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# The DFSA Rulebook

Representative Office Module

**(REP)**

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## Contents

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

|             |   |           |
|-------------|---|-----------|
| <b>1</b>    | <b>APPLICATION .....</b>                              | <b>1</b>  |
| 1.1         | Application.....                                      | 1         |
| 1.2         | Interpretation .....                                  | 1         |
| <b>2</b>    | <b>AUTHORISATION .....</b>                            | <b>3</b>  |
| 2.1         | Licence application.....                              | 3         |
| 2.2         | Consideration and assessment of applications .....    | 3         |
| 2.3         | Withdrawal of a Licence .....                         | 5         |
| <b>3</b>    | <b>CORE PRINCIPLES .....</b>                          | <b>6</b>  |
| 3.1         | Application of Principles .....                       | 6         |
| 3.2         | Principles for Representative Offices .....           | 6         |
|             | Principle 1 - Integrity .....                         | 6         |
|             | Principle 2 – Due skill, care and diligence.....      | 6         |
|             | Principle 3 – Resources .....                         | 6         |
|             | Principle 4 - Relations with regulators.....          | 6         |
| <b>4</b>    | <b>GENERAL PROVISIONS .....</b>                       | <b>7</b>  |
| 4.1         | General.....  | 7         |
| 4.2         | Fitness and Propriety .....                           | 7         |
| 4.3         | Dealing with property.....                            | 8         |
| 4.4         | Solvency .....  | 8         |
| 4.5         | Disclosure of regulatory status .....                 | 8         |
| 4.6         | Clear, fair and not misleading.....                   | 9         |
| 4.7         | Marketing of Foreign Funds .....                      | 10        |
| 4.8         | Record keeping .....                                  | 13        |
| 4.9         | Relevant UN Resolutions and Sanctions .....           | 13        |
| 4.10        | Communication with the DFSA .....                     | 14        |
| <b>5</b>    | <b>REGULATORY PROCESSES.....</b>                      | <b>15</b> |
| 5.1         | Notifications.....                                    | 15        |
| 5.2         | Lead regulation.....                                  | 15        |
| <b>6</b>    | <b>ANTI MONEY LAUNDERING .....</b>                    | <b>16</b> |
| 6.1         | Introduction.....                                     | 16        |
| 6.2         | Co-operation with regulators .....                    | 16        |
| 6.3         | AML Responsibilities of a Representative Office ..... | 16        |
| <b>APP1</b> | <b>GUIDANCE ON FITNESS AND PROPRIETY .....</b>        | <b>19</b> |
| A1.1        | Introduction.....                                     | 19        |
| A1.2        | Representative Office.....                            | 19        |
| A1.3        | Principal Representative and other staff .....        | 21        |

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## **1 APPLICATION**

### **1.1 Application**

- 1.1.1** (1) This module (REP) applies to every Person who carries on, or intends to carry on, the Financial Service of Operating a Representative Office in or from the DIFC.
- (2) Unless otherwise stated, the Rules apply to a Representative Office only with respect to activities carried on from an establishment maintained by it in the DIFC.

#### **Guidance**

1. Because of the limited nature of the Financial Service of Operating a Representative Office much of the DFSA Rulebook has been disapplied for Representative Offices. While most of the key provisions applying to a Representative Office are contained in this module, a Representative Office should ensure that it complies with and has regard to other relevant provisions in other applicable DFSA Rulebook Modules including GEN chapters 1 to 3, SUP chapters 1, 3 and 5, CIR chapter 2 and sections 3.5 to 3.7 and FER. The application section of each Rulebook module sets out which chapters, if any, apply to a Representative Office. Some modules are of general application to all Authorised Persons such as GLO, ENF and OSR.
2. A Representative Office should also ensure that it complies with and has regard to relevant provisions of the Regulatory Law 2004 and Markets Law 2004. The Regulatory Law 2004 gives the DFSA a number of important powers in relation to Authorised Firms including powers of supervision and enforcement.
3. The Financial Service of Operating a Representative Office is defined in GEN Rule 2.26.1. By virtue of GEN 2.26.2 and 3.2.6, the Financial Service of Operating a Representative Office is a stand alone financial service activity.
4. Whilst much Representative Office activity will not involve a continuing relationship with the Persons to whom marketing is directed, where such a relationship is necessary, the Representative Office will need to be careful to ensure that it does not carry on any activities other than those prescribed under GEN Rule 2.26.2.
5. A Representative Office which undertakes a Financial Service which is outside the scope of its Licence will be in breach of Article 42(4) of the Regulatory Law 2004. If the DFSA believes that a Representative Office is in breach of Article 42(4), it may take steps which may include withdrawal of authorisation and formal enforcement action under the Regulatory Law 2004.

