds available to it, to the satisfaction of the DFSA. This is particularly relevant in the case of a start-up entity; and
- (h) ~~the matters specified in paragraph 2-2-12(c). financial soundness of a Controller, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Firm.~~

3 SUPERVISION - BEING REGULATED

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Supervision philosophy

3-1-5 The DFSA's supervisory approach is based upon:

- (a) developing a strong relationship with a firm and its senior management, as set out in paragraphs 3-1-7 to 3-1-9;
- (b) where applicable, considering any lead or consolidated supervision which a firm or its Group may be subject to in other jurisdictions, taking into account the DFSA's relationship with other regulators, set out in paragraphs 3-1-10 to 3-1-11;
- (c) utilising its risk-based approach to supervision, including the risk assessment and classification of a firm, as part of the DFSA's continuous risk management cycle, set out in paragraphs 3-1-12 to 3-1-19; and
- (d) using appropriate supervisory tools, set out in ~~paragraphs 3-1-20 to 3-1-40 and further set out in sections 3-2 to 3-6. In relation to these supervisory tools, paragraphs 3-1-30 to 3-1-42 only apply to Authorised Persons.~~

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Supervisory Tools

3-1-20 For the purpose of supervision, the DFSA will select those supervisory tools which are most suitable and effective to identify and address particular risks in a specific situation.

3-1-21 Some of the supervisory tools are ~~discussed further below, whilst others are discussed in varying detail in sections 3-2 to 3-6 and chapter 4.~~

Information and documents

3-1-22 ~~In order to supervise the conduct and activities of a firm, the DFSA needs to have access to a broad range of information about a firm's business.~~

3-1-23 ~~The supervisory power for the DFSA to obtain information and require a firm to produce information and documents is provided under Article 73 of the Regulatory Law 2004.~~

3-1-24 ~~The DFSA will provide a firm with written notice of the documents and information that are required.~~

~~3-1-25~~ The DFSA may make a request for information and documents from a firm wherever that firm may be located (see Article 73(3) of the Regulatory Law 2004). For example, this allows the DFSA access to the head office of a Branch or Subsidiary and the provision of documents from its head office.

~~3-1-26~~ Article 73(4) of the Regulatory Law 2004 allows the DFSA, on application to the Court, to exercise these rights outside the jurisdiction of the DIFC in relation to a Person other than an Authorised Person or Ancillary Service Provider and require such a Person to comply with the requirement or permit the exercise of the DFSA's rights.

Access to premises

~~3-1-26~~ The DFSA may enter the premises of a firm during normal business hours or at any other time as may be agreed, for the purpose of inspecting and copying information or documents (at the firm's expense) stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA (see Article 73(2) of the Regulatory Law 2004).

~~3-1-27~~ The DFSA expects to be able to give reasonable notice to a firm when it seeks information, documents, meetings or access to premises. On rare occasions however, the DFSA may seek access to premises without notice, where it is necessary for the DFSA to meet its objectives and the delay is likely to be prejudicial to the interests of the DIFC.

~~3-1-28~~ The DFSA is conscious that the decision to exercise these access powers might have a significant impact on a firm and accordingly will do so only when necessary.

Requirement to Provide a Report

~~3-1-29~~ Article 74 of the Regulatory Law 2004 provides that the DFSA may require an Authorised Person to provide it with a report on any matter about which the DFSA has required or could require the giving of information or production of documents under Article 73 of the Regulatory Law 2004.

~~3-1-30~~ The person appointed to make a report, must be a person nominated or approved by the DFSA. This person is referred to as an independent expert in GEN section 11.12.

~~3-1-31~~ Where such a requirement has been made of an Authorised Person, it must take all reasonable steps to ensure that any person who is providing or has provided services to the Authorised Person, gives such assistance as the independent expert may reasonably require.

~~3-1-32~~ As outlined in Article 74 of the Regulatory Law 2004, information given or a document produced is admissible in evidence in administrative and civil proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.

~~3-1-33~~ An Authorised Person may appeal to the Regulatory Appeals Committee in respect of the requirement to provide a report (see Article 27(2)(h) of the Regulatory Law 2004).

