

## **General Rulebook (GEN)**

\*In this attachment underlining indicates new text and striking through indicates deleted text.



## 1. INTRODUCTION

### 1.1 Application

- 1.1.1 This Rulebook (~~"GEN"~~) applies to every Person to whom ~~the Financial Services and Markets Regulations 2015 ("FSMR") or Market Infrastructure Rules ("FSMR or MIR")~~ applies and to the same extent as those Regulations or Rules, except to the extent that a provision of GEN provides for a narrower application. This Rulebook does not apply to Remote Bodies.

### 1.2 Overview of the Rulebook

#### Guidance

...

3. Chapter 4 contains mainly guidance in respect of interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, Close Links, Complaints against the Regulator and the public records maintained by the Regulator in accordance with section 196 of ~~the~~FSMR.

...

- 2.1.3 (1) The Principles apply to an Authorised Person only with respect to Activities carried on from an establishment maintained by it in ~~the~~ADGM, unless an extension in (2), (3), (4) or (5) applies.

...

- (5) Principle 5 also applies to an Authorised Person with respect to the Activities carried on in or from any place outside ~~the~~ADGM if and to the extent that the Activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the ADGM Financial System.

...

- 2.3.1 The six Principles for Approved Persons set out in Rule 2.4 apply to every Approved Person and in respect of every Controlled Function.

#### Guidance

...

2. Breaching a Principle for Approved Persons ~~makes may indicate that an Approved Person liable to disciplinary action and may indicate that they are is no longer fit and proper to perform a Controlled Function, and the~~ The Regulator, may consider suspending or withdrawing Approved Person status on that basis.

...

4. An Approved Person breaching a Principle ~~makes that person liable to disciplinary action and~~ may indicate that ~~they are an Approved Person~~ is no longer fit and proper to perform the related function; ~~the~~. The Authorised Person should consider suspending or withdrawing their status as an Approved Person on that basis and whether disciplinary action is warranted.

...

- 3.1.1 (1) This Chapter applies to every Authorised Person with respect to the Regulated Activities carried on in or from ~~the~~ ADGM.

...

### Guidance

...

3. In relation to an Authorised Person which carries on Islamic Financial Business in or from ~~the~~ ADGM, this Chapter should be read in conjunction with IFR.

...

### Conduct

- 3.3.20 An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (1) market misconduct; or
- (2) a Financial Crime under any applicable ~~U.A.E.~~ UAE laws.

### Conflicts of Interest

- 3.3.21 An Authorised Person must comply with Principle 7 as outlined in Rule 2.2.7, taking all reasonable steps to identify conflicts of interest between:

- (1) the Authorised Person, including its managers, Employees ~~and Clients~~, or any person directly or indirectly linked to ~~them by the Authorised Person by control, and a Client of the Authorised Person;~~ or
- (2) one Client of the Authorised Person and another Client,

that ~~arises~~ arise or may arise in the course of the Authorised Person ~~providing~~ carrying on any Regulated ~~Activities~~ Activity.

...

3.3.36 If an Authorised Person's records relate to business carried on from an establishment in a country or territory outside the ADGM, an official language of that country or territory may be used instead of the English language as required by Rule 3.3.35.

...

## **4. GENERAL PROVISIONS**

### **4.1 Application**

- 4.1.1 (1) ~~Rules 4.2 and 4.8 apply to every Person to whom any provision in the Rulebook applies.~~
- (21) Rules ~~4.3~~ 4.3, 4.4 and ~~4.4~~ 4.8 apply to every Authorised Person and Recognised Body.
- (32) Rules 4.5 and 4.6 apply to every Authorised Person, Recognised Body and Person who has submitted an application for authorisation to carry on one or more Regulated Activities.
- (43) Rule 4.7 applies to the Regulator.
- (54) This Chapter does not apply to a Representative Office.

