

Appendix 3

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 includes text that has simply been relocated from GEN.



The DFSA Rulebook

General Module **(GEN)**

Chapter 11 - Supervision

Contents

The contents of this module are divided into the following chapters, sections and appendices:

11	SUPERVISION	3
	Introduction.....	3
11.1	INFORMATION GATHERING AND DFSA ACCESS TO INFORMATION	3
	Lead regulation.....	3
11.2	WAIVERS	4
	Continuing relevance of waivers	4
11.3	APPLICATION TO CHANGE THE SCOPE OF A LICENCE	5
11.4	WITHDRAWAL OF A LICENCE AT AN AUTHORISED FIRM'S REQUEST	5
11.5	CHANGES TO AN AUTHORISED INDIVIDUAL STATUS	5
11.6	TEMPORARY COVER	6
11.7	DISMISSAL OR RESIGNATION OF AN AUTHORISED INDIVIDUAL	7
11.8	CHANGES RELATING TO CONTROL	7
	Annual reporting of controllers	11
11.9	CREATION OF ADDITIONAL CELLS OF A PROTECTED CELL COMPANY FOR AN INSURER	11
	Notice of the DFSA's decision.....	12
	Rights of representation and appeal	12
11.10	NOTIFICATIONS	12
	Core information.....	13
	Regulatory impact	13
	Fraud and errors.....	18
	Other regulators	18
	Action against an Authorised Person	19
	Winding up, bankruptcy and insolvency	19
11.11	PROVISION OF NOTIFICATIONS AND REPORTS	20
11.12	REQUIREMENT TO PROVIDE A REPORT	20
11.13	IMPOSING RESTRICTIONS ON AN AUTHORISED PERSON'S BUSINESS OR ON AN AUTHORISED PERSON DEALING WITH PROPERTY	23

11 SUPERVISION

Introduction

Guidance

1. This chapter outlines DFSA's supervisory requirements for an Authorised Person.
2. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA's general regulatory policy and processes.

11.1 Information gathering and DFSA access to information

11.1.1 This section applies to an Authorised Person other than a Representative Office with respect to the carrying on of all of its activities.

11.1.2 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 Authorised Person's expense;
- (e) 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.

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

11.1.4 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.

Lead regulation

11.1.5 (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 have provided to a Financial Services Regulator.

11.2 Waivers

11.2.1 This section applies to every Authorised Person.

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

11.2.3 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 11.11.

Guidance

Waiver application forms are contained in AFN and the RPP Sourcebook sets out the DFSA's approach to considering a waiver.

11.2.4 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) the reason, if any, 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.

11.2.5 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.

Continuing relevance of waivers

11.2.6 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.

11.3 Application to change the scope of a Licence

- 11.3.1** This section applies to an Authorised Firm applying to change the scope of its Licence or, where a condition or restriction has previously been imposed, to have the condition or restriction varied or withdrawn.
- 11.3.2** The provisions relating to permitted legal forms, fitness and propriety, adequate resources, compliance arrangements, enquiries and the provision of additional information set out in section 7.2 also apply to an Authorised Firm making an application under this chapter, and are to be construed accordingly.
- 11.3.3** An Authorised Firm applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA, with written details of the proposed changes.

11.4 Withdrawal of a Licence at an Authorised Firm's request

- 11.4.1** An Authorised Firm seeking to have its Licence withdrawn must submit a request in writing stating:
- (a) the reasons for the request;
 - (b) that it has ceased or will cease to carry on Financial Services in or from the DIFC;
 - (c) the date on which it ceased or will cease to carry on Financial Services in or from the DIFC;
 - (d) that it has discharged, or will discharge, all obligations owed to its customers in respect of whom the Authorised Firm has carried on, or will cease to carry on, Financial Services in or from the DIFC; and
 - (e) if it is providing Trust Services, that it has made appropriate arrangements for the transfer of business to a new Trust Service Provider and the appointment, where necessary, of new trustees.

Guidance

When considering a withdrawal of a Licence, the DFSA takes into account a number of **matters including those outlined in the RPP Sourcebook.**

11.5 Changes to an authorised individual status

Guidance

This section addresses applications or requests regarding Authorised Individuals with respect to Article 53(3), 57(2), 58(3) and 58(4).

