



Markets Brief

Eligibility for listing

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Introduction

In this edition of Markets Brief, we provide issuers and market practitioners with information about the DFSA's approach to ensuring that issuers' Securities and their businesses are eligible for listing under the Markets Rules. When an Applicant applies to have its Securities admitted to the DFSA's Official List of Securities (List) for the first time, or in certain circumstances set out below, we would undertake a review of the issuer and its business to ensure that its Securities are eligible for listing under the Markets Rules – the 'listings eligibility review'. We would conduct a listings eligibility review at the same time as reviewing a Prospectus and other documents, completing it when the Prospectus is approved.

We have produced this Markets Brief to explain to issuers and market practitioners how the listings eligibility review process works in conjunction with the Prospectus review process and what they can do to help ensure the process runs smoothly. Failure to address key issues at the eligibility stage may result in a hold up in the Prospectus review process and delay the approval of a Prospectus.

This Markets Brief is targeted primarily at issuers of Shares or equity-like Securities (for example, Certificates over Shares) and, while it may apply in part to standardised debt transactions, the DFSA has a modified process for these types of transactions.

For the purposes of this Markets Brief, "Applicant" means a Person who applies for admission of its Securities to the List and includes the issuer. A reference to a "market practitioner" is to a Sponsor, legal advisor, financial advisor, auditor, compliance advisor or other similar person connected to an issuer and its application for approval of a Prospectus under the Markets Law 2012.

Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the Regulatory Law 2004 and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

Technical explanations given in this brief are for illustrative purposes and should not be

considered or relied upon as a legal advice. We recommend that independent legal advice is obtained if you are unsure about any aspect of the DFSA markets regime which may apply to you.

Defined terms are identified in this brief by the capitalisation of the initial letter of a word or each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

Listings eligibility review – overview

A listings eligibility review is performed in parallel with the Prospectus review and approval process.

In our experience, the majority of listing eligibility reviews end with a successful outcome for the issuer. In other cases our review may identify serious concerns regarding the issuer's eligibility for listing. In these instances, we will discuss our concerns with the issuer and its advisers or Sponsor. These discussions will often address our concerns. Where we cannot reach agreement with the issuer and its advisers or Sponsor, and the issuer nonetheless wishes to make a formal application for admission to listing, we will generally refer the application to an internal committee of senior staff within the DFSA for review.

When do we undertake a listings eligibility review?

We would perform a listings eligibility review in respect of new issuers applying to list their Securities (including Units) for the first time. We would also perform a listings eligibility review in circumstances where an issuer is seeking a listing through an alternative route including listing transactions from another jurisdiction or listing transactions using a summary document. These alternative listing routes are discussed further below.

What is involved in a listings eligibility review?

To assess a new issuer's eligibility for listing, we would undertake the following verification processes:

- **Listings Eligibility Letter (often referred to as an 'eligibility letter')** – for a listing of Securities, we would require that the issuer, or its advisers, write to us setting out how the issuer satisfies the relevant listing eligibility requirements and considerations. Where the issuer is seeking the listing of Shares or equity-like Securities the issuer is required to appoint a Sponsor and we would expect the Sponsor to submit all documents to us and be our point of contact throughout the listing process. The relevant eligibility requirements and other considerations are set out below. The eligibility letter should set out a brief outline of the transaction, drawing attention to potentially difficult issues or significant matters, an indicative timetable and details of any other issues or matters that should be brought to the DFSA's attention. See Annex 1 for guidance on the contents of a Listings Eligibility Letter.
- **Prospectus review** – for each application, checklists should be submitted setting out how admission criteria are met. These checklists can be downloaded from the DFSA website together with instructions on how to complete them. We would also review the draft Prospectus (and related documentation) to ensure that there is nothing in its contents that may cause us to question the listing eligibility of the issuer.
- **Background checks** – we would carry out background checks and research on the issuer and its management.

- **Internal discussions** – where the issuer is supervised by us we would discuss the issuer and the transaction with internal colleagues. We may also contact other regulators, where necessary.
- **Sponsor liaison** – we would ask questions of the Sponsor and would have regard to its opinions and views.
- **Additional procedures** – where we believe that there may be a high risk that admission of an issuer’s Securities may be detrimental to investors and the integrity or the reputation of the Dubai International Finance Centre (DIFC) capital markets, we may ask to see the issuer’s or Sponsor’s own due diligence, may require the issuer to obtain a third-party due diligence report and/or may also commission our own private due diligence.

Figure 1 – Listing eligibility review process



Can issuers, advisers and Sponsors meet with the DFSA to discuss eligibility issues before a formal submission?

We recommend that the eligibility letter is submitted at the same time as the draft Prospectus (which should be substantially complete) and accompanying documents are formally submitted.

