

Appendix 2

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

Note: The proposed numbering may change due to other amendments that are being consulted upon.



The DFSA Rulebook

General Module

(GEN)

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2 FINANCIAL SERVICES

2.1 Application

2.1.1 This chapter applies to every Person to whom the Regulatory Law applies, and to the same extent in relation to every such Person as that law.

2.2 Financial Service activities

2.2.1 An activity constitutes a Financial Service under the Regulatory Law and these Rules where:

- (a) it is an activity specified in Rule 2.2.2; and
- (b) such activity is carried on by way of business in the manner described in section 2.3.

2.2.2 The following activities are specified for the purposes of Rule 2.2.1:

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Providing Money Services;
- (d) Dealing in Investments as Principal;
- (e) Dealing in Investments as Agent;
- (f) Arranging Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products;
- (i) Managing a Collective Investment Fund;
- (j) Providing Custody;
- (k) Arranging Custody;
- (l) Effecting Contracts of Insurance;
- (m) Carrying Out Contracts of Insurance;
- (n) Operating an Exchange;
- (o) Operating a Clearing House;

- (p) Insurance Intermediation;
- (q) Insurance Management;
- (r) Managing a Profit Sharing Investment Account;
- (s) Operating an Alternative Trading System;
- (t) Providing Trust Services;
- (u) Providing Fund Administration;
- (v) Acting as the Trustee of a Fund;
- (w) Operating a Representative Office;
- (x) Operating a Credit Rating Agency;
- (y) Arranging Credit and Advising on Credit; ~~and~~
- (z) Operating a Crowdfunding Platform; and
- (aa) Arranging or Advising on Money Services.

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

2.2.3 Each activity specified in Rule 2.2.2:

- (a) is to be construed in the manner provided under these Rules; and
- (b) is subject to exclusions under these Rules which may apply to such an activity.

Permitted Financial Services for Authorised Firms**2.2.4** Pursuant to Article 42(1)(a) of the Regulatory Law 2004 an Authorised Firm, subject to the Rules, may carry on any one or more Financial Services ~~other than Providing Money Services.~~

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Restrictions relating to Money Services**2.2.10G** An Authorised Firm must not provide currency exchange in or from the DIFC unless it is in connection with, and a necessary part of, providing:

- (a) a Money Services activity referred to in paragraphs (b) to (f) of Rule 2.6.1(1); or
- (b) any other Financial Service.

Guidance

Providing currency exchange, although a specified activity in Rule 2.6.1(1)(a), cannot be provided as a stand-alone financial service in or from the DIFC. An Authorised Firm may, however, provide currency exchange where it is in connection with, and a necessary part of, providing another Money Service or another Financial Service. An Authorised Firm may also arrange for another person outside the DIFC to provide a currency exchange service if the Authorised Firm is authorised to Arrange or Advise on Money Services (see Rule 2.30.1).

2.2.10H An Authorised Firm must not receive or provide physical notes or coins in connection with Providing Money Services.

2.2.10I If an Authorised Firm Provides Money Services involving the UAE Dirham, it must ensure that all Dirham transactions are cleared and settled through a legal entity that is authorised by the Central Bank of the U.A.E to carry on the activity of accepting deposits.

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2.6 ~~Providing money services~~

~~**2.6.1** (1) In Rule 2.2.2, Providing Money Services means providing currency exchange or money transmission.~~

~~(2) In (1) 'money transmission' means:~~

~~(a) selling or issuing payment instruments;~~

~~(b) selling or issuing stored value; or~~

~~(c) receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC.~~

2.6 Providing Money Services

2.6.1 (1) In Rule 2.2.2, Providing Money Services means:

(a) providing currency exchange;

(b) providing Money Transmission;

(c) providing or operating a Payment Account;

(d) executing Payment Transactions on a Payment Account provided or operated by another Person;

(e) issuing Payment Instruments; or

(f) issuing Stored Value.

