



The DFSA Rulebook

Supervision Module

(SUP)

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1 GENERAL APPROACH TO SUPERVISION

1.1 Introduction

Guidance

1. The Authorisation module (AUT), the Supervision module (SUP) and the Enforcement module (ENF) collectively outline the regulatory processes of the DFSA.
2. Specific Rules in relation to the licensing and supervision of Authorised Market Institutions are contained in the Authorised Market Institutions module (AMI).
3. The regulatory processes in relation to Ancillary Service Providers are contained in the Ancillary Service Providers module (ASP).
4. AUT sets out the requirements for Licence applications and applications for Authorised Individual status including applications by existing Authorised Firms and Authorised Individuals to change the scope of or withdraw Financial Services or Licensed Functions.
5. This module's primary focus is on the supervisory approach of the DFSA and the ongoing relationship between an Authorised Firm and the DFSA and it contains detail on specific tools used by the DFSA under its supervisory powers.
6. ENF describes the DFSA's enforcement powers under the Regulatory Law 2004 and outlines its policy for using these powers. ENF also establishes the framework for the DFSA's decision making process and the giving of notices in relation to enforcement powers.

1.2 Application

1.2.1 This chapter is relevant to every Authorised Firm.

Guidance

1. The DFSA is a risk-based regulator.

DFSA's objectives and guiding principles

2. The appropriate use of the supervisory powers granted to the DFSA plays an important part in ensuring that the DFSA achieves its statutory objectives which are set out in Article 8(3) as follows:
 - a. to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
 - b. to foster and maintain confidence in the financial services industry in the DIFC;

- c. to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
 - d. 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, through appropriate means including the imposition of sanctions;
 - e. to protect direct and indirect users and prospective users of the financial services industry in the DIFC;
 - f. to promote public understanding of the regulation of the financial services industry in the DIFC; and
 - g. to pursue any other objectives as the Ruler may from time to time set under DIFC Law.
3. In exercising its supervisory powers and designing its approach to supervision, the DFSA has regard to the guiding principles, as set out in Article 8(4), being the desirability of:
- a. pursuing the objectives of the DIFC as set out under Dubai Law in so far as it is appropriate and proper for the DFSA to do so;
 - b. fostering the development of the DIFC as an internationally respected financial centre;
 - c. co-operating with and providing assistance to regulatory authorities in the United Arab Emirates and other jurisdictions;
 - d. minimising the adverse effects of the activities of the DFSA on competition in the financial services industry;
 - e. using its resources in the most efficient way;
 - f. ensuring the cost of regulation is proportionate to its benefit;
 - g. exercising its powers and performing its functions in a transparent manner; and
 - h. complying with relevant generally accepted principles of good governance.

1.3 Supervision philosophy

Guidance

1. The DFSA has adopted a risk-based approach to the regulation and supervision of Authorised Firms in order to concentrate its resources on the mitigation of risks to its objectives. The DFSA will work with Authorised Firms to identify, assess, mitigate and control these risks where appropriate.

2. Risks to the DFSA's objectives are not necessarily the same risks that an Authorised Firm faces or poses to its clients. The latter are risks which an Authorised Firm must manage in accordance with the regulatory requirements laid down, for example, in GEN chapter 5 concerning its business strategy, management information and risk management systems.
3. SUP chapter 1 outlines the DFSA's supervisory approach to Authorised Firms which is based upon:
 - a. developing a strong relationship with an Authorised Firm and its senior management, set out in section 1.4;
 - b. considering any lead or consolidated supervision which an Authorised Firm or its Group may be subject to in other jurisdictions, taking into account the DFSA's relationship with other regulators, set out in section 1.5;
 - c. utilising its risk-based approach to supervision including the risk assessment and classification of an Authorised Firm as part of the DFSA's continuous risk management cycle, set out in section 1.6; and
 - d. using appropriate supervisory tools, discussed in section 1.7.
4. The DFSA's risk-based approach to the supervision of Authorised Firms may vary depending upon the nature and circumstances of each individual Authorised Firm and the specific risks it poses to the DFSA's objectives.

1.4 Relationship with Authorised Firms

Guidance

Co-operation

1. In order to meet its objectives, the DFSA requires an open, transparent and co-operative relationship between itself and the Authorised Firm. The DFSA expects to establish and maintain an ongoing dialogue with the Authorised Firm's senior management in order to develop and sustain a thorough understanding of the Authorised Firm's business, systems and controls and, through this relationship, to be aware of all areas of risk to its objectives.
2. The DFSA seeks to maintain an up-to-date knowledge of an Authorised Firm's business. However, an Authorised Firm is also required to keep the DFSA informed of significant events, or anything related to the firm of which the DFSA would reasonably expect to be notified.
3. The nature and intensity of the DFSA's relationship with an Authorised Firm will depend on a number of factors. The DFSA's level of supervision will be proportionate to the risks which the Authorised Firm poses to the DFSA's objectives and will emphasise the responsibilities of the Authorised Firm's senior management in identifying, assessing, mitigating and controlling its risks. The greater the impact and probability of the Authorised Firm's perceived risks, the more intensive the supervisory relationship will be.

