

# CONG and DFSA Outreach Session 18 November 2014



# CP 97 Client Classification Survey Feedback

Carwyn Evans

Director

18<sup>th</sup> November

# Introduction

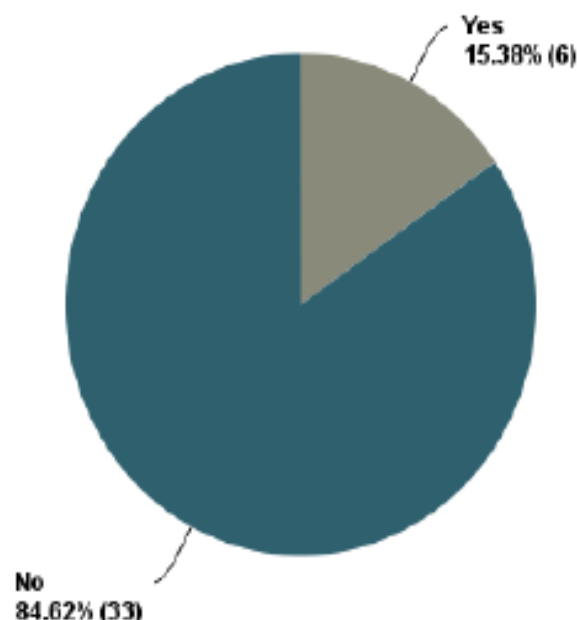
All CONG members were invited to respond to an anonymous survey setting out the 38 questions raised by the DFSA in CP97.

41 members in total responded to the survey. The average number of questions that were answered with either a yes, no or a comment was 61% of the total participants of the survey.

The survey was anonymous and not mandatory for participants to respond to all the DFSA questions.

We thank all of you who responded to the survey and have highlighted in the presentation some of the key points raised.

## Q1: Do you have any concerns relating to the DFSA's overall approach to risk-based regulation as reflected in these proposals?

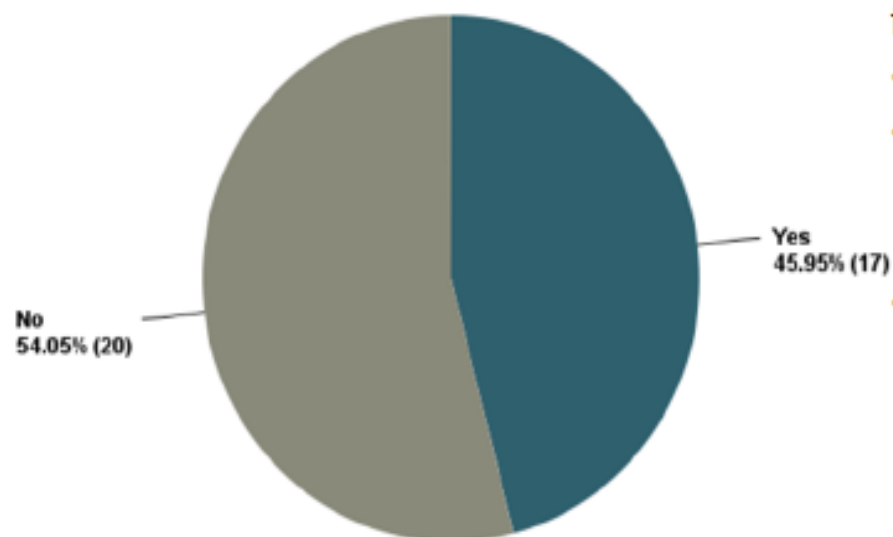


The general overall concerns to the DFSA's approach on the risk-based regulation proposed refer to:

- the **grandfathering** of clients and **transitioning** of current practices to comply with the new proposed rules;
- the **equivalence** and DFSA's recognition of client classifications by other jurisdictions or regulatory standards such as MIFID; and
- to seek more **clarification** on who exactly would be eligible to be classified as a 'deemed' Professional Client.

Answer Choices	Responses	
Yes	15.38%	6
No	84.62%	33
Total		39

## Q2: Is there scope for more Guidance to be included indicating the DFSA's expectations relating to compliance with the proposed client classification regime?



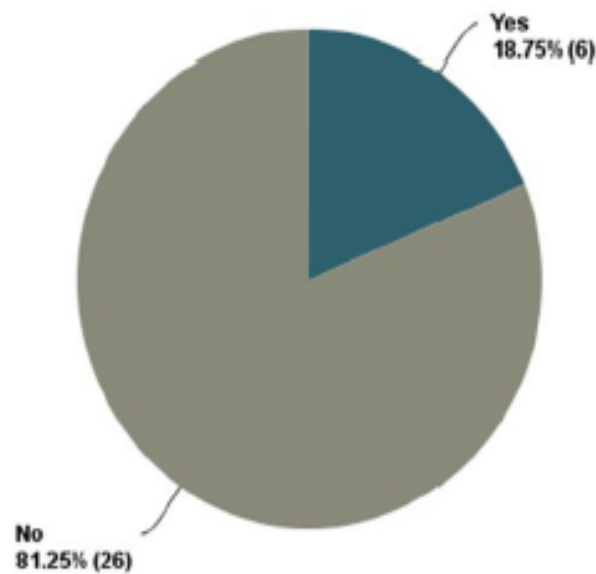
Over 50% of respondents thought there was scope to provide further guidance on the following points:

- Definition of **net assets**.
- Definition of what constitutes a **bundle of financial services** and how this affects the perimeter issue.
- The methods to be used when undertaking experience assessments including DFSA's **expectations** for assessing corporate undertakings.

