



2. BECOMING REGULATED

2.1 Our approach to authorisation

Introduction

2.1.1 This chapter outlines our approach when assessing if an applicant or registrant can become:

- (a) an Authorised Firm;
- (b) a Recognised Body;
- (c) a Representative Office;
- (d) an Approved Person; or
- (e) a Principal Representative.

2.1.2 Before submitting an application, an applicant or registrant should contact our Authorisation Team at authorisation@adgm.com.

Prohibition and by way of business

2.1.3 The FSMR impose 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 Firm, Recognised Body or an Exempt Person.

2.1.4 Whether or not an activity is carried on by way of business is a question of fact that takes account several factors, including:

- (a) how often the activity is conducted;
- (b) whether there is a commercial element involved;
- (c) the size and proportion of non-regulated activities carried on by the same person; and
- (d) the nature, context and circumstances of the activity that is carried on.

Whether someone is carrying on his or her own business

2.1.5 Another aspect of the prohibition is that an employee will not breach the prohibition by carrying on an activity on behalf of his employer, as in such cases it is the employer who is carrying on that activity. The employee is simply carrying on the employer's business. This principle potentially also applies to agents and others who assist another to carry on that other's business.



General Prohibition and by way of business

- 2.1.6 The regulations impose a general prohibition on all persons who carry on a Regulated Activity in the ADGM "by way of business" unless the person is a firm, Recognised Body or an exempt person.
- 2.1.7 Whether or not an activity is carried on by way of business is a question of fact that takes account of several factors. These include:
- (a) the degree to which the activity is conducted with continuity, regularity and systemically;
 - (b) the existence of a commercial element;
 - (c) the scale proportion and impact which the activity bears to other activities carried on by the same Person but which are not regulated; and
 - (d) the nature, context and circumstances of the particular activity that is carried on.

Regulated Activities and the need for a Financial Service Permission

- 2.1.8 Schedule 1 to the Financial Services and Markets Regulations contains a complete list of Regulated Activities. When determining whether an applicant will require a Financial Services Permission to engage in a specific Regulated Activity, the applicant should first, determine that such Regulated Activity will be carried on in or from the ADGM 'by way of business' as described in 2.1.6 and 2.1.7. If they are then the applicant will need to consider whether any of the applicable exclusions apply either (i) specified following the description of the relevant Regulated Activity or (ii) amongst the general exclusions contained in Chapter 18 of Schedule 1.

Combinations of Regulated Activities

- 2.1.9 Generally, we will rely upon the applicant's written application and discussions when considering which Regulated Activities should be included in any Financial Service Permission granted to the applicant. The Regulator will only include a Regulated Activity within a Financial Service Permission when it reasonably believes such Regulated Activity is required for the applicant to conduct its business. Applicants should consider each Regulated Activity as a distinct activity with a distinct Financial Service Permission.
- 2.1.10 While no Regulated Activity will require the Regulator to include a second Regulated Activity within the Financial Service Permission to enable the applicant to engage in the original Regulated Activity, certain Regulated Activities may be combined with other Regulated Activities. For example, where an applicant may be arranging transactions which arise from advice given to a client. This would be acceptable, provided (i) the applicant has requested both Regulated Activities to be included in its



Financial Service Permission, (ii) the applicant satisfies the relevant criteria necessary to engage in both Regulated Activities and (iii) no conflicts arise as a consequence of the conduct of both Regulated Activities by a single person (see 2.1.10).

Conflicts between Regulated Activities

- 2.1.11 By their nature, certain combinations of Regulated Activities may be difficult for a single applicant to undertake without risk of a material conflict of interest. In such circumstances the Regulator will not grant a Financial Service Permission to engage in both Regulated Activities without being satisfied that both activities may be undertaken independently in a manner which addresses potential conflicting duties between clients or conflicts between the interests of the applicant and its clients.
- 2.1.12 The Regulator does not provide an exhaustive list of potential conflicting duties and interests and expects that each applicant will have reviewed the scope of those Regulated Activities it wishes to engage in, in order to identify and take steps to mitigate potential conflicts.