1.5 Group supervision

Guidance

1. When the DFSA licenses an Authorised Firm, it takes into consideration the relationship with any wider Group to which the firm may belong or with other Persons closely linked to it. The DFSA will also take into account lead or consolidated supervision to which an Authorised Firm or its Group may be subject to in another jurisdiction.
2. An Authorised Firm is expected to provide information as required or reasonably requested under legislation applicable in the DIFC relating to the Authorised Firm and, where applicable, its consolidated or lead regulatory arrangements. This information may include prudential information, reports on systems and controls relating to an Authorised Firm's Group, internal and external audit reports, details of disciplinary proceedings or any matters which may have financial consequences, reputational impact or pose any significant risk to the DIFC or to the Authorised Firm. This information will initially be taken into account as part of DFSA's fit and proper test as set out in AUT and will subsequently be utilised in the supervision of the Authorised Firm. Further Rules and Guidance with regard to obtaining information from an Authorised Firm's lead regulator are set out in section 2.5.
3. The DFSA has an interest in the relationship of an Authorised Firm with other regulators particularly in order to determine the level of reliance the DFSA may place on a regulator in another jurisdiction concerning any lead supervision arrangements. Depending on the legal structure of an Authorised Firm and the relationship of the DFSA with the regulator in question, the DFSA may place appropriate reliance on the supervision undertaken by this regulator.
4. The DFSA expects to co-operate with other regulators in carrying out its responsibilities. The DFSA will, in principle, distinguish between regulators based on its assessment of their regulatory standards. The main areas on which the DFSA will satisfy itself before placing any reliance upon, or receiving assurance from, another regulator might include, for example, prudential regulation and anti money laundering supervision.
5. The DFSA may assess regulators against various regulatory standards, including the Basel, IOSCO, or IAIS core principles and the FATF recommendations. Additionally, in respect of Branches, the strength of support assessment as set out in Guidance note 13 involves a judgement on the nature of supervision within the Authorised Firm's home country.

Domestic firm's group with DIFC head office

6. The DFSA will usually be the lead and consolidated regulator of any Group headed by a Domestic Firm. Members of the Group, that is, any of the Authorised Firm's Subsidiaries or Branches, will be either subject to DFSA's exclusive supervision or, where members of the Group are located in a jurisdiction outside the DIFC, generally subject to lead or consolidated supervision by the DFSA in co-operation with another regulator.

Subsidiary of a non-DIFC firm

7. The DFSA will routinely be the lead regulator for the purpose of prudential supervision of an Authorised Firm which is a DIFC incorporated Subsidiary of a non-DIFC firm.

8. Where the Authorised Firm is a Subsidiary of a regulated non-DIFC parent company, the DFSA may have regard to any consolidated prudential supervision arrangements to which the Subsidiary is subject and will liaise with other regulators as necessary to ensure that these are adequately fulfilled, taking into account the Subsidiary's activities. The DFSA will usually place appropriate reliance on the Subsidiary's consolidated regulator in another jurisdiction if it is satisfied that it meets appropriate regulatory criteria and standards.
9. An Authorised Firm carrying on Financial Services as a Subsidiary of an unregulated non-DIFC parent company may be subject to DFSA's consolidated prudential supervision, taking into account the parent's activities.

Branch of a non-DIFC firm

10. An Authorised Firm carrying on Financial Services through a Branch will be subject to supervision by both the DFSA and the regulator in its head office jurisdiction.
11. The DFSA will have regard to any lead or consolidated prudential supervision arrangements to which a Branch is subject. The DFSA will usually place appropriate reliance on a Branch's lead regulator in another jurisdiction and, where appropriate, its consolidated regulator if it is satisfied that it meets appropriate regulatory criteria and standards. Where an Authorised Firm is subject to lead regulation arrangements with a foreign regulator, the DFSA will usually not seek to impose consolidated prudential supervision on the Authorised Firm's Group.
12. During the authorisation process the DFSA will take into account the nature and scope of the regulation and supervision to which the applicant is subject in its head office jurisdiction. Notwithstanding that an Authorised Firm may be subject to lead or consolidated regulatory arrangements, the DFSA require it to remain fit and proper in respect of its Group and Controllers. Certain changes or events will require notification to or prior approval from the DFSA.
13. The DFSA will determine the level of regulatory and supervisory oversight which is subsequently required for a specific Branch. As part of DFSA's risk assessment process, set out in section 1.6 Guidance note 10, during the authorisation process the DFSA undertakes a two-tier strength of support assessment of the risks to its objectives posed by the Branch, thereby taking into account the characteristics of the applicant and its head office. The first part of this assessment includes a judgement on the degree of home country supervision and considers the strength of support, both financial and managerial, which the head office is capable of providing to the Branch, taking into account the Branch's activities. The second part of the assessment considers the risk and control mechanisms within the Branch itself.
14. As a result of the assessment, the DFSA may consider modifying specific prudential or other regulatory requirements relating to a Branch.

Prudential returns for Authorised Firms

15. An Authorised Firm may be required to submit periodic prudential returns. In addition, an Authorised Firm may be required to submit copies of its Group's annual interim and audited accounts. The DFSA may also require an Authorised Firm to provide copies of Group returns which are sent to any other regulator.

Co-operation with other regulators

16. Effective co-operation arrangements with other regulators will provide for prompt exchange of information and co-operation in relation to supervision, investigation and enforcement between jurisdictions. Usually, co-operation arrangements will be in the form of memoranda of understanding or other arrangements. The information exchange will enhance the DFSA's understanding of the operations of an Authorised Firm's Group and the effect on the firm.

1.6 Risk-based supervision**Guidance****Purpose**

1. The DFSA seeks to ensure that Authorised Firms comply with legislation applicable in the DIFC and it has established a risk-based approach to the supervision of Authorised Firms.
2. The DFSA's supervisory approach is based on transparent and accountable risk-based regulation. This approach enables the DFSA to identify and focus its attention on the areas where there are perceived to be the greatest risks to its objectives.
3. The purpose of DFSA's risk-based approach to supervision is to:
 - a. ensure that its resources are deployed in relation to the perceived risks that an Authorised Firm poses to the DFSA's objectives;
 - b. formalise a structured supervisory approach to the use of its supervisory tools, for example to establish the frequency and type of on-site visits to an Authorised Firm; and
 - c. encourage Authorised Firms to develop a compliance culture and to identify, assess, mitigate and control significant risks, with particular reliance on an Authorised Firm's senior management to address the issues that are identified.

Risk management cycle

4. The DFSA has adopted a continuous risk management cycle. This comprises the identification, assessment, prioritisation and mitigation of risks arising from a range of areas within an Authorised Firm, including business, operations, internal controls and compliance arrangements. General factors that apply across the regulated community as a whole, or to particular sectors, are also be taken into consideration.