Answer Choices	Responses	
Yes	45.95%	17
No	54.05%	20
Total		37



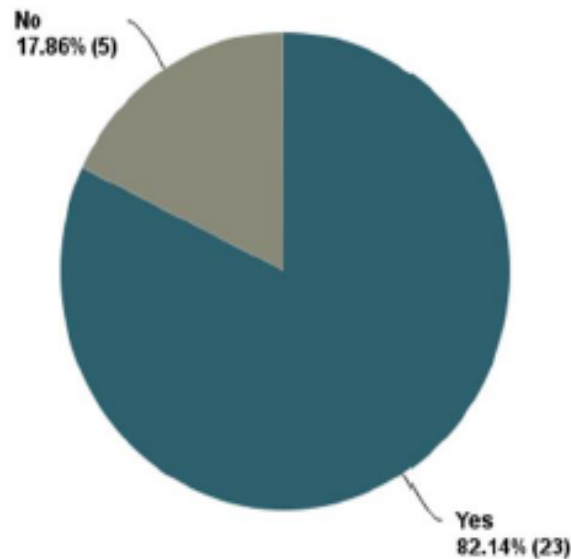
## Q10: Are there any other issues or concerns relating to 'deemed' Professional Clients?



- Some questioned if **large Undertakings** should fall into the 'deemed' Professional Client class without having to complete the knowledge assessment;
- Others suggested that an **insurance broker** who is involved in advising or arranging an insurance contract ought to be classified as a 'deemed' Professional Client;
- Guidance under the current COB 2.3.2(2) requiring clients to advise the Authorised Firms about any **change in its situation** has been removed from the proposed Rule 2.3.3(2), and should be re-added.

Answer Choices	Responses	
Yes	18.75%	6
No	81.25%	26
Total		32

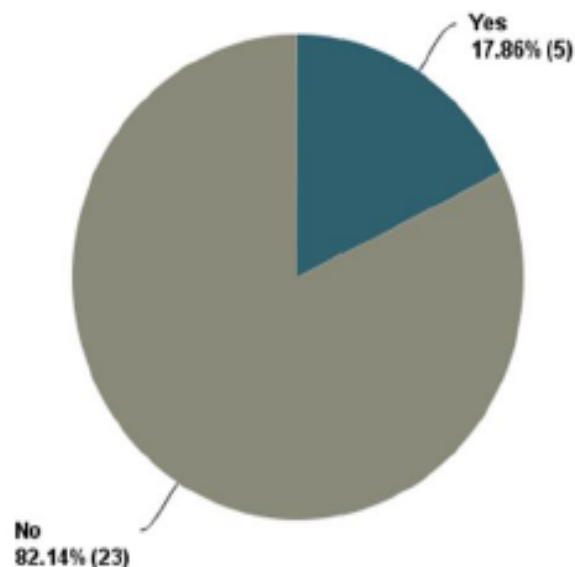
**Q11: Do you agree with our proposal to classify Undertakings to whom credit is provided for business purposes as Professional Clients on the basis that the lending firm, rather than the Undertaking, is primarily at risk?**



- While the proposal to classify Undertakings to whom credit is provided for business purposes as Professional clients is generally understandable and agreed to, some people do **not agree with the rationale** of the supporting argument that the risk is borne by the lender and not the customer.
- The **borrower is also at risk** and may on default be subject to legal action and in some cases to criminal proceedings.
- Also, credit provision can take many forms and a simple term loan wouldn't make the receiver a knowledgeable professional entity.

Answer Choices	Responses	
Yes	82.14%	23
No	17.86%	5
Total		28

**Q14: Are there any other categories of Financial Services where the persons obtaining such services can be classified as Professional Clients, either based on the nature of the service, or the type of clients who generally require such services?**



Some respondents suggested that the following categories of Financial Services should also be classified as a Professional Client, based on the nature of the service and the type of client:

- **trade finance** under the area of providing credit;
- **execution only** services;
- **Personal Investment Companies**; and
- the indirect dealing of reinsurance companies with other **insurance and reinsurance brokers**, who are not receiving any direct financial services.

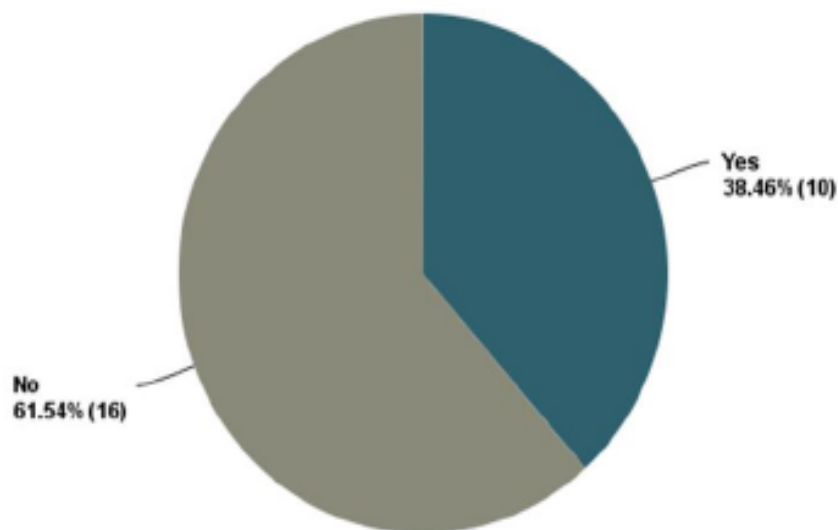
Answer Choices	Responses	
Yes	17.86%	5
No	82.14%	23
Total		28



## Q17: Do you have any concerns about our proposal to increase the net asset threshold from US\$ 500,000 to US\$ 1,000,000 in about a year's time?

