

**Appendix 1**

In this Appendix underlining indicates new text and striking through indicates deleted text.



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# The DFSA Rulebook

General Module

**(GEN)**

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## 2 FINANCIAL SERVICES

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**2.2.10H** An Authorised Firm must not carry on the Financial Service of Operating or Acting as the Administrator of an Employee Money Purchase Scheme in relation to a Scheme which receives contributions required to be made by employers under the Employment Law, or by employers under another Dubai law, unless that Scheme is established in the DIFC.

### **Guidance**

An Authorised Firm can act as the Operator or Administrator of two types of Employee Money Purchase Schemes, (a) a scheme that is established in the DIFC, or (b) a Non-DIFC Scheme. Even if a Non-DIFC Scheme has an Operator or Administrator licensed by the DFSA, such a scheme cannot receive employer contributions required under the Employment Law or another Dubai law.

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## 2.3 By way of business

**2.3.1** Subject to Rules 2.3.2, and 2.3.3, 2.3.4, 2.3.5, 2.3.6 and 2.3.7 for the purpose of these Rules a Person carries on an activity by way of business if the Person:

- (a) engages in the activity in a manner which in itself constitutes the carrying on of a business;
- (b) holds himself out as willing and able to engage in that activity; or
- (c) regularly solicits other Persons to engage with him in transactions constituting that activity.

### **Exclusions**

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**2.3.7** (1) A Person does not carry on an activity specified under paragraphs (aa) or (bb) of Rule 2.2.2 by way of business in respect of a Non-DIFC Scheme merely by reason of a DIFC employer participating in such a scheme provided the conditions in either (2) or (3) is met.

(2) The DIFC employer is participating in the Non-DIFC Scheme:

- (a) as a result of a statutory duty in a jurisdiction outside the DIFC to provide to its DIFC employees an end of service benefit; and

- (b) the scheme has a current certificate of exemption issued by the Board of Directors of DIFCA.
- (3) The DIFC employer is participating in the Non-DIFC Scheme that is a Group plan which:
  - (a) is available exclusively to the employees of the Group, in which the employer is a Group member;
  - (b) is available to the employees of Group members in multiple jurisdictions;
  - (c) provides benefits that exceed the benefits comprised of the Core Benefits required to be contributed in respect of a DIFC employee under the Employment Law; and
  - (d) has a current certificate of exemption issued by the Board of Directors of DIFCA.
- (4) In this Rule:
  - (a) “Board of Directors of DIFCA” has the meaning given in Schedule 1 of the Employment Law;
  - (b) “certificate of exemption” means a certificate issued to a scheme that is deemed as a Qualifying Scheme under Regulation 2.1.8. of the Employment Regulations; and
  - (c) “end of service benefit” is a benefit provided by a pension, gratuity, retirement or superannuation scheme or arrangement that is broadly similar to the benefits provided by an Employee Money Purchase Scheme.

### **Guidance**

1. Under the above exemptions, foreign fiduciary service providers, insurers and superannuation scheme operators, who are supervised and regulated in their home jurisdictions for their activities, would be able to accept contributions from DIFC employers in respect of their employees under the DIFC Employment Law.
2. Core Benefits is defined in COB Rule 12.1.2 as the contributions payable by a DIFC employer under Article 66(7) of the Employment Law or any other Dubai law.
3. A Non-DIFC Scheme is defined in GLO as an Employee Money Purchase Scheme or any similar scheme or arrangement that is established outside the DIFC.

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## 2.11 Advising on financial products

- 2.11.1** (1) In Rule 2.2.2, Advising on Financial Products means giving advice to a Person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product (whether as principal or agent).
- (2) Advice in (1) includes a statement, opinion or report:
- (a) where the intention is to influence a Person, in making a decision, to select a particular financial product or an interest in a particular financial product; or
  - (b) which could reasonably be regarded as being intended to have such an influence.
- (3) Giving advice to a Person under (1) includes operating an Insurance Aggregation Site relating to contracts of Long-Term Insurance, other than contracts of reinsurance.
- (4) For the purposes of this Rule and Rule 2.11.2, a “financial product” is: ~~an Investment, Deposit, Profit Sharing Investment Account or rights under a contract of Long-Term Insurance, that is not a contract of reinsurance or rights under an Employee Money Purchase Scheme.~~
- (a) an Investment;
  - (b) a Deposit;
  - (c) a Profit Sharing Investment Account;
  - (d) a right under a contract of Long-Term Insurance, that is not a contract of reinsurance;
  - (e) a right under an Employee Money Purchase Scheme; or
  - (f) a right or interest in a pension, superannuation, retirement or gratuity scheme or arrangement, or a broadly similar scheme or arrangement.