### **1.2 Interpretation**

#### **Guidance**

1. Every provision of REP and any other module of the Rulebook should be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.
2. Where this section refers to a provision, this means every type of provision, including Rules and Guidance.

3. Where reference is made in REP to another provision of the Rulebook or to another provision of DIFC legislation, it is a reference to that provision as amended from time to time.
4. Unless the contrary intention appears:
  - a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
  - b. words in the Rulebook in the singular include the plural and words in the plural include the singular.
5. If a provision in the Rulebook refers to a communication, notice, agreement, or other documents 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
6. Any reference to 'dollars' ('\$') is a reference to United States Dollars unless the contrary intention appears.
7. References to Articles made throughout the Rulebook are references to the Regulatory Law 2004 unless otherwise stated.
8. Unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official State holiday in the DIFC, the obligation must take place on the next calendar day which is a business day.

**Defined terms**

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or phrase and are defined in the Glossary (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

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## **2 AUTHORISATION**

### **2.1 Licence application**

**2.1.1** A Person, referred to in this chapter as an applicant, who intends to carry on the Financial Service of Operating a Representative Office must apply to the DFSA for a Licence by completing and submitting the appropriate form in AFN.

**2.1.2** (1) An application to Operate a Representative Office may only be made by a Person who is:

- (a) incorporated ; and
- (b) regulated by a Financial Services Regulator

in a jurisdiction other than the DIFC.

(2) The DFSA will not consider an application for a Licence from an applicant who intends to operate in the DIFC as a Domestic Firm.

### **2.2 Consideration and assessment of applications**

**2.2.1** An applicant will only be authorised to carry on the Financial Service of Operating a Representative Office if the DFSA is satisfied that the applicant is fit and proper to hold a Licence. In making this assessment the DFSA may consider:

- (a) those matters contained in App1;
- (b) whether the applicant is subject to supervision by a Financial Services Regulator;
- (c) whether the applicant's Financial Services Regulator in its home state has been made aware of the proposed application and has expressed itself as having no objection to the establishment by the applicant of a Representative Office in the DIFC; and
- (d) any other relevant matters.

**2.2.2** In relation to the assessment under Rule 2.2.1:

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;
- (b) the applicant must demonstrate to the DFSA's satisfaction that its Principal Representative is fit and proper;
- (c) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;

- (d) 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; and
- (e) 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.

**Guidance**

1. A Person who provides information to the DFSA which is false, misleading or deceptive, or who conceals information where the concealment is likely to mislead or deceive the DFSA, commits a contravention of Article 66.
2. If an applicant becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application which is under consideration by the DFSA, it must inform the DFSA of the change, in writing, without delay .
3. Article 51 enables the DFSA to withdraw a Representative Office's Licence where it is no longer considered fit and proper to hold such a Licence.
4. In considering whether an applicant is fit and proper, the DFSA may take into account those matters contained in App1, which provides information on the DFSA's approach to fitness and propriety for Representative Offices.

- 2.2.3** A Representative Office 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.

**Guidance**

A Representative Office applying to change the scope of its Licence should bear in mind that it may have to change its legal structure. The process will involve a fundamental review of the Representative Office by the DFSA to ascertain whether the firm meets all the relevant criteria to enable the proposed change in scope of its Licence.