(2) In this Rule:

(a) "Money Transmission" means the transmission of money or monetary value, without a Payment Account being created in the name of the payer or the payee, where funds are:

- (i) received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another Payment Service Provider acting on behalf of the payee; or
- (ii) received on behalf of, and made available to, the payee.
- (b) “Payment Account” means an account held in the name of one or more Users which is used to execute Payment Transactions;
- (c) “Payment Instrument” means a:
 - (i) personalised device; or
 - (ii) personalised set of procedures agreed between the User and the provider,
that is used by the User to initiate a Payment Order;
- (d) “Payment Order” means an instruction by a payer or payee to their respective Payment Service Provider requesting the execution of a Payment Transaction;
- (e) “Payment Service” means an activity referred to in (1) other than providing currency exchange or issuing Stored Value;
- (f) “Payment Service Provider” means a Person providing a Payment Service;
- (g) “Payment Transaction” means an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;
- (h) “Stored Value” means any electronically (including magnetically) stored monetary value as represented by a claim on the issuer which is issued on receipt of funds or other assets for the purpose of making Payment Transactions.

Guidance

1. The term “Payment Service” is used to describe all or any of the activities in Rule 2.6.1(1) other than providing currency exchange or issuing Stored Value.
2. A Payment Account is an account that is used to execute Payment Transactions. Funds are usually expected to remain in a Payment Account only for a short period. COB Rule A7.2.17 prohibits a provider of such an account from paying any interest or other return on funds in the account. Paying interest or any other return on the account is likely to result in the account being construed as a Deposit or a Profit Sharing Investment Account (PSIA), which would require the account provider to be authorised to Accept Deposits or Manage a PSIA.
3. A “User” means a user of a Money Service and includes in relation to a Payment Service a person acting in the capacity of payer, payee or both – see the definition in GLO.
4. The reference to receipt of “other assets” in the “Stored Value” definition in in Rule 2.6.1 includes, for example, the receipt of digital currencies or any other form of assets that may be accepted by an issuer of stored value. Stored Value does not, however, include a loyalty programme where a person earns points that can be redeemed directly for goods or services of the loyalty programme provider.

Exclusions

2.6.2 A Person who is an Authorised Firm does not Provide Money Services for the purposes of Rule 2.2.2 if it does so in relation to the carrying on of another Financial Service where Providing Money Services is in connection with and a necessary part of that other Financial Service.

Guidance

1. Activities that will be excluded under Rule 2.6.2 include, for example, Money Services carried on in connection with, and as a necessary part of, Financial Services such as Accepting Deposits, Providing Credit, Dealing in Investments (as principal or agent), Operating an exchange or clearing house, Managing Assets or Providing Custody.
2. A Bank or an Islamic Financial Institution Managing a PSIA will be able to provide many of the services that fall within the definition of Providing Money Services under the exclusion in Rule 2.6.2, as they will be services provided in connection with, and as a necessary part of, the other Financial Services they usually provide to customers. However, if a Bank or Islamic Financial Institution wishes to provide a discrete service, such as selling a type of Payment Instrument, it will need an additional authorisation for Providing Money Services.

2.6.3 A Person does not Provide Payment Services if the Person carries out a Payment Transaction for their own account.

2.6.4 A Person does not Provide Money Services if the Person sells or issues Stored Value or issues Payment Instruments that can be used only to pay for goods or services provided by that Person or by another entity in the Person's Group.

Guidance

Examples of activities that will be excluded under GEN Rule 2.6.4 include cards that can be used only to pay for goods purchased from a specific store or chain of stores or that can be used only to pay for a particular service (such as a taxi or other transport service) or to pay for goods or services offered by a specific club or organisation. However, if a card is more generally accepted, and can be used with other third parties, it will not fall within the exclusion.

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2.30 Arranging or Advising on Money Services

2.30.1 (1) In Rule 2.2.2, Arranging or Advising on Money Services means:

- (a) making arrangements for another Person to receive Money Services;
- (b) giving advice to another Person on the merits of using a particular Money Services Provider;
- (c) providing an Account Information Service; or
- (d) providing a Payment Initiation Service.

