

Appendix 1

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



The DFSA Rulebook

General Module

(GEN)

1 INTRODUCTION

Application

- 1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law or Markets Law applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

Guidance

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive and sections 6.9, 6.10, 11.2, 11.3, 11.12 and 11.13 of GEN apply to a Representative Office.

Overview of the module

Guidance

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10. Chapter 11 specifies the DFSA's supervisory requirements for any Authorised Person being regulated by the DFSA.

11. Chapter 12 sets out Rules relating to business transfer schemes under Part 9 of the Regulatory Law.

12. Chapter 13 contains guidance on the DFSA's approach to facilitating the testing and development of innovative financial technology (Fintech) in the DIFC.

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13. FACILITATING FINTECH INNOVATION

Introduction

1. This chapter sets out the DFSA’s approach to dealing with businesses that wish to test innovative financial technology (Fintech) in the DIFC. In particular, it sets out how the DFSA will consider using its powers to waive or modify Rules in relation to businesses that are testing innovative Fintech.
2. The intention is that the DFSA will consider using its powers to create a simplified regulatory framework that is tailored to the specific business proposal. This would allow the operator of the business (the Fintech Operator) to test innovative products, services and business models without having to comply with Rules that may be inappropriate or disproportionate given the innovative nature of the business and that it is only at a testing stage.
3. The DFSA would expect a Fintech business, once it is fully operational, to be able to comply with all relevant Rules applicable to the type of activities it carries on.

Which businesses may be suitable for this approach?

4. To be considered for this type of approach, a business should meet the following criteria:
 - (a) it must involve the use of innovative Fintech;
 - (b) it must involve an activity that, if carried on in the DIFC, would amount to a Financial Service (i.e. is within the scope of the activities that the DFSA regulates);
 - (c) it must be ready to start live testing of its Fintech business with customers (whether Authorised Persons in the DIFC or other persons) rather than being an established Fintech business; and
 - (d) the operator must intend to roll-out its Fintech business on a broader scale in or from the DIFC once it has successfully completed testing.

Applying for Authorisation

5. If a Fintech business involves carrying on a Financial Service in the DIFC, the operator will need to obtain a Licence before it can start testing its product or service. The DFSA will assist an operator to identify what Financial Service it may be carrying on. If no Financial Service is involved, DFSA authorisation will not be required to test or carry on the business in the DIFC (although other DIFC approvals may still be needed).
6. An applicant will need to satisfy the requirements in GEN chapter 7 to be authorised. For example, it will need to demonstrate that it is fit and proper and has adequate resources. In assessing the application, the DFSA will however, where appropriate, take into account the limited nature of the authorisation that is being sought, that the business is only at a testing stage and the simplified regulatory requirements that are therefore likely to apply.
7. If the Fintech business is a ‘start-up’ business, the DFSA may also consider if it is appropriate to grant relief from certain prudential requirements (i.e. PIB or PIN Rules) or corporate governance arrangements (taking into account that management control in a start-up business usually lies with one or two individuals).

Creating a simplified regulatory framework

8. The applicant will need to discuss with the DFSA at an early stage what its Fintech proposal involves, including the type of customer who is likely to use the product or service. The DFSA will work with the applicant to understand the proposal and establish, on a case-by-case basis, what Rules should apply to that business.
9. While the DFSA will consider giving relief from various parts of the Rulebook, it is not likely to waive or modify certain key requirements, for example, Rules relating to:
 - (a) fitness and propriety (see Rule 7.2.5);
 - (b) having an office in the DIFC (see Rule 6.5.1);
 - (c) acting with integrity and with due skill, care and diligence (see Rules 4.2.1 and 4.2.2);
 - (d) having due regard to customers' interests and communicating information in a way that is fair, clear and not misleading (see Rule 4.2.6);
 - (e) being open and co-operative with the DFSA (e.g. Rule 4.2.10 and section 11.1);
 - (f) Financial Promotions;
 - (g) Federal Law prohibitions (e.g. COB Rules 4.2.1 and 4.3.1);
 - (h) AML; and
 - (i) reporting to the DFSA (e.g. Rules 11.10.2 and 11.10.7).

Restrictions and conditions

10. If the DFSA grants a Licence to a Fintech business, it is likely to impose appropriate restrictions, for example, restricting the business that may be carried on under the Licence to testing the specific Fintech product or service, and limiting the number and type of customers that may take part in the testing. It will also require the Fintech business to disclose in communications that it is only authorised to test its product or service.
 11. The DFSA will also impose conditions on the Licence requiring the firm to have a detailed plan for testing that includes, for example:
 - (a) the parameters for testing;
 - (b) the timeline for testing, including clear milestones;
 - (c) the number and type of customers that will take part in testing;
 - (d) how the operator will ensure that customers understand that the product or service is being tested and the resulting risks;
 - (e) the safeguards that will be put in place to adequately protect customers, in the event of a problem arising from use of the technology or the business failing;
 - (f) how progress of testing will be reported to the DFSA; and
 - (g) a clear exit strategy in the event that its business is not successful.
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Completion of testing

12. As the purpose of the DFSA's approach is to allow a Fintech Operator to test and develop its Fintech business and not to carry on a fully operational Fintech business, the DFSA would expect the Person to use the simplified regulatory framework only for a limited period. It is therefore likely to grant waivers and modifications only for a finite period, normally six to twelve months. In exceptional cases, it may consider extending that period.
13. At the end of the testing period, the Fintech Operator would be expected either to:
- (a) carry on its Fintech business on a broader scale, in which case it would need to fully comply with relevant legal requirements; or
 - (b) cease carrying on activities in the DIFC.
14. In appropriate cases, after the end of the testing period, the DFSA may also consider granting further waivers or modifications to the Fintech Operator if the innovative nature of its business model, once fully operational, means that certain Rules are either not appropriate or disproportionate.