

Appendix 3

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



The DFSA Rulebook

Representative Office Module

(REP)

1 APPLICATION

1.1 Application

- 1.1.1** (1) This module (REP) applies to every Person who carries on, or intends to carry on, the Financial Service of Operating a Representative Office in or from the DIFC.
- (2) Unless otherwise stated, the Rules apply to a Representative Office only with respect to activities carried on from an establishment maintained by it in the DIFC.

Guidance

1. Because of the limited nature of the Financial Service of Operating a Representative Office much of the DFSA Rulebook has been disapplied for Representative Offices. While most of the key provisions applying to a Representative Office are contained in this module, a Representative Office should ensure that it complies with and has regard to other relevant provisions in other applicable DFSA Rulebook Modules including AML, GEN chapters 1 to 3 and 11 and sections 6.9 and 6.10, CIR chapter 2 and sections 3.5 to 3.7 and FER. The application section of each Rulebook module sets out which chapters, if any, apply to a Representative Office.
2. A Representative Office should also ensure that it complies with and has regard to relevant provisions of the Regulatory Law ~~2004~~ and Markets Law ~~2012~~. The Regulatory Law ~~2004~~ gives the DFSA a number of important powers in relation to Authorised Firms including powers of supervision and enforcement.
3. GEN Rule 2.26.1 defines tThe Financial Service of Operating a Representative Office and prescribes the activities which a Representative Office is permitted to carry on. By virtue of GEN 2.2.9 and 2.26.2, the Financial Service of Operating a Representative Office is a stand alone financial service activity.
4. Whilst much Representative Office activity will not involve a continuing relationship with the Persons to whom marketing is directed, where such a relationship is necessary, the Representative Office will need to be careful to ensure that it does not carry on any activities other than those prescribed under GEN Rule 2.26.~~12~~.
5. A Representative Office which undertakes a Financial Service which is outside the scope of its Licence will be in breach of Article 42(4) of the Regulatory Law ~~2004~~. If the DFSA believes that a Representative Office is in breach of Article 42(4), it may take steps which may include withdrawal of authorisation and formal enforcement action under the Regulatory Law ~~2004~~.
6. See also Guidance under section 1.3 for further clarification on the activities that a Representative Office is permitted to undertake.

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1.3 Scope of a Representative Office Licence

Guidance

What is the scope of the activities of a Representative Office?

1. A Representative Office (Rep Office) is permitted to carry on a very narrow set of activities described as 'marketing' of financial services or financial products offered in a jurisdiction outside the DIFC by a 'related party' (i.e. its head office, another branch of the head office or a Group member).

'Marketing activities'

2. The 'marketing' activities of a Rep Office can include one or more of the following:
 - a. providing information about financial services or products offered by its head office or a Group member outside the DIFC;
 - b. engaging in Financial Promotions (such as holding events and seminars) relating to the financial products or financial services referred to above; and
 - c. making introductions or referrals to its head office or a member of its Group for the financial services or financial products offered by them outside the DIFC.
3. In addition to the above, a Rep Office may undertake certain additional activities which may not necessarily amount to 'marketing' of related party financial services and financial products. Examples are activities to increase the profile of its head office and be the point of contact and source of information about those parties. Similarly, a Rep Office may also report to the head office on matters such as business trends, business opportunities and developments in the DIFC markets.
4. Whether a Rep Office is acting outside the scope of its Licence is always a question of fact, which the DFSA will determine in the overall context of the activities of the Rep Office. The DFSA will take into account the indicators set out in the Guidance below when determining whether a Rep Office is acting within or outside the scope of its Licence. If a Rep Office undertakes activities which are considered outside the scope of its Licence, such activities would trigger appropriate regulatory action or could result in civil liability.

How do Rep Office activities differ from 'advising'?