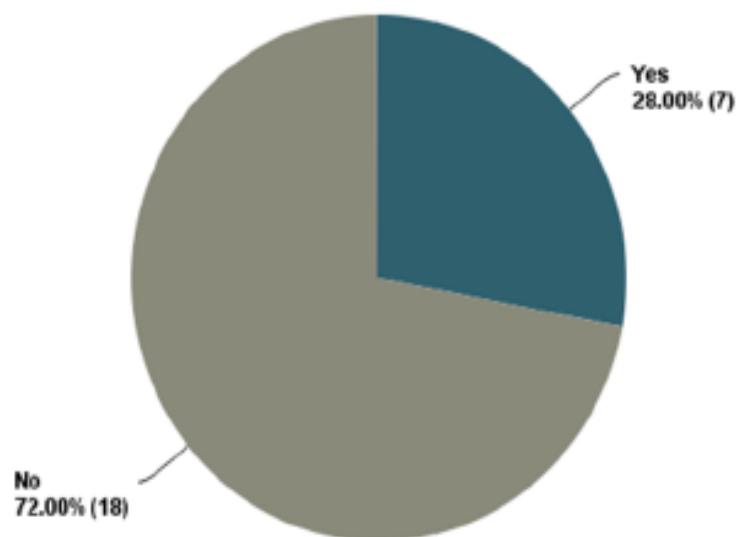
Several concerns were raised regarding the increase in the **net asset** threshold from US\$500,000 to US\$1,000,000.

- Inflation is understandable, however doubling the figure seems substantial, and that a **gradual increase** over the next few years could be more realistic.
- If credit has been extended to a client with net assets below US\$1,000,000, closing of his account will not be possible because the firm would still have **to recover the loan** from him.
- It could be more preferable for the net asset threshold to remain the same as in the current regime but with **more focus placed on the client's experience and expertise**, or if the current threshold is applied to a financial instrument **portfolio rather than net assets** as currently is the case.
- Perhaps the increase in net assets is more appropriate for **institutions** than for natural persons.



Answer Choices	Responses
Yes	38.46% 10
No	61.54% 16
Total	26

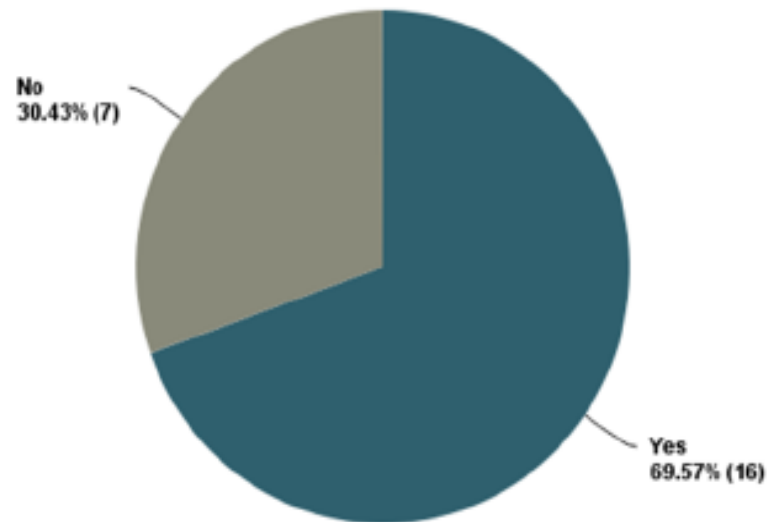
**Q19: Do you have any concerns relating to the proposed treatment of Family Members of a Professional Client as Professional Clients themselves in the circumstances specified in paragraph 47?**



- More clarification is required on definitions and the language used to acknowledge the liability of the engaged primary account holder, should there be excessive trading or unsuitable investments carried out in the account. Also, one member voiced concerns over the scope of including only family members, as friends have also been seen to be opening joint accounts.
- Further guidance for situations where a Client has provided Power of Attorney to an investment decision maker.
- Thirdly, some respondents believed the proposal was in line with current requirements and therefore required further guidance on what to do with existing relationships which have been established on this basis.

