

Appendix 1

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



The DFSA Rulebook

General Module

(GEN)

2 FINANCIAL SERVICES

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2.2.10H (1) An Authorised Firm must not Operate or Act as the Administrator of an Employee Money Purchase Scheme to which this Rule applies, unless the Scheme is established in the DIFC.

(2) This Rule applies to an Employee Money Purchase Scheme if the Scheme receives contributions that are required to be made by an employer under:

(a) the Employment Law; or

(b) another Dubai law.

Guidance

An Authorised Firm can act as the Operator or Administrator of two types of Employee Money Purchase Schemes: a scheme established in the DIFC (a “DIFC Scheme”) or a scheme established outside the DIFC (a “Non-DIFC Scheme”). However, under Rule 2.2.10H, an Authorised Firm is prohibited from Operating or Acting as the Administrator of a Non-DIFC Scheme where that Scheme receives employer contributions required to be made under the Employment Law or another Dubai law. The prohibition does not apply to the operation or administration of Non-DIFC Schemes that fall within the exclusion in Rule 2.3.7.

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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 in paragraphs (aa) or (bb) of Rule 2.2.2 by way of business to the extent that the Person operates or acts as the administrator of a Non-DIFC Scheme to which (2) or (3) applies.
- (2) This sub-rule applies to a Non-DIFC Scheme if:
- (a) a DIFC employer is participating in the Scheme as a result of a statutory duty in another country to provide an end-of-service benefit in respect of an employee; and
 - (b) an Exemption Certificate is in force in respect of the Scheme under the Employment Regulations.
- (3) This sub-rule applies to a Non-DIFC Scheme if:
- (a) it is available exclusively to some or all of the employees of a Group to which a DIFC employer belongs;
 - (b) it is available to employees of the Group in at least one other country (in addition to the UAE);
 - (c) it requires contributions for employees that exceed the Core Benefits required to be paid by the DIFC Employer under the Employment Law; and
 - (d) an Exemption Certificate is in force in respect of the Scheme under the Employment Regulations.
- (4) In this Rule, “Exemption Certificate” has the meaning given in the Employment Regulations.

Guidance

1. The exclusions under Rule 2.3.7 apply in respect of certain types of Non-DIFC Schemes that are the subject of exemptions issued by the DIFCA Board under the Employment Regulations.
2. 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.
3. The effect of the above exclusions is that foreign fiduciary service providers, insurers and superannuation scheme operators, who are supervised and regulated in their home jurisdictions for their activities, can be enabled to accept contributions from DIFC employers in respect of their employees under the DIFC Employment Law.

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.

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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.

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10.4 Transitional Rules relating to Employee Money Purchase Schemes

10.4.1 (1) In this Rule:

- (a) “Certificate of Compliance” means a certificate of compliance issued in relation to a Scheme by the DIFCA Board under the Employment Regulations;
- (b) “commencement date” means the day on which Rule-making instrument No [?] of 2021 comes into force;
- (c) “transitional period” means the period starting on the commencement date and ending six months after that date.

(2) An Authorised Firm which, immediately before the commencement date was Operating or Acting as the Administrator of a Non-DIFC Scheme that had obtained a Certificate of Compliance, is not required to comply with Rule 2.2.10H in relation to the Scheme until the Certificate of Compliance has expired or been revoked by the DIFCA Board.

(3) A Person is not required to comply with Rule 7.2.2(5) (as amended by Rule-making Instrument No [?] of 2021) before the end of the transitional period.

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