

RECOGNITION MODULE (REC) RULE-MAKING INSTRUMENT (No. 153) 2015

The Board of the Dubai Financial Services Authority in the exercise of the powers conferred on them by Article 23 of the Regulatory Law 2004, hereby make the Rules in the appendix to this instrument. The appendix to this instrument also contains the guidance made by the Chief Executive in the exercise of the powers conferred on him under the Regulatory Law 2004.

Commencement:

- (1) This instrument is made on 10 June 2015 and shall come into force on 1 August 2015.

Amendments to Modules:

- (2) The Recognition (REC) module – (REC/VER8/06-14) is repealed and replaced by Appendix 1 to this instrument and may be identified by the following reference – (REC/VER9/06-15)

Citation

- (3) This instrument may be cited as the Recognition Rule-making Instrument (No. 153) 2015.
- (4) Appendix 1 to this instrument may be cited as the Recognition module or REC.

By Order of the Board

Saeb Eigner
Chairman

Ian Johnston
Chief Executive

10 June 2015

RM153/2015



The DFSA Rulebook

Recognition

(REC)

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1 APPLICATION OF THE RECOGNITION MODULE

1.1 Application

1.1.1 This module (REC) applies to every Recognised Person and to applicants for admission to the list of Recognised Persons under Part 3 of the Markets Law 2012.

Guidance

1. A Recognised Person is defined in Article 37(3) as a Recognised body or a Recognised Member. A Recognised Body and a Recognised Member are also defined in Article 37(3) as follows:
 - a. “recognised body” means a person which operates an exchange, clearing house or alternative trading system in a jurisdiction other than the DIFC which has been admitted to, and appears on, the list of recognised bodies maintained by the DFSA pursuant to this Article.
 - b. “recognised member” means a person located in a jurisdiction other than the DIFC which has been admitted to, and appears on, the list of recognised members maintained by the DFSA pursuant to this article.
2. References to Articles made in this module are references to Articles in the Markets Law 2012 (“the Law”) unless otherwise stated.
3. This module is divided into three main chapters. Chapter 2 sets out the requirements for admission to the list of Recognised Persons, including the Recognition Criteria a Recognised Person must satisfy at the time of admission to the list of Recognised Persons and on a continuing basis. Chapter 3 sets out types of information a Recognised Person must provide the DFSA with on an ongoing basis, and in the case of a Recognised Body the information that must be included in its annual report to the DFSA. Chapter 4 sets out the process for a Recognised Person to request removal from the list of Recognised Persons, and also contains the requirements on the DFSA if it removes a Recognised Person from the list.
4. The following parts of the DFSA Rulebook also apply to Recognised Persons:

Module	Applicable chapters
General (GEN)	1 and 6
Enforcement (ENF)	All chapters

5. The Regulatory Policy and Process Sourcebook (RPP) may also be relevant to Recognised Persons.

2 ADMISSION TO THE LIST OF RECOGNISED PERSONS

2.1 Application

2.1.1 This chapter applies to every Recognised Person except to the extent that a provision provides for a narrower application.

2.2 Recognition as a recognised person

Guidance

1. The DFSA may only admit a Person to its list of Recognised Persons if it appears to the DFSA that such Person satisfies and will continue to satisfy the Recognition Criteria.
2. An applicant, or potential applicant for Recognition is advised to contact the DFSA to discuss their application at the earliest possible opportunity prior to the submission of any written documentation.

2.2.1 An applicant to be a Recognised Person must submit a written application to the DFSA demonstrating how the applicant satisfies or intends to satisfy the relevant Recognition Criteria at the date of Recognition and on an ongoing basis.

Guidance

A written application should also set out the basic general information relating to an applicant for a Recognised Person, including:

- a. its name;
- b. any business name or trading name it intends to use in the DIFC, if different to (a);
- c. the address of its registered office and head office; and
- d. the name of the Authorised Market Institution or ATS Operator upon which it is applying for membership.