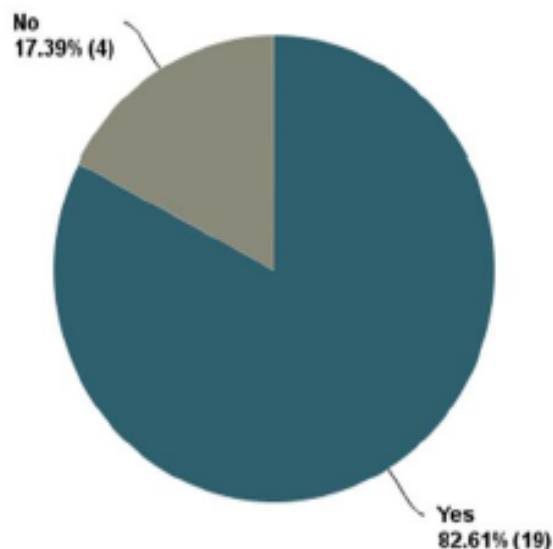
Answer Choices	Responses
Yes	28.00% 7
No	72.00% 18
Total	25

**Q24: Do you think that it is appropriate to retain the current distinction referred to in paragraph 56 with regard to the procedures applicable to certain types of 'deemed' Professional Clients before they could be classified as Market Counterparties?**



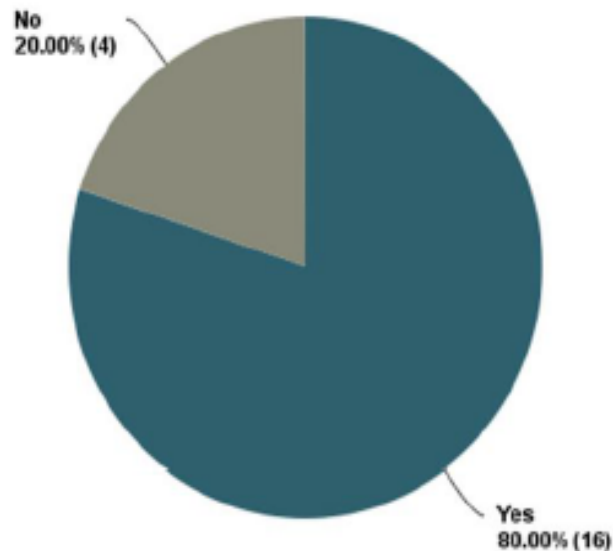
- The main concern with this is the requirement of receiving **written confirmation** by clients after being notified of being classified as a market counterparty.
- A distinction could be made in terms of the **services provided** where, financial services such as investments and holding client money could require a written agreement whereas, other financial services such as advising and arranging should not need to be agreed to.
- Also, if a client receives the letter and fails to respond to it, it would be their responsibility and therefore, **silence should amount to acceptance**.
- Furthermore, **MIFID** does not require written confirmations, so the DFSA's stringency in this area is not so clear.

**Q29: Do the proposed outcome-based requirements adequately address issues that arise where an Authorised Firm seeks to rely on a client classification made elsewhere, such as by its head office or a member of its Group?**



- Whilst there are clear advantages in the possibility for Authorised Firms, which are part of a large group, to place reliance on client classification done elsewhere in the group, in practice the classification being relied upon is unlikely to **match DFSA's exact requirements**.
- As re-assessments must be conducted on clients before relying on the foreign classification, many concerns were addressed on the **time and effort** to be spent on the classification and its administration that relatively **little advantages** can be found.
  - Authorised Firms have found that it would be easier to re-perform the classification to local standards altogether.
  - An **exemption for branches** with a parent in a recognized jurisdiction as per DFSA would be ideal.

**Q31: Do the proposed outcome-based requirements adequately address issues that arise where Authorised Firms operating within a Group provide a composite package of financial services to the same client?**



- There have been a few issues and calls for more analysis of scope with this proposal as it may, at one point, become difficult to determine **accountability for the respective services** and support functions across the group of companies or jurisdictions, with the attendant difficulty with enforcement of rights.
- An express exclusion for Group services being provided to a **Retail Client**, under proposed Rule 2.3.4, is not necessary, as long as the client agreement is drafted clearly.
- The comments also apply to the responses for Question 37 on the consequential changes to Client Agreements. In order for reliance on Group services and Group Client Agreements to operate effectively, the **legal risk** will need to be carefully managed and monitored including any conflicts of law or regulation.

Answer Choices	Responses	
Yes	80.00%	16
No	20.00%	4
Total		20



# DFSA Policy Update

**Peter Smith**  
**Head of Policy**

# Agenda

- CP97: Client Classification – some feedback on your feedback
- Update on:
  - CP98: Code of Market Conduct
  - CP99: Liquidity Coverage Ratio and Leverage Ratio
- Plans for 2015/16

# CP97 - A Reminder

Why is Client Classification important?

- To ensure that firms provide an **appropriate level of protection** to their Clients, in line with the particular Client's:
  - Knowledge
  - Experience
  - Resources

# CP97 Responses

- Outreach sessions on 30 September and 1 October:
  - Over 150 attendees
- Public comments closed on 15 October:
  - 22 written submissions

# CP97 Responses – Key Themes

- Desire for further guidance/clarification in a number of areas, such as:
  - Joint accounts
  - Group arrangements:
    - Client agreements put in place elsewhere
    - Bundled services



# CP97 Responses – Key Themes

- Suggestions of further areas where the DFSA should allow:
  - Clients to be deemed as professional
  - The service to determine the nature of the Client (service-based professionals)
  - Reliance to be placed on things done elsewhere in the group

# CP97 Responses – Key Themes

- Concerns about the proposal to increase the Net Asset test from USD 500k to USD 1 million:
  - In particular, the impact on existing Clients
- Concerns about transitional arrangements in general:
  - Would all existing Clients need to be reclassified?

