

DFSA Outreach Session

Policy & Legal Services

Monday, 23 February 2015

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Agenda

- **Client classification**
(Dhammika Amukotuwa)
- **DFSA Decision making process**
(James Lake)
- **Policy update**
(Peter Smith)

Changes to the Client Classification Regime

Dhammika Amukotuwa
Director, Policy and Legal Services

Agenda

Background to CP97 proposals

Where we are now

Key themes in public comments

New regime, with changes following public consultation

Comparison – Old and New

Next steps

Where to find more information

Background to CP97 proposals

Firms told us in 2013/2014 that our regime didn't work well with their ...

- business models and practices
- clients' needs and expectations, which have changed

CP97 proposals are designed to ...

- adapt the client classification regime to changing business models and practices
- give greater flexibility, clarity & certainty
- remain aligned with the EU/UK
- meet international standards
- cater to DIFC specific factors

Where we are now

The revised client classification regime ...

- was approved by the DFSA Board of Directors in February 2015
- will replace current chapter 2 of the Conduct of Business (COB) module
- will come into force, with one exception, on 1 April 2015
- contains grandfathering provisions to retain existing client classifications and client agreements

The exception – the increase of the asset threshold from US\$500,000 to US\$1 million comes in to effect on 1 April 2016.

Key themes in public comments

Scope for
re-classifying
existing clients

'Deemed'
Professional
Clients' right to
opt-in as retail

Scope of
look-through
arrangements

Scope of family
member joint
accounts

Market
Counterparty
procedures

Scope for
reliance on
external
classifications

What constitutes
a 'bundle' of
financial
services

Transitional
arrangements

We will publish a feed-back statement on the DFSA website

Changes following public comments

Changes to CP97 proposals have been made
in response to public comments ...

to provide more
flexibility

to provide greater
clarity

to better align the
DFSA regime with
MiFID / UK

Key CP97 proposals remain intact



More categories of Professional Clients – within the existing framework of three types of Clients



Look-through arrangements to attribute professional status to a Client



Flexibility to use client classifications made elsewhere



Flexibility to accommodate 'group-based' provision of financial services

Retail Clients

No change
from CP 97
proposals ...

A firm must
classify a Person
as a Retail Client
when that Person
is not classified as
a Professional
Client

A firm can only
classify a Person
as professional if
the Person:

meets
Professional
Client criteria;
and

has not
exercised the
right to opt-in
as a Retail
Client

‘Deemed’ Professional Clients

The ‘deemed’ Professional Client categories under CP97 remain unchanged, but ...



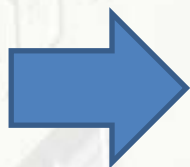
‘deemed’ Professional Clients have the right to opt-in as Retail Clients – to align with MiFID/UK



terms relating to a ‘Large Undertaking’ are now defined as per international accounting standards

'Service-based' Professional Clients

One clarification to CP97 proposals ...



added a definition of an individual
'controller' of an Undertaking for
provision of business credit

‘Assessed’ Professional Clients

Some enhancements to CP97 proposals ...



a new definition of the term ‘Family Member’



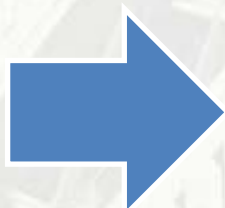
an Undertaking to be an ‘assessed’ Professional Client (PC) by looking through not only to an ‘assessed’ PC, but also to a ‘deemed’ PC



increase of the asset threshold to US\$1 million to come into force on 1 April 2016

Market Counterparties

Some enhancements to CP97 proposals ...



MC procedures streamlined – written notification & no objection within specified period will suffice



MC treatment can be extended to an Undertaking which is wholly owned by certain 'deemed' Professional Clients

A bundle of financial services provided by a Group

Some changes – new Guidance ...

Group client
concept

- recognises market practices – untested territory
- greater flexibility with outcome-based procedures

A 'bundle' of
financial
services

- guidance on what arrangements would constitute a 'bundle' of financial services

Conditions
to be met

- appropriate classification for the services provided
- the arrangement to be clear to the Client
- risks identified and effectively addressed
- proper records to be kept

Transitional arrangements

Adequate transitional arrangements to ensure ...



no need to re-classify existing Clients in respect of continuing Financial Services