- 2.2.4** For the purposes of Article 9 (2) of the Law Regulating Islamic Financial Business 2004, a Representative Office will not be taken to be holding itself out as conducting Islamic Financial Business in or from the DIFC in circumstances where it:

- (a) does not represent that it provides, in or from the DIFC, any services that are in accordance with Shari'a; and
- (b) acts within the scope of its Licence, that is, does not carry on in or from the DIFC a Financial Service other than Operating a Representative Office.

**Guidance**

The Law Regulating Islamic Financial Business 2004, contains a prohibition against an Authorised Firm holding itself out as conducting Islamic Financial Business without first obtaining an endorsement to its Licence. An Islamic Financial Institution may operate a Representative Office in the DIFC but it is deemed not to be conducting Islamic Financial Business through its Representative Office. This is because of the limited nature of the financial services activity it is permitted to carry on and because it does not enter into client relationships in the DIFC. Accordingly, there is no requirement to obtain an appropriate endorsement to its Licence and the IFR module does not apply.

[Amended][RM72][VER2/07-10]

## **2.3 Withdrawal of a Licence**

**2.3.1** A Representative Office 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 the Financial Service of Operating a Representative Office in or from the DIFC; and
- (c) the date on which it ceased or will cease to carry on the Financial Service of Operating a Representative Office in or from the DIFC.

### **Guidance**

The DFSA may act on its own initiative to withdraw a Representative Office's Licence. The circumstances in which the DFSA will do so are set out in Article 50(3).

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## **3 CORE PRINCIPLES**

### **3.1 Application of Principles**

- 3.1.1** (1) The four Principles for Representative Offices set out in section 3.2 apply to every Representative Office in accordance with Rule 1.1.1.

#### **Guidance**

1. Under Rule 1.1.1(2), the principles apply, unless otherwise stated, only to the Representative Office in its capacity as a branch in the DIFC and not to the institution as a whole.
2. The Principles for Representative Offices have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules and also in new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of this module or the Rulebook build upon these fundamental principles. Consequently the Rules and Guidance elsewhere should not be seen as exhausting the implications of the Principles.
3. Breaching a Principle for Representative Offices makes a Representative Office liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Financial Service or to hold a Licence and the DFSA may consider withdrawing authorisation or the Licence on that basis.
4. The onus will be on the DFSA to show that the Representative Office has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

### **3.2 Principles for Representative Offices**

#### **Principle 1 - Integrity**

- 3.2.1** A Representative Office must observe high standards of integrity and fair dealing.

#### **Principle 2 – Due skill, care and diligence**

- 3.2.2** In conducting its business activities a Representative Office must act with due skill, care and diligence.

#### **Principle 3 – Resources**

- 3.2.3** A Representative Office must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs.

#### **Principle 4 - Relations with regulators**

- 3.2.4** A Representative Office must deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Representative Office of which the DFSA would reasonably expect to be notified.



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## **4 GENERAL PROVISIONS**

### **4.1 General**

**4.1.1** A Representative Office must have a place of business within its geographical boundaries of the DIFC.

**4.1.2** A Representative Office must not:

- (a) share an office with another Authorised Firm;
- (b) represent anyone other than itself or a member of its Group; or
- (c) permit any staff member to be an Employee of another Authorised Person.

#### **Guidance**

The DFSA would not consider that an Authorised Firm is sharing an office if that firm were located in serviced offices which were also the place of business of another Authorised Firm.

### **4.2 Fitness and Propriety**

**4.2.1** A Representative Office must at all times be fit and proper to hold a Licence

**4.2.2** (1) A Representative Office must at all times have a Principal Representative who is resident in the UAE and who has satisfied the DFSA as to fitness and propriety.

(2) If the Principal Representative leaves the employment of a Representative Office, the Representative Office must designate a successor as soon as possible, and in any event within 28 days.

(3) If the DFSA considers that a Principal Representative designated under (1) or (2) is not fit and proper to fulfil the role for which he has been designated, it will give the Representative Office written notice to this effect.

(4) On receipt of a notice under (3), a Representative Office must within 28 days designate a new Principal Representative and notify the DFSA accordingly.