## 2.30 Operating an Employee Money Purchase Scheme

### Interpretation

**2.30.1** In this section and in section 2.31:

- (a) “Member” means an employee on whose behalf a Participating Employer is required to make or has made contributions into a Scheme;
- (b) “Participating Employer” means an employer who is a contributor, in respect of its employees, to a Scheme; and
- (c) “Scheme” means an Employee Money Purchase Scheme.

### **Guidance**

An Employee Money Purchase Scheme is defined in Schedule 1 to the Regulatory Law as an arrangement where:

- (a) the main purpose of the arrangement is to provide benefits to members in respect of their employment;
- (b) benefits are payable on termination of employment or on the occurrence of another specified event; and
- (c) the amount of the benefit is calculated by reference to:
  - (i) the contributions made by an employer in respect of the member, whether or not the member may make additional contributions; and
  - (ii) the investment performance of the scheme assets.

- 2.30.2** (1) In Rule 2.2.2, Operating an Employee Money Purchase Scheme means:
- (a) in relation to a Scheme established in the DIFC under a trust, acting as the trustee of the trust; or
  - (b) in relation to any other type of Scheme, acting as the manager of the Scheme.

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### **Exclusions**

- 2.30.3** A Scheme that is a Body Corporate does not carry on a Financial Service referred to in Rule 2.30.2(1) or (3) if:
- (a) it is operated by a Person who is authorised under a Licence to Operate a Scheme; and
  - (b) the DFSA has approved the Scheme under COB Rule 12.2.2.

~~**2.30.4** A Person does not carry on the Financial Service of Operating an Employee Money Purchase Scheme in respect of a Scheme if the Scheme is established outside the DIFC and each of the following conditions are met:~~

- ~~(a) the Scheme is established in a Recognised Jurisdiction in accordance with the regulatory requirements applicable in that jurisdiction;~~
- ~~(b) the persons:
  - ~~(i) responsible for operating and administering the Scheme;~~
  - ~~(ii) carrying on the function of advising the person operating the Scheme as specified under COB Rule 12.3.9; and~~
  - ~~(iii) whose investments are offered to Members of the Scheme, are regulated and supervised to an equivalent level of regulation as applicable to each such person under the DFSA Rulebook;~~~~
- ~~(c) the person responsible for operating the Scheme has appointed an Authorised Firm in the DIFC as its agent for the purposes of engaging with, and assisting, the Members and prospective members of the Scheme; and~~
- ~~(d) the Scheme complies with the applicable requirements under the DIFC Employment Law.~~

## **2.31 Acting as the Administrator of an Employee Money Purchase Scheme**

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### **Exclusions**

**2.31.2** A Scheme that is a Body Corporate does not carry on a Financial Service referred to in Rule 2.31.1(1) or (2) if:

- (a) the functions referred to in Rule 2.31.1(1) are performed in relation to the Scheme by a Person that is authorised under a Licence to Act as the Administrator of a Scheme; and
- (b) the DFSA has approved the Scheme under COB Rule 12.2.2.

~~**2.31.3** A Person does not carry on the Financial Service of Acting as the Administrator of an Employee Money Purchase Scheme in respect of a Scheme if the Scheme is established outside the DIFC and each of the conditions referred to in Rule 2.30.4(a) to (d) are met in respect of the Scheme.~~

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### 3.3. Definition of a Financial Product

**3.3.1** Pursuant to Article 41A(4) of the Regulatory Law, “financial product” in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean: ~~an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, a Contract of Insurance, a Crowdfunding Loan Agreement or rights under an Employee Money Purchase Scheme.~~

- (a) an Investment;
- (b) a Credit Facility;
- (c) a Deposit;
- (d) a Profit Sharing Investment Account;
- (e) a Contract of Insurance;
- (f) a Crowdfunding Loan Agreement;
- (g) a right under an Employee Money Purchase Scheme; or
- (h) a right or interest in a pension, superannuation, retirement or gratuity scheme or arrangement, or a broadly similar scheme or arrangement.

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### 7.2 Application for a Licence

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**7.2.2** (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2), (4), (5) and (6), is:

- (a) a Body Corporate; or
- (b) a Partnership;

and who is not an Authorised Market Institution.

(2) If the application is in respect of either or both of the following Financial Services:

- (a) Effecting Contracts of Insurance; or
- (b) Carrying Out Contracts of Insurance,

the applicant must be a Body Corporate.

- (3) Deleted.
- (4) If the application is in respect of the Financial Service of Managing a Collective Investment Fund or Acting as the Trustee of a Fund, the applicant must be a Body Corporate.
- (5) If the application is for the Financial Service of:
  - (a) Operating or Acting as the Administrator of an Employee Money Purchase Scheme, the applicant must be a Body Corporate incorporated under the DIFC Companies Law; and
  - (b) ~~Acting as the Administrator of an Employee Money Purchase Scheme, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.~~
- (6) If the application is for Managing a Venture Capital Fund, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.