### **4.2 Interpreting the Rulebook**

#### **Guidance**

#### **Interpretation**

1. Every provision in the Rulebook must 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.
- ...
7. References to sections made throughout the Rulebook are references to sections in ~~the~~ FSMR unless otherwise stated.

...

### **4.3 Emergency**

- 4.3.1 (1) If an Authorised Person or Recognised Body is unable to comply with a particular Rule due to an emergency which is outside its or its Employees' control and could not have been avoided by taking all reasonable steps, the Authorised Person or Recognised Body will not be in Contravention of that Rule to the extent that, in consequence of the emergency, compliance with that Rule is impractical.

...

### Guidance

...

2. The provisions in Rule 4.3.1 do not affect the powers of the Regulator under section 1(1) and (2) of the FSMR.

## 4.4 Disclosure of regulatory status

- 4.4.1 Neither an Authorised Person nor a Recognised Body must misrepresent its status expressly or by implication.

- (1) Each Authorised Person and Recognised Body must take reasonable care to ensure that every key business Document which is made available to third parties in connection with the Authorised Person or Recognised Body carrying on a Regulated Activity, or activity set out under a Recognition Order, in or from the ADGM includes one of the disclosures under this Rule.

...

## 4.5 Location of offices

- 4.5.1 (1) Where an Authorised Person; or a Recognised Body ~~or a Person who has submitted an application for authorisation to carry on one or more Regulated Activities, or activities set out under a Recognition Order,~~ is a Body Corporate incorporated in the ADGM, its head office and registered office must be in the ADGM.
- (2) Where an Authorised Person; or a Recognised Body ~~or a Person who has submitted an application for authorisation to carry on one or more Regulated Activities,~~ is a Partnership established under the Limited Liability Partnership Regulations 2015 or the Partnership Act 1890, its head office must be in the ADGM.
- (3) An Applicant for a Financial Services Permission or for a Recognition Order must satisfy the FSRA that it will meet the requirements in this Rule when the Financial Services Permission or Recognition Order is granted.

### Guidance

1. In considering the location of an Authorised Person or Recognised Body's head office, the Regulator will ~~have judge matters on a case by case basis, having regard to the location of its Directors, partners and senior management 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 Persons or the Recognition Requirements for Recognised Bodies, an~~ An Authorised Person or, Recognised

Body or Applicant for a Financial Services Permission or for a Recognition Order which does not satisfy the Regulator with respect to the location of its offices will, on this point alone, not be considered fit and proper or able to satisfy the Recognition Requirements.

#### 4.6 Close Links

- 4.6.1 (1) Where an Authorised Person, Recognised Body or a Person who has submitted an application for authorisation to carry on one or more Regulated Activities has Close Links with another Person, the Regulator must be satisfied that those Close Links are not likely to prevent the effective supervision by the Regulator of the Authorised Person or Recognised Body.
- (2) In assessing whether the Close Links between an Authorised Person, Recognised body or a Person who has submitted an application under (1), with another person will not prevent the effective supervision by the Regulator of that Authorised Person, Recognised Body or Person, the Regulator will consider:
- ...
- (c) if the person with whom the Authorised Person, Recognised Body or Person has Close Links is subject to the laws, regulations or administrative provisions of a country, territory or jurisdiction other than the ADGM, (the "Foreign Provisions"), whether those Foreign Provisions, or any deficiency in their enforcement, would prevent the Regulator's effective supervision of the Authorised Person, Recognised Body or Person.

...

#### Maintenance and publication

- 4.7.1 The records required to be maintained and published by the Regulator pursuant to section 196 of the FSMR shall be published and maintained in either or both of the following manners:

...

#### Acting as a Trade Repository

- 5.2.4 The requirements in Appendix 2 must be met by an Authorised Person whose Financial Services Permission, or Recognised Body whose Recognition Order, includes a designation permitting the Authorised Person or Recognised Body to maintain a Trade Repository.

#### Guidance

...