**4.2.3** A Representative Office must ensure, as far as reasonably practical, that its Employees are fit and proper.

#### **Guidance**

1. A1.3 provides information on the DFSA's approach to fitness and propriety.
2. Where a Representative Office is no longer fit and proper or where its Principal Representative is no longer fit and proper, it will be in breach of the relevant Rule and the DFSA may take steps to withdraw its Licence. A1.3 provides information on the DFSA's approach to fitness and propriety for Principal Representatives.

### **4.3 Dealing with property**

- 4.3.1** A Representative Office must not hold or control money or other property belonging to another Person except to the extent that this is necessary to deal with its ordinary business operating expenses.

### **4.4 Solvency**

- 4.4.1** A Representative Office must notify the DFSA immediately upon becoming aware that it is unlikely to remain solvent in the near future or that it is insolvent.

#### **Guidance**

The requirement to notify is in respect of the institution of which the Representative Office forms a part.

### **4.5 Disclosure of regulatory status**

- 4.5.1** A Representative Office must not:

- (a) hold itself out as able to carry on a Financial Service other than Operating a Representative Office; or
- (b) otherwise misrepresent its status expressly or by implication.

- 4.5.2** (1) A Representative Office must take reasonable care to ensure that every key business document which is in connection with the Representative Office carrying on the Financial Service of Operating a Representative Office in or from the DIFC includes one of the disclosures under this Rule.

- (2) A key business document includes letterhead whether issued by post, fax or electronic means, written promotional materials, business cards, and websites but does not include compliment slips, or text messages.

- (3) The disclosure required under (1) is:

- (a) 'Regulated by the Dubai Financial Services Authority as a Representative Office'; or
- (b) 'Regulated by the DFSA as a Representative Office'.

- 4.5.3** The DFSA logo must not be reproduced by a Representative Office without express written permission from the DFSA and in accordance with any conditions for use.

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## **4.6 Clear, fair and not misleading**

### **General**

- 4.6.1** In this section, a “financial product” means an Investment, Insurance Contract, Profit Sharing Investment Account, Deposit or Credit Facility.
- 4.6.2** When communicating information to a Person in relation to a financial product or financial service, a Representative Office must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- 4.6.3** A Representative Office must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the Regulatory Law 2004, Rules or any other relevant legislation.

### **Marketing material**

- 4.6.4** In this section, “marketing material” means any material communicated to a Person in the course of marketing financial services or financial products or effecting introductions where “marketing” and “financial products” have the meaning prescribed in GEN Rule 2.26.1.
- 4.6.5** (1) A Representative Office must ensure that any marketing material communicated to a Person contains the following information:
- (a) the name of the Representative Office communicating the marketing material and on whose behalf the marketing material is being communicated;
  - (b) the Representative Office’s regulatory status as required under Rule 4.6.2; and
  - (c) if the marketing material is directed at a specific class or category of investor, a clear statement to that effect and that no other Person should act upon it.
- (2) If the marketing material is in the form of an insurance proposal, banking services proposal, prospectus or other offering document, which is capable of acceptance in due course, it must contain in a prominent position, or have attached to it, a statement that clearly:
- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the financial product;
  - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
  - (c) describes the regulatory status accorded to the financial product by that Regulator; and

- (d) includes the following warning:

“This document relates to a financial product which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any prospectus or other documents in connection with this financial product. Accordingly, the DFSA has not approved this document or any other associated documents nor taken any steps to verify the information set out in this document, and has no responsibility for it.

The financial product to which this document relates may be illiquid and/or subject to restrictions on its resale. Prospective purchasers should conduct their own due diligence on the financial product .

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

- (3) A Representative Office which must not distribute such marketing material if it becomes aware that the Person offering the financial product or financial service to which the material relates is in breach of a regulatory or legal requirement that applies to that Person in relation to that product or service.

- 4.6.6** A Representative Office must take reasonable steps to ensure that no Person communicates or otherwise uses the marketing material on behalf of the Representative Office in a manner that amounts to a breach of the requirements in this section.

