

Referral and Agency Arrangements Guidance for Company Service Providers

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Introduction

This document is designed to assist Company Service Providers (CSPs) regulated in the Abu Dhabi Global Market (ADGM) in considering their regulatory obligations under Schedule 1 of the Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2024.

The content outlines considerations for CSPs when entering referral arrangements with agents, intermediaries and other third parties. The below is not exhaustive, and CSPs should consider the full scope of their regulatory obligations when entering any such arrangements.

1. Transparency and Client Awareness

Condition 10(1)(d), Transparency and Condition 10(1)(a)(iii), Ethical Behaviour and Professional Practice

The person ultimately establishing an ADGM Person, or the established ADGM Person (the “Client”) must be clearly informed of any referral arrangement, ensuring full transparency. The CSP must disclose the nature of the referral agreement and ensure the Client understands that the CSP is the service provider and responsible for regulatory compliance, not any referrer or agent of the Client. It is sensible for the CSP to consider sharing any referral agreement with the Client for full transparency.

Where a referrer is acting in the capacity of agent of a Client, the CSP maintains a responsibility to consider whether the agency relationship prevents the CSP from complying with its responsibilities to the Client including in relation to transparency. A CSP may wish to consider communicating the CSPs client responsibilities to the referrer or agent, to ensure there is no hinderance of a CSPs obligations.

2. Client Relationship

Condition 1(2)(b), Interests of Consumers and integrity of ADGM

The CSP should consider utilising direct communications with a Client where it would be in the interests of the Client. The Client must always be aware that the CSP is their service provider, and able to raise issues and request services directly from the CSP.

An agency relationship will often mean that day-to-day communications with regards to the Client’s needs are made through the agent. However, an agency relationship does not result in the agent being the client, and the client relationship is with the Client, not the agent. Being clear as to the nature of the Client relationship may also be necessary for the purposes of PII.

The CSP must ensure the Client understands that all service-related decisions are the CSP’s responsibility. (notably this will apply under s.296A of the Companies Regulations 2020 and the requirement to appoint a CSP for non-exempt companies). The CSP should ensure that the referrer or agent is not considered to be the ultimate-decision maker with respect to CSP services. The CSP should consider establishing clear boundaries for the referrer or agent, ensuring that it does not extend into unauthorised CSP activities.

3. Fit and Proper Standard

Condition 1, Being a Fit and Proper Person

The CSP must ensure that, in entering the referral relationship or a relationship with an agent, that they are able to maintain compliance with all aspects of Condition 1, including with respect to the CSPs responsibilities and the responsibilities of those employed by the CSP.

A referral agreement must be entered into in compliance with Condition 1, and will not prevent a CSP and its employees from having an ongoing obligation to demonstrate compliance, such as:

- soundness of judgement,
- protecting the interests of the Client,
- whether the referrer or agent is appropriately qualified. The CSP is not obligated to consider the competencies of the referrer or agent in their business operations, but the CSP should gain sufficient assurance that the relationship being instigated by the referrer or agent has been entered into to benefit the Client, and that the CSP can expect to receive instructions from an agent for the Client's benefit,
- understanding the legal and professional obligations between the CSP and Client, and between the referrer or agent and the Client to understand the correct parameters of the relationship.

4. Conflict of Interest

Condition 10(e) – Conflict of Interest

The CSP must ensure that no conflict of interest exists between its role as the service provider and the referrer or agent's role in introducing the Client. If any perceived or actual conflict arises, the CSP should consider if it is able to act, or whether the conflict can be disclosed to the Client and addressed where possible. This is of particular concern with respect to referral arrangement which result in the payment of a commission.

5. Audit and Monitoring

Condition 2(3)(f), Monitoring and Management of Compliance

The CSP should build in regular monitoring of referral arrangements and should consider monitoring the referrer's procedures where those procedures may impact the CSPs ability to maintain its own compliance. The agreement may need to provide for periodic audits of the referrer's records and processes where required to ensure that these comply with ADGM's standards. This can cover the AML practices of the referrer or agent, but may extend to other aspects, for example the scope of the agency relationship between the Client and the agent and the manner in which instructions are received from the Client.

6. White labelling services

Where the referral agreement between a CSP and a referrer or agency relationship creates, is representative, or purports to represent, a relationship whereby the referrer or agent offers CSP services directly to the Client, the referrer or agent must be licensed with the ADGM for CSP activity in accordance with the general prohibition under section 1 of the Conditions of Licence Regulations 2015. CSPs should protect the integrity of the ADGM and not facilitate unlicensed activity.

Disclaimer

This Guidance is a non-binding indicative guide and should be read together with the relevant legislation, in particular the ADGM Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2024 and any other relevant regulations and enabling rules, which may change over time without notice. Information in this Guidance is not to be deemed, considered or relied upon as legal advice and should not be treated as a substitute for a specific advice concerning any individual situation. Any action taken upon the information provided in this Guidance is strictly at your own risk and the Registration Authority will not be liable for any losses and damages in connection with the use of or reliance on information provided in this Guidance. The Registration Authority makes no representations as to the accuracy, completeness, correctness or suitability of any information provided in this Guidance.

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