

Guidance & Policies Manual (GPM)

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



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- 1.1.2 The GPM is meant to assist persons operating or intending to operate financial services or a market in ~~the~~ ADGM and should be read in conjunction with FSMR and the associated Rulebooks.

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- 1.2.1 Where we have used a defined term in the GPM, these are identified by the capitalisation of the word or a phrase capitalised. You can find the meanings of these defined terms in the ~~Glossary module of the Rulebooks (GLO) Rulebook~~. There are also defined terms in FSMR. If there is no capitalisation of the initial letter, the word or phrase has its normal everyday meaning.

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General Prohibition and by way of business

- 2.1.3 FSMR imposes a prohibition on all persons who carry on an activity regulated by us in ~~the~~ ADGM "by way of business" unless the person is an Authorised Person or an Exempt Person.

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Reputation and standing

- 2.2.2 In assessing the reputation and standing of an applicant, we can take into consideration any relevant matters including:

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- (c) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self-regulatory organisation, another regulatory authority or regulated exchange or clearing house;

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Location of offices

- 2.2.3 An applicant should be able to satisfy us that it will establish an office and maintain a presence in ~~the~~ ADGM based on the activities it will carry on.

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- 2.2.7 If the applicant is seeking to branch into ~~the~~ ADGM, we will take into account where the applicant's head office is located.

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2.5 Start-up entities in the ADGM

What are "start-up" entities?

2.5.1 This paragraph serves as a guide to assist start-up entities that are interested in applying for a Financial Services Permission to conduct Regulated Activities in ~~the~~ ADGM. It sets out the information required to support an application and what criteria we may consider in the authorisation process. Start-ups, as with any applicants, will be required to satisfy all of our requirements prior to being granted a Financial Services Permission.

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Compliance risk

2.5.11 The Senior Executive Officer of a firm is expected to take full responsibility for ensuring compliance with ADGM legislation by establishing a strong compliance culture which is fully embedded within the organisation. A start-up will be required to appoint a ~~U.A.E.~~ UAE resident as the senior executive officer as well as the compliance officer and money laundering reporting officer (MLRO) with the requisite skills and relevant experience in compliance and anti-money laundering duties. The individuals fulfilling the compliance and MLRO roles will be expected to demonstrate to us their competence to perform the proposed roles and adequate knowledge of the relevant sections of ADGM legislation and, in the case of the MLRO, the wider anti-money laundering legislation.

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2.5.13 A key document will be the regulatory business plan submitted in support of the application. It will facilitate the application process if applicants cover the following areas within this submission:

- (a) an introduction and background;
- (b) strategy and rationale for establishing in ~~the~~ ADGM;

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2.7.3 We may grant a Financial Services Permission only if we are satisfied that the applicant has demonstrated that it has the systems and controls in place to undertake Islamic Financial Business. In determining whether to grant such a Financial Services Permission, we may consider, among other things, those matters set out in the IFR ~~module of the ADGM Rulebook~~.

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2.8.2 In assessing an application for a Representative Office, we will need to be satisfied that:

- (a) the proposed activities are that of marketing, which means providing information on investments or financial services; engaging in promotions of investments or financial services; or making introductions or referrals of investments or financial services. It does not include advising on investments or the receiving or transmitting of orders (see paragraph 67 of Schedule 1 of FSMR); and

- (b) the applicant is incorporated and regulated by another regulatory authority and is setting up in ~~the~~ ADGM as a branch.
- (c) In assessing an application to establish a Representative Office, the Regulator will also consider whether it is in the interests of ADGM to grant such an authorisation, having regard to the limited scope of activity that may be carried out under such authorisation and the Regulator's objectives and guiding principles as outlined in sections 1(3) and (4) of FSMR. It is not the Regulator's intent that an approval granted under GEN 9.3.1 be regarded as encouraging the establishment of entities in ADGM that are solely marketing entities with minimal business presence and economic substance. The application will be reviewed favourably if the Applicant is able to demonstrate clear plans and commitment to scale its activities in ADGM.

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3.2.2 A firm is expected to provide information as required or reasonably requested relating to the Authorised Person and, where applicable, its consolidated or lead regulatory arrangements. This information may include:

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- (d) details of disciplinary proceedings or any matters which may have financial consequences, reputational impact or pose any significant risk to ~~the~~ ADGM or to the firm; and
- (e) the group-wide corporate governance practices and policies, and the remuneration structure and strategies adopted.

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Domestic Firm's Group with ADGM head office

3.2.5 We will usually be the lead and consolidated regulator of any Group headquartered as a Domestic Firm in ~~the~~ ADGM. Members of the Group, that is, any of the firm's Subsidiaries or Branches, will be either subject to our exclusive supervision or, where members of the Group are located in a jurisdiction outside ~~the~~ ADGM, generally subject to lead or consolidated supervision by us in co-operation with another regulator, provided we are satisfied that it meets appropriate regulatory criteria and standards.