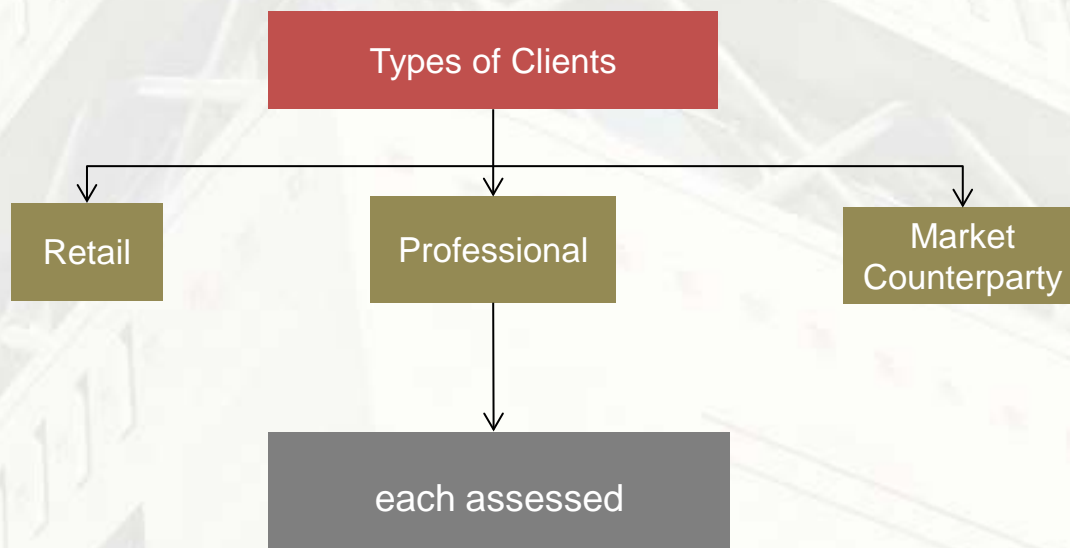
no need to enter into new Client Agreements or unwind existing Transactions



firms have until 1 April 2016 to meet the increased asset threshold to US\$1 million in respect of new Clients or new Financial Services to grandfathered Clients