2.2 Assessing the fitness and propriety of applicants

- 2.2.1 We expect applicants seeking authorisation/recognition to be fit and proper. This provides us with the assurance that applicants are willing and able to fulfil their obligations under the law. The onus is on each applicant to establish that they are fit and proper.

Reputation and standing

- 2.2.2 In assessing the reputation and standing of an applicant, we can take into consideration any relevant matters including:
- (a) any matter affecting the propriety of the applicant's conduct, whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of the law, or the institution of legal or disciplinary proceedings of whatever nature;
 - (b) whether an applicant has ever been the subject of disciplinary procedures by a government body or agency or any self-regulatory organisation or other professional body;
 - (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, non-ADGM financial services regulator or regulated exchange or clearing house;
 - (d) whether an applicant has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;



- (e) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by an applicant;
- (f) whether an applicant has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other non-ADGM financial services regulator;
- (g) whether an applicant has been open and truthful in all its dealings with us; and
- (h) any other matter that we consider relevant.

Locations 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.

Close Links

- 2.2.4 We need to be satisfied, as to who are the applicant's Close Links or where the applicants is closely related to another person (for example a parent or subsidiary company or someone who owns and controls 20% or more of the applicant). This is to make sure we are not prevented from effectively supervising the applicant.

Legal status of Firms and Recognised Bodies

- 2.2.5 We will only consider an application for authorisation or recognition where the legal status of the proposed ADGM entity is a Body Corporate or a Partnership. Individuals cannot make an application. In respect of the regulated activities of Effecting Contracts of Insurance or Carrying Out Contracts of Insurance as Principal, a firm can only be a Body Corporate.
- 2.2.6 In the case of non-ADGM persons other than companies limited by shares, we will consider whether the legal form is appropriate for the activities proposed.
- 2.2.7 If the applicant is seeking to branch in to the ADGM, we will take into account where the applicant's head office is located.

Ownership and Group

- 2.2.8 In relation to the ownership and Group structure of an applicant, we may have regard to:
- (a) the applicant's position within its group, including any other relationships that may exist between the applicant, controllers, associates and other persons that may be considered a close link;



- (b) the financial strength of the Group and its implications for the applicant;
- (c) whether the Group has a structure which makes it possible to:
 - (i) exercise effective supervision;
 - (ii) exchange information among regulators who supervise group members; and
 - (iii) determine the allocation of responsibility among the relevant regulators;
- (d) any information provided by other regulators or third parties in relation to the applicant or any entity within its Group; and
- (e) whether the applicant or its group is subject to any adverse effect or considerations arising from a country or countries of incorporation, establishment and operations of any member of its group. In considering these matters, we may also have regard to the type and level of regulatory oversight in the relevant country or countries of the group members and the regulatory infrastructure and adherence to internationally held conventions.

Controllers

- 2.2.9 In relation to the controllers of an applicant, we may, taking into account the nature, scale and complexity of the firm's business and organisation, have regard to:
- (a) the background, history and principal activities of the applicant's controllers, including that of the controller's directors, partners or other officers associated with the applicant, and the degree of influence that they are, or may be, able to exert over the applicant and/or its activities;
 - (b) where the Controller will exert significant management influence over the applicant, the reputation and experience of the controller or any individual within the controller;
 - (c) the financial strength of a controller and its implications for the applicant's ability to ensure the sound and prudent management of its affairs, in particular where a controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Firm or Recognised Body; and
 - (d) whether the applicant is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a controller. In considering such matters, we may have regard to, among other things, the type and level of regulatory oversight, which the controller is subject to in the relevant country or countries and the regulatory



infrastructure and adherence to internationally held conventions and standards.

2.2.10 Where we have any concerns relating to the fitness and propriety of an applicant for a Financial Services Permission stemming from a Controller of such a Person, we may consider imposing conditions on the Financial Services Permission designed to address such concerns. For example, we may impose, in the case of a start-up, a condition that there should be a shareholder agreement that implements an effective shareholder dispute resolution mechanism.