(2) Advice in (1)(b) includes a statement, opinion or report:

- (a) intended to influence a Person, in making a decision, to use or select a particular Money Services Provider; or

- (b) which could reasonably be regarded as being intended to have such an influence.
- (3) In 1(c), “Account Information Service” means an online service that provides consolidated information on one or more accounts held by the User with one or more account providers, and includes such a service whether information is provided:
 - (a) in its original form or after processing; and
 - (b) to the User or to another person in accordance with the User’s instructions.
- (4) In 1(d), “Payment Initiation Service” means an online service that initiates a Payment Order at the request of the User with respect to a Payment Account held at another Payment Service Provider, but does not include:
 - (a) a service that involves contact with any funds at any stage of the Payment Transaction; or
 - (b) the issue of a Payment Instrument.

Exclusion

2.30.2 An Authorised Firm does not Arrange or Advise on Money Services under Rule 2.30.1(a) or (b) if it is the relevant Money Services Provider.

Guidance

Activities that constitute ‘Arranging or Advising on Money Services’

1. Arranging Money Services includes the following activities:
 - (a) introducing potential users to persons Providing Money Services (whether the provider is in the DIFC or outside the DIFC);
 - (b) arranging currency exchange, including spot and forward contracts;
 - (c) assisting a potential user to use Money Services, for example by completing application forms and other processes relevant to the transaction;
 - (d) negotiating terms related to Money Services, including any fees payable to the arranger; and
 - (e) arranging assurances, incidentals or other arrangements required from a potential user to use Money Services.
2. A Person Arranging or Advising on Money Services should not be ‘holding or controlling’ any Client Money, including any Stored Value or other funds.
3. An Account Information Service enables users to have access to a single source of aggregated information so they can view information from various accounts in a single place. Users may also expressly consent to that information being shared with another person such as their financial adviser or a credit reference agency.
4. A Payment Initiation Service is a service that establishes a software ‘bridge’ between the website of the merchant and the online banking platform of a payer’s Payment Account, which allows the user to initiate the payment. This type of service would typically be made available as a payment option on a merchant’s website.

5. A provider of Payment Initiation Services should not receive funds at any stage of the Payment Transaction or issue Payment Instruments. The provider of a Payment Initiation Service provides independent verification to the relevant merchant that the user has sufficient funds in his Payment Account and has made a payment by selecting that account to make a payment to the merchant.

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8 ACCOUNTING AND AUDITING

8.1 Application

8.1.1 This chapter applies to every Authorised Person other than a Representative Office.

8.1.2 Pursuant to Article 99(5) of the Regulatory Law, an Authorised Person which is a Representative Office is hereby exempt from the requirements in Article 99 of the Regulatory Law relating to the appointment of an Auditor.

Guidance

The DFSA has exercised its power under Article 99(5) of the Regulatory Law to exempt an Authorised Person which is a Representative Office from the requirements in that Article. As a result, in accordance with the terms of Article 99(5), the Representative Office also does not need to comply with other requirements in chapters 4, 5 and 6 of Part 8 of that Law.

8.6 Audit reports

8.6.1 An Authorised Person must, in writing, require its Auditor to:

- (a) conduct an audit of and produce a Financial Statement Auditor's Report on the Authorised Person's financial statements in accordance with the International Standards on Auditing;
- (b) produce a Regulatory Returns Auditor's Report in accordance with the Rules in AUD App1 as relevant;
- (c) produce, if the Authorised Firm is permitted to control or hold Client Money, a Client Money Auditor's Report in accordance with the Rules in AUD App2;
- (d) produce, if the Authorised Firm is permitted to control or hold Insurance Monies, an Insurance Monies Auditor's Report in accordance with the Rules in AUD App3; ~~and~~
- (e) produce, if the Authorised Firm is permitted to hold or control Client Investments or Provide Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, in accordance with the Rules in AUD App4; and
- (f) provide a Money Services Auditor's Report in accordance with the Rules in AUD App7, if the Authorised Firm is Providing Money Services, Account Information Services or Payment Initiation Services.