Risks to the DFSA's objectives

5. The principal focus of the DFSA is on the risks to its objectives that arise in respect of the regulated community.

6. The DFSA may also identify where there is a particular risk to the DFSA's objectives seen in several firms and consider the risks to its objectives that may arise from a broader perspective. For example, this could include the risks arising from the external environment, including developments in overseas markets that may affect the regulated community.

Risk categories, risk groups and risk elements

7. The DFSA differentiates between the two high level risk categories 'business and operations' and 'internal controls and compliance arrangements'. Within these risk categories are risk groups which the DFSA may review to identify risks that could inhibit the achievement of its objectives.
 - a. The risk category 'business and operations' includes the following risk groups:
 - i. financial risks;
 - ii. business and strategic risks; and
 - iii. external risks.
 - b. The risk category 'internal controls and compliance arrangements' includes the following risk groups:
 - i. regulatory and legal risks;
 - ii. system and control risks;
 - iii. management and governance risks; and
 - iv. risks to clients and markets.
8. In each of the risk groups there are risk elements which describe specific risk factors, for example credit risk or market risk, which may alone or combined represent a 'financial risk' to one or more of the DFSA's objectives.

Risk to the DFSA's objectives

9. App1 provides an overview of the risk categories, risk groups and risk elements considered by the DFSA in relation to its objectives.

Risk identification and assessment

10. DFSA's risk management cycle and an Authorised Firm's initial risk assessment will begin upon receipt of an application for authorisation. The assessment of regulatory risks set out in section 1.5 Guidance note 13 forms part of this initial risk assessment.
11. The DFSA will assess and prioritise all identified risks to its objectives and as a result assign each Authorised Firm an aggregate risk classification of low, medium or high.

12. The risk classification process will comprise an assessment of the specific risks within each firm, determining the extent to which the risks impact on the DFSA's objectives and the probability of the risks occurring. The importance that the DFSA attaches to a particular risk will depend upon its assessment of the impact on its objectives if such risk were to materialise, together with the probability that the risk will materialise. This will allow the DFSA to determine the relative importance of each risk compared to other risks, and in turn the relative risk to the achievement of its objectives arising from each Authorised Firm compared to other Authorised Firms. The assessments of the firm's specific risks will be brought together in aggregate to determine to which classification the Authorised Firm is assigned.
13. It is important to emphasise that risk has two dimensions: the possible impact of any adverse outcome and the probability of that event occurring. Because impact may correlate with size, an Authorised Firm may be categorised as high risk mainly on the basis that it is large, and hence that any failure would have a significant effect on the DFSA's objectives.

Risk prioritisation and mitigation

14. The risk assessment and classification of each Authorised Firm will allow the DFSA to allocate its resources in such a way that its supervisory tools are targeted towards those Authorised Firms and activities which pose the highest risk to the DFSA's objectives.
15. Whenever appropriate, the DFSA will inform the Authorised Firm of the steps the firm needs to take in relation to specific risks. Subsequently, the DFSA expects the Authorised Firm to demonstrate that it has taken appropriate steps to mitigate the risks it poses to the DFSA's objectives.
16. Where necessary, risk mitigation programmes will be developed with Authorised Firms in order to mitigate or remove identified areas of risk.
17. Whilst the DFSA will discuss certain information with the Authorised Firm, in particular the specific risks that lead it to assign an overall risk classification to the Authorised Firm and any necessary remedial actions, it will not usually disclose the final risk classification.

Risk elements with substantial influence

18. There are particular risk elements that may substantially affect an Authorised Firm's overall risk classification. For example, compliance and management culture are risk elements which may be rated more highly than other elements. Inadequate compliance systems and controls as well as a poor management culture directly affect most other risk elements therefore may impact on an Authorised Firm's minimum risk level. Money laundering may be another risk element which has the potential to substantially influence an Authorised Firm's overall risk classification.

Ongoing risk analysis

19. The risk assessment process will apply equally to all Authorised Firms, although the information required may vary from firm to firm. Authorised Firms with a higher risk classification will be subject to closer regulatory attention and would typically be subject to supervisory reviews specifically designed to address particular causes of risk.

20. All Authorised Firms will be subject to an individual risk assessment, except where more than one Authorised Firm belongs to the same Group, in which case the DFSA may decide to carry out a Group risk assessment.
21. The risk assessment process is ongoing and it is expected that the risks of each Authorised Firm will be reviewed on at least an annual basis. Notifications, reporting of information, an on-going dialogue with senior management and visits to the Authorised Firm will ensure that the DFSA has current information on key risk areas of the Authorised Firm, facilitating the updating of the Authorised Firm's risk classification at any time.
22. There are also a number of trigger events which may affect the frequency of a risk assessment and the Authorised Firm's overall risk classification. Examples include:
 - a. a notification from a non-DIFC regulator or other authority of an issue concerning the Authorised Firm or its Group;
 - b. a material change in an Authorised Firm's business and new business activities;
 - c. a change in the Authorised Firm's Controllers;
 - d. an Authorised Firm's development of high risk products or business lines;
 - e. an Authorised Firm's development of business areas with characteristics such as unusual profitability;
 - f. an Authorised Firm's appointment of new personnel in key business areas;
 - g. an Authorised Firm's acquisition of new or revised information systems or new technology;
 - h. a rapid growth in specific areas of activity of an Authorised Firm;
 - i. an Authorised Firm's corporate restructuring, merger or acquisitions;
 - j. an Authorised Firm's expansion or acquisition of non-DIFC operations including the impact of changes in related economic and regulatory environments; or
 - k. the DFSA's response to industry-wide concerns or themes.

Review of risk management systems

23. Pursuant to GEN Rule 5.3.6, an Authorised Firm must ensure that its risk management systems provide the Authorised Firm with the means to identify, assess, mitigate and control its risks. The DFSA may review the results of the Authorised Firm's internal risk assessment and determine the extent to which each of the Authorised Firm's risks impacts on DFSA's objectives, the likelihood of the risk occurring and consider the controls and mitigation programmes the firm has in place.