5. While a Rep Office can give general information to potential customers about financial services or financial products of its related parties, it is prohibited from advising, for example conducting the Financial Service of 'Advising on Financial Products'. A firm licensed to give advice can give advice and distribute general information about financial products and financial services whether or not such services or products are of a related party of the firm or otherwise.
 6. A Rep Office must take particular care to ensure that it acts within the scope of its Licence, given the far narrower activities it can undertake by way of giving information about financial services and financial products, compared to a firm licensed to 'Advise on Financial Products', as highlighted below.
 7. The first difference is that the information which a Rep Office can give to a potential customer is limited to 'general information' about financial products or financial services. A firm 'Advising on Financial Products' can give advice to an investor or potential investor on the merits of that Person (either as principal or agent), buying, selling, holding, subscribing for or underwriting a particular financial product. This is advice, not just giving general information.
 8. Advice differs from general information because the latter does not contain any view, based on an assessment of the particular investor's needs and circumstances, of the merits of him buying, selling, subscribing for or underwriting a particular financial product. Instead, general information contains only factual information and promotional literature (such as product features and benefits) about the financial products.
 9. Generally, giving the following type of information constitutes providing general information that falls within the scope of a Rep Office Licence:
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- a. the name and other details of the provider of the relevant financial product or financial service, and how that provider can be contacted;
 - b. in the case of insurance, the type of risks which are covered or excluded under policies offered by the insurer;
 - c. the types of benefits potentially available under Investments, and any risks associated with the relevant Investments;
 - d. how fees, charges or premiums are calculated; and
 - e. investment research or general market information.
10. The second difference is, that unlike firms licensed to give advice on financial products offered by any third party, a Rep Office can only give general information about financial products or financial services offered by a related party.

How do Rep Office activities differ from ‘arranging’?

11. Many of the restrictions noted above apply in this context. A Rep Office can introduce or refer potential customers to a related party that provides financial products or financial services. In contrast, a firm licensed to conduct arranging activities i.e. Arranging Deals in Investments, Arranging Credit and Advising on Credit, Arranging Custody and Insurance Intermediation (referred to here as an ‘arranging firm’) can make such introductions or referrals to financial product or financial service providers, without such a provider having to be a related party of the arranging firm.
12. Most importantly, while a Rep Office can introduce or refer potential customers to its related party financial product or financial service provider, it cannot undertake the extra activities which an arranging firm can undertake to facilitate a potential customer to obtain a financial product or financial service. Examples of activities which a Rep Office is not permitted to undertake, (but can be undertaken by an arranging firm), include:
- a. negotiating and settling the terms of the contract between the potential customer and the financial product or service provider;
 - b. collecting and processing fees, commissions or other payments (such as premiums in the case of insurance);
 - c. receiving and transmitting client orders or instructions;
 - d. issuing confirmations relating to transactions;
 - e. opening bank accounts for or on behalf of customers to facilitate transactions;
 - f. receiving any fees or other financial benefits from the potential customer for its marketing or referral activities; and
 - g. undertaking activities which can reasonably be regarded by potential customers as indicating (or implying) that they have a client relationship with the Rep Office. Examples of such activities include:
 - i. having a nominated employee within the Rep Office as a key contact for a potential customer, being the point of contact for inquiries or complaints relating to the financial product or financial service offered by its related party;
 - ii. having regular face-to-face meetings with the customers referred to its related parties to discuss those customers’ needs and objectives, in circumstances that would lead the potential customer to believe that the Rep Office is providing the financial service or product; and

- iii. in the case of insurance, explaining to a potential policyholder its 'duty of disclosure' to the insurer.
13. While the DFSA would take into account the overall circumstances in determining whether a Rep Office had acted outside the scope of its Licence, generally a Rep Office will not be regarded as carrying on 'arranging activities' if it:
- a. distributes the type of general information referred to in Guidance item 9 above to potential customers;
 - b. merely acts as a mail box for collecting and sending customer information (including KYC related information) provided by the potential customers to the financial product or financial service provider;
 - c. sends account opening documents to potential customers (but does not assist in opening the account or open bank accounts in its name);
 - d. hosts seminars and other marketing events, and regularly invites potential customers to such events;
 - e. introduces a Group relationship manager at a seminar or other financial promotion hosted by the Rep Office to those attending the seminar; and
 - f. receives commissions from the related parties for the referral of potential customers.

