

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

1.

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 or from the DIFC. In particular, it sets out how the DFSA will consider using its powers to waive or modify Rules for businesses that are testing innovative Fintech.
2. In this way the DFSA may create a simplified regulatory framework tailored to the specific Fintech business proposal. This will allow the business operator (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 however 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.

Fintech businesses that can use this approach

4. To be considered for this facilitative approach, a business should meet the following criteria:
 - (a) it must involve the use of innovative Fintech, by offering a new type of product or service or applying innovative Fintech to an existing product or service;
 - (b) it must involve an activity that, if carried on in or from the DIFC, is a Financial Service (i.e. it is within the scope of the activities that the DFSA regulates);
 - (c) the Fintech Operator must be ready to start live-testing of its Fintech business with customers; and
 - (d) the Fintech Operator must intend to roll-out its Fintech business on a broader scale in or from the DIFC once it has successfully completed testing.
5. In assessing if a business involves innovative Fintech, the DFSA will consider if the product or service uses new or emerging technology or uses technology in an innovative way and also if it addresses a problem or brings potential benefits to consumers or industry. That is, the Fintech Operator must be able to demonstrate that the business uses innovative Fintech.
6. The DFSA will also assess the stage of development of the product or service to check that it is ready to start-live testing with customers. If a Fintech proposal is only at a conceptual stage and not yet ready to start testing, then it is unlikely a Licence will be required as no Financial Service is being carried on. By contrast, if the Fintech business is already fully operational, then the Fintech Operator should apply for a Licence under the normal application processes (and not in accordance with this Guidance).

Authorisation

7. If a Fintech business involves an activity that is a Financial Service in the DIFC, and the Fintech Operator is not an Authorised Firm, it 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 the Fintech Operator is already an Authorised Firm, it should refer to the Guidance in paragraphs 26 to 28. If a Fintech business does not involve a Financial Service, a DFSA Licence will not be required to test or carry on the business in the DIFC (although other DIFC approvals may still be needed).

8. 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, where appropriate, will 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.
9. 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, for example, taking into account that management control of a new Fintech business usually lies with one or two individuals.

Licence Application and Test Plan

10. A potential Licence applicant should discuss its Fintech proposal with the DFSA at an early stage.
 11. The applicant will then need to complete a special application form designed for Fintech Operators that wish to apply for the restricted Licence to test their products or services.
 12. The applicant will need to provide a detailed test plan (a Test Plan) with its Licence application. The Test Plan must clearly describe:
 - (a) the business and the proposed innovative Fintech product or service;
 - (b) the objectives and parameters for the testing of the product or service;
 - (c) the timeline and key milestones for testing;
 - (d) the number and type of customers that will take part in testing and how they will be sourced;
 - (e) the key risks of testing and how they will be mitigated;
 - (f) how the Fintech Operator will ensure that customers understand that the product or service is being tested and the resulting risks;
 - (g) 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;
 - (h) how communications with customers will be handled before, during and after testing, including how the Fintech Operator will deal with queries, feedback and complaints;
 - (i) how the success of the testing will be measured;
 - (j) how testing progress will be reported to the DFSA;
 - (k) the next steps if the testing is successful; and
 - (l) a clear exit plan if the testing is not successful, including how the Fintech Operator will fulfil its obligations to its testing customers.
 13. The DFSA will try to assist the applicant to understand what information needs to be included in the application form and in its Test Plan.
 14. The DFSA will need to be satisfied that the information in the application and the Test Plan is appropriate and complete before it considers the Licence application.
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Creating a simplified regulatory framework

15. The DFSA will work with the applicant to understand its business proposal and to establish, on a case-by-case basis, what Rules should apply to that business.
16. 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) acting with integrity and with due skill, care and diligence (see Rules 4.2.1 and 4.2.2);
 - (c) having due regard to customers' interests and communicating information in a way that is fair, clear and not misleading (see Rule 4.2.6);
 - (d) being open and co-operative with the DFSA (e.g. Rule 4.2.10 and section 11.1);
 - (e) Financial Promotions (see chapter 3); and
 - (f) holding and controlling Client Assets (COB sections 6.11 to 6.13).
17. The DFSA will also not waive or modify requirements based on Federal Law requirements, for example, Rules relating to:
- (a) not accepting Deposits from the State's markets or carrying on currency exchange involving the Dirham (see COB Rules 4.2.1 and 4.3.1);
 - (b) having an office in the DIFC (see Rule 6.5.1); and
 - (c) AML requirements.