2. The functions of a Trade Repository promote increased transparency and integrity of information, particularly for centrally cleared OTC Derivatives. Transaction reporting requirements in ~~the~~ ADGM exist in section 146 of ~~the~~ FSMR which require reporting to Trade Repositories. These requirements are yet to be triggered by the Regulator.

...

#### **Persons Licensed by the Emirates Securities and Commodities Authority**

- 5.2.5 A Person licensed by the Emirates Securities and Commodities Authority to trade on an ~~U.A.E.UAE~~ exchange will not be granted a Financial Services Permission by the Regulator unless that Person has the prior approval of the Emirates Securities and Commodities Authority.

...

#### **Adequate and appropriate resources**

- 5.2.8 (1) In assessing whether an ~~applicant~~ Applicant has adequate and appropriate financial resources, the Regulator will consider:
  - (a) how the ~~applicant~~ Applicant will comply with the applicable provisions of PRU, COBS and PIN;
  - ...
  - (i) the ~~applicant's~~ Applicant's membership of a Group and any effect which that membership may have; ~~and~~
  - (j) whether the ~~applicant~~ Applicant is capable of meeting its debts as they fall due; ~~and~~
  - (k) any other relevant matters.
- (2) In assessing whether an ~~applicant~~ Applicant has adequate and appropriate non-financial resources, the Regulator will consider:
  - (a) the skills and experience of those who will manage the ~~applicant's~~ Applicant's affairs;
  - ...
  - (d) the effectiveness of the ~~applicant's~~ Applicant's business management; ~~and~~
  - (e) whether the ~~applicant's~~ Applicant's non-financial resources are sufficient to enable the ~~applicant~~ Applicant to comply with:

- (i) requirements imposed or likely to be imposed on the ~~applicant~~ Applicant by the Regulator in the exercise of its functions; or
- (ii) any other requirement in relation to whose Contravention the Regulator would be concerned for the purpose of any provision of Part 19 of ~~the~~ FSMR; and
- (f) any other relevant matters.

...

### **Fitness and propriety**

- 5.2.9 (1) In assessing whether an ~~applicant~~ Applicant is fit and proper, the Regulator will consider:
- (a) the fitness and propriety of the members of its Governing Body;
  - ...
  - (f) the nature (including the scale and complexity) of the activities of the ~~applicant~~ Applicant and any associated risks that those activities pose to the Regulator's objectives described under section 1(3) of ~~the~~ FSMR;
  - (g) whether the ~~applicant's~~ Applicant's business model will allow for its affairs and business to be conducted and managed in a sound and prudent manner, having regard in particular to the interests of consumers and the integrity of ~~the~~ ADGM;

...

### **Effective supervision**

- 5.2.10 (1) In assessing whether an ~~applicant~~ Applicant is capable of being effectively supervised by the Regulator, the Regulator will consider:
- ...
  - (d) if the ~~applicant~~ Applicant is a member of a Group, whether membership of the Group is likely to prevent the Regulator's effective supervision of the ~~applicant~~ Applicant; and
  - (e) whether the ~~applicant~~ Applicant is subject to consolidated supervision; and
  - (f) any other relevant matters.

...



5.2.12 In assessing an application for a Financial Services Permission, the Regulator may:

...

- (3) require the ~~applicant~~ Applicant to ~~have provide~~ information on how it intends to ensure compliance with a particular Rule;

...

5.2.13 (1) In assessing an application for a Financial Services Permission the Regulator may, by means of written notice, indicate the legal form that the ~~applicant~~ Applicant may adopt to enable authorisation to be granted.

- (2) Where the Regulator ~~thinks~~ considers it appropriate, it may treat an application made by one legal form or Person as having been made by the new legal form or Person.

...

### 5.3 Controlled Functions and Approved Persons

5.3.1 (1) Pursuant to Part 5 of ~~the~~ FSMR, the functions specified in Rules 5.3.2 to 5.3.9 are Controlled Functions.

...