Resources, systems and controls

2.2.11 We will have regard to whether the applicant has sufficient resources, including the appropriate systems and controls, such as:

- (a) the applicant's financial resources and whether it complies, or will comply, with any applicable financial rules, and whether the applicant appears to be in a position to be able to comply with such rules;
- (b) the extent to which the applicant is or may be able to secure additional capital in a form acceptable to us where this appears likely to be necessary at any stage in the future;
- (c) the availability of sufficient competent human resources to conduct and manage the applicant's affairs, in addition to the availability of sufficient Approved Persons to conduct and manage the applicant's activities;
- (d) whether the applicant has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;
- (e) whether the applicant has appropriate anti-money laundering procedures and systems designed to ensure full compliance with applicable money laundering and counter terrorism legislation, and relevant UN Security Council and applicable sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;
- (f) the impact of other members of the applicant's group on the adequacy of the applicant's resources and, in particular, though not exclusively, the extent to which the applicant is or may be subject to consolidated prudential supervision by us or another non-ADGM financial services regulator;
- (g) whether the applicant is able to provide sufficient evidence about the source of funds available to it, to our satisfaction. This is particularly relevant in the case of a start-up entity; and
- (h) the matters specified in paragraph 2.2.88(c).



Firms and Recognised Persons: Collective suitability of individuals or other Persons connected to the firm

2.2.12 Although individuals performing Controlled and Recognised Functions are required to be Approved Persons and/or Recognised Persons and that a firm is required to appoint certain Approved and Recognised Persons to certain functions, we will also consider:

- (a) the collective suitability of all of the firm's staff taken together, and whether there is a sufficient range of individuals with appropriate knowledge, skills and experience to understand, operate and manage the firm's affairs in a sound and prudent manner;
- (b) the composition of the Governing Body of the firm. The factors that would be taken into account by us in this context include, depending on the nature, scale and complexity of the firm's business and its organisational structure, whether:
 - (i) the governing body has a sufficient number of members with relevant knowledge, skills and expertise among them to provide effective leadership, direction and oversight of the firm's business. For this purpose, the members of the governing body should be able to demonstrate that they have, and would continue to maintain, including through training, the necessary skills, knowledge and understanding of the firm's business to be able to fulfil their roles;
 - (ii) the individual members of the governing body have the commitment necessary to fulfil their roles, demonstrated, for example, by a sufficient allocation of time to the affairs of the firm and reasonable limits on the number of memberships held by them in other boards of directors or similar positions. In particular, we will consider whether the membership in other boards of directors or similar positions held by individual members of the governing body has the potential to conflict with the interests of the firm and its customers and stakeholders; and
 - (iii) there is a sufficient number of independent members on the governing body. We will consider a member of the governing body to be "independent" if he is found, on reasonable grounds by the governing body, to be independent in character and judgement and able to make decisions in a manner that is consistent with the best interests of the Firm;
- (c) the position of the Firm in any Group to which it belongs;
- (d) the individual or collective suitability of any person or persons connected with the firm;
- (e) the extent to which the firm has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities;



- (f) whether the firm has appointed Auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the firm's activities; and
- (g) whether the remuneration structure and strategy adopted by the firm is consistent with the requirements in GEN 3.3.42(1).

Recognised Bodies: other considerations

2.2.13 In determining whether a Recognised Body has satisfied its recognition requirements set out in MIR Chapter 2 and GEN Chapter 3, we will consider:

- (a) its arrangements, policies and resources for fulfilling its obligations under the recognition requirements as set out in MIR 4.2.1;
- (b) its arrangements for managing conflicts and potential conflicts between its commercial interest and applicable regulatory requirements;
- (c) the extent to which its constitution and organisation provide for effective governance;
- (d) the arrangements made to ensure that the Governing Body has effective oversight of its regulatory functions;
- (e) the fitness and propriety of its Approved Persons and the access the approved persons have to the Governing Body;
- (f) the size and composition of the Governing Body including:
 - (i) the number of independent members on the Governing Body;
 - (ii) the number of members of the Governing Body who represent members of the Recognised Body or other persons and the types of persons whom they represent; and
 - (iii) the number and responsibilities of any members of the governing body with executive roles within the Recognised Body;
- (g) the structure and organisation of its Governing Body, including any distribution of responsibilities among its members and committees;
- (h) the integrity, relevant knowledge, skills and expertise of the members of the governing body to provide effective leadership, direction and oversight of the Recognised Body's business. For this purpose, such individuals should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the Recognised Body's business to be able to fulfil their roles;



- (i) the commitment necessary by the members of the governing body to fulfil their roles effectively, demonstrated, for example, by a sufficient allocation of time to the affairs of the Recognised Body and reasonable limits on the number of memberships held by them in other boards of directors or similar positions. In particular, the Regulator will consider whether the membership in other boards of directors or similar positions held by individual members of the governing body has the potential to conflict with the interests of the Recognised Body and its stakeholders;
- (j) the integrity, qualifications and competence of its approved persons;
- (k) its arrangements for ensuring that it employs individuals who are honest and demonstrate integrity;
- (l) the independence of its regulatory departments from its commercial departments; and
- (m) whether the remuneration structure and strategy adopted by the Recognised Body is consistent with the requirements in GEN 3.3.42(1).

2.2.14 We will consider a Director to be "independent" if the Director is found, on the reasonable determination of the Governing Body, to:

- (a) be independent in character and judgement; and
- (b) have no relationships or circumstances which are likely to affect or could appear to affect the director's judgement in a manner other than in the best interests of the Recognised Body.

2.2.15 In forming a determination the Governing Body should consider the length of time the director has served as a member of the Governing Body and whether the relevant director:

- (a) has been an employee of the Recognised Body or group within the last five years;
- (b) has or has had, within the last three years, a material business relationship with the Recognised Body, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the Recognised Body;
- (c) receives or has received, in the last three years, additional remuneration or payments from the Recognised Body apart from a director's fee, participates in the Recognised Body's share option, or a performance- related pay scheme, or is a member of the Recognised Body's pension scheme;



- (d) is or has been a director, partner or employee of a firm which is the Recognised Body's auditor;
- (e) has close family ties with any of the Recognised Body's advisors, directors or senior employees;
- (f) holds cross directorships or has significant links with other directors through involvement in other bodies; or
- (g) represents a significant shareholder.

2.3 Assessing the fitness and propriety of Approved Persons, Recognised Persons and Principal Representatives

Introduction

- 2.3.1 This section sets out the matters which we take into consideration, and expect the firm or Recognised Body to take into consideration, when assessing the fitness and propriety of:
- (a) In the case of a firm, an Approved Person, Recognised Person under GEN 5.3 and GEN 5.4 and Principal Representative under 9.8;
 - (b) In the case of a Recognised Body, an Approved Person under MIR 7.2.
- 2.3.2 Applications for approved person status in respect of the controlled functions of Senior Executive Officer, Licensed Director and Licensed Partner shall be made by the firm and approved by us. We may reject an application for an Approved Person status or grant an Approved Person status with or without conditions and restrictions.
- 2.3.3 In relation to applications for Recognised Persons status the firm or Recognised Body will approve the Recognised Functions of Finance Officer, Compliance Officer, Senior Manager, Money Laundering Reporting Officer and Responsible Officer, and notify us of such appointments. The onus is on the firm or Recognised Body to carry out proper due diligence to ensure that the person is fit and proper to carry out the function, and to maintain the necessary supporting documentation for its due diligence.
- 2.3.4 We expect a firm and Recognised Body to continually ensure that all Approved and Recognised Persons are fit and proper for the controlled and or recognised Functions that they have been appointed to.
- 2.3.5 When assessing whether an individual meets the fitness and propriety criteria to be able to perform the role of an Approved Person or Recognised Person, we take the following considerations into account, as set out in paragraphs 2.3.6 to 2.3.8 below.