Restrictions and conditions

18. If the DFSA grants a Licence to the Fintech Operator, it is likely to impose appropriate restrictions including, for example, restricting:
- (a) the business that may be carried on under the Licence to testing the specific Fintech product or service;
 - (b) the number and type of customers that may take part in the testing; and
 - (c) the period during which it may carry on testing.
19. The DFSA is also likely to impose conditions on the Licence, for example, requiring the Fintech Operator:
- (a) to comply with its Test Plan;
 - (b) to disclose in any communications that it is only authorised by the DFSA to test its product or service; and
 - (c) within a reasonable period after the test period ends, either to demonstrate it can comply fully with all regulatory requirements or to cease carrying on its activities.

Completion of testing

20. 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 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.

21. When the testing period ends, the Fintech Operator would be expected either:
 - (a) if the testing is successful, to carry on its Fintech business on a broader scale, in which case it will need to demonstrate to the DFSA's satisfaction that it is able to comply fully with relevant legal and regulatory requirements before the DFSA will remove the various restrictions and conditions; or
 - (b) to cease carrying on activities in the DIFC, in which case it should implement its exit plan and ensure that all obligations to customers are fulfilled.
22. The DFSA will not permit a Licensee that has completed testing to continue to hold a restricted Licence (i.e. that only permits it to carry on testing). At this point the Licensee will be required either to apply to remove the restrictions or to apply to have the Licence withdrawn.
23. In appropriate cases, if testing is successful, the DFSA may 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.

Withdrawal of Licence

24. Without limiting any other grounds on which it may act, the DFSA may take action to withdraw a restricted Licence at any time if the Fintech operator:
 - (a) is no longer fit and proper to hold a Licence;
 - (b) has breached any restrictions or conditions imposed on the Licence;
 - (c) has breached the Law or any Rules;
 - (d) is not carrying on testing under the Licence as set out in its Test Plan; or
 - (e) has completed its testing but has not promptly taken steps either to apply to remove the restrictions or to withdraw its Licence.

Fees

25. The normal fees that are payable by a Licensee are set out in FER. The precise fee calculation will depend on the nature of the activities being carried on. The DFSA will consider reducing or waiving fees for Fintech applicants given the 'start-up' nature of many businesses. However, once the Fintech operator has completed testing, it will be expected to pay the standard fees set out in FER.

Existing Authorised Firms that wish to test Fintech

26. If an existing Authorised Firm wishes to test an innovative Fintech proposal, it will not need to apply for a Licence. Instead, if it has authorisation for the activity it wishes to carry on, it may carry on the activity. Alternatively, if it does not have the relevant authorisation for the activity, it will need to apply to amend its Licence to obtain that authorisation.
27. If the Authorised Firm considers that there are Rules that are not appropriate or are disproportionate to the testing of its Fintech proposal, it can apply to the DFSA for a waiver

or modification of the Rules. Again, if the DFSA grants waivers or modifications, it will do so only for a finite period (the period during which testing is to take place).

28. An Authorised Firm that wishes to test an innovative Fintech proposal should discuss its proposal with the DFSA at an early stage.

Partnerships with existing Authorised Firms

29. In some cases, a Person wishing to test a Fintech proposal may seek to do so in partnership with an Authorised Firm. If that is the case, and the activity is to be carried out under the Licence of the Authorised Firm, paragraphs 26 to 28 will be relevant. Alternatively, if the Person wishes to carry on the business in its own right, it will need to apply for a Licence.