- (4) A Controlled Function shall not include a function performed by a registered insolvency practitioner (subject to the restrictions defined within section 289 of the Insolvency Regulations ~~2015~~) if the practitioner is:

- (a) appointed as a receiver or administrative receiver within the meaning of Part 2 of the Insolvency Regulations ~~2015~~;
- (b) appointed as a liquidator in relation to a members' voluntary Winding-Up within the meaning of Chapter 3 of Part 3 of the Insolvency Regulations ~~2015~~;
- (c) appointed as a liquidator in relation to a creditors' voluntary Winding-Up within the meaning of Chapter 4 of Part 3 of the Insolvency Regulations ~~2015~~; or
- (d) appointed as a liquidator or provisional liquidator in relation to a compulsory Winding-Up within the meanings of Chapter 6 of Part 3 of the Insolvency Regulations ~~2015~~.

...

### Senior Executive Officer

5.3.2 The Senior Executive Officer function is carried out by an individual who:

- (1) has, either alone or jointly with other Approved Persons, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Person's Regulated Activities carried on in or from the ADGM; and

...

### 5.5 Mandatory appointments

5.5.1 (1) An Authorised Person must, subject to (2), make the following appointments and ensure that they are held by one or more Approved Persons at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer;
- (c) Compliance Officer; and
- (d) Money Laundering Reporting Officer.

(2) An Authorised Person which is a Credit Rating Agency:

- (a) need not make the appointments referred to in (1)(b) and (d); and
- (b) must ensure that the appointments referred to in (1)(a) and (c) are held by separate persons at all times.

...

5.5.2 The Approved Persons referred to in Rule 5.5.1(1)(a), (c) and (d) must be resident in the U.A.E.UAE.

### Guidance

1. In appropriate circumstances, the Regulator may waive the requirement for a Compliance Officer or Money Laundering Reporting Officer to be resident in the U.A.E.UAE. In determining whether to grant a Waiver, the Regulator will consider a range of factors on a case by case basis focused on whether the Authorised Person can demonstrate that it has appropriate compliance arrangements (see Rules 3.3.7 to 3.3.12). These factors may include, but are not limited to: the nature, scale and complexity of the activities of the Authorised Person; the ability of a remote officer to carry out his functions in differing time zones and a differing working week; the size, resourcing and capabilities of a remote compliance function; the ability of a remote officer to liaise and communicate readily with the Regulator; and the competency and capability of a remote officer and whether

the remote officer is able effectively to undertake or supervise regular compliance monitoring and keep up to date with applicable Rules.

...

5.5.4 An Authorised Person which is a Body Corporate whose head office and registered office are located in ~~the~~ ADGM, must register with the Regulator all of its Directors as Licensed Directors.

5.5.5 (4) In the case of an Authorised Person which is a Partnership established under either the Limited Liability Partnership Regulations 2015 or the Partnership Act 1890, the Licensed Partner function must be carried out by:

...

5.6.10 The Authorised Person is responsible for the conduct of its Approved Persons and for ensuring that they remain fit and proper to carry out their role.

#### Guidance

In considering whether an Approved Person remains fit and proper, the Authorised Person should consider ~~those matters in the GPM and~~ the factors outlined in section 2.3 of the GPM. The Authorised Person must also comply with the notification requirements in Rule 8.10 where it considers that an Approved Person is no longer fit and proper to perform their role.

...

6.1.2 An Authorised Person or Recognised Body which is a Representative Office is hereby exempt from the requirements in section 189 of ~~the~~ FSMR relating to the appointment of an Auditor.

#### Guidance

The Regulator has exercised its power under section 189 of ~~the~~ FSMR to exempt an Authorised Person or Recognised Body which is a Representative Office from the requirements in that section. As a result, in accordance with the terms of section 189 ~~the~~ FSMR, the Representative Office also does not need to comply with other requirements in Part 15 of ~~the~~ FSMR.

...

