

Appendix 1

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



Notice of Amendments

General Module

(GEN)

<u>Changes in relation to Consultation Paper No. 79</u>
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5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

- 5.1.1** (1) Subject to (5), this chapter applies to every Authorised Person with respect to the Financial Services carried on in or from the DIFC.
- (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
- (3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch's activities wherever they are carried on.
- (4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance.
- (5) Rules 5.3.13, 5.3.14, 5.3.15, 5.3.23, 5.3.24, 5.3.30 and 5.3.31 do not apply to an Authorised ISPV.
- (6) This chapter does not apply to a Representative Office.

Guidance

1. The purpose of this chapter is to set out the requirements for the Governing Body and the senior management within an Authorised Person who are to take direct responsibility for the Authorised Person's arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA's objectives or they affect the DFSA's functions under the legislation applicable in the DIFC. See also the requirements relating to organisation in Rules 5.3.2 and 5.3.3.
2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module.
3. In relation to an Authorised Firm which is a Fund Manager or the Trustee, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates or for which it acts as the Trustee.
4. In relation to an Authorised Person which carries on Islamic Financial Business in or from the DIFC, this chapter should be read in conjunction with the IFR module.

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8 ACCOUNTING AND AUDITING

8.1 Application

- 8.1.1** (1) This chapter applies subject to (2) to every:
- (a) Authorised Person other than a Representative Office;
 - (b) applicant for registration as an auditor with the DFSA; and
 - (c) Auditor registered with the DFSA.
- (2) This chapter does not apply to applicants for registration as Auditors in relation to Public Listed Companies.

Guidance

1. Chapter 4 of the Islamic Finance Rules (IFR) contains additional accounting and audit requirements that are specific to Islamic Financial Business.
2. Chapter 5 of the Markets Rules (MKT) contains the audit requirements that are specific to a Public Listed Company including registration criteria etc

8.2 Accounting standards

- 8.2.1** An Authorised Person must prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards (IFRS), ~~except to the extent it complies with section 4.2 of the Islamic Finance Rules (IFR) module with respect of its Islamic Financial Business.~~

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10 TRANSITIONAL RULES

10.1 Application

- 10.1.1** This chapter applies as follows:

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- (d) Rule 10.7.2 applies to every Authorised Person in respect of the corporate governance requirement in Rule 5.3.30 and the remuneration related requirement Rule 5.3.31-; and

- (e) Rule 10.8.1 applies to an Authorised Person who has been authorised to conduct Islamic Financial Business as an Islamic Financial Institution or to operate an Islamic Window.

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10.8 Specific relief – IFR Module - Accounting Standards

- 10.8.1** An Authorised Persons who is authorised to conduct Islamic Financial Business as an Islamic Financial Institution or to operate an Islamic Window and who applies the accounting and auditing standards of the Accounting and Auditing Organisation for Islamic Financial Institutions immediately prior to the date on which the rule-making instrument No 105 came into force may continue to apply such standards for a period of not more than 2 years from such date.

Changes in relation to Consultation Paper No. 80

6 GENERAL PROVISIONS

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6.5 Location of offices

- 6.5.1** (1) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a Body Corporate incorporated in the DIFC ~~under the Companies Law 2004~~, its head office and registered office must be in the DIFC.
- (2) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a ~~Partnership~~ partnership established under the DIFC Limited Liability Partnership Law 2004 or the DIFC General Partnership Law 2004, its head office must be in the DIFC.
- ~~(3) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services is an unincorporated association formed within the jurisdiction of the DIFC, its head office must be in the DIFC.~~

Guidance

1. In considering the location of an Authorised Firm's or Authorised Market Institution's head office, the DFSA will have regard to the location of its directors, partners and senior management and to the main location of its day-to-day operational, control, management and administrative arrangements and will judge matters on a case by case basis.
2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect to the location of its offices will, on this point alone not be considered fit and proper or able to satisfy the Licensing Requirements.

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7 AUTHORISATION

7.1 Application

- 7.1.1** (1) ~~Subject to (2),~~ This chapter applies, subject to (2), to every Person who is:

- (a) an Authorised Firm;
 - (b) an applicant for a Licence to be an Authorised Firm;
 - (c) an Authorised Individual; ~~or~~
 - (d) an applicant for Authorised Individual status; or
 - (e) a Controller of a Person referred to in (a) or (b).
- (2) This chapter does not apply to a Person intending to:
- (a) Operate an Exchange;
 - (b) Operate a Clearing House; or
 - (c) Operate a Representative Office.