# Other Current/Recent Consultations

- CP98 – Code of Market Conduct
  - Consultation closed on 15 October
  - Respondents supportive of the introduction of a Code
    - Some suggestions to improve/clarify the wording
- CP99 – Liquidity Coverage and Leverage Ratios:
  - Open for consultation until 28 October
- Both expected to be finalised this year

# Plans for 2015/16

- Complete work on Client Classification
- We hope to consult on:
  - Further enhancements to our funds regime
  - Improving our Rules for insurance related activities
- We need to explore issuing arising from:
  - The difficulties experienced by ESBD
  - The Al Khorafi vs. Sarasin case

# Plans for 2015/16

- We will look at international standards on:
  - Recovery and resolution for financial institutions and infrastructures
  - Reform of OTC derivatives markets
  - Basel proposals, including the Net Stable Funding Ratio
  - Capital requirements for insurers
- In each case, we will consider what an appropriate regime for the DIFC looks like, drawing from the international standards





# Questions

# **Supervision Division Structure 2015 Business Plan and Priorities**

**Bryan Stirewalt  
Managing Director, Supervision**



# Agenda

- Update to changes to the Supervision Division structure
- Overview of the DFSA's regulatory priorities and business plan proposals for 2015
- Presentations by the Heads of the Supervisory Teams



# Why Did we Change the Supervision Division Structure?

## **Risk-Based Approach**

- Four Supervision units around targeted risk groups
- Most firms no longer have a dedicated Relationship Manager
- Greater resources for higher impact firms
- Increased focus on conduct-related issues

# Supervision Division

**Bryan  
Stirewalt**

Managing  
Director

**Authorisations**

Martin Wilding

**Prudential**

Prasanna  
Seshachellam

**Conduct of  
Business**

Lawrence  
Paramasivam

**Thematic  
Supervision**

Serdar Guner



# What are DFSA's Regulatory Priorities for 2015?

2015

Financial Crime/  
Conduct of Business

Financial Stability

DIFC Jurisdiction

Standards Alignment

# What are Some of DFSA's Business Plan Proposals for 2015?

- Financial Service Activities
  - Insurance Activities
  - Arranging
  - Perimeter Guidance
- Resolution Planning
- Suitability



# Authorisation Team

**Martin Wilding**  
**Associate Director, Supervision**

# The Current DFSA Firm Population

- As at 17<sup>th</sup> November 2014:
  - 358 Authorised Firms
  - 82 DNFBPs
  - 17 Registered Auditors
- Plus a strong “*pipeline*” of applicant firms



# Responsiveness

- Feedback from applicant firms, and their advisers, is always very welcome, carefully considered and frequently acted upon
- We will continue to:
  - simplify processes and reduce turnaround times where we can, whilst robustly upholding our standards
  - take a risk-based approach to applications, mirroring DFSA's general approach to Supervision



# Key Lessons Learned From Authorisations

- Ensure that business plans, compliance and AML manuals and any other processes and procedures are specific to your business
- Be realistic in your initial – and ongoing – financial projections, particularly in the early years

# Looking forward...

- More reliance on self-certification for lower risk applicants - e.g. in respect of the readiness of compliance and AML procedures
- Progressive introduction during 2015 of “on-line” application functionality for a variety of application related processes

# Prudential Matters

**Prasanna Seshachellam**  
**Director, Supervision**

# Update from Prudential Perspective

- Current enhancements to prudential regime
- Key prudential messages
- Key insurance messages
- New EPRS reporting



# Current Prudential Changes

- New Rules relating to the Liquidity Coverage Ratio and the Leverage Ratio – currently under consultation
- LCR applies to all Category 1 and 5 firms
- Global liquidity concession subject to DFSA approval for Branches
- Leverage Ratio disclosure required for Category 1, 2 and 5, but this does not apply to Branches



# Expected prudential changes

- Next year will see a focus on
  - Concentration risk rules and guidance
  - Recovery and Resolution Planning
  - Ad hoc amendments

# New EPRS Forms

- New EPRS system will be in place from 1 January 2015. First submission for firms will be April 2015
- Annual forms will be in current format
- Guidance on new forms have been released for review
- Guidance will be available from December 2014

# Key Messages

- Theme review on trading room operations ongoing and expected to be completed shortly
- Theme review for liquidity risk ongoing and hopes to be published before the end of the year
- Liquidity risk management and contingency funding planning are key themes

# Key Messages

- Issues relating to the service of Providing Custody and sub-custody services.
- Need for clarity in relation to the nature and disclosures surrounding the provider of these services to Clients
- Need for thorough assessment of the custody service provider and all risks arising from that activity
- Greater focus on outsourced services
- Need for greater oversight and contingency planning for outsourced services

# Insurance Update

For Insurance Companies - Changes from 2015:

- New PIN forms – applicable to both Branches and Domestic insurers
  - IN190 Employment Statistics (annual)
  - IN200 Statement of Underwriting Performance (annual/quarterly)
  - IN210 Statement of Revenue by Jurisdiction (annual)
- Quarterly Prudential returns to be submitted within ONE month of quarter end in EPRS - applicable from Q1 2015 onwards



# Insurance Update

For Insurance intermediary / management firms in Prudential Category 4 - Changes from 2015:

- New PIB forms - for both Branches and Domestic firms
  - B270 Insurance Brokerage Form (annual/quarterly)
  - B270 Schedule of Insurance Monies (annual)
- Insurance Monies theme review currently underway, responses to the questionnaire due at the end of Nov 14
- Currently reviewing the scope of insurance management licence (includes TPAs, captive management, underwriting agents, cover holders)

# Conduct of Business Risks

**Lawrence Paramasivam**  
**Director, Supervision**

# Agenda

- What is the DFSA's supervisory approach to conduct risks?
- What are some of the conduct risks we will focus on next year?
- What are some of the lessons from the DIFC Courts Al Khorafi decision?