Third-party products distributed by a Rep Office's related parties

14. A Rep Office is prohibited from marketing financial products offered by a third party unrelated to it, even if such a third party has an agreement with a related party of the Rep Office to distribute/market such products. For example, if a Group member of the Rep Office is an arranger or a brokerage firm, the Rep Office cannot market any third party financial products which the related arranger or brokerage firm can distribute/market. This is because the financial product belongs to an unrelated third party, and the financial service itself of the related party, which the Rep Office can market, does not extend to the activities which the related party can carry out under its own authorisation/Licence. The Rep Office can only make introductions or referrals to the arranging or brokerage firm which is related to it.

Related parties of a Rep Office located in the DIFC

15. A Rep Office is also prohibited from marketing financial services or financial products offered by a related party if that party is in the DIFC. For example, if a Rep Office has a Group member which is established in the DIFC, the Rep Office cannot undertake marketing activities relating to the financial products and financial services offered by that Group member.

What 'Financial Promotions' can a Rep Office undertake?

16. A Rep Office can only undertake financial promotions relating to financial products or financial services offered by its related parties outside the DIFC. A Rep Office is not permitted to undertake or approve 'Financial Promotions' relating to financial products or financial services offered by any unrelated party.

A Rep Office of a non-DIFC reinsurer

17. The Guidance in items 18 to 20 focuses on clarifying issues that have arisen in reinsurance markets because the DIFC is primarily a reinsurance market. However they generally apply in the direct insurance market as well.

18. A Rep Office of a non-DIFC reinsurer will be able to provide to potential cedants information about the type of reinsurance contracts, including some general information about the standard terms, exclusions and premiums, offered by a related party reinsurer. It will also be able to refer reinsurers to its related parties where they are potential cedants. However, a Rep Office of a non-DIFC reinsurer cannot enter into any discussions about the terms of specific contracts of reinsurance, as such discussions would then become arranging or advising for the reasons discussed above.
19. While a Rep Office will be able to refer a potential cedant to a related party non-DIFC reinsurer, it will not be able to place or assist in placing contracts of reinsurance with its related party reinsurers, as such activities amount to arranging. A Rep Office will need to upgrade to an Insurance Intermediation Licence if it wishes to:
- a. engage in detailed discussions relating to the terms of reinsurance contracts with DIFC reinsurers – which constitute ‘arranging/advising’;
 - b. assist in placing of reinsurance business with its head office or a Group member – which constitutes ‘arranging’; and
 - c. act under a binding authority issued by its head office/Group member – which constitutes ‘acting as agent’.

A Rep Office of a non-DIFC reinsurance broker

20. A Rep Office of a non-DIFC reinsurance broker will:
- a. be able to establish contact with DIFC reinsurers, but not maintain an on-going business relationship with them. For example, it cannot be the reference point for all complaints by reinsurers or cedants relating to contracts of reinsurance brokered by a related party;
 - b. not be able to enter into discussions with DIFC reinsurers about the terms of specific reinsurance contracts that the reinsurer can enter into with prospective clients of a related party (i.e. potential cedants outside the DIFC) because such discussions:
 - i. go beyond giving general information about the financial services offered by a related party (which is only a brokerage business). Discussions about the terms of specific contracts of insurance amount to arranging and probably advice (as a degree of tailoring to suit the particular cedant/reinsurer will be involved), and can only be undertaken by a licensed Insurance Intermediary in the DIFC, and not by a Rep Office of the non-DIFC reinsurance broker; and
 - ii. go beyond a referral of a reinsurer to a related party; and
 - c. not be able to ‘place’ or ‘assist’ in the placing of reinsurance business with (as opposed to making referrals to) reinsurers in the DIFC through a related party that is offering reinsurance brokerage services to cedants, because such activities also go beyond either or both permitted activities of a Rep Office. For placing, or assisting in that process, the DIFC entity needs an Insurance Intermediation Licence, not a Rep Office Licence.