#### **Past performance and forecasts**

- 4.6.7** A Representative Office must ensure that any marketing material containing information or representations relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to a Person is clear, fair and not misleading and contains a prominent warning that past performance is not necessarily a reliable indicator of future results.

### **4.7 Marketing of Foreign Funds**

- 4.7.1** (1) A Representative Office must not market a Unit of a Foreign Fund unless the Fund meets the criteria either for a Designated Fund under Rule 4.7.2 or for a non-Designated Fund under Rule 4.7.3.

- (2) In this section “market” has the meaning prescribed to “marketing” under GEN Rule 2.26.1.

- 4.7.2** A Representative Office may market a Unit of a Foreign Fund where:

- (a) the Fund is a Designated Fund in a Recognised Jurisdiction; and
- (b) if the Fund is a Property Fund, the requirements in Rule 4.7.4 are satisfied.

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**Guidance**

In relation to the requirements of Rules 4.7.2 and 4.7.3, in respect of Recognised Jurisdictions and Designated Funds, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

- 4.7.3** (1) A Representative Office may market a Unit of a Foreign Fund where:
- (a) one or more of the following apply:
    - (i) the custodian of the Fund meets one of the requirements in (4) and the investment manager of the Fund meets one of the requirements in (5);
    - (ii) both the custody and investment management activities of the Fund are performed by a Person who meets the requirements in (6); or
    - (iii) the Fund has been rated in accordance with the requirement in (7);
- and
- (b) if the Fund is a Property Fund, the requirements in Rule 4.7.4 are satisfied.
- (2) For the purposes of (1)(a), the “custodian” is a Person who is retained by the Fund, the Fund Manager or the Fund’s Directors or Partners under a commercial arrangement which is not an employee contract of service to safeguard the Fund’s assets.
- (3) For the purposes of (1)(a), the “investment manager” is a Person who is retained by the Fund, the Fund Manager or the Fund’s Directors or Partners under a commercial arrangement which is not an employee contract of service to manage the Fund’s assets.
- (4) For the purposes of (1)(a)(i), the custodian must be:
- (a) an Eligible Custodian;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;
  - (c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or

- (d) a Person as to whom the Representative Office is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
  - (i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;
  - (ii) the extent of segregation of assets;
  - (iii) independence and management of conflicts of interests;
  - (iv) the terms of the safe custody agreement; and
  - (v) periodic reporting requirements.
  
- (5) For the purposes of (1)(a)(i), the investment manager must be a Person who is:
  - (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.
  
- (6) For the purposes of (1)(a)(ii), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
  - (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.

- (7) The requirement in (1)(a)(iii) in respect of the Foreign Fund is that the Fund has been rated or graded as at least “investment grade” by Moody’s, Fitch or Standard & Poor’s or such other international rating agency as may be recognised by the DFSA.

[Amended][RM72][VER2/07-10]

- 4.7.4** (1) A Representative Office must ensure that it does not market a Unit of a Foreign Fund which is a Property Fund unless:
- (a) the Fund is a closed-ended structure; and
  - (b) the Fund is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction, unless the Units are to be Offered, issued or sold by means only of Private Placement.
- (2) For the purposes of (1), a “Property Fund” is a Foreign Fund in respect of which 60% or more of the Fund’s assets comprise Real Property, Property Related Assets or Units in another Property Fund.

#### **Guidance**

A closed ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund.

## **4.8 Record keeping**

- 4.8.1** A Representative Office must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Representative Office. These must include, where applicable any marketing material (as defined under Rule 4.6.4) issued, distributed or otherwise communicated by, or on behalf of, the Representative Office.

## **4.9 Relevant UN Resolutions and Sanctions**

- 4.9.1** (1) A Representative Office must establish and maintain effective systems and controls to obtain and make appropriate use of relevant resolutions or sanctions issued by the United Nations Security Council
- (2) In relation to an activity which is restricted or prohibited by a relevant sanction or resolution issued by the United Nations Security Council, a Representative Office must immediately notify the DFSA when it becomes aware that it is carrying on or about to carry on a service, for or on behalf of a Person, and such carrying on constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.
- (3) A Representative Office must ensure that the notification stipulated in (2) includes the following information:

- (a) a detailed description of the relevant activity; and
- (b) the action proposed to be taken or has been taken by the Representative Office with regard to the matters specified in the notification.