2.2.2 In assessing an application for Recognition the DFSA may:

- (a) carry out any enquiries which it considers appropriate including enquiries independent of the applicant;
- (b) require the applicant to submit such additional information as the DFSA may reasonably require;
- (c) require any information submitted by the applicant to be verified in such manner as the DFSA may specify; and
- (d) take into account any information which the DFSA considers appropriate in relation to the applicant.

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- 2.2.3** 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.

2.3 Determination of applications and references

Guidance

Determination of applications

1. Where the DFSA recognises a Person pursuant to Article 37 of the Law, it will include such person in its list of Recognised Persons.

References

2. If the DFSA proposes to refuse an application for Recognition it is required under Article 37(9) of the Law to comply with the procedures in schedule 3 to the Regulatory Law.
3. If the DFSA decides to refuse an application for Recognition, the applicant may refer the matter to the FMT for review under Article 37(10) of the Law.
4. Under Article 29 of the Regulatory Law, a Person who commences a reference to the FMT, must do so within 30 days of the notification of the relevant decision.
5. The form of submission that a reference must take is specified in the rules of procedures of the FMT.

2.4 Recognition criteria for recognised bodies

- 2.4.1** For the purposes of Article 37(6) of the Law the Recognition Criteria for a Recognised Body are that:

- (a) it is licensed or otherwise authorised to operate an exchange, clearing house or alternative trading system in a jurisdiction acceptable to the DFSA;
- (b) it is regulated by a Financial Services Regulator to a standard satisfactory to the DFSA;
- (c) the law and practice under which the Recognised Body is licensed or otherwise authorised is broadly equivalent to the DFSA's regulatory regime as it applies to a DIFC Exchange;
- (d) adequate arrangements exist, or will exist for co-operation between the DFSA and the Financial Services Regulator responsible for the Recognised Body's licensing and regulation.
- (e) it has its head and registered offices outside of the DIFC; and
- (f) it operates to a standard which would reasonably satisfy the Licensing Requirements for Authorised Market Institutions set out in AMI.

2.5 Recognition criteria for recognised members

2.5.1 For the purposes of Article 37(6) of the Law the Recognition Criteria for a Recognised Member are that:

- (a) it is licensed or otherwise authorised to trade on or use the facilities of an exchange, clearing house or alternative trading system in a jurisdiction acceptable to the DFSA;
- (b) it is regulated in respect of the trading in (a) by a Financial Services Regulator to a standard satisfactory to the DFSA;
- (c) the law and practice under which the Recognised Member is licensed or otherwise authorised is broadly equivalent to the DFSA's regulatory regime as it applies to a DIFC Member;
- (d) adequate arrangements exist, or will exist for co-operation between the DFSA and the Financial Services Regulator responsible for the Recognised Member's licensing and regulation.
- (e) when using the facilities of an exchange, clearing house or alternative trading system in the DIFC, it does not exceed the scope of the activities it is licensed to carry on by its Financial Services Regulator;
- (f) subject to 2.5.2, it carries on business in a jurisdiction other than the DIFC and has its head and registered offices outside of the DIFC; and
- (g) subject to 2.5.3, when dealing on an Exchange or Alternative Trading System in the DIFC, it does so only for:
 - (i) non-DIFC customers; or
 - (ii) DIFC customers for whom it deals as a result of an unsolicited request for execution-only services.

2.5.2 Rule 2.5.1(e) does not prevent a Recognised Member which has a Branch which is an Authorised Firm from carrying on a Financial Service in or from the DIFC through such Branch.

2.5.3 Rule 2.5.1(g) does not apply to:

- (a) a Recognised Member which is licensed and supervised by a Financial Services Regulator in the UAE; and
- (b) a Recognised Member which has a Branch which is an Authorised Firm.

3 GENERAL PROVISIONS

3.1 Application

- 3.1.1** This chapter applies to every Recognised Person except to the extent that a provision provides for a narrower application.