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Periodic communications

3.2.18 We are committed to open and transparent communication with firms. From time to time, we may issue letters to Senior Executive Officers or equivalent persons across ~~the~~ ADGM. Frequently, these letters will be issued as a means of communicating findings arising from thematic visits, emerging trends and risks in the financial sector, or in response to any major events or developments.

3.2.19 From time to time, we may consider a particular item of communication to a firm to be of key regulatory importance. For this reason, it may be necessary to issue such

communications directly to a senior member of staff at the board level of the ADGM entity copied (where appropriate) to the group's home regulator. For entities established as a Branch in the ADGM, these communications will likely be delivered to the Chairman of the Board at the ADGM Branch entity's head or Parent office. For ADGM incorporated entities, these communications will likely be delivered directly to the Chairman of the firm's board or head office. These communications may include, for example, the findings of our risk assessment visits where a risk mitigation plan has been sent that contains significant matters of concern to our objectives.

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Controllers - Our approval

3.2.21 A person who proposes to become a Controller of a Domestic Firm or an existing Controller who proposes to increase the level of control which that person has in a ~~domestic firm~~ Domestic Firm beyond the threshold of 20%, 30% or 50% is required to obtain our prior approval before doing so. A Controller does not require our prior approval if they are simply increasing their level of control within the same control band that is specified in GEN 8.8.4(2). Our assessment of a proposed acquisition or increase in control of a ~~domestic firm~~ Domestic Firm is a review of such a firm's continued fitness and propriety and ability to conduct business soundly and prudently and takes into account considerations set out in paragraph 2.2.9.

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3.2.23 Where we propose to object to or impose conditions relating to a proposed acquisition of or increase in the level of control in a ~~domestic firm~~ Domestic Firm, we will first notify the applicant in writing of its proposal to do so and its reasons. We will take into account any representations made by an applicant before making our final decision.

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4.4.3 Relief will be given to overcome the disproportionate effects of Rules in exceptional cases, the anomalous effects of Rules in unique cases for which they were not created, and the unforeseen side effects of Rules. For example, changes in international standards may result in unforeseen differences between the Rules and the new standards. While the Rules would ordinarily adapt over time to reflect such changes, an Authorised Person or Recognised Body may seek a waiver or modification of a specific Rule to accommodate the evolution of the international standard. This may also represent a scenario where we may publish a notice to be made available to other affected persons within the ADGM upon their consent. Similarly, where material changes to a Rule may make it impractical for Authorised Persons or a Recognised Body to comply immediately, a request for a temporary waiver or modification may be granted.

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5.4.5 Examples of Requirements that we may consider imposing include, among other things, a requirement:

- (a) not to take on new business;
- (b) not to hold or control Client Money;

- (c) not to trade in certain categories of Specified Investment;
- (d) prohibiting or restricting the disposal of, or other dealing with, any of the firm's assets (whether in ~~the~~ ADGM or elsewhere); and
- (e) that all or any of the firm's assets (or all or any assets belonging to investors but held by the firm) must be transferred to a trustee approved by us.

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5.6.2 In determining whether to exercise our power under section 46 of FSMR, we will have regard to all relevant matters including, but not limited to:

- (a) the criteria for assessing the fitness and propriety of an Approved Person as set out in GEN 5.2.9 and section 2.3 of GPM;

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- (g) the severity of the risk that the individual poses to consumers and to confidence in the ADGM ~~financial system~~ Financial System.

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6.1.4 There are a number of principles underlying our approach to the exercise of our enforcement powers, including:

- (a) the effectiveness of the regulatory regime depends on the maintenance of an open and co-operative relationship between us and those we regulate;

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- (d) we will act swiftly and decisively to stop conduct which threatens the integrity of ~~the~~ ADGM or the stability of the financial services industry in ~~the~~ ADGM, minimise its effects, and prevent such conduct from re-occurring;

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Enforcement assessment: Threshold Conditions cases

6.2.7 We may take enforcement action against an Authorised Person who no longer meets the Threshold Conditions. We view the Threshold Conditions as being fundamental requirements for a firm operating within ~~the~~ ADGM under a Financial Services Permission.

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Complaints

6.3.3 Complaints received by us from members of the public that relate to:

- (a) any conduct of, or dissatisfaction with, any person regulated by us;
- (b) a potential contravention of FSMR or Rules; or

- (c) any conduct that causes, or may cause, damage to the reputation of the ADGM or the financial services industry in the ADGM;
- (d) are classified as regulatory complaints and are assessed through our complaints management function.

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Referrals

6.3.10 There are two types of referrals - internal and external.

- (a) Internal referrals
- (b) Internal referrals usually originate from our supervisory activities. Our supervisory framework is designed to detect and mitigate risks to the ADGM and the financial services industry in the ADGM.

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9.8.2 The ADGM Board of Directors established the Appeals Panel in accordance with FSMR. More detail on the Appeals Panel and its members can be found at <https://www.adgm.com/financial-services-regulatory-authority/independent-review>

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