However, the issuer’s advisers or Sponsor may wish to submit an eligibility letter or meet with the DFSA to seek advance guidance on eligibility matters before a formal submission – for example, where the issuer has concerns that it may be ineligible for listing and wishes to seek guidance from us on matters before incurring substantial costs. In such circumstances, we would meet with the issuer and its advisers or Sponsor and attempt to provide the advanced guidance.

Relevant listing eligibility requirements and other considerations

General listing eligibility requirements – MKT 9.3

The DFSA rules relating to general listing eligibility can be found in chapter 9 of the Markets Rules and relate to the following:

- Incorporation
- IFRS compliant audited financial statements (3 years)
- Working capital sufficiency (Shares only)
- General suitability for listing
- Management experience and expertise
- Controlling shareholder (Shares only)
- Conflicts of interest (Shares only)
- Validity and transferability
- Market capitalisation (Shares only)
- Shares in public hands (Shares only)
- Whole class of Securities to be listed

- Settlement
- Warrants
- Depositary receipts

Prospectus requirements – MKT 2

The DFSA rules relating to Prospectus requirements can be found in chapter 2 of the Markets Rules. A Prospectus is required when an issuer is making an Offer of Securities to the public in or from the DIFC or when Securities are to be admitted to trading on an Authorised Market Institution (AMI).

The DFSA has published a Markets Brief on the Prospectus review and approval process which can be found on the DFSA website.

Corporate governance principles (Shares only) – MKT 3

The DFSA rules relating to corporate governance principles can be found in chapter 3 of the Markets Rules. This chapter applies to issuers of Shares (and their boards of directors).

Listed Funds requirements – MKT 6

The DFSA rules relating to the listing of fund Units (or Units representing shares) can be found in chapter 6 (Listed Funds) of the Markets Rules.

Sponsor requirements – MKT 7

The DFSA rules relating to the Sponsor regime can be found in chapter 7 of the Markets Rules. We would require an issuer to appoint a Sponsor when it is making an Offer of Securities to the public in or from the DIFC, when Securities are to be admitted to trading on an AMI for the first time and/or to assist in the Prospectus due diligence and verification process. A Sponsor must be appointed in respect of initial public offering (IPOs) of Shares or equity-like Securities.

While we will not formally approve the content of a summary document, we will conduct a review to determine an issuer's general

compliance with the content requirements in MKT Rule 2.4.1(i)(iii) and applicable eligibility requirements.

The DFSA has published a Markets Brief on the Sponsor Regime which can be found on the DFSA website.

Systems and controls requirements – MKT 8

The DFSA rules relating to the adequacy of systems and controls can be found in chapter 8 of the Markets Rules. This chapter applies to issuers and their boards of directors.

Alternative listing routes

Listing transactions from another jurisdiction

MKT Rule 2.7 provides the DFSA power to accept Prospectuses from other jurisdictions in accordance with certain conditions.

Issuers seeking to list Securities under this rule still need to meet the relevant eligibility requirements and must undergo a listings eligibility review.

Listing transactions using a summary document

MKT Rule 2.4.1(i)(iii) provides for the exemption from the requirement to produce a Prospectus if the Securities are already admitted to trading on another AMI or Regulated Exchange and where certain other conditions are met.

Issuers seeking to list Securities under this rule will still need to meet the relevant eligibility requirements and must undergo a listings eligibility review.

It is up to the issuer seeking to use this exemption to decide (on taking its own legal advice) whether it meets the conditions. The DFSA will not formally decide on whether the conditions are met. However, it can challenge the issuer if it considers in specific cases that

the conditions are not met.

Arabic edition

Every Markets Brief is produced in both English and Arabic and is available on the DFSA website.

Contact us

Visit the DFSA website www.dfsa.ae for:

- previous editions of the Markets Brief;
- access to DFSA-administered

- legislation and the DFSA Rulebook; and
- a full text of the Markets Law 012 and Markets Rules.

For enquiries:

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Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at markets@dfs.ae

Annex 1 – Contents of a Listings Eligibility Letter

A Listings Eligibility Letter should contain information that demonstrates to the DFSA that the Applicant satisfies the relevant listing eligibility requirements and considerations set out in MKT 9.3.

The following is an example of the type of information that we would normally expect to find in a Sponsor Eligibility Letter:

- a) a brief outline of the transaction, drawing attention to potentially difficult issues or significant matters;
- b) information demonstrating that the Applicant meets the relevant eligibility requirements set out in MKT 9.3:
 - i. Incorporation
 - ii. IFRS compliant audited financial statements (3 years)
 - iii. Working capital sufficiency (Shares only)
 - iv. General suitability for listing
 - v. Management experience and expertise
 - vi. Controlling shareholder (Shares only)
 - vii. Conflicts of interest (Shares only)
 - viii. Validity and transferability
 - ix. Market capitalisation (Shares only)
 - x. Shares in public hands (Shares only)
 - xi. Whole class of Securities to be listed
 - xii. Settlement
 - xiii. Warrants
 - xiv. Depositary receipts
- c) an indicative timetable for listing.