6.2.3 (1) An Authorised Person specified in (2) may prepare and maintain its financial statements in accordance with IFRS for Small and Medium Sized Entities (SMEs) where that standard applies to it.

...

(5) The procedures in Part 21 of ~~the~~ FSMR apply to a decision of the Regulator to give a direction under (3) to a particular Authorised Person.

- (6) If the Regulator decides to give a direction under (3) to a particular Authorised Person, the Authorised Person may refer the matter to the ~~Regulatory Committee~~ Appeals Panel for review.

...

- 6.6.1 Each Authorised Person and Recognised Body must, in writing, arrange for and ensure the submission of the following by its Auditor:

...

- (2) a Regulatory Returns Auditor's Report in accordance with ~~the Rules 6.6.4 and 6.6.5~~ as relevant;

...

- (4) if the Authorised Person is permitted to hold or control Client Investments or Provide Custody in or from ~~the ADGM~~, a Safe Custody Auditor's Report in respect of such business as applicable, in accordance with ~~the Rule 6.6.7~~;

...

...

- 7.2.6 If the complainant is not satisfied with the terms of redress offered by the Authorised Person, the Authorised Person must inform the complainant of other avenues, if any, for resolution of the Complaint and provide him with the appropriate contact details upon request.

#### **Guidance**

Other avenues for resolution of a Complaint may include an external dispute resolution scheme, arbitration, the Appeals Panel or Court in ~~the ADGM~~.

...

- 8.2.2 [Deleted]

#### **Guidance**

Throughout the Rulebooks and non-Rulebook guidance a Direction given under section 9 of ~~the FSMR~~ will be referred to as a "Waiver" or a "Modification" as appropriate.

...

- 8.4.1 An Authorised Person seeking to have its Financial Services Permission withdrawn must submit a request in writing stating:

- (1) the reasons for the request;

- (2) that it has ceased or will cease to carry on Regulated Activities in or from ~~the~~ ADGM;
- (3) the date on which it ceased or will cease to carry on Regulated Activities in or from ~~the~~ ADGM;
- (4) that it has discharged, or will discharge, all obligations owed to its Customers in respect of whom the Authorised Person has carried on, or will cease to carry on, Regulated Activities in or from ~~the~~ ADGM; and

...

## 8.5 Changes to an Approved Person status

### Guidance

This Rule addresses applications or requests regarding Approved Persons with respect to Parts 3, 4 and 5 of ~~the~~ FSMR.

...

- 8.5.3 A request for the variation or withdrawal of a condition or restriction may only be made after the expiry of any period within which a reference to the Court relating to the relevant condition or restriction may commence under Part 19 of ~~the~~ FSMR.

...

## 8.7 ~~Dismissal or resignation of an~~Withdrawal of Approved Person status

...

## 8.8 Changes relating to control

- 8.8.1 (1) This Rule applies, subject to (2) and (3), to:

...

### Guidance

The requirements in respect of notification of changes relating to control of Branches (i.e. non-ADGM established companies) are set out in Rule 8.8.10. Although some Credit Rating Agencies may be companies established in ~~the~~ ADGM, such companies will only be subject to the notification requirements relating to their Controllers. Accordingly, regardless of whether a Credit Rating Agency is a company established in ~~the~~ ADGM or a Branch operation, it is subject to the notification requirements only and not to the requirement for prior approval by the Regulator of changes relating to its Controllers.

### Definition of a Controller

- 8.8.2 (1) A Controller is a Person who, either alone or with any Associate:
- ...
- (3) The Regulator may make additional rules which:
- (a) provide for exemptions from the obligations to notify imposed by Rules 8.8.5, 8.8.9 and Part 10 of ~~the~~ FSMR; or
  - (b) amend the cases in this Chapter where a ~~person~~ Person is deemed to be:
- ...

### Contraventions of the Rules under this Chapter

- 8.8.14 (1) A Person commits a Contravention of the Rules under this Chapter where it:
- ...
- (2) Any Contravention in (1) will entitle the Regulator to exercise its powers in Part 19 of ~~the~~ FSMR.