1.7 Regulatory and supervisory tools used by the DFSA

Guidance

Nature and purpose of regulatory and supervisory tools

1. The DFSA's risk-based approach emphasises the continuous nature of supervision of Authorised Firms, early detection of risk issues, and the need for efficient use of resources. This will be achieved through the appropriate and where possible pre-emptive use of its regulatory tools. Once an Authorised Firm's risks to the DFSA's objectives have been identified and assessed, the DFSA will take appropriate action to mitigate them before they crystallise. In doing so, the DFSA will consider all regulatory tools at its disposal.
2. The DFSA has a wide range of regulatory tools available to address risks at different stages of their development. These tools can be classified as diagnostic, monitoring, preventative or remedial in nature, though many tools are multi-purpose:
 - a. diagnostic tools help to identify and assess risks;
 - b. monitoring tools help to monitor and track identified risks;
 - c. preventative tools help to mitigate identified risks and prevent them from crystallising; and
 - d. remedial tools help to respond to risks that have crystallised, for example disciplinary sanctions or restrictions placed on an Authorised Firm's business or property.
3. Regulatory tools are utilised during the authorisation, supervision and enforcement regulatory processes. Some regulatory tools are used mainly within the supervisory process. Others, for example the development of new rules or publicising a particular issue, lie outside the relationship with individual firms.
4. Pursuant to AUT, an Authorised Firm must be able to demonstrate that it is fit and proper at the time of its authorisation and appears likely to remain so. The DFSA will use its regulatory tools to test an Authorised Firm's ongoing fitness and propriety.
5. 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. The selection process will also take into account the relevant guiding principles, as set out under section 1.2 Guidance note 3.
6. Examples of the DFSA's supervisory tools include:
 - a. on-site visits;
 - b. high level meetings;
 - c. external auditor reports, statements and tripartite meetings;
 - d. desk based reviews;

- e. requiring information and documents;
- f. use of and reliance on lead regulators;
- g. independent expert reports;
- h. reliance on an Authorised Firm's compliance and audit department;
- i. varying the scope of an Authorised Firm's Licence; and
- j. setting capital requirements.

Details about some common supervisory tools are given below.

On-site visits

- 7. On-site visits provide the DFSA with an overview of the Authorised Firm's operations and enable it to form a first hand view of the personnel, systems and controls and compliance culture within the Authorised Firm as well as identifying and evaluating the risks to the DFSA's objectives, taking into account any mitigation by the Authorised Firm. They enable the DFSA to test the soundness of the Authorised Firm's systems and controls and the extent to which the DFSA can continue to rely on them and the Authorised Firm's senior management to prevent or mitigate risks to the DFSA's objectives. On-site visits will also assist the DFSA to assess the extent of supervision and the use of other supervisory tools required to address certain key risk areas.
- 8. There are various types of on-site visits by the DFSA to an Authorised Firm which differ in their objective and frequency:
 - a. Periodic visits are undertaken at frequencies determined by the DFSA and focus on the main risk areas within an Authorised Firm as well as providing the DFSA with a thorough understanding of the Authorised Firm, its business and any major changes that have taken place within the Authorised Firm since a previous visit or risk assessment and their probable effects.
 - b. Theme visits are designed to address a current or topical risk or issue either within a particular type of Authorised Firm or the market place in general. They tend to be short in duration and are focused in their approach. Examples of theme visits are anti money laundering, client assets or conflicts management.
 - c. Follow-up visits are often required to follow up any action that may have been agreed as part of a risk mitigation programme or to satisfy the DFSA that the Authorised Firm has taken appropriate action arising from a previous visit or communication.
 - d. Special visits are unique to a particular Authorised Firm and are generally scheduled following a particular event or notification from an Authorised Firm. They are generally short, focused visits usually targeted to a particular area of an Authorised Firm. These visits allow the DFSA to review certain high risk areas of an Authorised Firm's business in isolation. Occasionally, special visits may be unannounced. These assist in keeping firms alert to the need to maintain a continuously high quality of compliance.

High level meetings

9. High level meetings with an Authorised Firm's senior management seek to:
 - a. understand how the senior management controls an Authorised Firm's operations and views its business situation and prospects. The DFSA will usually wish to discuss the Authorised Firm's business plan and strategies during these meetings;
 - b. clarify specific queries and discuss prudential concerns arising from desk based reviews or elsewhere; and
 - c. ensure that an Authorised Firm vests responsibility for effective and responsible organisation in senior management and has effective systems and controls.
10. High level meetings may be held in the Authorised Firm's premises at intervals depending on the Authorised Firm's risk profile, or at any other time the DFSA has cause for a specific concern. In addition, the DFSA may hold discussions with the Authorised Firm's non-DIFC head office and regulator.

External auditor reports, statements and tripartite meetings

11. The DFSA requires an Authorised Firm's registered external auditor to co-operate with the DFSA in a number of ways, including the submission of specific audit reports and statements. As part of an audit, the DFSA would expect an auditor to review any relevant correspondence between the DFSA and the Authorised Firm. Further, tripartite meetings between the Authorised Firm's senior management, the auditor, and the DFSA may be requested at the DFSA's initiative.

Desk based reviews

12. Desk based reviews will be undertaken regularly in order to review compliance with legislation applicable in the DIFC. They assist the DFSA's understanding of an Authorised Firm's operations, for example by monitoring its financial position and detecting emerging problems or concerns to be explored in greater detail through prudential meetings, examinations, or otherwise. A desk based review may involve analysing information provided by the firm through supervisory returns, internal management information or published financial information.

Requiring information and documents

13. Apart from reports such as regular prudential returns, the DFSA may from time to time also request from an Authorised Firm additional supplementary information and documents, including non-financial information such as an Authorised Firm's internal policies on particular areas of risk or its organisational chart.

2 INFORMATION GATHERING

2.1 Application

2.1.1 This chapter applies to an Authorised Person with respect to the carrying on of all of its activities and takes into account any activities of other members of the Group of which the Authorised Person is a member.