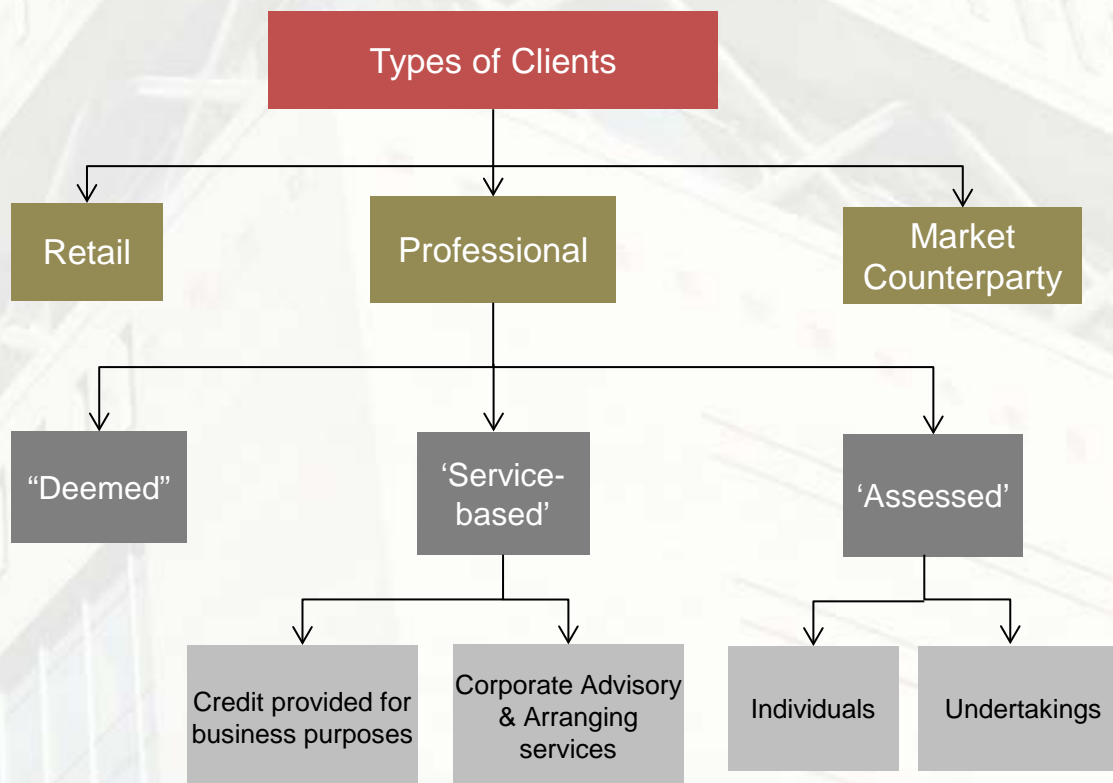
Comparison - Old and New

**old
COB 2**



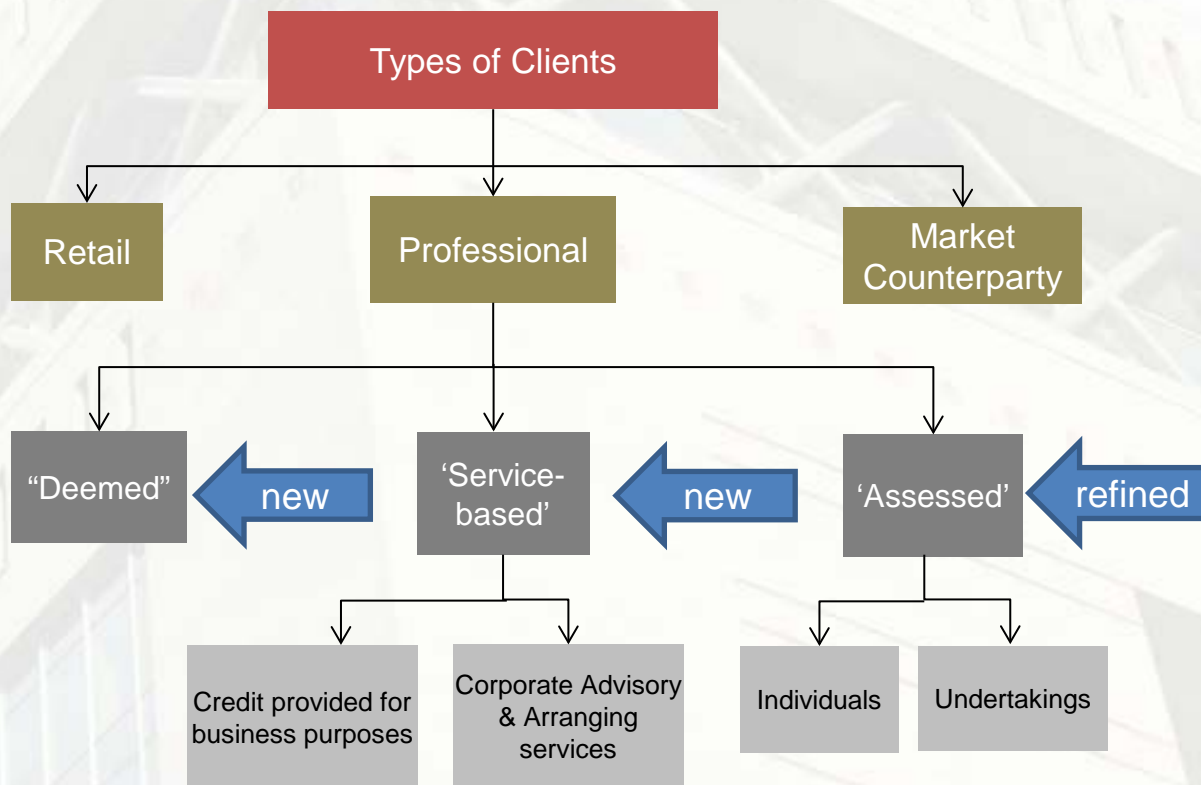
Comparison - Old and New

**new
COB 2**



Comparison - Old and New

**new
COB 2**



New
Reliance on external client
classifications

New
A Group-based 'bundle' of
financial services

Next Steps

new regime in
force
on
1 April 2015
(one exception)

increased asset
threshold of
US\$1 million in
force on
1 April 2016

only existing
Clients are
grandfathered for
existing services/
activities

firms should consider if there are any
practical implications

Where to find out more ...