Guidance

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

7.2 Application for a Licence

7.2.1 A Person who intends to carry on one or more Financial Services in or from the DIFC must apply to the DFSA for a Licence, in accordance with the Rules in this section.

- 7.2.2** (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2), (3) and (4), is:
- (a) a Body Corporate; or
 - (b) a Partnership; ~~or~~
 - (c) ~~an unincorporated association;~~

and who is not an Authorised Market Institution.

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

Guidance

Section 2.2.8 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment under Rule 7.2.2.

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

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

Guidance

A Person submitting an application under Rule 7.2.4 is required to:

- a. pay the appropriate application fee as set out in FER- ; and
- b. include information relating to its Controllers, completed by the relevant Controllers themselves, in the appropriate form in AFN.

Consideration and assessment of applications

7.2.5 In order to become authorised to carry on one or more Financial Services, the applicant must demonstrate to the satisfaction of the DFSA that it:

- (a) has adequate resources, including financial resources;
- (b) is fit and proper; and
- (c) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements, including the Rules.

Adequate resources

~~7.2.5~~ **7.2.6** In order to become authorised to carry on one or more Financial Services, the applicant must satisfy the DFSA that it has adequate resources, including financial resources. In making this assessment In assessing whether an applicant has adequate resources, the DFSA will consider:

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

Guidance

A Credit Rating Agency is not subject to any specific capital requirements in PIB. Instead, it is required, pursuant to Rules 4.2.4 and 7.2.56 to have and maintain adequate financial resources to manage its affairs prudently and soundly.

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

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

Guidance

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

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

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;
- (b) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;
- (c) the DFSA will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the DFSA's objectives described under Article 8 of the Regulatory Law 2004; and

- (d) ~~the DFSA will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.~~

Fitness and propriety

- 7.2.7** (1) In assessing whether an applicant is fit and proper, the DFSA will consider:
- (a) the fitness and propriety of the members of its Governing Body;
 - (b) the suitability of the applicant's Controllers or any other Person;
 - (c) the impact a Controller might have on the applicant's ability to comply with the applicable requirements;
 - (d) the Financial Services concerned;
 - (e) the activities of the applicant and any associated risks that those activities pose to the DFSA's objectives described under Article 8(3) of the Regulatory Law 2004;
 - (f) whether the applicant's affairs will be conducted and managed in a sound and prudent manner;
 - (g) any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC; and
 - (h) any other relevant matters.
- (2) The DFSA will, in assessing the matters in (1), 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

Section 2.2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment under Rule 7.2.7.

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

Compliance arrangements

- 7.2.8** In assessing whether an applicant has adequate compliance arrangements, the DFSA will consider whether it has:
- (a) clear and comprehensive policies and procedures relating to compliance with all applicable legal requirements including the Rules;

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- (b) adequate means to implement those policies and procedures and monitor that they are operating effectively and as intended.

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7.4 Licensed Functions and Authorised individuals

- 7.4.1** (1) Pursuant to Article 43 of the Regulatory Law 2004, the functions specified in Rules 7.4.2 to 7.4.9 are Licensed Functions.
- (2) An individual must not, subject to, (3), (4) and Rule 11.6.1, carry out a Licensed Function for an Authorised Firm unless he is authorised by the DFSA as an Authorised Individual to carry out that Licensed Function for that Authorised Firm.
- (3) The prohibition in (2) does not apply to a function performed by a registered insolvency practitioner (subject to the restrictions defined within Article 88 of the Insolvency Law 2009) if the practitioner is:
- (a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;
 - (b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;
 - (c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;
 - (d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or
 - (e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article 58 and 59 of the Insolvency Law 2009.
- (4) The prohibition in (2) does not apply to individuals appointed to act as managers of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law 2004.

Senior Executive Officer

- 7.4.2** The Senior Executive Officer function is carried out by an individual who:
- (a) has, either alone or jointly with other Authorised Individuals, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Firm's Financial Services carried on in or from the DIFC; and

(b) is a Director, Partner or Senior Manager of the Authorised Firm.