3.2 Supervisory approach

Guidance

The DFSA will rely upon a Recognised Person's lead Financial Services Regulator to supervise a Recognised Person. The focus of DFSA's interest will be on the DIFC and on those activities of the Recognised Person that may impact the DIFC.

3.3 Core information

- 3.3.1** A Recognised Person must provide the DFSA with reasonable advance notice of a change in:
- (a) its name;
 - (b) any business name or trading name it uses in the DIFC, if different to (a); or
 - (c) the address of its registered office or head office in its home jurisdiction.

3.4 Reporting

- 3.4.1** A Recognised Body must notify the DFSA immediately upon the granting, modification, variation, withdrawal or refusal of any application for, or revocation of, licensing, recognition or authorisation:
- (a) in the jurisdiction in which the Recognised Body has its head office or principal business; and
 - (b) in any other jurisdiction to the extent that the relevant licensing, recognition or authorisation relates to operating an exchange, clearing house or alternative trading system.
- 3.4.2** A Recognised Person must notify the DFSA immediately upon the granting, modification, variation, withdrawal or refusal of an application for, or revocation of membership of an exchange, clearing house or alternative trading system, including membership of an Authorised Market Institution.

- 3.4.3** A Recognised Person must provide the DFSA with a copy of any information provided to any Financial Services Regulator to which the Recognised Person is subject and which is relevant to its status as a Recognised Person.
- 3.4.4** Notwithstanding Rules 3.4.1 to 3.4.3, a Recognised Person must notify the DFSA as soon as possible of:
- (a) anything which causes or may cause it to fail to satisfy the Recognition Criteria;
 - (b) it becoming aware that a Financial Services Regulator has started an investigation into the affairs of the Recognised Person;
 - (c) the appointment of inspectors, howsoever named, by a Financial Services Regulator to investigate or manage the affairs of the Recognised Person;
 - (d) the imposition of disciplinary measures or disciplinary sanctions on the Recognised Person by any Financial Services Regulator; or
 - (e) any significant event or anything else relating to the Recognised Person of which the DFSA would reasonably expect to be notified.

Guidance

1. The DFSA does not require notification from a Recognised Person, for the purposes of Rule 3.4.2(b) or (c), where the activities of the Financial Services Regulator are part of a routine or regular inspection or audit of the affairs of the Recognised Person.
2. Events which may cause a Recognised Person to be unable to meet the Recognition Criteria include significant changes to any relevant laws or regulations in its home jurisdiction, which:
 - a. govern exchanges, clearing houses or alternative trading systems;
 - b. are designed to prevent market abuse or money laundering;
 - c. affect the ability of a Recognised Body to seek information from its users;
 - d. affect the ability of a Recognised Person to provide information to the DFSA; or
 - e. requires significant changes to a Recognised Body's organisation, structure or practices.

3.5 Annual report

- 3.5.1** A Recognised Body must submit to the DFSA an annual report in accordance with Rule 3.5.2 within four months of its financial year end.
- 3.5.2** A Recognised Body's annual report must include:
- (a) a copy of its annual report and accounts, including any consolidated annual report and accounts of any Group of which the Recognised Body is a member;

- (b) notwithstanding Rule 3.4.4(a), confirmation that the Recognised Body has satisfied the Recognition Criteria throughout the previous 12 months and is continuing to satisfy the Recognition Criteria; and
- (c) if the Recognised Body has not satisfied the Recognition Criteria in any respect, an explanation of why the Recognised Body failed to satisfy the Recognition Criteria and what actions it is taking to satisfy the Recognition Criteria.

Guidance

The annual report may be submitted to the DFSA in either hard copy or electronic form.

- 3.5.3** (1) If a Recognised Body fails to submit its annual report to the DFSA within the period specified in Rule 3.5.1, or submits an annual report that does not include all of the information required under Rule 3.5.2, such failure to submit a duly completed report incurs a late submission fee of \$1,000.
- (2) Nothing in this Rule limits the right of the DFSA to take any other action.

