

4 ADDITIONAL RULES - ACCEPTING DEPOSITS AND PROVIDING CREDIT

4.1 Application

4.1.1 The Rules in this chapter apply to an Authorised Firm with respect to Accepting Deposits or Providing Credit through an establishment maintained by it in the DIFC.

4.2 Accepting Deposits

4.2.1 A Bank, in the course of Accepting Deposits, must not:

- (a) Accept Deposits from the State's markets;
- (b) Accept Deposits in the U.A.E. Dirham;
- (c) undertake currency or foreign exchange transactions involving the U.A.E. Dirham; or
- (d) Accept Deposits from Retail Clients.

4.3 Providing Credit

4.3.1 (1) An Authorised Firm may, subject to (2), Provide Credit to a:

- (a) Professional Client; and
- (b) Retail Client, but only where:
 - (i) the Retail Client is an Undertaking; and
 - (ii) the Credit Facility is provided to the Retail Client for a business purpose.

(2) An Authorised Firm, in the course of Providing Credit, must not:

- (a) Provide Credit in the U.A.E. Dirham; or
- (b) undertake currency or foreign exchange transactions involving the U.A.E. Dirham.

4.4 Depositor protection

4.4.1 (1) Subject to (2), to the extent that the Rules in this section are inconsistent with the Insolvency Law 2009 and any regulations made for the purposes of that law the Rules in this section will prevail.

(2) The following provisions of laws, Rules and Regulations prevail over the Rules in this section:

(a) parts A5.13.2 (a), (b), (c) and (d)(ii) of the Client Money Distribution Rules;

(b) Article 65 of the Insolvency Law 2009;

(c) the DIFC Preferential Creditor Regulations; and

(d) Regulations 5.45.4 and 5.52 of the DIFC Insolvency Regulations.

4.4.2 (1) In the event of:

(a) the appointment of a provisional liquidator, liquidator, receiver or administrator, or trustee in bankruptcy, over a Bank which is a Domestic Firm; or

(b) a direction by the DFSA to a Bank which is a Domestic Firm under Article 76 of the Regulatory Law 2004 to deal with all or substantially all its Deposits in a specified manner,

eligible depositors of the Bank have priority over, and shall be paid in priority to, all other unsecured creditors of the Bank.

(2) In (1), an “eligible depositor” means, subject to (3), a Person who, at the relevant time, is a creditor of a Bank referred to in (1) by virtue of being owed an amount of Money held by the Bank as a Deposit.

(3) In (2), eligible depositor excludes any creditor which is:

(i) a Market Counterparty; or

(ii) a bank.

Guidance

Article 101 of the DIFC Insolvency Law 2009 gives the DFSA a power to modify the application of provisions of that law and the Regulations made for the purposes of it in particular cases or classes of case. It permits the DFSA to make Rules which provide for the orderly conduct of affairs or winding up of an

Authorised Firm and to prescribe procedures and priorities for dealing with assets of the Authorised Firm or other persons in the event of pending or actual insolvency or other default.

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A5.13 Client money distribution rules

A5.13.1 This section is referred to as the Client Money Distribution Rules and to the extent that these Rules are inconsistent with part 5.52 ~~4.13~~ of the DIFC Insolvency Regulations, and the DIFC Preferential Creditor Regulations, these Rules will prevail.