Integrity

- 23.6 In determining whether an individual has met the fitness and propriety criteria with respect to his/her integrity, the following matters may be taken into account:
- (a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
 - (b) a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
 - (c) whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self-regulatory organisation or other professional body;
 - (d) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self-regulatory organisation, Recognised Body, regulated exchange or regulated clearing house or non-ADGM Financial Services Regulator;
 - (e) a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
 - (f) a dismissal or a request to resign from any office or employment;
 - (g) whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
 - (h) an adverse finding in a civil proceeding by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
 - (i) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against the individual;
 - (j) an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
 - (k) whether the individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that individual was connected with that body corporate or within one year of such a connection;



- (l) whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that individual was connected with that partnership or within a year of such a connection;
- (m) whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- (n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, us or any officially appointed inquiry, or Non-ADGM Financial Services Regulator; and
- (o) whether the individual has been candid and truthful in all his dealings with us.

Competence and capability

- 23.7 We will take into account the individual's qualifications and experience, in determining the fitness and propriety criteria of competence and capability of an individual to perform a role as an Approved Person or Principal Representative.

Financial soundness

- 23.8 With respect to the financial soundness of an individual, we will take into account :
- (a) whether an individual is able to meet his debts as and when they fall due; and
 - (b) whether an individual has been declared bankrupt, had a receiver or an administrator appointed, had a bankruptcy petition served on him, had his estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors, or within the last 10 years, has failed to satisfy a judgement debt under a court order.

2.4 Waivers during authorisation

- 2.4.1 An applicant for authorisation may request a waiver or modification when the application is made and being processed. In some circumstances, the applicant may need to work with us in developing the waiver or modification and may not be required to use the formal application process. However, the written consent to the waiver or modification will be required if the applicant is authorised.

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



that 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.

2.5.2 A Start-up entity is:

- (a) any newly set up business entity which is not part of a group that is subject to financial services regulation; or
- (b) part of an existing business entity which it, or whose group is not subject to financial services regulation.

2.5.3 As a general position, we will not usually accept applications for start-up banks or insurers however each application will be considered on its merits. We will take into account such factors as the applicant's financial position, systems and controls and whether the Start-up entity is managed by persons who have the necessary expertise and knowledge to conduct such activities.

Our risk-based approach to Start-ups

2.5.4 Any consideration of an application for the granting of a Financial Services Permission to carry on a regulated activity is likely to involve an assessment of the risks posed to our objectives by the proposed regulated activity. Whilst the broad categories of risks for all applicants will be the same, the nature of those risks within start-ups can be amplified, as a start-up does not have a regulatory track record to deal with risks and upon which we may place reliance. In the case of a new business, even where senior management has substantial experience and relevant competence in the business sector, this does not necessarily imply an ability to create and sustain an adequate management control environment and compliance culture, particularly when faced with all the other issues of establishing a new business.

2.5.5 The broad categories of risk and some of the unique elements of those risk categories that apply to start-ups include financial risk, governance risk, business/operational risk and compliance risk.

Financial risk

2.5.6 All applicants are required to demonstrate they have a sound initial capital base and funding and must be able to meet the relevant prudential requirements of the ADGM laws, on an on-going basis. This includes holding enough capital resources to cover expenses even if expected revenue takes time to materialise. Start-ups can encounter greater financial risks as they seek to establish and grow a new business.

2.5.7 In addition to the risks associated with the financial viability of the start-up, particular attention may be given to the clarity and the verifiable source of the initial capital funding.