Procedure to restrict an Authorised Person's business or property

~~3-1-34~~ The DFSA has a power to impose restrictions on an Authorised Person's business. This includes prohibiting an Authorised Person from entering into specific or certain types of transactions, from soliciting business from specific or certain types of person or from carrying on business in a specific manner. The DFSA may also require an Authorised Person to carry on business in, and only in, a specified manner (see Article 75 of the Regulatory Law 2004).

~~3-1-35~~ Article 76 of the Regulatory Law 2004 provides the DFSA with the power to prohibit or require an Authorised Person to deal with any relevant property in a certain manner.

~~3-1-36~~ The DFSA may exercise its powers to impose a prohibition or requirement in circumstances prescribed in GEN Rule 11.13.1. The DFSA is conscious that the decision to exercise these powers may have a significant impact on the Authorised Person and accordingly will only do so where it is necessary for the DFSA to meet its objectives and the delay is likely to be prejudicial to the interests of the DIFC.

~~3-1-37~~ Where possible an Authorised Person will receive an opportunity to make representations prior to the DFSA imposing a restriction on its business or property unless the DFSA concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the DIFC. When making a representation the process in Appendix 3 to the ENF module should be followed.

~~3-1-38~~ An Authorised Person may appeal to the Regulatory Appeals Committee in respect of a restriction imposed on its business or property (see Article 27(2)(h) of the Regulatory Law 2004).

~~3-1-39~~ When the DFSA imposes a restriction it will do so in writing setting out matters including:

- ~~(a)~~— the restriction on the business or property;
- ~~(b)~~— the date and time when the restriction takes effect;
- ~~(c)~~— where applicable, the duration of the restriction; and
- ~~(d)~~— the fact that the Authorised Person may appeal to the Regulatory Appeals Committee.

Notifications to the DFSA

~~3-1-40~~ 3-1-22 Section 11.10 of the GEN module sets out Rules on specified events, changes or circumstances that require notification to the DFSA by an Authorised Person (other than a Representative Office). The list of notifications outlined in section 11.10 is not exhaustive and other areas of the Rulebook may also specify additional notification requirements.

~~3-1-41~~ 3-1-23 An Authorised Firm and Authorised Market Institution is required to comply with the high level principles in GEN Rule 4.2.10 and AMI Rule 10.2.1 respectively. These Rules require an Authorised Person to deal with the DFSA in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to such person of which the DFSA would reasonably expect to be notified.

Application Requirements relating to for-a Change in Control

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

DFSA approval

~~3-2-34 A Person who proposes to become a Controller of a Domestic Firm or an existing Controller who proposes to increase the level of control which that Person has in a Domestic Firm beyond the threshold of 30% or 50% is required to obtain the DFSA's prior approval before doing so. The DFSA's assessment of a proposed acquisition or increase in control of a Domestic Firm is a review of such a firm's continued fitness and propriety and ability to conduct business soundly and prudently. Accordingly, the DFSA takes into account the considerations specified in paragraph 2-2-12 relating to Controllers when making such an assessment.~~

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

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

~~3-2-37 The DFSA may consider whether a Person has become an unacceptable Controller as a result of any notification given by an Authorised Firm pursuant to Rule 11.8.11(2) or as a result of its own supervisory work. The considerations which the DFSA will take into account in assessing whether a Person is an acceptable Controller are those set out in paragraph 3-2-34 above.~~

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

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

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

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Application for a Change of Scope of Licence

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~~3-2-41~~ When considering a change to the scope of a Licence, the DFSA may also consider one or more of the matters outlined in paragraphs ~~3-2-44~~2 to ~~3-2-46~~7 below relating to the withdrawal of a Licence.

3-6 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

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Application for a Change in Control

~~3-6-7~~ The AMI module sets out requirements relating to a change in control. These requirements are similar to those for an Authorised Firm which are set out at paragraphs ~~3-2-33~~ to ~~3-2-37~~3-2-41 and ~~3-2-4~~ to ~~3-2-6~~ of this chapter.