Licensed Director

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

Licensed Partner

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

7.5 Mandatory appointments

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

7.5.5 (1) In the case of aAn Authorised Firm which is a Partnership (including a Limited Liability Partnership) whose head office is located in the DIFC must register each Partner as a Licensed Partner, established under either the DIFC General Partnership Law or Limited Liability Partnership Law, the Licensed Partner function must be carried out by:

(a) each individual Partner who must be registered as a Licensed Partner; and

(b) in the case of a Partner which is a Body Corporate, by an individual nominated by that Body Corporate and registered as a Licensed Partner to act on its behalf.

(2) In the case of an Authorised Firm which is a partnership established under the DIFC Limited Partnership Law, the Licensed Partner function must be carried out by:

(a) each individual General Partner who must be registered as a Licensed Partner; and

(b) in the case of a General Partner which is a Body Corporate, by an individual nominated by that Body Corporate and registered as a Licensed Partner to act on its behalf.

Guidance

An Authorised Firm that is a Branch is not required to register its Directors as Licensed Directors under Rule 7.5.4 or its Partners as a Licensed Partner under Rule 7.5.5.

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11 SUPERVISION

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11.8 Changes relating to control

- 11.8.1** (1) This section applies, subject to (2) and (3), to:
- (a) an Authorised Firm; or
 - (b) a Person who is, or is proposing to become, a Controller specified in Rule 11.8.3.
- (2) This chapter does not apply to a Representative Office or a Person who is a Controller of such a firm.
- (~~3~~) A Credit Rating Agency must comply with the requirements in this section as if it were a non-DIFC established company.

~~**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.~~

Definition of a Controller

- 11.8.2** (1) A Controller is a Person who, either alone or with any Associate:
- (a) holds 10% or more of the shares in either the Authorised Firm or a Holding Company of that firm;
 - (b) is entitled to exercise, or controls the exercise of, 10% or more of the voting rights in either the Authorised Firm or a Holding Company of that firm; or
 - (c) is able to exercise significant influence over the management of the Authorised Firm as a result of holding shares or being able to exercise voting rights in the Authorised Firm or a Holding Company of that firm or having a current exercisable right to acquire such shares or voting rights.
- (2) A reference in this chapter to the term:
- (a) “share” means:
 - (i) in the case of an Authorised Firm, or a Holding Company of an Authorised Firm, which has a share capital, its allotted shares;
 - (ii) in the case of an Authorised Firm, or a Holding Company of an Authorised Firm, with capital but no share capital, rights to a share in its capital; and
 - (iii) in the case of an Authorised Firm, or a Holding Company of an Authorised Firm, without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up; and
 - (b) “a holding” means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Firm or a Holding Company of that firm held by that Person either alone or with any Associate.

Guidance

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the DIFC Companies Law. That definition describes when one body corporate is considered to be a holding company or a subsidiary of another body corporate and extends that concept to the ultimate holding company of the body corporate.
2. Pursuant to Rule 11.8.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over an Authorised Firm. The ability to exert significant management influence can arise even where a Person, alone or with his Associates, controls less than 10% of the shares or

voting rights of the Authorised Firm or a Holding Company of that firm. Similarly, a Person may be able to exert significant management influence where such Person does not hold shares or voting rights but has current exercisable rights to acquire shares or voting rights, such as under Options.

Disregarded holdings

11.8.3 For the purposes of determining whether a Person is a Controller, any shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with any Associate, in an Authorised Firm or a Holding Company of that firm are disregarded if:

- (a) they are shares held for the sole purpose of clearing and settling within a short settlement cycle;
- (b) they are shares held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or
- (c) the Person is an Authorised Firm or a Regulated Financial Institution and it:
 - (i) acquires the shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;
 - (ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and
 - (iii) retains the shares for a period less than one year.

Requirement for prior approval of Controllers of Domestic Firms

11.8.4 (1) In the case of an Authorised Firm which is a Domestic Firm, a Person must not:

- (a) become a Controller; or
- (b) increase the level of control which that Person has in the firm beyond a threshold specified in (2),

unless that Person has obtained the prior written approval of the DFSA to do so.

(2) For the purposes of (1)(b), the thresholds at which the prior written approval of the DFSA is required are when the relevant holding is increased:

- (a) from below 30% to 30% or more; or
- (b) from below 50% to 50% or more.

Guidance

See Rules 11.8.2 and 11.8.3 for the circumstances in which a Person becomes a Controller of an Authorised Person.