## 8.9 Creation of additional Cell of a Protected Cell Company or an Incorporated Cell Company for an Insurer

- 8.9.1 This Rule applies to Insurers that are Protected Cell Companies or Incorporated Cell Companies.

### Guidance

1. An Insurer that is a Protected Cell Company is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the Companies Regulations ~~2015~~.
  2. An Insurer that is an Incorporated Cell Company is a company incorporated as, or converted into, an Incorporated Cell Company in accordance with the provisions of the Companies Regulations ~~2015~~.
- 8.9.2 A Protected Cell Company and an Incorporated Cell Company cannot be established in ~~the~~ ADGM without the consent of the Regulator.
- ...
- 8.9.6 (1) The Regulator may:
- (a) grant approval;
  - (b) grant approval with conditions or restrictions; or

(c) refuse approval;

for the creation of a new Cell.

(2) The procedures in Part 21 of ~~the~~ FSMR apply to a decision of the Regulator under (1)(b) and (1)(c).

...

## 8.10 Notifications

8.10.1 (1) This Rule applies to every Authorised Person and Recognised Body, unless otherwise provided, with respect to the carrying on of Regulated Activities and any other activities whether or not financial.

...

### Guidance

...

3. Each Authorised Person, Recognised Body and its Auditors is also required under Part 16 and section 193 of ~~the~~ FSMR respectively, to disclose to the Regulator any matter which may indicate a breach or likely breach of, or a failure or likely failure to comply with, Regulations or Rules. Each Authorised Person and Recognised Body is also required to establish and implement systems and procedures to enable its compliance and compliance by its Auditors with notification requirements.

### Core information

8.10.2 Each Authorised Person must provide the Regulator with reasonable advance notice of a change in:

- (1) its name;
- (2) any business or trading name under which it, ~~in the case of an Authorised Person,~~ carries on a Regulated Activity in or from ~~the~~ ADGM;
- (3) the address of its principal place of business in ~~the~~ ADGM;
- (4) in the case of a Branch, its registered office or head office address;
- (5) its legal structure; or
- (6) ~~in the case of an Authorised Person,~~ an Approved Person's name or any material matters relating to his fitness and propriety.

8.10.3 A Domestic Firm must provide the Regulator with reasonable advance notice of the establishment or closure of a branch office anywhere outside the jurisdiction of ~~the~~ ADGM from which it carries on Regulated Activities.

...

8.10.5 (1) The Regulator may object to the establishment by a Domestic Firm of a branch office elsewhere outside the jurisdiction of ~~the~~ ADGM.

(2) If the Regulator objects to the Domestic Firm establishing a branch anywhere outside the jurisdiction of ~~the~~ ADGM, the Domestic Firm may not proceed with establishment of such a branch.

(3) The procedures in Part 21 of ~~the~~ FSMR apply to a decision of the Regulator under (1).

...

#### **Regulatory impact**

8.10.6 Each Authorised Person and Recognised Body must advise the Regulator immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

...

(8) any action that would result in a material change in the capital adequacy or solvency of the Authorised Person; ~~or~~

(9) non-compliance with Rules due to an emergency outside the Authorised Person or Recognised Body's control and the steps being taken by the Authorised Person or Recognised Body; ~~or~~

(10) an Approved Person is no longer fit and proper to perform a Controlled Function.

#### **Fraud and errors**

8.10.7 Each Authorised Person and Recognised Body must notify the Regulator immediately if one of the following events arises in relation to its activities in or from ~~the~~ ADGM:

...

#### **Other Regulators**

8.10.8 Each Authorised Person and Recognised Body must advise the Regulator immediately of:

(a) the granting or refusal of any application for or revocation of authorisation to carry on financial services in any jurisdiction outside ~~the~~ ADGM;



...

### **Winding-Up, bankruptcy and insolvency**

8.10.10 Each Authorised Person must notify the Regulator immediately on:

...