Governance risk

- 2.5.8 All applicants are required to demonstrate robust governance arrangements together with the fitness and integrity of all controllers, directors and senior management. We are aware that management control, in smaller start-ups especially, may lie with one or two dominant individuals who may also be amongst the owners of the firm. In such circumstances, we would expect the key business and control functions (i.e. risk management, compliance and internal audit) to be subject to appropriate oversight arrangements which reflect the size and complexity of the business. Applicants can assist us by describing in detail the ownership structure, high level controls and clear reporting lines which demonstrate an adequate segregation of duties.
- 2.5.9 We may request details of the background, history and ownership of the start-up and, where applicable, its Group. Similar details relating to the background, history and other interests of the directors of the start-up may also be required. Where it considers it necessary to do so, we may undertake independent background checks on such material. A higher degree of due diligence will apply to individuals involved in a start-up and there would be an expectation that the start-up itself will have conducted detailed background checks, which may then be verified by us.

Business/operational risk

- 2.5.10 All applicants are required to establish appropriate systems and controls to demonstrate that the affairs of the firm are managed and controlled effectively. The nature of the systems and controls may depend on the nature, size and complexity of the business. A start-up may wish to consider which additional systems and controls may be appropriate in the initial period of operation following launch, such as increased risk or compliance monitoring. Due to the unproven track record of a start-up, we may, for example, impose restrictions on the business activities of the entity or a greater degree and intensity of supervision until such a track record is established.

Compliance risk

- 2.5.11 The Senior Executive Officer of a firm is expected to take full responsibility for ensuring compliance with the ADGM laws 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. 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 the ADGM laws and, in the case of the MLRO, the wider anti-money laundering laws.

Main information requirements

- 2.5.12 The main information requirements are the same for all applicants, including start-ups, and each application will be assessed on its own merits.



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;
- (c) organisational structure;
- (d) management structure;
- (e) proposed resources;
- (f) high level controls;
- (g) risk management;
- (h) operational controls;
- (i) systems overview;
- (j) how the proposed activities are mapped against the Regulated Activities and why particular Regulated Activities are applied for; and
- (k) financial projections.

2.5.14 Start-up applicants may find it useful to include diagrams illustrating corporate structures, and, where applicable, group relationships, governance arrangements, organisational design, clear reporting lines, business process flows and systems environments.

2.5.15 Comprehensively addressing these areas and detailing how the key risks will be identified, monitored and controlled may significantly assist us in determining applications from a start-up.

2.6 Application for carrying out a Regulated Activity with or for a Retail Client

2.6.1 GEN 5.2.3 outlines the requirements to be met by an applicant intending to carry on a Regulated Activity where the client is a Retail Client.

2.6.2 When assessing an application of this type we may consider the following:

- (a) the adequacy of an applicant's systems and controls for carrying on Regulated Activities with a Retail Client;
- (b) whether the applicant is able to demonstrate that its systems and controls (including policies and procedures) adequately provide for, among other



things, compliance with the requirements specifically dealing with Retail Clients under the Conduct of Business Rulebook (COBS), in particular:

- (i) marketing materials;
 - (ii) the content requirements for Client Agreements;
 - (iii) the suitability assessment for recommending a financial product;
 - (iv) the disclosure of fees and commissions, and any inducements; and
 - (v) the segregation of Client Money and/or Client Investments, where relevant;
- (c) whether the applicant has adequate systems and controls to ensure, on an on-going basis, that its Employees remain competent and capable to perform the functions which are assigned to them, including any additional factors that may be relevant if their functions involve interfacing with Retail Clients; and
- (d) the adequacy of the applicant's Complaints handling policies and procedures. An applicant's policies and procedures must provide for fair, consistent and prompt handling of Complaints. In addition to the matters set out in GEN Chapter 7, the policies and procedures should explicitly deal with how the applicant ensures that:
- (i) Employees dealing with Complaints have adequate training and competencies to handle complaints, as well as impartiality and sufficient authority (see GEN 3.3.19, 7.2.7 and 7.2.8);
 - (ii) a Retail Client is made aware of the firm's Complaints handling policies and procedures before obtaining its services (see COB 12.1.2(a)(viii)); and
 - (iii) the applicant's Complaints handling policies and procedures are freely available to any Retail Client upon request (see GEN 7.2.11).