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9 COMPLAINTS HANDLING AND DISPUTE RESOLUTION

9.1 Application

9.1.1 This chapter applies to every Authorised Firm, other than a Representative Office and a Credit Rating Agency, carrying on a Financial Service in or from the DIFC as follows:

- (a) Section 9.2 applies to an Authorised Firm carrying on a Financial Service with or for a Retail Client; ~~and~~
- (b) Section 9.3 applies to an Authorised Firm carrying on a Financial Service with or for a Professional Client; and
- (c) Section 9.4 applies only to an Authorised Firm that Provides Money Services or Arranges or Advises on Money Services (whether for a Retail Client or a Professional Client).

9.2 Complaints handling procedures for Retail Clients

Written Complaints handling procedures

9.2.1 An Authorised Firm must have adequate policies and procedures in place for the investigation and resolution of Complaints made against it by Retail Clients, and the manner of redress (including compensation for acts or omissions of the Authorised Firm).

9.2.2 The policies and procedures for handling Complaints must be in writing and provide that Complaints are handled fairly, consistently and promptly.

Guidance

1. In establishing adequate Complaints handling policies and procedures, an Authorised Firm should have regard to:
 - a. the nature, scale and complexity of its business; and
 - b. its size and organisational structure.
2. In handling Complaints, an Authorised Firm should consider its obligations under the Data Protection Law 2007.
3. An Authorised Firm should consider its obligations under GEN Rule 5.3.19 and accompanying guidance.
4. The DFSA considers 60 days from the receipt of a Complaint to be an appropriate period in which an Authorised Firm should be able to resolve most Complaints. However, Complaints related to the Provision of Money Services or Arranging or Advising on Money Services should generally be resolved within 15 business days – see Rule 9.4.3.

9.2.3 On receipt of a Complaint, an Authorised Firm must:

- (a) acknowledge the Complaint promptly in writing;

- (b) provide the complainant with:
 - (i) the contact details of any individual responsible for handling the Complaint;
 - (ii) key particulars of the Authorised Firm's Complaints handling procedures; and
 - (iii) a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11; and
- (c) consider the subject matter of the Complaint.

9.2.4 Where appropriate, an Authorised Firm must update the complainant on the progress of the handling of the Complaint.

Guidance

1. The DFSA considers 7 days to be an adequate period in which an Authorised Firm should be able to acknowledge most Complaints.
2. The DFSA expects an update to be provided to the complainant in circumstances where the resolution of the Complaint is taking longer than 30 days.

Resolution of Complaints

9.2.5 Upon conclusion of an investigation of a Complaint, an Authorised Firm must promptly:

- (a) advise the complainant in writing of the resolution of the Complaint;
- (b) provide the complainant with clear terms of redress, if applicable; and
- (c) comply with the terms of redress if accepted by the complainant.

9.2.6 If the complainant is not satisfied with the terms of redress offered by the Authorised Firm, the Authorised Firm must inform the complainant of other avenues, if any, for resolution of the Complaint and provide him with the appropriate contact details upon request.

Guidance

Other avenues for resolution of a Complaint may include an external dispute resolution scheme, arbitration or the DIFC Court. Under Rule 9.4.4 an Authorised Firm Providing Money Services or Arranging or Advising on Money Services is required to ensure that Clients have access to an independent complaints handling service.

Employees handling Complaints

9.2.7 Where appropriate, taking into account the nature, scale and complexity of an Authorised Firm's business, an Authorised Firm must ensure that any individual handling the Complaint is not or was not involved in the conduct of the Financial Service about which the Complaint has been made, and is able to handle the Complaint in a fair and impartial manner.

- 9.2.8** An Authorised Firm must ensure that any individual responsible for handling the Complaint has sufficient authority to resolve the Complaint or has access to individuals with the necessary authority.

Complaints involving other Authorised Firms or Regulated Financial Institutions

- 9.2.9** If an Authorised Firm considers that another Authorised Firm or a Regulated Financial Institution is entirely or partly responsible for the subject matter of a Complaint, it may refer the Complaint, or the relevant part of it, to the other Authorised Firm or Regulated Financial Institution in accordance with Rule 9.2.10.

