

Categories of Clients in the DIFC

There are two types of Client, namely Retail and Professional. Some Professional Clients may be treated as Market Counterparties.

For a firm to deal with Retail Clients, it needs to apply for a Retail Endorsement on its Licence.

Professional Clients

A Professional Client is a Person who:

- either:
 - has net assets (direct or indirect) of at least \$500,000; or
 - is, or has been in the previous 2 years, employed by the firm, or employed by another Authorised Firm in a professional capacity; and
- has sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks; and
- has not elected to be treated as a Retail Client.

Depending on the circumstances, a Client may at times be treated as Professional, whilst at other times as Retail.

A firm also has the option to deal only with Professional Clients, but must then verify that any new Client meets the criterion.

Some types of Client may be assumed to possess the necessary experience and understanding without conducting any analysis. Examples would be governments, or other Authorised Firms.

A personal investment vehicle may be classified as a Professional Client if it is established to manage the investment portfolio of an existing Professional Client. In this case, there is no need to meet the Professional Client net asset test.

Market Counterparties

Market Counterparties are a sub-set of Professional Clients, who do not have to be given all the protections that would otherwise be required. See COB Rule 2.3.2(2). Some Market Counterparties have to give their express consent for such treatment. Others have simply to be notified by the firm, with a right to object if they wish.

Retail Clients

Only firms who have obtained a Retail Endorsement on their Licence can deal with Retail Clients. Retail Clients are any Clients that deal with an Authorised Firm or Authorised Market Institution, that are not classified as Professional Clients.

When applying for an endorsement to its Licence, a firm needs to show that it can offer additional protections, especially in the area of internal complaints handling and dispute resolution systems.

It is important to note the following restrictions in terms of Financial Services which can be offered by firms dealing with Retail Clients:

- No Accepting Deposits.
- Providing Credit is confined to Undertakings and for business purposes only.

A firm that deals with Retail Clients has the option to treat all its Clients as retail, without conducting any further classification.

Client classification does not need to be undertaken where a firm does no more than give generic advice or refer a Person to another Authorised Firm or a firm regulated in another jurisdiction.

For more information about the DFSA's client definitions, please refer to the DFSA Rulebook, specifically the COB module.

Visit the DFSA website at www.dfsa.ae for:

- More news about the DFSA
- Full text of the Laws and Rules
- Information on the application process
- Copies of application forms

Note that the new Rules will be incorporated into the Rulebook only from 1 July 2008. Until then, they can be found under Rulemaking Instruments No 56, 57 and 58.

General Enquiries

- Via telephone +971 (0)4 362 1500
- Via e-mail info@dfsa.ae

Outcome of the DFSA's Key Policy Review 2008



This is a summary of key changes to the Rulebook. It is not intended to be comprehensive, nor to constitute legal advice on the effect of the changes. Interested persons must refer to the text of the Rules, and the DFSA recommends that you should obtain independent legal advice.

A guide to the new DFSA requirements

The DFSA Board has made new Rules, arising from the DFSA's Key Policy Review. This follows an extensive consultation process that started with the release of Consultation Paper 52 (CP52) early in December 2007 and encompassed two further Consultation Papers (CP53 and CP54). **The rules will come into effect on 1 July 2008.**

The maturity of the DIFC, as well as increased convergence across markets, prompted the review. In general, the DFSA has brought its conduct of business regime closer to the Markets in Financial Instruments Directive (MiFID), with the aim that where a firm meets the requirements of MiFID, it will be able to carry its compliance arrangements into the DIFC with few changes.

The new Rules will, for the first time, allow most firms in the DIFC to deal with Retail Clients, if they wish. However, firms which continue to do the same business as they do now will be able to do so with minimal changes and will have the benefit of transitional relief in specific areas relating to existing Clients. Fund Operators will be able to market their Public Funds to Retail Clients, and the fund regime has been simplified in other areas, for example by removing some of the restrictions on outsourcing, and on the operation of property funds. There is also an enhanced prudential regime for Islamic finance, covering a fuller range of Islamic contracts and drawing on the standards of the Islamic Financial Services Board.

The key changes include:

Conduct of Business

- Client classification into Retail and Professional Clients (refer to the inside cover of this leaflet).
- Enhanced list of entities that may be treated as Market Counterparties. (Market Counterparties are a subset of Professional Clients.)
- Enhanced suitability and Client Agreement provisions when

dealing with Retail Clients.

- Marketing material directed at 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 complaints handling procedures for Retail Clients, including timeframes and manner of redress.

- Conduct of business requirements for insurance more

closely aligned with those for other Financial Services.

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 1 or Recognised 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.
- 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 Services definitions.
- New Islamic Prudential Rules providing more extensive treatment of Islamic contracts.
- 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 licences. Both new applicant firms as well as existing firms can apply for the endorsement, for which there is no application fee. More guidance on

this process can be found in SUP Form 5 and our authorisation forms.

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 and procedures to be able to

provide Financial Services to Retail Clients.

Transitional arrangements

There is transitional relief available for firms who currently hold a licence 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 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 are 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.
- 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.

Remember that, as from 1 July 2008, all firms will need to comply with the new Rules. Therefore, all new Clients will need to be classified according to the new scheme.

Getting help

- **Up to 1 July 2008:** Refer to the Rulemaking Instruments 56, 57, 58 section of the DFSA website, located under Legislation.
- **From 1 July 2008:** Refer to the DFSA Rulebook on the DFSA website, applicable modules include: General (GEN), Conduct of Business (COB), Collective Investment Rules (CIR), Prudential – Investment, Insurance Intermediation and Banking (PIB), and Islamic Financial Business (ISF).
- **DFSA Forms:** Existing firms wishing to apply for a Retail Endorsement, should use the

new SUP5 form. Firms currently in the process of obtaining a Licence for the first time should take note of the new Guidance available on the application form (Form AUT CORE). All forms are available on the DFSA website.

- **Authorisation Enquiries:** Firms currently in the process of obtaining a licence for the first time should direct questions to the Authorisation Enquiries team or if allocated, an Authorisation Case Manager.
- **Relationship Manager:** Existing Authorised Firms should direct questions to their DFSA Relationship Managers.