**Guidance**

1. In relation to the term “make appropriate use” in Rule 4.9.1 (1), this may mean that a Representative Office cannot provide a service for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. Relevant resolutions or sanctions mentioned in Rule 4.9.1 may, inter alia, relate to money laundering or terrorist financing or financing of weapons of mass destruction or otherwise may be relevant to the services provided by, or business activities of, the Representative Office. For example, a Representative Office should exercise due care to ensure that it does not provide any service to a Person engaged in money laundering or terrorist financing or financing of weapons of mass destruction.

**4.10 Communication with the DFSA**

- 4.10.1** A Representative Office must ensure that any communication with the DFSA is conducted in the English language.



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## **5 REGULATORY PROCESSES**

### **5.1 Notifications**

**5.1.1** A Representative Office must notify the DFSA as soon as reasonably practical of any change in its:

- (a) name;
- (b) legal status;
- (c) Controller(s); or
- (d) address.

**5.1.2** A Representative Office must notify the DFSA as soon as reasonably practical of:

- (a) any breach of a Rule or of a provision of DFSA-administered legislation by the Representative Office; and
- (b) any materially adverse information which would on reasonable grounds be considered likely to affect the fitness and propriety of the Representative Office or Principal Representative.

### **5.2 Lead regulation**

**5.2.1** If requested by the DFSA, a Representative Office must provide the DFSA with information that it or another member of its Group has provided to a Financial Services Regulator.

#### **Guidance**

1. Under Article 39 the DFSA may exercise its powers for the purpose of assisting other regulators or agencies.
2. The DFSA may also delegate functions and powers to representatives of other regulators or agencies as prescribed in Article 40.

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## **6 ANTI MONEY LAUNDERING**

### **6.1 Introduction**

**6.1.1** A Representative Office must comply with the relevant Anti Money Laundering Laws and Rules which apply to its business.

#### **Guidance**

1. By virtue of Article 3(1) of Federal Law No. 8 of 2004, U.A.E. Law No. 4 of 2002 — Criminalisation of Money Laundering of the U.A.E. (U.A.E Law No. 4), the Federal Law No. 1 of 2004 regarding anti-terrorism, the U.A.E. Penal Code and any other Federal Law of the U.A.E. as applicable in the DIFC in relation to anti money laundering compliance apply to all operations in the DIFC.
2. The defined term of 'Money Laundering' in these Rules follows that in the U.A.E. Law No.4. The legal definition of the offence of 'Money Laundering' is set out in Article 1 of that law.
3. Representative Offices are reminded that the failure to report suspicions of Money Laundering may constitute a criminal offence that is punishable under the laws of the U.A.E.

### **6.2 Co-operation with regulators**

**6.2.1** A Representative Office which receives a request for information from a regulator or agency responsible for anti money laundering regarding enquiries into potential money laundering must promptly inform the DFSA in writing.

### **6.3 AML Responsibilities of a Representative Office**

**6.3.1** A Representative Office must ensure that its Principal Representative is responsible for all of its anti money laundering measures as they affect its activities carried on in or from the DIFC.

#### **Guidance**

Where a Representative Office has adequate systems and controls the DFSA may permit a Representative Office's head office or another Group company to be responsible for its compliance with all or some of its obligations in this chapter.

**6.3.2** A Representative Office must ensure that its Principal Representative carries out and is responsible for the following:

- (a) compliance with applicable anti money laundering legislation applicable in the DIFC;
- (b) acting as the point of contact to receive notifications of suspicious transactions from the Representative Office's Employees ;

- (c) taking appropriate action following the receipt of a notification of a suspicious transaction from the Representative Office's Employees;
- (d) making, in accordance with U.A.E. Law No. 4, Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. (if appropriate) and sending corresponding copies to the DFSA; and
- (e) acting as the point of contact within the Representative Office for competent U.A.E. authorities and the DFSA regarding money laundering issues.