2.2 Information and documents

Guidance

1. In order to supervise the conduct and activities of Authorised Persons and Authorised Individuals the DFSA needs to have access to a broad range of information about an Authorised Person's business.
2. The power for the DFSA to obtain information and require an Authorised Person to produce information and documents is provided under Article 73.
3. The DFSA will provide Authorised Persons with written notice of the documents and information that are required.
4. The Regulatory Law 2004 allows the DFSA to make a request for information and documents from an Authorised Person wherever that Authorised Person may be located. This allows the DFSA access to the head office of a Branch or Subsidiary and the provision of documents from its head office.
5. Article 73(4) 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 and require such a Person to comply with the requirement or permit the exercise of the DFSA's rights.

2.2.1 An Authorised Person must where reasonable:

- (a) give or procure the giving of specified information, documents, files, tapes, computer data or other material in the Authorised Person's possession or control to the DFSA;
- (b) make its Employees, readily available for meetings with the DFSA;
- (c) give the DFSA access to any information, documents, records, files, tapes, computer data or systems, which are within the Authorised Person's possession or control and provide any facilities to the DFSA;

- (d) permit the DFSA to copy documents or other material on the premises of the Authorised Person at the DFSA's reasonable expense; [Amended][VER3/04-05]
- (e) to provide any copies as requested by the DFSA; and
- (f) answer truthfully, fully and promptly, all questions which are put to it by the DFSA.

2.2.2 An Authorised Person must take reasonable steps to ensure that its Employees act in the manner set out in this chapter.

2.2.3 An Authorised Person must take reasonable steps to ascertain if there is any secrecy or data protection legislation that would restrict access by the Authorised Person or the DFSA to any data required to be recorded under the DFSA's Rules. Where such legislation exists, the Authorised Person must keep copies of relevant documents or material in a jurisdiction which does allow access in accordance with legislation applicable in the DIFC. [Amended][VER3/04-05]

2.3 Access to premises

Guidance

1. Under Article 73, the DFSA may enter the premises of any Authorised Person during normal business hours or at any other time as may be agreed, for the purpose of inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.
2. The DFSA expects to be able to give reasonable notice to an Authorised Person or person when it seeks information, documents, meetings or access to premises. On rare occasions however, the DFSA may seek access to premises without notice. The prospect of unannounced visits is intended to encourage Authorised Persons to comply with the legislation applicable in the DIFC.
3. Pursuant to Articles 67 and 72 (2), Authorised Persons are required to give full co-operation and respond to any regulatory request.

2.4 Third party providers and suppliers

2.4.1 An Authorised Person must ensure that the terms of its contract with each third party provider or supplier under a material outsourcing arrangement requires the third party to:

- (a) provide for the provision of information under this chapter in relation to the Authorised Person and access to their business premises; and
- (b) deal in an open and co-operative way with the DFSA.

Guidance

1. The DFSA will normally seek information from an Authorised Person in the first instance, but reserves the right to seek it from a supplier under a material outsourcing arrangement if appropriate.
2. A material outsourcing arrangement would be a service of such importance that weakness, or failure of the service would cast serious doubt on the Authorised Person's continuing ability to remain fit and proper or comply with applicable laws including Rules.
3. GEN Rule 5.3.22 requires an Authorised Person to inform the DFSA about any material outsourcing arrangements.
4. The Regulatory Law 2004 requires co-operation and disclosure by an Authorised Person's auditor and may involve the DFSA meeting or requesting documents or information from the Authorised Person's auditors.

2.5 Lead regulation

- 2.5.1** (1) If requested by the DFSA, an Authorised Person must provide the DFSA with information that the Authorised Person or its auditor has provided to a Financial Services Regulator.
- (2) If requested by the DFSA, an Authorised Person must take reasonable steps to provide the DFSA with information that other members of the Authorised Person's Group has provided to a Financial Services Regulator.

Guidance

1. Under Article 39 the DFSA may exercise its powers for the purpose of assisting other regulators or agencies.
2. The DFSA may also delegate functions and powers to representatives of other regulators or agencies as prescribed in Article 40.

3 WAIVERS

3.1 Application

3.1.1 This chapter applies to every Authorised Person.

Guidance

1. Under Article 25, the DFSA may by means of a written notice provide that one or more provisions of the Rules either:
 - a. shall not apply in relation to a particular person; or
 - b. shall apply to a particular person with such modifications as are set out in the written notice.
2. This chapter sets out Rules in connection with the provision of a written notice under Article 25 including Rules prescribing procedures for the making of applications and providing of consents.
3. It is unlikely that the DFSA will waive the following Rules:
 - a. Rules in GEN chapters 2 and 3; or
 - b. Rules in COB part 1.

3.1.2 Throughout the Rulebook reference to the written notice under Article 25 will be referred to as a 'waiver'.

3.2 Procedures for application for waivers

Guidance

Waiver application forms are contained in AFN.

Application

3.2.1 If an Authorised Person wishes to apply for a waiver, it must apply in writing and the application must be delivered to the DFSA as outlined in section 7.10.

3.2.2 The application must contain:

- (a) the name and licence number of the Authorised Person;
- (b) the Rule to which the application relates;

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

3.2.3 An Authorised Person must immediately notify the DFSA if it becomes aware of any material change in circumstances which may affect the application for a waiver.

Determination of waivers

Guidance

1. The DFSA will acknowledge an application for a waiver and may request further information. The time taken to determine the application for a waiver will depend upon the issues it raises.
2. The determination of a waiver is at the discretion of the DFSA and it will generally only apply a waiver where there is shown to be an appropriate and justifiable reason.
3. The DFSA may impose conditions on a waiver, for example additional reporting requirements.
4. A waiver may be given for a specified period of time only, after which time it will cease to apply.
5. If the DFSA decides not to give a waiver, it will give reasons for the decision.
6. An Authorised Person may withdraw its application for a waiver at any time up until the giving of the waiver. In doing so, an Authorised Person should give reasons for the withdrawing of the application.