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4 GENERAL PROVISIONS

4.1 General

4.1.1 A Representative Office must have a place of business within the geographical boundaries of the DIFC.

4.1.2 (1) A Representative Office must not:

- (a) share an office with another Authorised Firm, except as provided in (2);
- (b) represent anyone other than itself or a member of its Group; or
- (c) permit any staff member to be an Employee of another Authorised Person.

(2) A Representative Office may share an office with another Authorised Firm that is a member of the same Group.

Guidance

The DFSA would not consider that an Authorised Firm is sharing an office if that firm were located in serviced offices which were also the place of business of another Authorised Firm.

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4.3 Dealing with property

4.3.1 (1) A Representative Office must not hold or control money or other property belonging to another Person except to the extent that this is necessary to deal with its ordinary business operating expenses and the money or property belongs to a related party.

(2) In (1), a “related party” has the same meaning as in Gen Rule 2.26.1 (3).

Guidance

While a Representative Office is prohibited from holding money or other assets belonging to its customers, it is not prevented from being able to hold ‘money or other property’ belonging to a ‘related party’ (i.e. its head office, another branch of the head office or a Group member) to deal with its ordinary expenses.

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4.6 Clear, fair and not misleading

General

4.6.1 In this section, a “financial product” has the same meaning as in GEN Rule 2.26.1(3) means an Investment, Insurance Contract, Profit Sharing Investment Account, Deposit or Credit Facility.

4.6.2 When communicating information to a Person in relation to a financial product or financial service, a Representative Office must take reasonable steps to ensure that the communication is clear, fair and not misleading.

4.6.3 A Representative Office must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the Regulatory Law 2004, Rules or any other relevant legislation.

Marketing material

4.6.4 In this section, “marketing material” means any material communicated to a Person in the course of marketing financial services or financial products or making effecting introductions or referrals in accordance with where “marketing” and “financial products” have the meaning prescribed in GEN Rule 2.26.1.

4.6.5 (1) A Representative Office must ensure that any marketing material communicated to a Person contains the following information:

- (a) the name of the Representative Office communicating the marketing material and on whose behalf the marketing material is being communicated;
- (b) the Representative Office’s regulatory status as required under Rule 4.5.2; and
- (c) if the marketing material is directed at a specific class or category of investor, a clear statement to that effect and that no other Person should act upon it.

(2) If the marketing material includes is in the form of an standard terms of a contract of insurance proposal or, banking services proposal, or a prospectus or other offering document, which is capable of acceptance in due course, the Representative Office must ensure that such material it must contains in a prominent position, or have attached to it, a statement that clearly:

- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the financial product;
- (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
- (c) describes the regulatory status accorded to the financial product by that Regulator; and
- (d) includes the following warning:

“This document relates to a financial product which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any prospectus or other documents in connection with this financial product. Accordingly, the DFSA has not approved this document or any other associated

documents nor taken any steps to verify the information set out in this document, and has no responsibility for it.

The financial product to which this document relates may be illiquid and/or subject to restrictions on its resale. Prospective purchasers should conduct their own due diligence on the financial product.

If you do not understand the contents of this document you should consult an authorised financial adviser”;

- (3) A Representative Office which must not distribute such marketing material if it becomes aware that the Person offering the financial product or financial service to which the material relates is in breach of a regulatory or legal requirement that applies to that Person in relation to that product or service.

Guidance

See Guidance item 9 in section 1.3 for the type of general information which a Rep Office is permitted to distribute.

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