Conduct of Business Module (COB) Chapter 2
Re-read CP97 on the DFSA website www.dfsa.ae
“DFSA Response to Comments on CP97” to be published on DFSA website shortly



Questions

The DFSA's decision-making process

James Lake
Associate Director, Policy & Legal Services

Agenda

- Context and purpose
- DFSA's general approach to decision-making
- Overview of process in Schedule 3 to the DIFC Regulatory Law
- The Decision Making Committee (the "DMC")
- Notices and representations
- Referrals and appeals
- Settlement and publicity

Context and purpose

To protect the rights, interests and legitimate expectations of persons subject to DFSA decisions

To ensure timely, consistent decisions are made, using simple, proportionate & fair procedures

DFSA approach to decision-making

RPP Sourcebook, Chapter 7

- Who can exercise a DFSA power
- Key elements
- Principles of procedural fairness
 - Acting without bias or conflict
 - Giving the person an opportunity to present their case
 - Taking into account only relevant considerations

Categories of decisions

- Routine operational decisions – no formal process
- Discretionary power decisions – prescribed process
 - Schedule 3 decisions: Executive or DMC
 - Bespoke due process: Executive or DMC

Examples of Schedule 3 decisions

Examples:

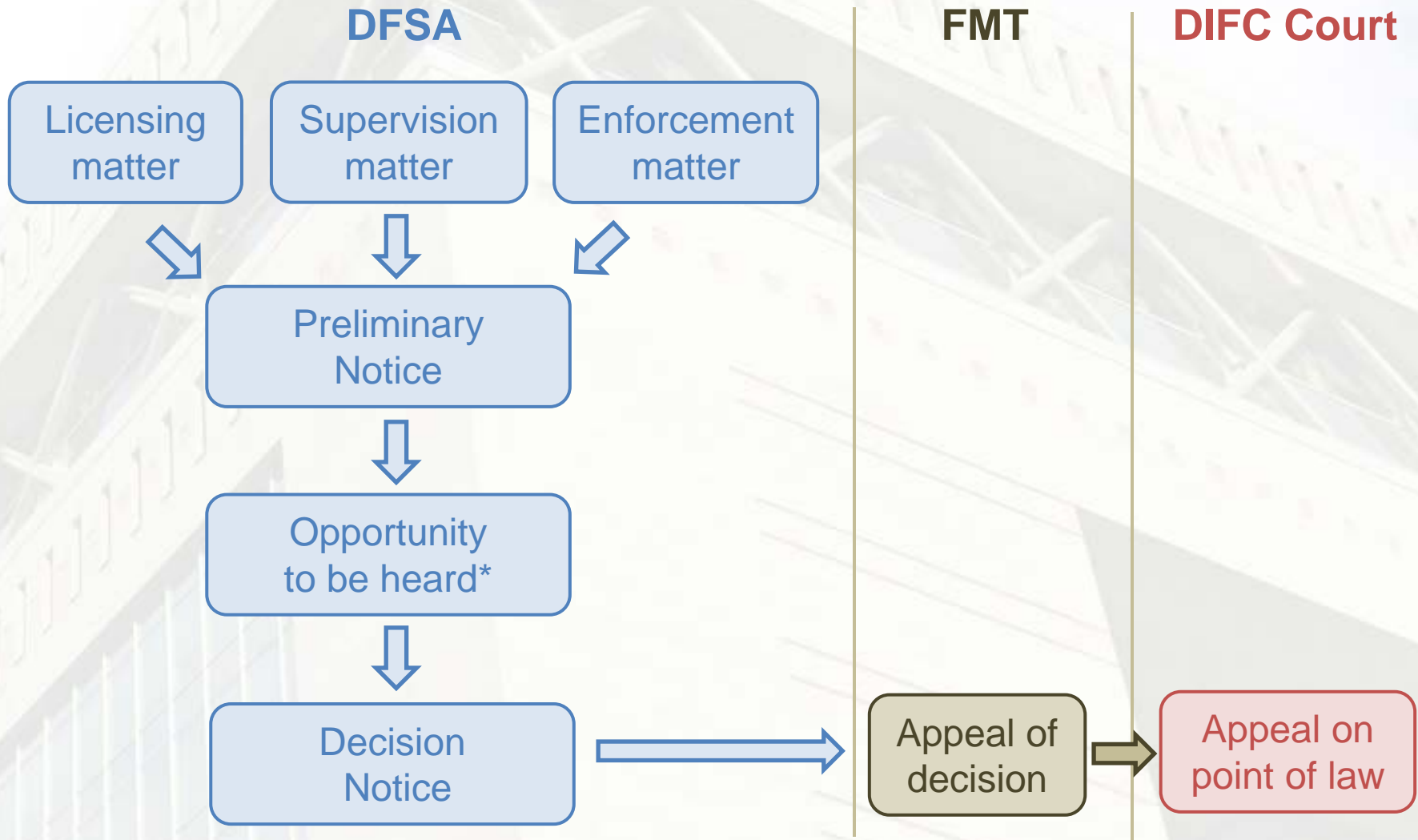
- *Refusal to grant a Licence (Art 47)*
- *Impose a prohibition or restriction on a firm's business (Art 75)*
- *Impose a financial penalty (Art 90)*
- *Direct an AML to suspend securities (Markets Law Art 35)*

