

Appendix 2

The text in this appendix has not been underlined and struck through in the usual manner. Where **text is highlighted in yellow** this indicates that text is either completely new or has been amended from the current version set out in the Authorisation (AUT) or Supervision (SUP) module, as the case may be. Where text is not highlighted this is existing text which has simply been relocated into GEN.



The DFSA Rulebook

General Module **(GEN)**

Chapter 7 – Authorisation

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7 AUTHORISATION

7.1 Application

- 7.1.1 (1) Subject to (2), this chapter applies to every Person who is:
- (a) an Authorised Firm;
 - (b) an applicant for a Licence to be an Authorised Firm;
 - (c) an Authorised Individual; or
 - (d) an applicant for Authorised Individual status.
- (2) This chapter does not apply to a Person intending to:
- (a) Operate an Exchange;
 - (b) Operate a Clearing House; or
 - (c) Operate a Representative Office.

Guidance

1. This chapter outlines DFSA's authorisation requirements for an Authorised Firm and Authorised Individual.
2. The DFSA's requirements for authorisation of :
 - a. Authorised Market Institutions are covered by the AMI module;
 - b. Representative Offices are covered by the REP module; and
 - c. Ancillary Service Providers are covered by the ASP module.
4. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA's general regulatory policy and processes. Some additional processes may be outlined in other chapters of this module.
5. Chapter 2 of the RPP Sourcebook sets out DFSA's approach to the authorisation of undertakings and individuals to conduct Financial Services or Licensed Functions, as the case may be.

7.2 Application for a Licence

- 7.2.1 A Person, who intends to carry on one or more Financial Services in or from the DIFC must apply to the DFSA for a Licence, in accordance with the Rules in this section.
- 7.2.2 (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2) and (3), is:

- (a) a Body Corporate;
- (b) a Partnership; or
- (c) an unincorporated association;

and who is not an Authorised Market Institution.

- (2) If the application is in respect of either or both of the following Financial Services:
 - (a) Effecting Contracts of Insurance; or
 - (b) Carrying Out Contracts of Insurance,the applicant must be a Body Corporate.
- (3) If the application is in respect of the Financial Service of Accepting Deposits, the applicant must be a Body Corporate or a Partnership.
- (4) If the application is in respect of the Financial Service of Managing a Collective Investment Fund or Acting as the Trustee of a Fund, the applicant must be a Body Corporate.

7.2.3 A Person licensed by the **Emirates Securities and Commodities Authority** to trade on an U.A.E. exchange will not be granted a Licence by the DFSA unless that Person has the prior approval of the **Emirates Securities and Commodities Authority**.

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

Guidance

A Person submitting an application under Rule 7.2.4 is required to pay the appropriate application fee as set out in FER.

Consideration and assessment of applications

7.2.5 In order to become authorised to carry on one or more Financial Services, the applicant must satisfy the DFSA that it has adequate resources, including financial resources. In making this assessment, the DFSA will consider:

- (a) how the applicant will comply with the applicable provisions of PIB or PIN;
- (b) the provision the applicant makes in respect of any liabilities, including contingent and future liabilities;
- (c) the means by which the applicant and members of its Group manage risk in connection with its business; and
- (d) the rationale for, and basis of, the applicant's business plan.

7.2.6 An applicant will only be authorised to carry on one or more Financial Services if the DFSA is satisfied that the applicant is fit and proper to hold a Licence. In making this assessment the DFSA will consider:

- (a) the applicant's connection with its Controllers or any other Person;
- (b) the Financial Services concerned;
- (c) whether the applicant's affairs will be conducted and managed in a sound and prudent manner; and
- (d) any other relevant matters.

Guidance

Section 2.2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 7.2.6.

7.2.7 When the DFSA is considering an application for a Licence, then in respect of the fitness and propriety of the applicant:

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;
- (b) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;
- (c) the DFSA will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the DFSA's objectives described under Article 8 of the Regulatory Law 2004; and
- (d) the DFSA will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

7.2.8 An applicant must be able to demonstrate that it has compliance arrangements, including processes and procedures that will enable it to comply with all applicable Rules.