**6.3.3** A Representative Office must have appropriate arrangements to ensure that whenever any Employee, acting in the ordinary course of his employment, either:

- (a) knows or suspects; or
- (b) has reasonable grounds for knowing or suspecting;

that a Person is engaged in Money Laundering, the Employee notifies the Representative Office's Principal Representative of the suspicious transaction.

**6.3.4** If a Representative Office's Principal Representative is notified or becomes aware of a suspicious transaction he must without delay:

- (a) investigate the circumstances in relation to the suspicious transaction;
- (b) determine whether in accordance with U.A.E. Law No. 4 a Suspicious Transaction Report must be made to the AMLSCU (if appropriate);
- (c) if required, make such an Suspicious Transaction Report to the AMLSCU; and
- (d) provide a copy of such an Suspicious Transaction Report to the DFSA at the time of provision under U.A.E. Law No. 4.

**6.3.5** All relevant details in relation to suspicious transactions and Suspicious Transaction Reports must be kept for at least six years.

**6.3.6** A Representative Office must ensure that its Employees receive regular training on their obligations under this Chapter.

#### **Guidance**

1. The requirement for Employees to make a suspicious transaction notification include situations when no business relationship was developed because the circumstances were suspicious.
2. A Suspicious Transaction Report should be made when there is knowledge or suspicion of money laundering. Suspicion is a personal and subjective assessment. Suspicion of money laundering requires a degree of satisfaction although this may not amount to belief, it should at least extend beyond mere speculation and should be based upon some foundation that money laundering has occurred or is about to occur.

3. An Employee who considers a transaction to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.
4. Rule 6.3.3 makes reference to 'reasonable grounds for knowing or suspecting' which introduces an objective test rather than a subjective test of suspicion by assessing whether or not 'suspicion' was not reported because of a person:
  - a. wilfully turning a blind eye or ignoring a suspicious matter;
  - b. being negligent, that is wilfully and recklessly failing to make the adequate enquiries; or
  - c. failing to assess adequately the facts and information that are either presented or available.
5. Circumstances that might give rise to suspicion or reasonable grounds for suspicion may be:
  - a. transactions which have no apparent purpose and which make no obvious economic sense;
  - b. transactions requested by a Person without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of a Representative Office in relation to a particular Person;
  - c. the size or pattern of transactions, without reasonable explanation, is out of line with any pattern that has previously emerged;
  - d. a Person refuses to provide the information requested without reasonable explanation;
  - e. a Person who has just entered into a relationship uses the relationship for a single transaction or for only a very short period of time;
  - f. an extensive use of offshore accounts, companies or structures in circumstances where the customer's economic needs do not support such requirements;
  - g. unnecessary routing of funds through third party accounts; or
  - h. unusual transactions without an apparently profitable motive.
6. Representative Offices are reminded that in accordance with Article 16 of the U.A.E. Law No. 4, Representative Offices or any of their Employees must not tip-off any Person, that is, inform any Person that his transaction is being scrutinised for possible involvement in suspicious Money Laundering operations, or that any other competent authority is investigating his possible involvement in suspicious Money Laundering operations.

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**APP1 GUIDANCE ON FITNESS AND PROPRIETY****A1.1 Introduction****Guidance**

1. This appendix provides guidance on the matters which the DFSA may take into account when assessing, for the purpose of REP, the fitness and propriety of:
  - a. an applicant for a Licence to be an Authorised Firm (Representative Office);
  - b. an Authorised Firm (Representative Office);
  - c. a Principal Representative and other staff; and
  - d. if applicable, any member of the applicant's or Representative Office's Group.
2. In every case, the Person must satisfy the DFSA that he is fit and proper. The DFSA will have regard to current, past and anticipated future factors.
3. In this appendix a Representative Office includes an applicant for a Licence to be a Representative Office and (where applicable) any Group Member.

