



CONSULTATION PAPER NO. 73

DECEMBER 2010

**THE REGULATORY POLICY AND PROCESS SOURCEBOOK AND
ENHANCEMENTS TO DFSA'S RULEBOOK**

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Why are we issuing this paper?

1. This Consultation Paper presents the DFSA's new Sourcebook module, namely the Regulatory Policy and Process (RPP) module.
2. This paper also seeks public comment on the DFSA's proposal to relocate the Rules currently set out in the Authorisation (AUT) and Supervision (SUP) modules of the Rulebook into the General (GEN) module.
3. Furthermore, public comment is also sought on proposed amendments to the Rules mentioned above.

Who should read this paper?

4. The proposals in this paper would be of interest to:
 - (a) Persons carrying on, or considering carrying on, Financial Services in or from the DIFC;
 - (b) Persons carrying on or considering carrying on, Ancillary Services in or from the DIFC,
 - (c) Registered Auditors, or auditors considering becoming a Registered Auditor;
 - (d) Reporting Entities, and Authorised Market Institutions, or Persons considering becoming a Reporting Entity or Authorised Market Institution; and
 - (e) advisors to the Persons in (a) (b) (c) and (d).

How is this paper structured?

5. In this paper, we set out:
 - (a) the background to the creation of the RPP module (paragraphs 9 – 16);
 - (b) overview of the GEN module changes (paragraphs 17 – 20);
 - (c) enhancements to the Rules in GEN (paragraphs 21 – 33); and
 - (d) other matters (paragraphs 34 - 35).

How to provide comments?

6. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

Comments to be addressed or emailed to:

**Consultation Paper No. 73
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE**

Email: consultation@dfsa.ae

Tel: +971(0)4 3621500

What happens next?

7. The deadline for providing comments on the proposals is **17th January 2011**. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to recommend the proposed changes to the Regulatory Law 2004 to the President for enactment by the Ruler. If the proposed changes to the Regulatory Law 2004 are enacted, we shall then proceed to enact the relevant changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the Regulatory Law 2004 and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Terminology in this paper

8. In this paper, defined terms are identified throughout by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in GLO or in the proposed amendments. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

9. The DFSA Rulebook contains Rules and Guidance. Guidance is indicative and non-binding, pursuant to Schedule 1 of the Regulatory Law 2004. Such Guidance may consist of:
 - (a) guidance made and issued by the Chief Executive as notations to the Rules; and
 - (b) any standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules.
10. Currently, Guidance as notations to the Rules covers:
 - (a) the operation of the DFSA's Rules and Laws;
 - (b) signposting to other Rules or Laws; and
 - (c) information on DFSA's policies, processes and regulatory approach.
11. In contrast to the Rulebook, the Sourcebook contains information such as instructional guidelines and forms as set out in the Applications, Forms and Notices (AFN) module and Prudential Returns (PRU) module.

Creation of RPP Module

12. The DFSA is creating a new module of the Sourcebook to be known as the Regulatory Policy and Process (RPP) module. The DFSA intends to relocate the information on DFSA policy, process and its regulatory approach (see 10(c) above) from the Rulebook into the RPP module of the Sourcebook.
13. The DFSA also proposes to consolidate information on matters which the DFSA may take into account when considering to exercise specific discretionary powers. For example, this would include those matters which the DFSA may take into consideration when making an assessment of whether an Authorised Person or Authorised Individual is fit and proper.
14. In creating the RPP module of the Sourcebook, the DFSA is consolidating information currently contained in a number of Rulebook modules into one Sourcebook module. Such material has been reviewed and inserted into RPP in chapter 2 and 3 and generally does not alter existing policy. The RPP module (see Appendix 1) will initially contain the following chapters:
 - (a) Chapter 1 – Introduction;
 - (b) Chapter 2 – Authorisation – Becoming Regulated; and

- (c) Chapter 3 – Supervision – Being Regulated.
15. The Executive proposes to release additional chapters for RPP later next year including chapters on information handling and disclosure and enforcement.
 16. Where possible, the DFSA has taken the opportunity to consolidate information on similar themes which were previously repeated across different modules of the Rulebook. Examples of such changes in RPP include:
 - (a) section 2.2 which sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of both Authorised Firms and Authorised Market Institutions; and
 - (b) section 3.1 which sets out DFSA's overall risk based approach to the supervision of Authorised Persons, Ancillary Service Providers and Registered Auditors.