7.2.9 In assessing an application for a Licence, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (b) require the applicant to provide additional information;
- (c) require the applicant to have information on how it intends to ensure compliance with a particular Rule;
- (d) require any information provided by the applicant to be verified in any way that the DFSA specifies; and
- (e) take into account any information which it considers relevant.

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- 7.2.10** (1) In assessing an application for a Licence the DFSA may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.
- (2) Where the DFSA thinks it appropriate it may treat an application made by one legal form or Person as having been made by the new legal form or Person.
- 7.2.11** In assessing an application for a Licence authorising the applicant to Operate an Alternative Trading System, the DFSA will have regard to, but is not limited to, considering the following matters:
- (a) whether the establishment of an ATS is, or is likely to be, in the interests of the Financial Services and Markets industry;
- (b) whether the ATS will or is likely to lead to more efficient price discovery of, or deepen liquidity in, an Investment; and
- (c) whether there is any risk of market fragmentation, loss of liquidity or inefficiency in price discovery as a result of the proposed ATS operation.

7.3 Application for an endorsement for Retail Clients

- 7.3.1** (1) An Authorised Firm may apply to the DFSA for an endorsement on its Licence, including variation of such an endorsement, to carry on a Financial Service with or for a Retail Client.
- (2) The DFSA may in its absolute discretion refuse to grant an endorsement or a variation of an endorsement pursuant to an application under (1).
- (3) Upon refusing to grant an endorsement or a variation to an endorsement, the DFSA must without undue delay inform the applicant in writing of such refusal and, if requested by the applicant, the reasons for such refusal.
- (4) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to refuse an application for an endorsement or a variation to an endorsement made under this section.

7.4 Licensed Functions and Authorised individuals

- 7.4.1** (1) Pursuant to Article 43 of the Regulatory Law 2004, the functions specified in Rules 7.4.2 to 7.4.9 are Licensed Functions.
- (2) An individual must not, subject to, (3), (4) and Rule 11.6.1, carry out a Licensed Function for an Authorised Firm unless he is authorised by the DFSA to carry out that Licensed Function for that Authorised Firm.

- (3) The prohibition in (2) does not apply to a function performed by a registered insolvency practitioner, subject to the restrictions defined within Article 88 of the Insolvency Law 2009:
- (a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;
 - (b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;
 - (c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;
 - (d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or
 - (e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article 58 and 59 of the Insolvency Law 2009.
- (4) The prohibition in (2) does not apply to individuals appointed to act as managers of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law 2004.

Senior Executive Officer

7.4.2 The Senior Executive Officer function is carried out by an individual who:

- (a) has, either alone or jointly with other Authorised Individuals, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Firm's Financial Services carried on in or from the DIFC; and
- (b) is a Director, Partner or Senior Manager of the Authorised Firm.

Licensed Director

7.4.3 Subject to Rule 7.5.4, the Licensed Director function is carried out by an individual who is a Director of an Authorised Firm which is either a Body Corporate or an unincorporated association.

Licensed Partner

7.4.4 Subject to Rule 7.5.5, the Licensed Partner function is carried out by an individual who is a Partner of an Authorised Firm which is either a Partnership or Limited Liability Partnership.

Finance Officer

- 7.4.5** The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for the Authorised Firm's compliance with the applicable Rules in PIN or PIB.

Compliance Officer

- 7.4.6** The Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for compliance matters in relation to the Authorised Firm's Financial Services.

Senior Manager

- 7.4.7** The Senior Manager function is carried out by an individual who is responsible either alone or jointly with other individuals for the management, supervision or control of one or more parts of an Authorised Firm's Financial Services who is:

- (a) an Employee of the Authorised Firm; and
- (b) not a Director or Partner of the Authorised Firm.