Approval process

- 11.8.5** (1) A Person who is required to obtain the prior written approval of the DFSA pursuant to Rule 11.8.4(1) must make an application to the DFSA using the appropriate form in AFN.
- (2) Where the DFSA receives an application under (1), it may:
- (a) approve the proposed acquisition or increase in the level of control;
 - (b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or
 - (c) object to the proposed acquisition or increase in the level of control.

Guidance

1. A Person intending to acquire or increase control in an Authorised Firm should submit an application for approval in the appropriate form in AFN sufficiently in advance of the proposed acquisition to be able to obtain the DFSA approval in time for the proposed acquisition. Sections 3-2-34 – 3-2-37 of the RPP Sourcebook set out the matters which the DFSA will take into consideration when exercising its powers under Rule 11.8.5 to approve, object to or impose conditions of approval relating to a proposed Controller or a proposed increase in the level of control of an existing Controller.
2. The DFSA will exercise its powers relating to Controllers in a manner proportionate to the nature, scale and complexity of an Authorised Firm's business, and the impact a proposed change in control would have on that firm and its Clients. For example, the DFSA would generally be less likely to impose conditions requiring a proposed acquirer of control of an Authorised Firm whose financial failure would have a limited systemic impact or impact on its Clients to provide prudential support to the firm by contributing more capital. Most advisory and arranging firms will fall into this class.

- 11.8.6** (1) Where the DFSA proposes to approve a proposed acquisition or an increase in the level of control in an Authorised Firm pursuant to Rule 11.8.5(2)(a), it must:
- (a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different period is considered appropriate by the DFSA and notified to the applicant in writing; and
 - (b) issue to the applicant, and where appropriate to the Authorised Firm, an approval notice as soon as practicable after making that decision.

- (2) An approval, including a conditional approval granted by the DFSA pursuant to Rule 11.8.5(2)(a) or (b), is valid for a period of one year from the date of the approval, unless an extension is granted by the DFSA in writing.

Guidance

1. If the application for approval lodged with the DFSA does not contain all the required information, then the 90 day period runs from the date on which all the relevant information has been provided to the DFSA.
2. If a Person who has obtained the prior DFSA approval for an acquisition or an increase in the control of an Authorised Firm is unable to effect the acquisition before the end of the period referred to in Rule 11.8.6(2), it will need to obtain fresh approval from the DFSA.

Objection or conditional approval process

- 11.8.7** (1) Where the DFSA proposes to exercise its objection or conditional approval power pursuant to Rule 11.8.5(2)(b) or (c) in respect of a proposed acquisition of, or an increase in the level of control in, an Authorised Firm, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:
- (a) a written notice stating:
 - (i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and
 - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
 - (b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.
- (2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
 - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
 - (c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.

Guidance

A final decision made by the DFSA pursuant to Rule 11.8.7(2)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

- 11.8.8** (1) A Person who has been approved by the DFSA as a Controller of an Authorised Firm subject to any conditions must comply with the relevant conditions of approval.
- (2) A Person who has been notified by the DFSA pursuant to Rule 11.8.7(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Authorised Firm.

Guidance

A Person who acquires control of or increases the level of control in an Authorised Firm without the prior DFSA approval or breaches a condition of approval is in breach of the Rules. See Rule 11.8.13 for the actions that the DFSA may take in such circumstances.

Notification for decrease in the level of control of Domestic Firms

- 11.8.9** A Controller of an Authorised Firm which is a Domestic Firm must submit, using the appropriate form in AFN, a written notification to the DFSA where that Person:

- (a) proposes to cease being a Controller; or
- (b) proposes to decrease that Person's holding from more than 50% to 50% or less.

Requirement for notification of changes relating to control of Branches

- 11.8.10** (1) In the case of an Authorised Firm which is a Branch, a written notification to the DFSA must be submitted by a Controller or a Person proposing to become a Controller of that Authorised Firm in accordance with (3) in respect of any one of the events specified in (2).
- (2) For the purposes of (1), a notification to the DFSA is required when:
- (a) a Person becomes a Controller;
- (b) an existing Controller proposes to cease being a Controller; or
- (c) an existing Controller's holding is:
- (i) increased from below 30% to 30% or more;
- (ii) increased from below 50% to 50% or more; or
- (iii) decreased from more than 50% to 50% or less.
- (3) The notification required under (1) must be made by a Controller or Person proposing to become a Controller of a Branch using the

appropriate form in AFN as soon as possible, and in any event, before making the relevant acquisition or disposal.