11.5.1 An application to extend the scope of an Authorised Individual status to other Licensed Functions may be made by the Authorised Individual and Authorised Firm by the completion and submission of the appropriate form in AFN.

11.5.2 An Authorised Firm or Authorised Individual requesting:

- (a) the imposition, variation or withdrawal of a condition or restriction;
- (b) withdrawal of Authorised Individual status; or
- (c) withdrawal of authorisation in relation to one or more Licensed Functions;

must, subject to Rule 11.5.3, for (a) submit such request in writing to the DFSA, and submit a request for (b) and (c) by completing the appropriate form in AFN.

11.5.3 A request for the variation or withdrawal of a condition or restriction may only be made after the expiry of any period within which an appeal to the Regulatory Appeals Committee relating to the relevant condition or restriction may commence under Article 28.

Guidance

- 1. Notification of the determination of an application under Rule 11.5.1 or request under Rule 11.5.2 will be made in accordance with Articles 55 and 57.
- 2. In considering the suitability of such an application or request the DFSA may take into account any matter referred to in RPP with respect to fitness and propriety for Authorised Individuals.

11.6 Temporary cover

11.6.1 (1) An Authorised Firm may, subject to (2), appoint an individual, who is not an Authorised Individual, to carry out the functions of an Authorised Individual where the following conditions are met:

- (a) the absence of the Authorised Individual is temporary or reasonably unforeseen;
- (b) the functions are carried out for 12 weeks maximum in any consecutive 12 months; and
- (c) the Authorised Firm has assessed that the individual has the relevant skills and experience to carry out these functions.

(2) An Authorised Firm may not appoint under (1) an individual to carry out the Licensed Functions of a Licensed Director or Licensed Partner.

(3) The Authorised Firm must take reasonable steps to ensure that the individual complies with all the Rules applicable to Authorised Individuals.

(4) Where an individual is appointed under this Rule, the Authorised Firm must notify the DFSA in writing of the name and contact details of the individual appointed.

11.6.2 Where an individual is appointed under this section, the DFSA may exercise any powers it would otherwise be entitled to exercise as if the individual held Authorised Individual status.

11.7 Dismissal or resignation of an Authorised Individual

11.7.1 An Authorised Firm must request the withdrawal of an Authorised Individual status within seven days of the Authorised Individual ceasing to be employed by the Authorised Firm to perform a Licensed Function.

11.7.2 In requesting the withdrawal of an Authorised Individual status, the Authorised Firm must submit the appropriate form in AFN, including details of any circumstances where the Authorised Firm may consider that the individual is no longer fit and proper.

11.7.3 If an Authorised Individual is dismissed or requested to resign, a statement of the reason, or reasons, for the dismissal or resignation must be given to the DFSA by the Authorised Firm.

11.7.4 If the Authorised Individual was acting as a trustee, the Trust Service Provider must confirm to the DFSA in writing that a new trustee has been appointed in place of the trustee in question.

11.8 Changes relating to control

11.8.1 This chapter applies to:

- (a) an Authorised Firm; or
- (b) a Person who is, or is proposing to become, a Controller specified in Rule 11.8.3.

11.8.2 An Authorised Firm must take reasonable steps to monitor changes or proposed changes concerning:

- (a) its Controllers;
- (b) the level of control of existing Controllers; and
- (c) significant changes in the circumstances of existing Controllers which might reasonably be considered to affect the fitness and propriety of the Authorised Firm.

Guidance

1. Steps taken by an Authorised Firm to comply with Rule 11.8.2 must have regard to the approval and notification requirements set out in this chapter.
2. Reasonable steps in Rule 11.8.2 should include, but are not limited to, the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