The GEN module changes

17. The creation of the RPP module provides an opportunity to relocate the Rules, currently located in AUT and SUP, to the GEN module. It is proposed to relocate the AUT Rules to chapter 7 of the GEN module (see Appendix 2) and the SUP Rules to chapter 11 of the GEN module (see Appendix 3).
18. We have also taken the opportunity to reorganise some of the Rules in these chapters to better reflect where such Rules are likely to impact a regulated Person through the regulatory cycle. For example, we propose to move the following Rules to the Supervision chapter of the GEN module, namely:
 - (a) application to change the scope of a Licence (proposed section 11.3 of the GEN module);
 - (b) withdrawal of a Licence at an Authorised Firm's request (proposed section 11.4 of the GEN module);
 - (c) changes to an Authorised Individual status (proposed section 11.5 of the GEN module);
 - (d) temporary cover (proposed section 11.6 of the GEN module);
 - (e) dismissal or resignation of an Authorised Individual (proposed section 11.7 of the GEN module); and
 - (f) change in control (proposed section 11.8 of the GEN module).
19. To help readers follow the proposed changes to the AUT and SUP modules, we have prepared two destination tables which are attached to this Consultation Paper (see Appendix 4 and 5).
20. The proposed additions to the GEN module will result in the DFSA no longer having an AUT or SUP module in its Rulebook.

Issues for consideration

1. Do you have any concerns or comments about our proposed re-structuring and changes to chapters 7 and 11 of the GEN module?

Enhancement to the Rules in GEN

21. There are two associated consultation papers to take into account when considering the changes relating to the GEN module:
 - (a) Consultation Paper 71 (Financial Services) consulted on modification to the definition of Financial Services. The consultation period ended on 23 November 2010 and after due consideration of consultees comments the final version of the Rules will be included in GEN; and
 - (b) Consultation Paper 72 (Financial Promotions) consulted on introducing a financial promotion prohibition into the regime. The consultation period ended on 23 November 2010 and after due consideration of consultees comments the final version of the Rules will be included in GEN.
22. In addition to the above, we have also taken the opportunity to rectify anomalies and unintended consequences in the AUT and SUP modules. Such proposed changes upon which the DFSA seeks public comment are set out below.

Outsourcing requirements

23. Following an earlier review of the outsourcing requirements relating to Funds under the CIR module and as part of our aim to have uniform outsourcing requirements across our Rulebook, the DFSA has taken the opportunity to:
 - (a) consolidate and centralise its general outsourcing requirements in chapter 5 of the GEN module. Currently, the DFSA has outsourcing requirements and Guidance spread across GEN Rules 5.3.21 and 5.3.22 and also in SUP Rule 2.4.1;
 - (b) review its general outsourcing requirements against the Guiding Principles for Outsourcing in Financial Services issued by the Joint Forum and equivalent regulations such as the Markets in Financial Instruments Directive (Mifid) in Europe. To better align our requirements with such international standards, we have identified some Guidance in our existing requirements which we consider should be elevated to Rules; and
 - (c) adopt common terminology relating to outsourcing. For example, similar to the CIR module, the term “service provider” will be used in GEN chapter 5 to refer to the outsourced party rather than various other terms currently used such as “third party provider” or “third party provider or supplier” (see Appendix 6).