Obligations of Authorised Firms relating to its Controllers

- 11.8.11** (1) An Authorised Firm must have adequate systems and controls to monitor:
- (a) any change or proposed change of its Controllers; and
 - (b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact on the fitness and propriety of the Authorised Firm or its ability to conduct business soundly and prudently.
- (2) An Authorised Firm must, subject to (3), notify the DFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.
- (3) An Authorised Firm need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the DFSA or notified the event to the DFSA as applicable.

Guidance

Steps which an Authorised Firm may take in order to monitor changes relating to Controllers include 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.

- 11.8.12** (1) An Authorised Firm must submit to the DFSA an annual report on its Controllers within four months of its financial year end.
- (2) The Authorised Firm's annual report on its Controllers must include:
- (a) the name of each Controller; and
 - (b) the current holding of each Controller, expressed as a percentage.

Guidance

1. An Authorised Firm may satisfy the requirements of Rule 11.8.12 by submitting a corporate structure diagram containing the relevant information.
2. An Authorised Firm must take account of the holdings which the Controller, either alone or with any Associate, has in the Authorised Firm or any Holding Company of the firm (see the definition of a Controller in Rule 11.8.2).

Other Powers relating to Controllers

- 11.8.13** (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Firm where such a Person:
- (a) has acquired or increased the level of control that Person has in an Authorised Firm without the prior written approval of the DFSA as required under Rule 11.8.4;
 - (b) has breached the requirement in Rule 11.8.8 to comply with the conditions of approval applicable to that Person; or
 - (c) is no longer acceptable to the DFSA as a Controller.
- (2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Firm under (1), the DFSA must provide such a Person with:
- (a) a written notice stating:
 - (i) the DFSA's reasons for objecting to that Person as a Controller; and
 - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
 - (b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.
- (3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
 - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
 - (c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.
- (4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.
- (5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller, that Person must dispose of the relevant holdings within such period as specified in the final notice.
- (6) The DFSA must also notify the Authorised Firm of any decision it has made pursuant to (3).
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Guidance

1. Sections 3.2.34 and 3.2.37 of the RPP Sourcebook set out the matters which the DFSA takes into consideration when exercising its powers under Rule 11.8.13.
2. A final decision made by the DFSA pursuant to Rule 11.8.13(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

<u>Changes in relation to Consultation Paper No. 81</u>
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10 TRANSITIONAL RULES

10.1 Application

10.1.1 This chapter applies as follows:

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10.1.1 This chapter applies as follows:

- (a) Rule 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 apply to every Person to whom a provision of the Previous Regime applied;
- (b) Rule 10.6.2 applies to a Person who has been authorised to carry on a Financial Service in respect of a Designated Investment as defined in Rule 10.6.1; ~~and~~
- (c) Rule 10.6.3 applies to a Reporting Entity which has its Designated Investments included in an Official List of Securities of an Authorised Market Institution and to an Authorised Market Institution where its Official List of Securities includes Designated Investments as defined in Rule 10.6.1-; ~~;~~
- (d) Rule 10.7.2 applies to every Authorised Person in respect of the corporate governance requirement in Rule 5.3.30 and the remuneration related requirement Rule 5.3.31; ~~and~~
- (e) Rule 10.8.1 applies to an Authorised Person who has been authorised to conduct Islamic Financial Business as an Islamic Financial Institution or to operate an Islamic Window-; and
- (f) Section 10.9 applies to a Person who is the subject of a notice issued by the DFSA under Article 90 or 91 of the Regulatory Law 2004 prior to the date on which this rule came into force.

10.9 Specific Relief – ENF Module

10.9.1

- (1) Any matter commenced by the DFSA by way of notice under Article 90 or 91 of the Regulatory Law 2004 to impose an administrative fine or censure under the previous regime where the matter remains to be concluded on the date this rule came into force may be continued under the relevant requirements prescribed under the previous regime.

- (2) For the purposes of (1), the “previous regime” means the regime specified under Articles 90 and 91 of the Regulatory Law 2004 in force immediately prior to the coming into force of the DIFC Laws Amendment Law 2012 and the ENF module of the DFSA’s Rulebook prior to the coming into force of this Rule.