Guidance

In respect of a Fund, the DFSA would expect the Fund Manager to appoint at least one individual other than the Senior Executive Officer to carry out Senior Manager functions in relation to the Fund such as managing operational risk and other internal controls.

Money Laundering Reporting Officer

- 7.4.8** The Money Laundering Reporting Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm and who has responsibility for the Authorised Firm's compliance with the Rules in AML and any relevant anti money laundering legislation applicable in the DIFC.

Responsible Officer

- 7.4.9** The Responsible Officer function is carried out by an individual who:
- (a) has significant responsibility for the management of one or more aspects of an Authorised Firm's affairs;
 - (b) exercises a significant influence on the firm as a result of (a); and
 - (c) is not an Employee of the Authorised Firm.

Guidance

1. The Licensed Function of Responsible Officer applies to an individual employed by a Controller or other Group company who is not an Employee of the Authorised Firm, but who has significant responsibility for, or for exercising a significant influence on, the management of one or more aspects of the Authorised Firm's business.

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2. Examples of a Responsible Officer might include an individual responsible for the overall strategic direction of an Authorised Firm or a regional manager to whom a Senior Executive Officer reports and from whom he takes direction.

7.4.10 An Authorised Individual may perform one or more Licensed Functions for one or more Authorised Firms.

Guidance

1. In considering whether to grant an individual Authorised Individual status with respect to more than one Authorised Firm, the DFSA will consider each Licensed Function to be carried out and the allocation of responsibility for that individual among the Authorised Firms.
2. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

7.5 Mandatory appointments

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

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

Guidance

1. This Guidance addresses a range of circumstances:
 - a. one individual performing more than one function in a single firm, as contemplated in Rule 7.5.1;
 - b. more than one individual performing one function in a single firm, not addressed by that Rule;
 - c. one individual performing a single function in more than one firm, also not addressed by that Rule.
2. The DFSA will only authorise an individual to perform more than one Licensed Function or combine Licensed Functions with other functions where it is satisfied that the individual is fit and proper to perform each Licensed Function or combination of Licensed Functions.
3. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

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4. Notwithstanding this Rule, an Authorised Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not be expected to be combined with any other functions unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Authorised Firm. This may be possible in the case of a Branch, where monitoring and controlling of the individual (carrying out more than one role in the Branch) is conducted from the firm's home state by an appropriate individual for each of the relevant Licenced Functions. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible.
 5. In what it considers to be exceptional circumstances, the DFSA may register more than one individual to perform the Licensed Function of Compliance Officer in respect of different internal business divisions within a large Authorised Firm. In this regard the DFSA may consider, amongst other things, the nature, scale and complexity of the activities of the firm, the clarity of demarcation between areas of responsibility, the potential for gaps in responsibility, and processes of communication with the DFSA.
 6. The DFSA may also register an individual as the Compliance Officer for more than one Authorised Firm. The DFSA will only do this where it is satisfied that the individual is able to carry out his functions effectively in each firm taking into consideration factors such as the amount and nature of business conducted by the firms. Each Authorised Firm has a duty under GEN 5 to monitor its compliance arrangements to ensure, as far as reasonably practicable, that it complies with all legislation applicable in the DIFC.

7.5.2 The Authorised Individuals referred to in Rule 7.5.1(a), (c) and (d) must be resident in the U.A.E.

Guidance

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

7.5.3 In the case of a Trust Service Provider, the Authorised Individuals referred to in Rule 7.5.1 (c) and (d) must not act also as trustees on behalf of the Trust Service Provider.

7.5.4 An Authorised Firm which is a Body Corporate, other than a Limited Liability Partnership, whose head office and registered office are located in the DIFC, must register with the DFSA all of its Directors as Licensed Directors.

7.5.5 An Authorised Firm which is a Partnership, including a Limited Liability Partnership, whose head office is located in the DIFC must register each Partner as a Licensed Partner.