2.7 Application to conduct Islamic Financial Business

- 2.7.1 A firm wishing to carry on Islamic Financial Business must have a Financial Services Permission authorising it to Conduct Islamic Financial Business either as an Islamic Financial Institution or by operating an Islamic Window.
- 2.7.2 A Firm that is granted a Financial Services Permission to operate an Islamic Window may conduct some of its Regulated Activities in a conventional manner while conducting its Islamic Financial Business through the Islamic Window.
- 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.

2.8 Application to be a Representative Office

2.8.1 An applicant seeking to become a Representative Office will need to comply with requirements including those set out in GEN Chapter 9.

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 the FSMR); and
- (b) the applicant is incorporated and regulated by a Non-ADGM Financial Services Regulator and setting up in the ADGM as a branch.

2.9 Application for a withdrawal of Financial Services Permission

2.9.1 In considering requests for the withdrawal of a Financial Services Permission, a firm will need to satisfy us that it has made appropriate arrangements with respect to its existing customers, including the receipt of any customers' consent where required and, in particular:

- (a) whether there may be a long period in which the business will be run-off or transferred;
- (b) whether deposits must be returned to customers;
- (c) whether money and other assets belonging to customers must be returned to them; and
- (d) whether there is any other matter which we would reasonably expect to be resolved before granting a request for the withdrawal of a Financial Services Permission.

2.9.2 In determining a request for the withdrawal of a Financial Services Permission, we may require additional procedures or information as appropriate, including evidence that the firm has ceased to carry on Regulated Activities.

2.9.3 A firm should submit detailed plans where there may be an extensive period of wind-down. It may not be appropriate for a firm to immediately request a withdrawal of its



Financial Services Permission in all circumstances, although it may wish to consider reducing the scope of its Financial Services Permission during this period. Firms should discuss these arrangements with us.

- 2.9.4 We may also refuse a request for the withdrawal of a Financial Services Permission where:
- (a) the firm has failed to settle its debts owed to us; or
 - (b) it is in the interests of a current or pending investigation by us, or by another regulatory body or a Non-ADGM Financial Services Regulator.
- 2.9.5 Some other matters which a firm should be mindful of in relation to the withdrawal of its Financial Services Permission include:
- (a) Where a firm's FSP is withdrawn, the approved status of its Approved Persons will also be withdrawn on the same date. However, this does not remove the obligation on a firm to provide a statement where an approved person has been dismissed or requested to resign (under GEN 8.7.3); and
 - (b) Where a Fund Manager or the Trustee makes a request for withdrawal (under GEN 8.4.1), the Fund Manager or the Trustee will need to satisfy us that it has made appropriate arrangements in accordance with the requirements under the FUNDS Rules with respect to the continuing management of the Fund for which it is the Fund Manager or the Trustee, as the case may be.

Application for variation of a Financial Services Permission

- 2.9.6 Where a firm applies to change the scope of its Financial Services Permission, it should provide the following information:
- (a) a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;
 - (b) details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the firm will be able to comply with any additional regulatory requirements; and
 - (c) descriptions of the firm's senior management responsibilities (see GEN Chapter 5) where these have changed from those previously disclosed, including any updated staff organisation charts and internal and external reporting lines;
 - (d) details of any transitional arrangements where the firm is reducing its activities and where it has existing customers who may be affected by the cessation of a Regulated Activity;

- (e) the appropriate financial reporting statement where the variation may result in a change to the firm's prudential category or the application of additional or different financial rules. If a capital increase is required in order to demonstrate compliance with additional financial rules but such capital is not paid up or available at the time of application, proposed or forecast figures may be used;
- (f) details of the effect of the proposed variation on the approved persons including, where applicable, submitting any written applications for individuals to perform additional or new controlled functions, or to remove existing controlled functions; and
- (g) revised pro forma financial statements.

2.9.7 In considering whether a Firm or Recognised Body is fit and proper with respect to a change in the scope of its Financial Services Permission, we may take into account the matters set out in Chapter 2 of this document, which provides guidance on assessing fitness and propriety for firms and Recognised Bodies.