- 11.8.3** (1) A Controller is a Person who, either alone or with any Associate:
- (a) holds 10% or more of an Authorised Firm's shares;
 - (b) is entitled to exercise, or control the exercise, of 10% or more of the voting rights in respect of an Authorised Firm;
 - (c) holds shares or voting rights of an Authorised Firm which enables the Person to exercise significant influence over the management of the Authorised Firm; or
 - (d) meets one or more of the conditions of (a), (b), or (c) in respect of a Holding Company of an Authorised Firm.
- (2) In (1), a share means:
- (a) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with share capital, allotted shares;
 - (b) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with capital but no share capital, rights to a share in the capital of the Authorised Firm or a Holding Company of an Authorised Firm; or
 - (c) in relation to an Authorised Firm or a Holding Company of an Authorised Firm without capital:
 - (i) interests conferring any right to share in the profits, or liability to contribute to the losses, of the Authorised Firm or a Holding Company of an Authorised Firm; or
 - (ii) giving rise to any obligation to contribute to the debt or expenses of an Authorised Firm or a Holding Company of an Authorised Firm in the event of a winding up of the Authorised Firm or a Holding Company of the Authorised Firm.
- 11.8.4** (1) Subject to (2) and (3), a Person specified in Rule 11.8.1(b) must not act as a Controller of an Authorised Firm unless he, or the Authorised Firm, has:
- (a) obtained prior approval pursuant to Rule 11.8.5; or
 - (b) made a prior notification pursuant to Rule 11.8.5 or Rule 11.8.7, as may be applicable.

- (2) The requirement in (1) does not apply to a Person who becomes a Controller by virtue of:
- (a) having acquired Shares for the sole purpose of clearing and settling within a short settlement cycle; or
 - (b) holding Shares in a custodian capacity, provided that the Person can only exercise the voting rights attached to the Shares under instructions given in writing.
- (3) The requirement in (1) does not apply to an Authorised Firm or a Regulated Financial Institution, that becomes a Controller by virtue of holding Shares or holding or exercising voting rights as a result of:
- (a) providing the underwriting of financial instruments; or
 - (b) placing financial instruments on a firm commitment basis,
- provided that voting rights are not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

- 11.8.5** (1) Where the Authorised Firm is:
- (a) a Body Corporate incorporated under the Companies Law 2004 or the Limited Liability Partnership Law 2004;
 - (b) a Partnership established under the General Partnership Law 2004; or
 - (c) an unincorporated association formed within the jurisdiction of the DIFC;

and a Person becomes a Controller or the level of control changes as set out in Rule 11.8.3(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 11.8.1(b) must submit a notification or application to the DFSA as applicable.

- (2) The events mentioned in (1) which trigger a written application for prior approval are as follows:
- (a) when a holding is increased from below 10% to 10% or more;
 - (b) when a holding is increased from below 30% to 30% or more;
 - (c) when a holding is increased from below 50% to 50% or more; or
 - (d) when any significant management influence as identified under Rule 11.8.3(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.
- (3) The event mentioned in (1) which triggers a written notification is when a holding is decreased from more than 50% to 50% or less.

- (4) An application for prior approval or notification must be submitted to the DFSA using the appropriate form in AFN.
- 11.8.6** (1) An Authorised Firm must submit the notification or application required in Rule 11.8.5(1) not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.
- (2) Where an Authorised Firm is not reasonably able to comply with (1), the Person identified in Rule 11.8.1(b) must submit the required notification or application for approval.
- (3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in (2) of their obligations under this chapter.
- 11.8.7** (1) Where the Authorised Firm does not fall within Rule 11.8.5(1)(a), (b) or (c) and a Person becomes a Controller, or the level of control changes as set out in Rule 11.8.3(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 11.8.1(b) must submit a notification to the DFSA.
- (2) The events mentioned in (1) which trigger a notification are as follows:
- (a) when a holding is increased from below 10% to 10% or more;
 - (b) when a holding is increased from below 30% to 30% or more;
 - (c) when a holding is increased from below 50% to 50% or more;
 - (d) when a holding is decreased from more than 50% to 50% or less; or
 - (e) when any significant management influence as identified under Rule 11.8.3(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.
- (3) A notification must be submitted to the DFSA using the appropriate form in AFN.
- 11.8.8** (1) An Authorised Firm must submit the notification required in Rule 11.8.7 not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.
- (2) Where an Authorised Firm has not complied with (1), the Person identified in Rule 11.8.1(b) must submit the required notification.
- (3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in Rule 11.8.1(b) of his obligations under this chapter.