Relevant DFSA administered law or Rulebook module specifies whether Schedule 3 applies

NOTE - Schedule does not apply to decisions where:

- the person has requested or consented to in writing; or
- the DFSA withdraws certain restrictions, directions, requirements, restrictions, prohibitions or conditions

Schedule 3 process



Decision Making Committee (DMC)

- Independent from team that gathered the evidence
- Comprised of senior DFSA staff
- Single member or panel of three – drawn from pool
- Considers the recommendation, reviews the supporting evidence and applies relevant DFSA policy
- Decides whether to take the proposed action.
- If so, DMC issues a Preliminary Notice

Preliminary Notice requirements

Schedule 3, paragraph 4 requirements:

- Written notice – a “Preliminary Notice”;
- Offer opportunity to make representations
(except if delay is prejudicial to interests of users or the DIFC)

The Preliminary Notice will include:

- the proposed action;
- the reasons, including any proposed findings of fact;
- a copy of the relevant materials considered;
- notification of the right to make representations – in person and in writing; and
- details of how and by when any representations may be made.

Right of representations

Can be in person and in writing

- Preliminary Notice will specify the period for representations
- If none, default procedures apply (Schedule 3, para 4.(4))

Written representations

- Should be clear and concise and respond to the facts, matters and action proposed in the Preliminary Notice

Oral representations

- Attendees
- Practicalities and formalities

Decision Notice requirements

Schedule 3, paragraph 5 requirements:

- written notice specifying the decision – a “**Decision Notice**”;
- the reasons for the decision, including any findings of facts;
- the date on which the decision is to take effect;
- the date by which any relevant action must be taken by the person, for example, to pay a financial penalty;
- the person’s right to refer the decision to the FMT; and
- copy of the relevant materials considered in making the decision.

Referrals and appeals

Referral to FMT

- Chapter 5 of the Regulatory Law (Articles 28 to 34)
- Law / Rulebook specifies whether a right of referral to FMT
- Full review of the merits of the decision
- Referral to be made by FMT Form 1 Notice of Appeal
- Within 30 days of decision
- Governed by FMT Rules of Procedure

Appeal of FMT decision to DIFC Court

- **Only** on a point of law
- Permission of FMT or Court is required

Settlement

Relevant to Enforcement matters

- Guidance in RPP Sourcebook 5-15

Possible at any stage of the process

DFSA recognises the benefit of early settlement

- Reduction in financial penalty
- Not to apply to any “disgorgement”

Schedule 3 requirements do not apply

- The DMC is generally the decision-maker for settlement of enforcement action which results in a Decision Notice

Publicity

Policy set out in RPP Sourcebook 5-17

DFSA will generally publish outcomes relating to enforcement actions and decisions made by the DMC

DFSA will generally publish information about the commencement of proceedings before the FMT or Court

Consistent with DFSA's objectives and commitment to open and transparent processes

Applies equally to DMC decisions and settled outcomes

Want to know more?

- Further details on www.dfsa.ae
 - Legal Framework: Legislation
 - About Us: Who we are / Financial Markets Tribunal
- RPP Sourcebook
 - Chapter 4: Supervisory and Enforcement powers
 - Chapter 5: Enforcement (including settlement and publicity)
 - Chapter 6: Penalty guidance
 - Chapter 7: Decision making



Questions

Policy Update

Peter Smith
Head of Policy & Strategy

Other recent changes

Effective from 1 January 2015:

Code of Market Conduct (CP98)

- guidance on Part 6 of the Markets Law 2012
- conduct that the DFSA sees as likely to be, or not to be, market abuse

Basel Liquidity Coverage & Leverage Ratios (CP99)

- Liquidity Coverage Ratio fully introduced as a 'hard' limit
- Reporting of Leverage Ratio calculation, no 'hard' limit yet

Plans for 2015/16

Consult on:

- further enhancements to our funds regime
- improving our rules for insurance-related activities

Explore issues arising from:

- the difficulties experienced by ESBD
- the Al Khorafi vs. Sarasin case

Look at international standards on:

- recovery & resolution
- reform of OTC derivatives markets
 - consider in each case what an appropriate regime for the DIFC looks like



Thank you