7.6 Application for Authorised Individual status

7.6.1 In submitting applications for Authorised Individual status, both the individual and Authorised Firm must complete and submit the appropriate form in AFN.

7.6.2 When an individual and an Authorised Firm apply to the DFSA for that individual to be an Authorised Individual, the individual must satisfy the DFSA that he is a fit and proper person to carry out the role.

Consideration and assessment of applications

7.6.3 An individual will only be authorised to carry on one or more Licensed Functions if the DFSA is satisfied that the individual is fit and proper to be an Authorised Individual. In making this assessment, the DFSA will consider:

- (a) the individual's integrity;
- (b) the individual's competence and capability;
- (c) the individual's financial soundness;
- (d) the individual's proposed role within the Authorised Firm; and
- (e) any other relevant matters.

Guidance

Section 2.3 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 7.6.3.

7.6.4 In Rule 7.6.3, an individual may not be considered as fit and proper where:

- (a) he is bankrupt;
- (b) he has been convicted of a serious criminal offence; or
- (c) he is incapable, through mental or physical incapacity, of managing his affairs.

7.6.5 In assessing an application for Authorised Individual status, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (b) require the individual or Authorised Firm to provide additional information;
- (c) require any information provided by the individual or Authorised Firm to be verified in any way specified by the DFSA; and

(d) take into account any information which it considers appropriate.

7.6.6 An Authorised Firm must not permit an individual to perform a Licensed Function on its behalf, except as permitted by section 11.6, unless that individual is an Authorised Individual who has been assessed by the Authorised Firm as competent to perform that Licensed Function in accordance with Rule 7.6.7.

7.6.7 In assessing the competence of an individual, an Authorised Firm must:

- (a) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
- (b) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
- (c) determine whether the individual holds any relevant qualifications with respect to the Licensed Function or Licensed Functions performed, or proposed to be performed, within the Authorised Firm;
- (d) determine the individual's relevant experience; and
- (e) determine the individual's knowledge of the Authorised Firm's relevant systems and procedures with respect to the type of business that is to be, or is being, conducted by the individual on behalf of the Authorised Firm.

7.6.8 An Authorised Firm must be satisfied that an Authorised Individual:

- (a) continues to be competent in his proposed role;
- (b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
- (c) is able to apply his knowledge.

7.6.9 The Authorised Firm is responsible for the conduct of its Authorised Individuals and for ensuring that they remain fit and proper to carry out their role.

Guidance

In considering whether an Authorised Individual remains fit and proper, the Authorised Firm should consider those matters in **section 3.2 of the RPP Sourcebook** and the notification requirements in section 11.10 of this module.

7.6.10 Before lodging an application with the DFSA, an Authorised Firm must make reasonable enquiries as to an individual's fitness and propriety to carry out a Licensed Function.

7.6.11 An Authorised Firm must not lodge an application if it has reasonable grounds to believe that the individual is not fit and proper to carry out the Licensed Function.

Systems and controls

- 7.6.12** An Authorised Firm must have appropriate arrangements in place to ensure that an individual assessed as being competent under Rule 7.6.6 maintains his competence.
- 7.6.13** An Authorised Firm must ensure, in the case of individuals seeking to perform the Licensed Functions of Money Laundering Reporting Officer, Compliance Officer or Senior Executive Officer, that such individuals are able to demonstrate sufficient knowledge of relevant anti money laundering requirements.

Guidance

In considering whether individuals have sufficient knowledge of relevant anti money laundering requirements, the DFSA may be satisfied where the individual can demonstrate receipt of appropriate training specifically relevant to such requirements. See AML section 3.9.

- 7.6.14** An Authorised Firm must establish and maintain systems and controls which will enable it to comply with Rules 7.6.6 to 7.6.9.
- 7.6.15** (1) An Authorised Firm must keep records of the assessment process undertaken for each individual under this chapter.
- (2) These records must be kept for a minimum of six years from the date of the assessment.