Temporary Cover

24. Pursuant to AUT section 9.4, an Authorised Firm may appoint an individual who is not an Authorised Individual to carry out the functions of an Authorised Individual, subject to certain conditions being met. As currently drafted AUT section 9.4 does not place an obligation on an Authorised Firm to notify the DFSA when it is benefiting from the relief provided by that section.
25. We are proposing to amend AUT Rule 9.4.1 (this Rule is now 11.6.1 in Appendix 3) to introduce a Rule that places an obligation on an Authorised Firm to provide the DFSA with the name and contact details of the individual when one is appointed under this section. Placing an obligation on the Authorised Firm to notify us of this information will assist the DFSA greatly in ensuring we are in possession of key information on a timely basis and the DFSA contact records reflect the correct details.

Content of Safe Custody Auditor's Report

26. In 2009 the DFSA enhanced the requirement for certain Authorised Firms to require their auditors to produce a Safe Custody Auditor's Report. The requirement, which is contained in GEN Rule 8.6.1 (f), now requires not only Authorised Firms carrying on the Financial Service of Providing Custody but also Authorised Firms carrying on the Financial Service of Arranging Custody to produce a Safe Custody Auditor's Report.
27. Recently the DFSA conducted a thematic review in relation to Client Assets and during the course of that review it became apparent that guidance on what needs to be contained in a Safe Custody Auditor's Report for a firm Arranging Custody would assist Authorised Firms in meeting this requirement. The DFSA is including Guidance under GEN Rule 8.6.1 (see Appendix 6) in respect of paragraph (f) to assist Authorised Firms to understand their obligations in producing a Safe Custody Auditor's Report.

Time line for receipt of information

28. AUT Rule 9.3.2 provides that if additional information is requested by the DFSA in relation to an Authorised Individual's application and such information is not provided within 28 days, then the application is deemed to be withdrawn unless otherwise agreed by the DFSA.
29. The DFSA considers there is no regulatory benefit in retaining this Rule and proposes that it be removed. In considering an application by an Authorised Individual, the DFSA proposes that any request for additional material or an extension of time in which to provide such material will be considered on a case by case basis.

Copying documents

30. SUP Rule 2.2.1 (d) provides that an Authorised Person must where reasonable permit the DFSA to copy documents or other material on the premises of such Person at the DFSA's reasonable expense. An anomaly was created in 2005 by incorrect replacement of "its" with "the DFSA's" where "its" was meant to refer to the Authorised Person.

31. The DFSA proposes to correct this anomaly in SUP Rule 2.2.1(d) (this Rule is now 11.1.2(d) in Appendix 3), by replacing the words “at the DFSA’s reasonable expense with “at the Authorised Person’s expense”.

Notification upon the occurrence of certain events

32. SUP Rule 7.3.1 prescribes certain events the occurrence of which requires an Authorised Person to provide immediate notification to the DFSA. We currently have some Guidance to this Rule which requires an Authorised Person to notify us of any major, new or revised IT system or new technology affecting the person’s business, risk profile or resources.
33. The DFSA proposes to remove this Guidance as it is not captured by any of the types of events in SUP Rule 7.3.1. However, we note that an Authorised Firm and Authorised Market Institution are required to comply with the high level principles in GEN Rule 4.2.10 and AMI Rule 10.2.1, respectively. These Rules require an Authorised Person to deal with the DFSA in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to such person of which the DFSA would reasonably expect to be notified.

Issues for consideration

2. Do you have any concerns or comments about our miscellaneous changes to the AUT and SUP modules?

Other matters

34. It is proposed that the enhancements to the various modules of DFSA’s Rulebook will come into effect to coincide with the coming into force of the proposed changes to the Regulatory Law 2004 and the GEN module resulting from:
- (a) Consultation Paper No 71 – Financial Service Definitions review; and
 - (b) Consultation Paper No 72 – Changes to the DFSA Financial Promotions regime.
35. The DFSA will keep the regulated community updated on progress and provide sufficient time for changes to relevant policies, procedures, systems and controls and other matters prior to the coming into force of the Rules and the RPP Sourcebook module.