# What is the DFSA's Supervisory Approach to Conduct Risks?

## Supervisory Approach

- Apply a risk-based approach centred on thematic reviews
- Assess the culture and values of the firm: not just about “can I do it” but “should I do it”
- Identify poor conduct which requires enforcement action



# What are Some of the Conduct Risks on which we will Focus Next Year?

## Client Classification

What is an individual's financial knowledge and experience?

## Suitability

When are suitability assessments not undertaken?



# What are Some of the Conduct Risks on which we will Focus on Next Year?

## Marketing Material

Information is clear, fair and not misleading

## Financial Crime

Risk-Based Approach, Ongoing CDD and SARs

# What are Some of the Lessons From the DIFC Courts Al Khorafi case?

## Conduct Issues

- DFSA reminds firms of the importance of compliance with DFSA's conduct requirements

## Financial Services Perimeter

- DFSA is reviewing the business models of a sample of firms
- DFSA is considering perimeter guidance

# Thematic Supervision

**Serdar Guner**  
**Director, Supervision**

# Agenda

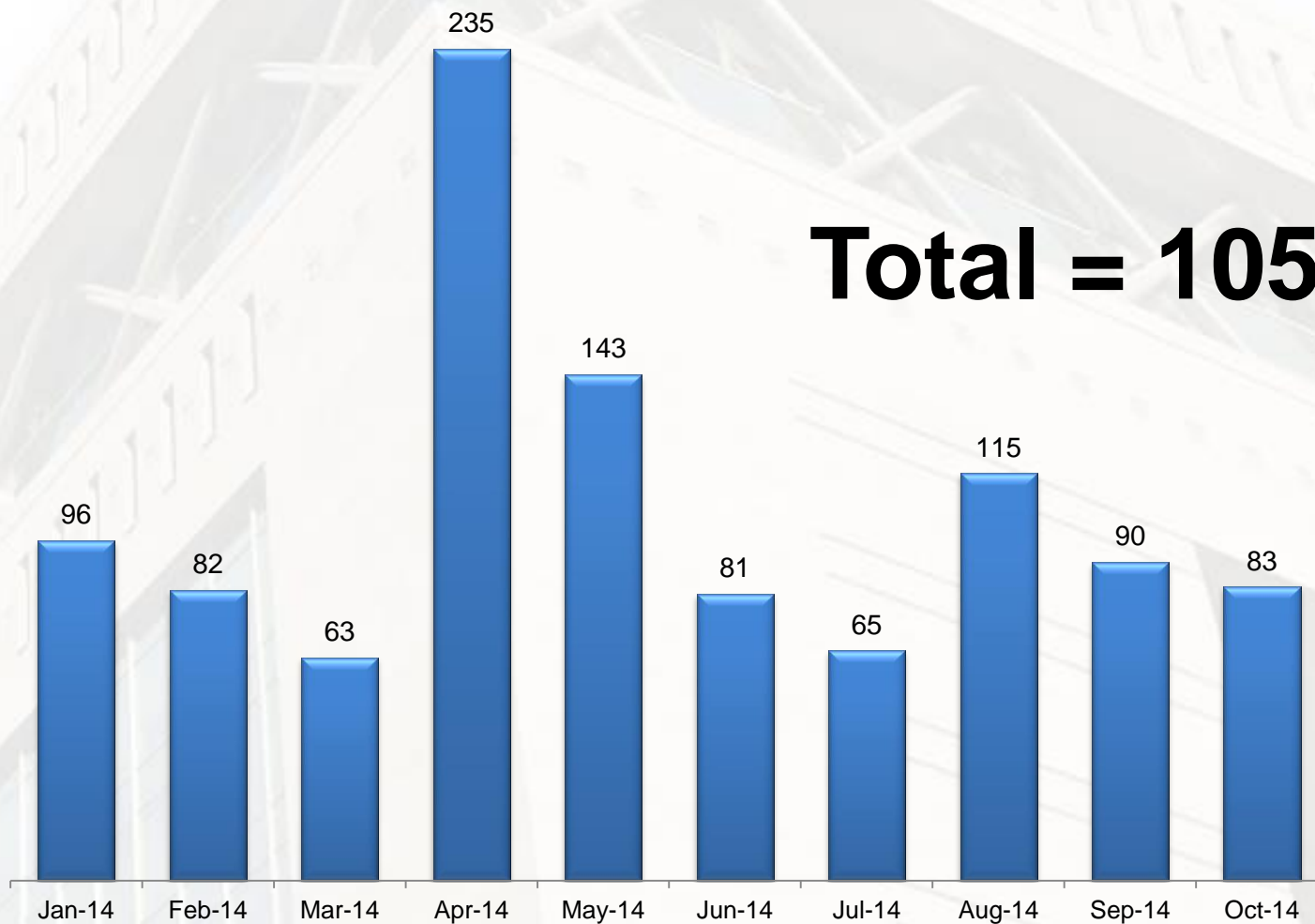
- On-going Supervision
- Thematic
- Systems