- (5) the application of any person against the Authorised Person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country, territory or jurisdiction outside the ADGM.

...

8.12.1 This Rule applies to every Authorised Person and Recognised Body other than a Representative Office.

### **Guidance**

1. Under section 203 of the FSMR, the Regulator may require an Authorised Person or Recognised Body to provide it with a report on any matter. The Person appointed to make a report must be a Person nominated or approved by the Regulator. This Person will be referred to throughout the Rulebook as a "Skilled Person".
2. When requesting a report under section 203 of the FSMR, the Regulator may take into consideration the matters set out in the GPM.

...

8.12.4 When an Authorised Person or Recognised Body appoints a Skilled Person, the Authorised Person or Recognised Body must, in the contract with the Skilled Person:

- (1) require and permit the Skilled Person to co-operate with the Regulator in relation to the Authorised Person or Recognised Body and to communicate to the Regulator information on, or his opinion on, matters of which he has, or had, become aware in his capacity as a Skilled Person reporting on the Authorised Person or Recognised Body in the following circumstances:
  - (i) the Skilled Person reasonably believes that, as regards the Authorised Person or Recognised Body concerned:
    - (A) there is or has been, or may be or may have been, a Contravention of any relevant requirement that applies to the Authorised Person or Recognised Body concerned; and
    - (B) that the Contravention may be of material significance to the Regulator in determining whether to exercise, in relation to the

Authorised Person or Recognised Body concerned, any powers conferred on the Regulator under any provision of ~~the~~FSMR;

...

8.12.5 An Authorised Person and Recognised Body must ensure that the contract required under Rule 8.12.4:

- (1) is governed by the Regulations and Rules of ~~the~~ADGM;

...

8.13.1 The Regulator has the power to impose a prohibition or requirement on an Authorised Person or Recognised Body in relation to its business or in relation to its dealing with property in circumstances where:

...

- (10) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country, territory or jurisdiction outside ~~the~~ADGM for it;

...

## **9. ~~REPRESENTATIVES~~REPRESENTATIVE OFFICES**

### **9.1 Application**

- 9.1.1 (1) This Chapter applies to every Person who carries on, or intends to carry on, the Regulated Activity of Operating a Representative Office in or from ~~the~~ADGM.
- (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~~ADGM.

#### **Guidance**

...

2. A Representative Office should also ensure that it complies with and has regard to relevant provisions of ~~the~~FSMR and MKT. FSMR gives the Regulator a number of important powers in relation to Authorised Persons including powers of supervision and enforcement.
3. The Regulated Activity of Operating a Representative Office is defined in Schedule 1 of ~~the~~FSMR. By virtue of this Schedule, the Regulated Activity of Operating a Representative Office is a stand-alone Regulated Activity.

...

5. A Representative Office which undertakes a Regulated Activity which is outside the scope of its Financial Services Permission will be in breach of Part 4 of ~~the~~ FSMR. If the Regulator believes that a Representative Office is in breach of Part 4 of ~~the~~ FSMR, it may take steps which may include withdrawal of authorisation and formal enforcement action under ~~the~~ FSMR.

...

- 9.2.2 (1) An application to Operate a Representative Office may only be made by a Person who is:
  - (a) incorporated; and
  - (b) regulated by a Non-ADGM Financial Services Regulator in a jurisdiction other than ~~the~~ ADGM.
- (2) The Regulator will not consider an application for the activity of Operating a Representative Office from an ~~applicant~~ Applicant who intends to operate in ~~the~~ ADGM as a Domestic Firm.

### 9.3 Consideration and assessment of applications

- 9.3.1 An ~~applicant~~ Applicant will only be authorised to carry on the Regulated Activity of Operating a Representative Office if the Regulator is satisfied that the ~~applicant~~ Applicant is fit and proper to hold a Financial Services Permission. In making this assessment the Regulator may consider:
  - (1) whether the ~~applicant~~ Applicant is subject to supervision by a Non-ADGM Financial Services Regulator;
  - (2) whether the ~~applicant's~~ Applicant's Non-ADGM 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~~ Applicant of a Representative Office in the ADGM; and
  - (3) any other relevant matters.