General waivers

7. Where the DFSA considers that a waiver should apply to a number of Authorised Persons, for example, where a Rule unmodified may not meet the particular circumstances of a particular category of Authorised Person the DFSA will inform the Authorised Persons concerned that the waiver is available, either by contacting Authorised Persons individually or by publishing details of the availability of the waiver on the DFSA's website. An Authorised Person will not have to make a formal application but will have to give its written consent for the waiver to apply.

Consent during application for authorisation

8. An applicant for authorisation may request a waiver whilst its application for authorisation is being processed. In some circumstances, the applicant may need to work with the DFSA in developing the waiver and may not be required to use the formal application process. However, the written consent to the waiver by the Authorised Person will then be required once the applicant is authorised.

Application of waived rules

9. If a waiver directs that a Rule is to apply to an Authorised Person with modifications, then contravention of the modified Rule could lead to the DFSA taking enforcement action.
10. If a waiver is given subject to a condition, the waiver will not apply to activities conducted in breach of the condition, and those activities, if in breach of the original Rule, could lead to enforcement action.

3.3 Publication of waivers

Guidance

1. Under the Regulatory Law 2004, unless the DFSA is satisfied that it is inappropriate or unnecessary to do so, it must publish a waiver in such a way as it considers appropriate for bringing the notice to the attention of:
 - a. those likely to be affected by it; and
 - b. others who may be likely to become subject to a similar notice.
2. The principal method of publication of waivers is by publication on the DFSA website.
3. If an Authorised Person believes there are reasonable grounds for the DFSA either to withhold publication or to publish the waiver without disclosing the identity of the Authorised Person it should make this clear in its application.

3.4 Continuing relevance of waivers

- 3.4.1** An Authorised Person must immediately notify the DFSA if it becomes aware of any material change in circumstances which could affect the continuing relevance of a waiver.

3.5 Withdrawal or variation of waivers

Guidance

Under Article 25, the DFSA may:

- a. on its own initiative or on the application of the person to whom it applies, withdraw a written notice; or
- b. on the application of, or with the consent of, the person to whom it applies, vary a written notice.

4 REQUIREMENT TO PROVIDE A REPORT

4.1 Application

4.1.1 This chapter applies to every Authorised Person.

Guidance

1. In summary, under Article 74, the DFSA may require an Authorised Person to provide it with a report on any matter.
2. The person appointed to make a report, must be a person nominated or approved by the DFSA. This person will be referred to throughout the Rulebook as an independent expert.
3. 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 shall give all such assistance as the independent expert may reasonably require.
4. As outlined in Article 74, 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.
5. An Authorised Person may appeal to the Regulatory Appeals Committee in respect of the requirement to provide a report.

4.2 Appointment and reporting process

- 4.2.1**
- (1) The DFSA may, by sending a notice in writing, require an Authorised Person to provide a report by an independent expert. The DFSA may require the report to be in whatever form it specifies in the notice.
 - (2) The DFSA will give written notification to the Authorised Person of the purpose of its report, its scope, the timetable for completion and any other relevant matters.
 - (3) The independent expert must be appointed by the Authorised Person and be nominated or approved by the DFSA.
 - (4) The Authorised Person must pay for the services of the independent expert.

Guidance

1. If the DFSA decides to nominate the independent expert, it will notify the Authorised Person accordingly. Alternatively, if the DFSA is content to approve the independent expert selected by the Authorised Person it will notify it of that fact.
2. The DFSA will only approve an independent expert that in the DFSA's opinion has the necessary skills to make a report on the matter concerned.

4.3 Requirements

4.3.1 When an Authorised Person appoints an independent expert, the Authorised Person must ensure that:

- (a) the independent expert co-operates with the DFSA; and
- (b) the Authorised Person provides all assistance that the independent expert may reasonably require.

4.3.2 When an Authorised Person appoints an independent expert, the Authorised Person must, in the contract with the independent expert:

- (a) require and permit the independent expert to co-operate with the DFSA in relation to the Authorised Person and to communicate to the DFSA information on, or his opinion on, matters of which he has, or had, become aware of in his capacity as an independent expert reporting on the Authorised Person in the following circumstances:
 - (i) the independent expert reasonably believes that, as regards the Authorised Person concerned:
 - (A) there is or has been, or may be or may have been, a contravention of any relevant requirement that applies to the Authorised Person concerned; and
 - (B) that the contravention may be of material significance to the DFSA in determining whether to exercise, in relation to the Authorised Person concerned, any powers conferred on the DFSA under any provision of the Regulatory Law 2004;
 - (ii) the independent expert reasonably believes that the information on, or his opinion on, those matters may be of material significance to the DFSA in determining whether the Authorised Person concerned satisfies and will continue to satisfy the fit and proper requirements; or

- (iii) the independent expert reasonably believes that the Authorised Firm is not, may not be, or may cease to be, a going concern;
- (b) require the independent expert to prepare a report, as notified to the Authorised Person by the DFSA, within the time specified by the DFSA; and
- (c) waive any duty of confidentiality owed by the independent expert to the Authorised Person which might limit the provision of information or opinion by that independent expert to the DFSA in accordance with (a) or (b).

4.3.3 An Authorised Person must ensure that the contract required under Rule 4.3.2:

- (a) is governed by the laws of the DIFC;
- (b) expressly provides that the DFSA has a right to enforce the provisions included in the contract under Rule 4.3.2;
- (c) expressly provides that, in proceedings brought by the DFSA for the enforcement of those provisions, the independent expert is not to have available by way of defence, set-off or counter claim any matter that is not relevant to those provisions;
- (d) if the contract includes an arbitration agreement, expressly provides that the DFSA is not, in exercising the right in (b) to be treated as a party to, or bound by, the arbitration agreement; and
- (e) provides that the provisions included in the contract under Rule 4.3.2 are irrevocable and may not be varied or rescinded without the DFSA's consent.

5 IMPOSING RESTRICTIONS

5.1 Application

5.1.1 This chapter applies to every Authorised Person.

Guidance

1. Article 75 provides the DFSA with the 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.
2. Article 76 provides the DFSA with the power to prohibit or require an Authorised Person to deal with any relevant property in a certain manner.
3. The DFSA may exercise its powers to impose a prohibition or requirement in the circumstances prescribed in the Rules.
4. The DFSA is conscious that the decision to exercise these powers will have a significant impact on the Authorised Person and accordingly will only do so in exceptional circumstances.