# Firms Managed under Thematic Supervision

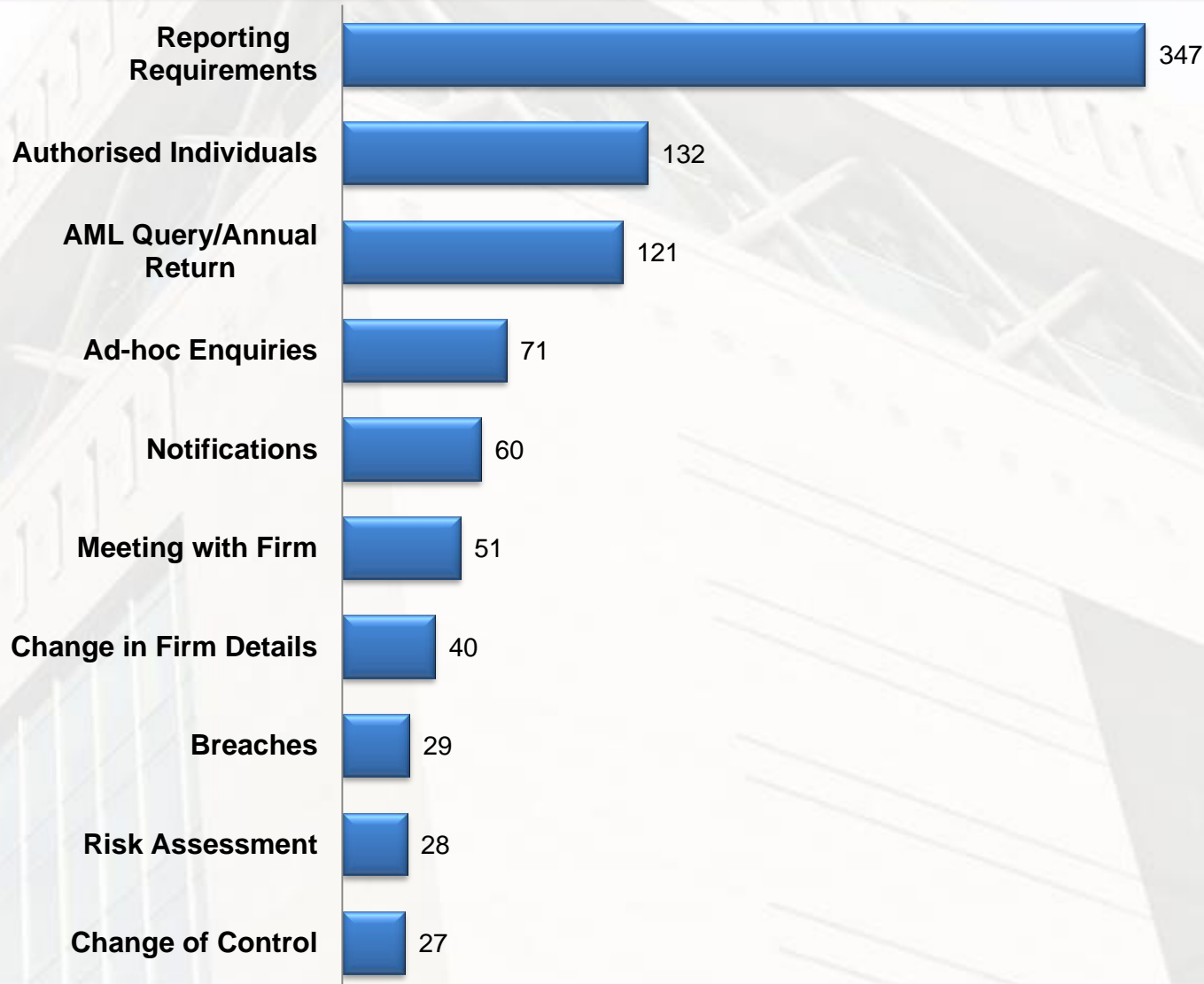
Capacity	Prudential Category	Oct
AF	PIB Cat 1/Insurer	0
	PIB Cat 2	2
	PIB Cat 3A	17
	PIB Cat 3C	21
	PIB Cat 4	88
<b><i>AF Total</i></b>		<b>128</b>
Rep Office		49
<b>Grand Total</b>		<b>177</b>