#### Guidance

The GPM sets out matters which the Regulator takes into consideration when making an assessment of the kind under Rule 9.3.1.

- 9.3.2 In relation to the assessment under Rule 9.3.1, amongst other considerations:

- (1) the ~~applicant~~ Applicant must demonstrate to the Regulator's satisfaction that it is fit and proper;

- (2) the ~~applicant~~ Applicant must demonstrate to the Regulator's satisfaction that its Principal Representative is fit and proper;
- (3) the Regulator will consider any matter which may harm or may have harmed the integrity or the reputation of the Regulator or ~~the~~ ADGM;
- (4) the Regulator will consider the activities of the ~~applicant~~ Applicant and the associated risks, and accumulation of risks, that those activities pose to the Regulator's objectives described under section 1(3) of ~~the~~ FSMR; and
- (5) the Regulator 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~~ Applicant.

...

9.3.4 For the purposes of IFR and Schedule 1 of ~~the~~ FSMR, a Representative Office will not be taken to be holding itself out as conducting Islamic Financial Business in or from ~~the~~ ADGM in circumstances where it:

- (1) does not represent that it provides, in or from ~~the~~ ADGM, any services that are in accordance with Shari'a; and
- (2) acts within the scope of its Financial Services Permission, that is, it does not carry on in or from ~~the~~ ADGM a Regulated Activity other than Operating a Representative Office.

### Guidance

IFR and Schedule 1 of ~~the~~ FSMR contain a prohibition against an Authorised Person holding itself out as conducting Islamic Financial Business without first obtaining a Financial Services Permission. An Islamic Financial Institution may operate a Representative Office in ~~the~~ ADGM 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~~ ADGM. Accordingly, there is no requirement to obtain an appropriate Financial Services Permission and IFR does not apply.

## 9.4 Withdrawal of a Financial Services Permission

9.4.1 A Representative Office seeking to have its Financial Services Permission withdrawn must submit a request in writing stating:

- (1) the reasons for the request;
- (2) that it has ceased or will cease to carry on the Regulated Activity of Operating a Representative Office in or from ~~the~~ ADGM; and

- (3) the date on which it ceased or will cease to carry on the Regulated Activity of Operating a Representative Office in or from ~~the~~ ADGM.

...

- 9.5.1 (1) The four Principles for Representative Offices set out in 9.6 apply to every Representative Office in accordance with Rule 9.1.1.

#### **Guidance**

1. Under Rule 9.1.1(2), the principles apply, unless otherwise stated, only to the Representative Office in ~~the~~ ADGM and not to the institution as a whole.

...

- 9.7.1 A Representative Office must have a place of business within the geographical boundaries of ~~the~~ ADGM.

...

- 9.8.2 (1) A Representative Office must at all times have a Principal Representative who is resident in the ~~U.A.E.~~ UAE and who has satisfied the Regulator as to fitness and propriety.

...

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

...

- 9.12.2 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~~ FSMR, MKT or any other relevant legislation.

#### **Marketing Material**

- 9.12.3 In ~~this Rules 9.12 and 9.13~~, "Marketing Material" means any material communicated to a Person in the course of marketing financial services or financial products or effecting introductions.

...

- 9.13.1 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 9.12.3~~) issued, distributed or otherwise communicated by, or on behalf of, the Representative Office.

...

### **Lead regulation**

- 9.15.3 If requested by the Regulator, a Representative Office must provide the Regulator with information that it or another member of its Group has provided to a Non-ADGM Financial Services Regulator.

### **Guidance**

Under sections 215 to 217 of the FSMR the Regulator may exercise its powers for the purpose of assisting other Regulators or agencies.

...