5.2 Restrictions on an Authorised Person's business or on an Authorised Person dealing with property

5.2.1 The DFSA has the power to impose a prohibition or requirement on an Authorised Person in relation to the Authorised Person's business or in relation to the Authorised Person dealing with property under Article 75 or Article 76 in circumstances where:

- (a) there is a reasonable likelihood that the Authorised Person will contravene a requirement of any legislation applicable in the DIFC;
- (b) the Authorised Person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated;
- (c) there is loss, risk of loss, or other adverse effect on the Authorised Person's customers;
- (d) an investigation is being carried out in relation to an act or omission by the Authorised Person that constitutes or may constitute a contravention of any applicable law or Rule;

- (e) enforcement action has commenced against the Authorised Person for a contravention of any applicable law or Rule;
- (f) civil proceedings have commenced against the Authorised Person;
- (g) the Authorised Person or any Employee of the Authorised Person may be or has been engaged in market abuse;
- (h) the Authorised Person is subject to a merger;
- (i) a meeting has been called to consider a resolution for the winding up of the Authorised Person;
- (j) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country for the Authorised Person;
- (k) there is a notification to dissolve the Authorised Person or strike it from the DIFC Registrar of Companies or the comparable register in another jurisdiction;
- (l) there is information to suggest that the Authorised Person is involved in financial crime; or
- (m) the DFSA considers that this prohibition or requirement is necessary to ensure customers, Authorised Persons or the financial system are not adversely affected.

5.3 Procedure to restrict an Authorised Person's business or property

Guidance

1. 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 ENF App3 should be followed.
2. An Authorised Person may appeal to the Regulatory Appeals Committee in respect of a restriction imposed on its business or property.
3. When the DFSA imposes a restriction it will do so in writing setting out:
 - 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;
- d. the reasons for the restriction; and
- e. the fact that the Authorised Person may appeal to the Regulatory Appeals Committee.



6 [Not currently used]

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. [Amended][VER5/06/07][RM43/07]

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. [Amended][VER5/06/07][RM43/07]

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; or
- (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.

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 by the Authorised Person or any of its Employees;

- (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.

[Amended][VER5/06/07][RM43/07]

Guidance

The DFSA 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.
[Amended][VER5/06/07][RM43/07]

- 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 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.

[Added][VER5/06/07][RM43/07]

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).

[Added][VER5/06/07][RM43/07]

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- 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 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.

[Added][VER5/06/07][RM43/07]

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 a 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.

[Added][VER5/06/07][RM43/07]

- (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;
 - (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.

[Added][VER5/06/07][RM43/07]

Guidance

Factors which the DFSA may take into account in assessing whether there are any undue risks arising from the proposed Major 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. [Added][VER5/06/07][RM43/07]

- 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 it 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.

[Added][VER5/06/07][RM43/07]

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.

[Added][VER5/06/07][RM43/07]

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- 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.

[Added][VER5/06/07][RM43/07]

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.

[Added][VER5/06/07][RM43/07]

- 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.

[Added][VER5/06/07][RM43/07]

7.4 Fraud and errors

- 7.4.1** An Authorised Person must notify the DFSA immediately if one of the following events arises in relation to its activities in or from the DIFC:
- (a) it becomes aware that an Employee may have committed a fraud against one of its customers;
 - (b) a serious fraud has been committed against it;
 - (c) it has reason to believe that a Person is acting with intent to commit a serious fraud against it;
 - (d) it identifies significant irregularities in its accounting or other records, whether or not there is evidence of fraud; or
 - (e) it suspects that one of its Employees who is connected with the Authorised Person's Financial Services may be guilty of serious misconduct concerning his honesty or integrity.

7.5 Other regulators

7.5.1 An Authorised Person must advise the DFSA immediately of:

- (a) the granting or refusal of any application for or revocation of authorisation to carry on financial services in any jurisdiction outside the DIFC;
- (b) the granting, withdrawal or refusal of an application for, or revocation of, membership of the Authorised Person of any regulated exchange or clearing house;
- (c) the Authorised Person becomes aware that a Financial Services Regulator has started an investigation into the affairs of the Authorised Person;
- (d) the appointment of inspectors, howsoever named, by a Financial Services Regulator to investigate the affairs of the Authorised Person; or
- (e) the imposition of disciplinary measures or disciplinary sanctions on the Authorised Person in relation to its financial services by any Financial Services Regulator or any regulated exchange or clearing house.

7.6 Action against an Authorised Person

7.6.1 An Authorised Person must notify the DFSA immediately if:

- (a) civil proceedings are brought against the Authorised Person and the amount of the claim is significant in relation to the Authorised Person's financial resources or its reputation; or
- (b) the Authorised Person is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion.

7.7 Winding up, bankruptcy and insolvency

7.7.1 An Authorised Person must notify the DFSA immediately on:

- (a) the calling of a meeting to consider a resolution for winding up the Authorised Person;

- (b) an application to dissolve the Authorised Person or to strike it from the register, maintained by the DIFC Registrar of Companies, or a comparable register in another jurisdiction;
- (c) the presentation of a petition for the winding up of the Authorised Person;
- (d) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Authorised Person; or
- (e) the application of any person against the Authorised Person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country.

7.8 Change in an Authorised Firm's financial year end

Guidance

1. GEN Rule 8.3.5 requires a Domestic Firm to obtain DFSA consent prior to implementing a change to its financial year end.
2. GEN Rule 8.3.6 requires an Authorised Firm which is not a Domestic Firm to provide the DFSA with reasonable advance notice when it intends to change its financial year.