3.6 Communication with and notification to the DFSA

- 3.6.1** A Recognised Person must deal with the DFSA in an open and co-operative manner.
- 3.6.2** Unless a Rule states otherwise, a Recognised Person must ensure that each notification and report it provides to the DFSA is:
 - (a) in writing and contains the Recognised Person's name;
 - (b) addressed for the attention of the Markets Division; and
 - (c) confirmed in writing as received by the DFSA.
- 3.6.3** A Recognised Person must ensure that any communication with the DFSA is conducted in the English language.

4 REMOVAL FROM THE LIST OF RECOGNISED PERSONS

4.1 Application

4.1.1 This chapter applies to every Recognised Person except to the extent that a provision provides for a narrower application.

4.2 Removal from the list of Recognised Persons at the Recognised Body's request

4.2.1 A Recognised Body which requests to have its name removed from the list of Recognised Persons must submit such request in writing stating:

- (a) the reasons for the request;
- (b) that it has ceased or will cease to offer access to its facilities to Persons located in the DIFC;
- (c) the date on which it ceased or will cease to offer access to its facilities to Persons located in the DIFC; and
- (e) that it has discharged, or will discharge, all obligations owed to Persons located in the DIFC.

4.3 Removal from the list of Recognised Persons at the Recognised Member's request

4.3.1 If a Recognised Member wishes to have its name removed from the list of Recognised Persons it must submit a request in writing stating:

- (a) the reasons for the request;
- (b) that it is no longer a Member of an Authorised Market Institution or will no longer be a Member of Authorised Market Institution;
- (c) the date on which its membership was terminated or will be terminated; and
- (d) that it has discharged, or will discharge, all obligations owed to any Person in the DIFC which have arisen as a result of its recognised status.

4.4 Removal from the list of Recognised Persons by the DFSA

Guidance

1. Where, pursuant to Article 37(7) of the Law, the DFSA removes a Person from its list of Recognised Persons, the DFSA will generally only do so if:
 - a. the Recognised Person is in breach of, or has otherwise been in breach of, the Law or Rules or other legislation administered by the DFSA;
 - b. the Recognised Person is failing, has failed, or is likely to fail, to satisfy the Recognition Criteria;
 - c. the Recognised Person requests to have its name removed from the list of Recognised Persons; or
 - d. the DFSA considers that the exercise of the power is otherwise necessary or desirable in the pursuit of its objectives.
2. For the avoidance of doubt, the DFSA may remove a Person from the list of Recognised Persons in circumstances where such Person continues to meet the Recognition Criteria. This may include where the DFSA considers it necessary or desirable in the pursuit of its objectives to prevent damage to the reputation of the DIFC or to protect direct or indirect users of the financial services industry in the DIFC.
3. If the DFSA proposes to remove a Person from its list of Recognised Persons, it is required under Article 37(9) of the Law to comply with the procedures in Schedule 3 to the Regulatory Law.
4. If the DFSA decides to remove a Person from its list of Recognised Persons, the Person may refer the matter to the FMT for review.

5 TRANSITIONAL PROVISIONS

5.1 Application

- 5.1.1** (1) Rule 5.1.2 applies to every Person to whom the Regulatory Law 2004 and any Rules made for the purposes of that law or the Markets Law 2004 applied immediately prior to the Effective Date.
- (2) The Effective Date for the purposes of this Rule is the date on which the Law comes into force.
- 5.1.2** (1) For the purposes of Article 1(5) of the Law, a Person who was recognised pursuant to Article 61 of the Regulatory Law 2004 as a Recognised Person and who has a valid Recognition Notice on the Effective Date is deemed to be recognised pursuant to the Law.
- (2) A Person in (1) will be admitted to the list maintained by the DFSA pursuant to Article 37(5) of the Law on the Effective Date.