**A1.2 Representative Office****Guidance****General**

1. A Representative Office not satisfying the DFSA with respect to the location of its offices, and legal status (as applicable), will not be considered fit and proper.
2. The DFSA will have regard to all relevant matters, whether arising in the DIFC or elsewhere. The DFSA will determine the materiality of any information for the purposes of considering whether a Representative Office has demonstrated, or continues to demonstrate, that it is fit and proper.
3. The DFSA may request or require any information which it considers relevant to its consideration of an application by a Representative Office.

**Background and history**

4. The DFSA will have regard to:
  - a. any matter affecting the propriety of the Representative Office's conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. whether a Representative Office has ever been the subject of disciplinary procedures by a government body or agency or any self regulating organisation or other professional body;
  - c. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self regulatory organisation, Financial Services Regulator, Authorised Market Institution or regulated exchange or clearing house;

- d. whether a Representative Office has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
- e. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by a Representative Office in excess of \$10,000 or awards that total more than \$10,000;
- f. whether a Representative Office has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; or
- g. whether a Representative Office has been open and truthful in all its dealings with the DFSA.

**Ownership and group**

- 5. The DFSA will have regard to:
  - a. any information provided by other regulators in relation to the Representative Office or any entity within its Group;
  - b. the Representative Office's connection with its Controllers or any other Person; and
  - b. whether the Representative Office or its Group is subject to any adverse effect or considerations arising from its country of incorporation or the country (or countries) of incorporation of its Controllers. In considering such matters, the DFSA will also have regard to the type and level of regulatory oversight in the country or countries of incorporation referred to above, the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA has adopted in its Rules.
- 6. Where a Representative Office also represents another member of its Group, then the DFSA will have regard to all matters mentioned in APP1 as appropriate in the circumstances in relation to determining the fitness and propriety of the relevant Group member or members.

**Resources**

- 7. The DFSA will have regard to whether the Representative Office has sufficient resources of all types, including:
  - a. whether the Representative Office has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner; and
  - b. whether the Representative Office has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering legislation, including arrangements to ensure all relevant staff are aware of their obligations.

**Collective suitability of individuals or other persons connected to the Representative Office**

- 8. The DFSA will also consider:
  - a. the collective suitability of all of the Representative Office's staff taken together, and whether there is a sufficient range of individuals with

appropriate skills and experience to understand, operate and manage the Representative Office's affairs in a sound and prudent manner; and

- b. the extent to which the Representative Office has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities.

#### **The DFSA's Rulebook**

9. In assessing whether a Representative Office is fit and proper, the DFSA will also consider the degree to which the Representative Office is ready, willing and able to conduct the relevant activities in accordance with the Rules and other legislation applicable in the DIFC.
10. A Representative Office which fails to comply with any one or more Rules of the DFSA may also be in breach of one or more of the Principles for Representative Offices. Accordingly, the Representative Office may then be liable for disciplinary or enforcement action. In certain circumstances a breach of a Rule or Principle may call into question whether that Person remains fit and proper.

### **A1.3 Principal Representative and other staff**

#### **Guidance**

#### **Integrity**

1. In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:
  - a. the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
  - c. whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self regulatory organisation or other professional body;
  - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
  - e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - f. a dismissal or a request to resign from any office or employment;
  - g. whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;

- h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
- i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an Authorised Individual in excess of \$10,000 or awards that total more than \$10,000;
- j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
- k. whether an individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that person was connected with that body corporate or within one year of such a connection;
- l. whether an individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that person was connected with that partnership or within a year of such a connection;
- m. whether an individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- n. whether an individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any DFSA, or any officially appointed inquiry, or Financial Services Regulator; or
- o. whether an individual has been candid and truthful in all his dealings with the DFSA.

**Competence and capability**

- 2. In determining the competence and capability of an individual, the DFSA may have regard to any factors, whether in the U.A.E. or elsewhere including, but not limited to whether an individual is capable of performing functions which his Representative Office employs or intends to employ him to perform.