

Morison Menon Limited

DFSA KEY POLICY CHANGE

The information provided in this document is not a complete representation of the changes. Please refer to the detailed documentation available on the DFSA website (www.dfsa.ae)

The DFSA had recently issued a Key Policy Review in the form of Consultation Paper No. 52 (on 4th December 2007), in which it had considered it appropriate to review its regulatory regime in the light of recent regulatory developments in other advanced jurisdictions, like the adoption of Markets in Financial Instruments Directive (MiFID) in Europe. The recent trend towards principles-based regulation, focusing on outcomes rather than the ways which they are to be achieved, was also a major reason for the policy review.

The changes have now been approved by the DFSA Board and will come into effect on July 1st, 2008.

The key changes include:

	Before 1st July 2008	After 1st July 2008
Types of clients	Individuals- USD 1 million in liquid assets Undertakings- USD 5 million in net assets	Professional Clients- USD 500,000 in net assets Undertakings- USD 5 million in net assets Retail Clients- who are not professional clients
Collective investment funds	Public and private funds open to only qualified investors	Public funds- can cater to Retail Clients Private Funds- can cater only to professional clients
Fund administration	Must be conducted from within the DIFC	Can use service providers in Zone 1 and Recognized Jurisdictions.
Fund custodian capital requirements	USD 10 million	USD 4 million
Providing Credit	Only to qualified undertakings	To all undertakings (professional and retail) for business purposes only

Implications

- The new rules reduce restrictions on the clientele that the Authorized Firms can cater to, and so an Authorized Firm can now **cater to a larger segment of clients.**
- All Clients shall by default, be considered Retail unless they opt to be Professional Clients. The same client can be both Professional and Retail. [For example, a Professional Client who currently has an Equities Portfolio may opt to be considered as Retail client when he/she starts a Portfolio in Derivatives]
- The Authorized Firm can opt to do business with Professional Clients only, in which case the regulatory requirements shall be less stringent than a Firm that chooses to cater to the Retail segment of clients.
- Marketing material directed at the Retail Clients needs to reflect a fair and balanced view when presenting future forecasts or representations based on past performance.
- Enhanced training and competency requirements for firms' staff.
- Firms to have complaint handling procedures for Retail Clients, including timeframes and manner of redress.

Collective Investments

- Public Funds are open to all Clients, whilst Private Funds are available only to Professional Clients.
- Public Funds may now use fund administrators in Zone I or Recognized Jurisdictions, subject to due diligence requirements.
- Private Funds may use fund administrators in any jurisdiction.
- Revised requirements for outsourcing and delegation agreements, including removing the requirement for DFSA approval.
- Base capital requirement for fund custodians reduced from \$10 million to \$4 million.
- New regime for Supplementary Prospectuses encompasses replacement Prospectuses and 12 month end-dates for Prospectuses (where Units still on offer).
- Prohibition on single property funds removed and replaced with a disclosure regime.

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- Shari'a Board conflicts prohibition replaced a disclosure regime.
- Marketing of Foreign Funds broadly aligned with new Domestic Funds regime.

Other changes

- Technical changes to Financial Service definitions.
- Prospectus Offers of Securities can be made to any investor, including Retail Clients. Exempt Offers can only be made to Professional Clients.
- The Conduct of Business (COB) and Collective Investment Rules(CIR) modules of the Rulebook have been restructured and simplified.

Retail Endorsement

In order to deal with Retail Clients, firms must obtain a Retail Endorsement on their licenses. Both new applicant firms as well as existing firms can apply for the endorsement, for which there is no application fee.

In order to obtain a Retail Endorsement, a firm needs to:

- **Have adequate internal complaints handling procedures;**
- **Provide enhanced disclosure in all new marketing material; and**
- **Have adequate systems controls procedures to be able to provide Financial Services to Retail Clients.**

Transitional arrangements

There is transitional relief available for firms who currently hold a license to operate in the DIFC. The objective of these arrangements is to ensure firms can continue to conduct their existing business with minimum disruption. It is important to note that there is a little or no change for firms who do not wish to deal with Retail Clients.

The transitional arrangements can be found in the General (GEN) module of the DFSA Rulebook and relevant to requirements in COB, CIR and ISF modules.

The details of the transitional relief are as follows:

- No Client classification required for existing Clients, as long as the firm continues to provide to such Clients the same services as before.

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- No notice or consent is required for existing Market Counterparties to continue to be treated as such.
- No new Client Agreement is required for dealing with existing Clients.
- Firms can continue to distribute existing marketing material and Prospectuses for 6 months after implementation mostly in the same manner as before.

FAQ

We are an existing Authorized Firm in the DIFC, and we do not want to cater to Retail Clients. Do we have to make changes to our existing setup?

The changes would be minimal. These would include updating of existing Compliance Manuals and related documentation to reflect the changes in client classifications.

We are an existing Authorized Firm in the DIFC, and we want to cater to Retail Clients. What changes would we have to make to our existing setup?

In order to deal with Retail Clients, firms must obtain a Retail Endorsement on their licenses. Both new applicant firms as well as existing firms can apply for the endorsement, for which there is no application fee.

In order to obtain a Retail Endorsement, a firm needs to:

- Have adequate internal complaints handling procedures;
- Provide enhanced disclosure in all new marketing material; and
- Have adequate systems controls procedures to be able to provide Financial Services to Retail Clients.