- 9.2.10** To refer a Complaint, an Authorised Firm must:

- (a) inform the complainant promptly and in writing that it would like to refer the Complaint, either entirely or in part, to another Authorised Firm or Regulated Financial Institution, and obtain the written consent of the complainant to do so;
- (b) if the complainant consents to the referral of the Complaint, refer the Complaint to the other Authorised Firm or Regulated Financial Institution promptly and in writing;
- (c) inform the complainant promptly and in writing that the Complaint has been referred and include adequate contact details of any individual at the other Authorised Firm or Regulated Financial Institution responsible for handling the Complaint; and
- (d) continue to deal with any part of the Complaint not referred to the other Authorised Firm or Regulated Financial Institution, in accordance with this chapter.

Guidance

The referral of a Complaint may involve the transfer of Personal Data, as defined under the Data Protection Law 2007, DIFC Law No 1 of 2007. In this respect, an Authorised Firm should consider its obligations under the Data Protection Law 2007.

Retail Client awareness

- 9.2.11** An Authorised Firm must ensure that a copy of its Complaints handling procedures is available free of charge to any Retail Client upon request.

Retention of records

- 9.2.12** An Authorised Firm must maintain a record of all Complaints made against it for a minimum period of six years from the date of receipt of a Complaint.

- 9.2.13** This record must contain the name of the complainant, the substance of the Complaint, a record of the Authorised Firm's response, and any other relevant correspondence or records, and the action taken by the Authorised Firm to resolve each Complaint.

Systems and controls

- 9.2.14** In accordance with GEN Rules 5.3.4 and 5.3.5, an Authorised Firm must put in place adequate systems and controls in order for it to identify and remedy any recurring or systemic problems identified from Complaints.

Guidance

An Authorised Firm should consider whether it is required to notify the DFSA, pursuant to Rule 11.10.7, of any recurring or systemic problems identified from Complaints.

Outsourcing

Guidance

An Authorised Firm may outsource the administration of its Complaints handling procedures in accordance with GEN Rule 5.3.21.

9.3 Complaints recording procedures for Professional Clients

- 9.3.1** An Authorised Firm must have adequate policies and procedures in place for the recording of Complaints made against it by Professional Clients.
- 9.3.2** An Authorised Firm must maintain a record of any Complaint made against it for a minimum period of six years from the date of receipt of the Complaint.

Guidance

Depending on the nature, scale and complexity of its business, it may be appropriate for an Authorised Firm to have in place a suitable Complaints handling procedure for Professional Clients in order to ensure that such Complaints are properly handled and remedial action is taken promptly. Such Complaints handling procedures would be expected to include provisions about the independence of staff investigating the Complaint and bringing the matter to the attention of senior management.

9.4 Additional requirements for Money Services or Arranging or Advising on Money Services

- 9.4.1** This section applies to a complaint made by a Client against an Authorised Firm Providing Money Services or Arranging or Advising on Money Services.
- 9.4.2** A requirement in this section does not apply in relation to a Client that is a Market Counterparty if it has elected in writing to waive the requirement.

Complaints to be resolved within 15 business days

- 9.4.3** (1) An Authorised Firm must, except as provided in (2), advise the complainant in writing of the resolution of the Complaint and, if applicable, provide the complainant with clear terms of redress no later than 15 business days after the day on which it received the Complaint.
- (2) If the Authorised Firm cannot comply with (1) for reasons beyond its control, it must send a holding reply, clearly indicating the reasons for the delay and specifying the deadline by which the complainant will receive a full reply.

Independent complaints handling service

9.4.4 An Authorised Firm must:

- (a) ensure that Clients have access to an independent complaints handling service that can determine Complaints where a Client is not satisfied with the firm's resolution of a Complaint;
- (b) ensure that the complaints handling service referred to in (a) is easily accessible to its Clients;
- (c) bear the cost of any application fee payable for the use of that complaints handling service, unless the Complaint is found to be unsuccessful, in which case the firm may recover the cost of the fee; and
- (d) when it advises the complainant under Rule 9.4.3 of the outcome of the Complaint, inform the Client in writing:
 - (i) about the complaints handling service and how it may access the service; and
 - (ii) that the firm will pay the costs of the application fee in the circumstances specified in (c).