7.9 Accuracy of information

Guidance

Article 66 states that a person shall not:

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

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

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

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

7.10 Provision of notifications

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

[Amended][VER3/04-05]

8 REPORTING

8.1 Application

8.1.1 This chapter applies to every Authorised Person.

Guidance

1. The purpose of this chapter is to outline the process and requirements that must be followed when making a report to the DFSA.
2. Other sections of the Rulebook outline the specific reports that must be provided and states the due date, frequency, timeframe for delivery and the contents that are required in the report.
3. In order to discharge its obligations and meet its objectives under the Regulatory Law 2004, the DFSA requires timely and accurate information about an Authorised Person.

8.2 Provision of regulatory reports

- 8.2.1** (1) Unless a Rule states otherwise, an Authorised Person must ensure that each report it provides to the DFSA is:
- (a) in writing and contains the Authorised Firm name and license number; and
 - (b) addressed for the attention of (in the case of an Authorised Firm) the Supervision Department and (in the case of an Authorised Market Institution) the Markets Department and delivered to the DFSA by:
 - (i) post to the current address of the DFSA;
 - (ii) hand delivered to the current address of the DFSA;
 - (iii) electronic mail to an address provided by the DFSA; or
 - (iv) faxed to a fax number provided by the DFSA.
- (2) In (1)(b) confirmation of receipt must be obtained.

[Amended][VER3/04-05]

- (3) If the report is submitted in paper form, it must be submitted with the cover sheet contained in AFN.

9 CREATION OR TRANSACTIONS OF CELLS OF A PROTECTED CELL COMPANY

[Added] [VER2/10-04]

9.1 Application

9.1.1 This chapter applies to Insurers that are Protected Cell Companies.

Guidance

A Protected Cell Company is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the DIFC Company Regulations.

9.2 Creation of additional cells

9.2.1 An Insurer that is a Protected Cell Company may not create a new Cell unless approval has been granted by the DFSA.

9.2.2 An application to the DFSA for the approval for the creation of a new Cell must be made on the appropriate form in AFN, and shall be accompanied by such documents and information, verified in such manner, as the DFSA may require.

9.3 Determination of applications

9.3.1 The DFSA may:

- (a) grant approval;
- (b) grant approval with conditions or restrictions; or
- (c) refuse approval;

for the creation of a new cell.

9.4 Notice of the DFSA's decision

- 9.4.1** (1) Where the DFSA grants approval of a new Cell, the DFSA will without undue delay give the Insurer a written notice of its decision.
- (2) Where the DFSA grants approval of a new Cell with conditions or restrictions, the DFSA will without undue delay give the Insurer a written notice of its decision and, where requested by the Insurer, the reasons for the conditions.
- (3) Where the DFSA refuses approval of a new Cell, the DFSA will without undue delay give a written notice of its decision to the Insurer and, where requested by the Insurer, the reasons for such refusal.

9.5 Rights of representation and appeal

- 9.5.1** The DFSA may only exercise its power to refuse an application for a new Cell, or to grant approval with conditions or restrictions, if it has given the Insurer a suitable opportunity to make representations in person and in writing in relation to the proposed refusal or the proposed conditions or restrictions.
- 9.5.2** The Insurer has the right to appeal a decision to refuse approval, or to grant approval with conditions or restrictions, to the Regulatory Appeals Committee which has the jurisdiction to hear and determine such an appeal.

9.6 Prohibition on dealings or transactions between cells

Guidance

1. Under the provisions of the DIFC Company Regulations dealings or transactions between Cells may take place only with the approval of the Court.
2. An Authorised Firm which intends to apply to the Court for approval under the provisions is invited to consult with the DFSA before making the necessary application to the Court.

9.7 Transfer of cellular assets from a protected cell company

Guidance

1. Certain transfers of cellular assets may take place only with the approval of the Court as defined under the provisions of the DIFC Company Regulations.
2. An Authorised Firm which intends to apply to the Court for approval under the provisions is invited to consult with the DFSA before making the necessary application.

9.8 Notifications

- 9.8.1** An Insurer must advise the DFSA immediately it becomes aware of any actual or prospective significant change in the type or scale of the business conducted through a Cell, or the ownership of the Cell shares.

App1 RISKS TO THE DFSA OBJECTIVES

A1.1 Risk assessment table

Guidance

1. In accordance with section 1.6 Guidance note 7, the DFSA's risk management process differentiates between risk categories, risk groups and risk elements.
2. The table below outlines the relative importance which the DFSA may attach to risk categories, groups and elements when considering the achievability of each of its objectives.
3. The importance rating that the DFSA has attached to each risk group in the table is indicative only and particular circumstances may result in the DFSA reassigning the degree of importance of any particular risk category, group or element.

A1.1.1 The risk assessment table.

Risk category	Risk group	Risk element	DFSA objectives					
			Integrity	Confidence	Financial stability	Detection & restraint	Protection	Understanding
Business & operations	Financial risks	Capital	Medium	High	High	High	High	Medium
		Liquidity						
		Earnings						
		Credit						
		Market						
	Underwriting							
	Business & strategic risks	Strategy	Low	High	High	Low	High	High
		Nature of business						
		Products/services						
		Customers						
	External risks	Sources of business/distribution	Medium	High	High	Low	Low	Medium
		Political/economic						
		Disaster						
Internal controls & compliance arrangements	Regulatory & legal risks	Sanctions	High	High	High	High	High	High
		Relationship with regulators						
		Coverage of home state supervision						
		Reputational issues - cultural/ethical						
	System & control risks	Litigation	High	High	High	High	High	High
		Risk management						
		Operations						
		Compliance						
		Internal audit						
		Money laundering						
		Data protection						
		Financial control						
		IT						
		Management Information						
		Outsourcing						
		Professional advisors						
	Crime							
	Management & governance risks	Business continuity planning	High	High	High	High	High	High
		Management culture						
		Senior management responsibilities – allocation & definition						
		HR issues						
		Clarity of legal/ownership structure						
	Risks to customers & markets	Controllers/close links/group entities	High	Low	Low	Medium	Low	Medium
Relationship with rest of group								
Training								
Remuneration								
	Conflicts management	High	Low	Low	Medium	Low	Medium	
	Adherence to COB rules							