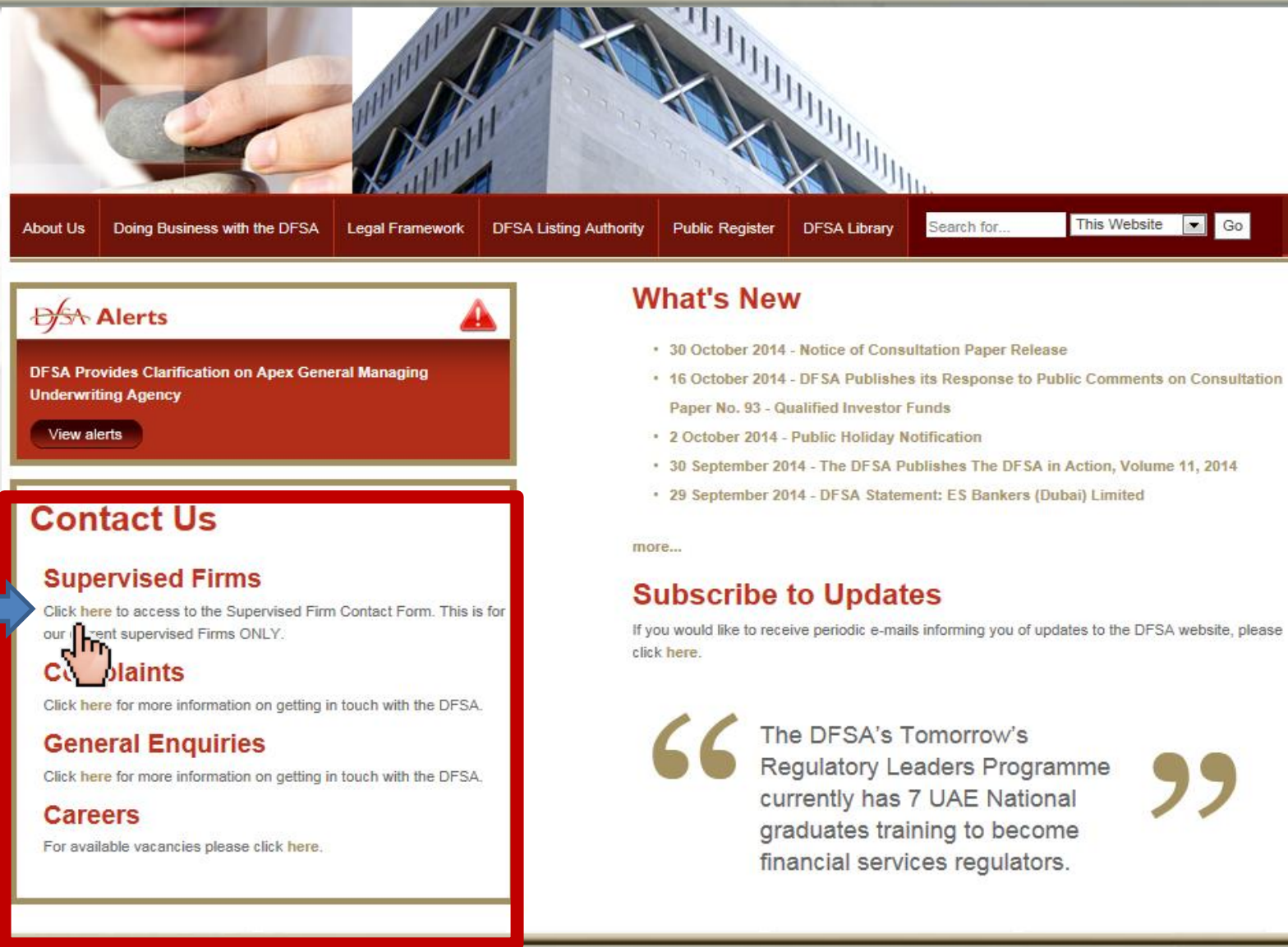
# Thematic Supervision - Enquiries



# Thematic Supervision – Activities



# Thematic Supervision - Contact



The screenshot shows the DFSA website interface. At the top is a navigation bar with links: About Us, Doing Business with the DFSA, Legal Framework, DFSA Listing Authority, Public Register, and DFSA Library. A search bar is on the right. Below the navigation bar is a 'What's New' section with a list of recent updates. To the left of 'What's New' is an 'Alerts' section with a red warning icon and a link to 'View alerts'. The 'Contact Us' section is highlighted with a red border and contains links for 'Supervised Firms', 'Complaints', 'General Enquiries', and 'Careers'. A blue arrow points to the 'Supervised Firms' link, and a hand cursor icon is over the 'Complaints' link. A quote is displayed on the right side of the page.

**DFSA Alerts**

DFSA Provides Clarification on Apex General Managing Underwriting Agency

[View alerts](#)

## Contact Us

**Supervised Firms**

[Click here](#) to access to the Supervised Firm Contact Form. This is for our present supervised Firms ONLY.

**Complaints**

[Click here](#) for more information on getting in touch with the DFSA.

**General Enquiries**

[Click here](#) for more information on getting in touch with the DFSA.

**Careers**

For available vacancies please [click here](#).

## What's New

- 30 October 2014 - Notice of Consultation Paper Release
- 16 October 2014 - DFSA Publishes its Response to Public Comments on Consultation Paper No. 93 - Qualified Investor Funds
- 2 October 2014 - Public Holiday Notification
- 30 September 2014 - The DFSA Publishes The DFSA in Action, Volume 11, 2014
- 29 September 2014 - DFSA Statement: ES Bankers (Dubai) Limited

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**“** The DFSA's Tomorrow's Regulatory Leaders Programme currently has 7 UAE National graduates training to become financial services regulators. **”**





# Questions





Thank You