Annual reporting of controllers

11.8.9 An Authorised Firm must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

11.8.10 The Authorised Firm's annual report on its Controllers must include:

- (a) the name of each Controller;
- (b) the current holding of each Controller, expressed as a percentage; and
- (c) any other Controller specified in Rule 11.8.3(1)(c) or (d).

Guidance

- 1. An Authorised Firm may satisfy the requirements of Rule 11.8.10 by submitting a corporate structure diagram containing the relevant information.
- 2. Where the DFSA deems that a Controller is unacceptable, it will notify the Authorised Firm in writing to remove the Controller without undue delay, or take other specified action to the satisfaction of the DFSA.

11.9 Creation of additional cells of a protected cell company for an Insurer

11.9.1 This section applies to Insurers that are Protected Cell Companies.

Guidance

- 1. An Insurer that is 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.
- 2. Under the provisions of the DIFC Company Regulations dealings or transactions between Cells in relation to an Insurer may take place only with the approval of the Court.
- 3. 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.

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

11.9.3 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 and verified in such manner, as the DFSA may require.

11.9.4 The DFSA may:

- (a) grant approval;

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

for the creation of a new Cell.

Notice of the DFSA's decision

- 11.9.5** (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.

Rights of representation and appeal

- 11.9.6** 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.
- 11.9.7** 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.

11.10 Notifications

- 11.10.1** (1) This section 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.
- (2) This section does not apply to a Representative Office.

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 of, 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.

Core information

- 11.10.2** 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.
- 11.10.3** 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.
- 11.10.4** When giving notice under Rule 11.10.3 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.
- 11.10.5** (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.
- (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.
- 11.10.6** 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.

Regulatory impact

- 11.10.7** 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 11.10.8, 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.

Major acquisitions

- 11.10.8** (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 11.10.9; and
 - (b) if it is not a Domestic Firm, comply with the requirements in Rule 11.10.10.
- (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.

Guidance

1. Examples of the kind of investments referred to in Rule 11.10.8(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 11.10.8(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 11.10.8 (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 11.10.8 (3)(b), the Authorised Firm may seek guidance from the DFSA.
3. Examples of contractual arrangements of the kind referred to in Rule 11.10.8 (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 11.10.8(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).

-
- 11.10.9** (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 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 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.
- (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.

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.

- 11.10.10** (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 11.10.9 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 11.10.9 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.
- 11.10.11** (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.

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.

- 11.10.12** An Authorised Firm may make an appeal to the Regulatory Appeals Committee for the review of a decision of the DFSA under Rules 11.10.9, 11.10.10(b) or 11.10.11(2) and the Regulatory Appeals Committee has the jurisdiction to hear any such appeal.

Fraud and errors

- 11.10.13** 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.

Other regulators

- 11.10.14** 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 becoming 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.

Guidance

The notification requirement in Rule 11.10.14(c) extends to investigations relating to any employee or agent of an Authorised Person or a member of its Group, provided the conduct investigated relates to or impact on the affairs of the Authorised Person.

Action against an Authorised Person

11.10.15 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.

Winding up, bankruptcy and insolvency

11.10.16 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.

Accuracy of information

11.10.17 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.

- 11.10.18** (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.
- 11.10.19** 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.

11.11 Provision of notifications and reports

- 11.11.1** (1) Unless a Rule states otherwise, an Authorised Person must ensure that each notification or report it provides to the DFSA is:
- (a) in writing and contains the Authorised Person's name and Licence 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.

11.12 Requirement to provide a report

- 11.12.1** This section applies to every Authorised Person other than a Representative Office.

Guidance

1. Under Article 74, the DFSA may require an Authorised Person to provide it with a report on any matter. 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.
2. When requesting a report under Article 74, the DFSA may take into consideration the matters set out in the RPP Sourcebook.

Independent Expert

- 11.12.2** (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.

11.12.3 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.

11.12.4 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 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).

11.12.5 An Authorised Person must ensure that the contract required under Rule 11.12.4:

- (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 11.12.4;
- (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 11.12.4 are irrevocable and may not be varied or rescinded without the DFSA's consent.

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

11.13.1 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 is 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) an 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.