

By Email

26 April 2022

To Senior Executive Officers of DFSA Authorised Firms, Designated Non-Financial Businesses or Professions (“DNFBPs”) and Audit Principals of Registered Auditors¹ (collectively referred to as “Regulated Entities”)

RE: Remote Working

1. The purpose of this letter is to inform you of the DFSA’s expectations regarding remote, or hybrid, working, the issues that we believe you need to consider and the controls that Regulated Entities need to put in place.

Introduction

2. The Covid-19 pandemic has caused significant disruption in many ways since late 2019, some of which has been addressed through temporary change and some of which has led, or will lead, to more long-lasting changes.
3. During the height of the pandemic, there were times when all staff employed in the DIFC were required to work from home. There were other times when some Regulated Entities chose to ask staff to work from home. We have seen, from our discussions with Regulated Entities, just about every possible combination of working patterns, including different split team models, and different return-to-office plans, as Regulated Entities have focused on the well-being of their staff while continuing to do business.
4. Consequently, there has been considerable debate about the ‘future of work’, with discussions of remote working, including working from home, hybrid working, work from anywhere, and digital nomads.
5. As part of this ongoing debate, we have received a significant number of questions from Regulated Entities seeking guidance on what will be permissible, going forward, in terms of working models. Some Regulated Entities that have contacted us are part of global groups that are trying to introduce global policies on these issues, whilst others are DIFC start-ups exploring what their future might look like.
6. Against the background of these requests for guidance, we set out below several issues that Regulated Entities should consider before deciding on hybrid working policies applicable to staff employed by a Regulated Entity.

¹ This letter is only applicable to those Registered Auditors whose physical office is in the DIFC.

7. For the sake of clarity, we use the term hybrid working to cover a range of possibilities, but the focus is on working in the DIFC or elsewhere in the UAE, which should be the norm.

General points

8. Regulated Entities should not expect, going forward, the same extent of flexibility from regulators and other authorities that has been available during the pandemic. Measures that may have been acceptable in a crisis will not necessarily be acceptable as the situation returns to business as usual.
9. As with most areas of Regulated Entities' operations, we expect Regulated Entities to put policies in place where they wish to permit hybrid working and procedures to manage the application of these policies. We expect a Regulated Entity to explain to the DFSA, upon request, how and why the Regulated Entity had reached the conclusions set out in its policies. As always, policies and procedures should be commensurate with the nature, scale and complexity of the activity that the Regulated Entity carries out that is subject to DFSA oversight and scrutiny. Our expectations will be different, for example, for a small Registered Auditor or DNFBP than for a large Authorised Firm.
10. We recognise that some DIFC-based staff also have responsibilities outside the UAE and have always understood that this means they will spend time in certain other locations. This is not the same as hybrid working. We do, of course, expect such staff to spend sufficient time in the DIFC to discharge their responsibilities fully and properly.
11. We note above that some Regulated Entities will be part of larger groups and may wish to implement a group-level policy on hybrid working. In principle, the DFSA has no objection to this. However, in considering the implementation of a group-level policy, the Regulated Entity will need to satisfy itself that the issues set out below are adequately addressed and that the group-level policy has been considered in the operating context of the DFSA regulated entity and amended as necessary.

Issues that Regulated Entities need to consider

12. The issues below will not apply equally to all Regulated Entities. For example, not all Regulated Entities provide financial services (paragraph 14). Please consider the issues in light of the circumstances of your Regulated Entity.
13. All Regulated Entities will have staff who need to be issued with DIFC employment visas. These are not the same as employment visas issued in the rest of Dubai and the UAE. A DIFC employment visa includes requirements about the location of work that go together with having such a visa.

Regulated Entities will need to make sure that any hybrid working arrangements they put in place are consistent with the requirements and expectations applicable to those holding DIFC employment visas.

Although not everybody working in the DIFC needs a DIFC employment visa, we do not see a good argument for differentiated treatment under a hybrid working policy.

14. Regulated Entities can provide Financial Services “in or from” the DIFC. Our interpretation of this legal requirement is a literal one - that financial services should primarily be provided in or from the DIFC: for example, those individuals providing financial services (e.g., traders, advisers) should be in the DIFC, although the clients they are dealing with may not be in the DIFC (where the service is being delivered “from” the DIFC). We understand that it is possible to recreate, in remote locations, an IT set-up that mirrors the one in the office and that the relevant IT infrastructure may, technically, still be considered to be in the DIFC. We do not think such an ongoing approach is in line with the spirit of what Regulated Entities are required to do.

Regulated Entities need to ensure that any hybrid working arrangements they put in place are consistent with the “in or from” test.

The ability of a Regulated Entity to be governed under the DIFC civil and commercial laws, rather than those of the UAE, may also become questionable if employees of the Regulated Entity regularly provide their services while working remotely from locations outside the DIFC. This is not an outcome the DFSA considers to be desirable.

15. As is common practice amongst regulators, the DFSA expects the “mind and management” of a Regulated Entity to be in the DIFC. This suggests that senior management of such a firm should be spending the clear majority of their time in the DIFC.

Regulated Entities need to ensure that any hybrid working arrangements they put in place have the result that the “mind and management” of the Regulated Entity can genuinely be said to be in the DIFC.

16. The DFSA does not expect a “one size fits all” approach to hybrid working, as we have made clear in this letter. However, whatever approach to hybrid working a Regulated Entity chooses to take, the DFSA expects no material reduction in the extent and quality of control and oversight of staff and their activities.

Regulated Entities need to ensure that any hybrid working arrangements they put in place allow for no material reduction in control and oversight of staff and their activities and, where there is any reduction, additional controls and other risk mitigants are applied as necessary.

17. As you will be aware, hybrid working models pose challenges from a technology perspective, including Cyber security issues. Some of these challenges are the same as for office working, while some are different.

Regulated Entities need to ensure that their Cyber security arrangements have been considered and issues related to hybrid working identified and addressed before introducing hybrid working models.

18. If you have any questions in relation to this letter, please contact us using the DFSA Supervised Firm Contact Form found on the DFSA [ePortal](#)

Yours faithfully,



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