

## Appendix 2

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

\*Please note that a limited number of Rules in this text are not being amended, but are included for reference.



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# The DFSA Rulebook

General Module

**(GEN)**

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## **2.2 Financial Service activities**

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**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 Credit or Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products or Credit;
- (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; and
- (x) Operating a Credit Rating Agency.

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### Exclusions

- 2.3.2** (1) Subject to Rule 2.3.5, a Person does not carry on an activity specified under paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (j), (k), (p), (q) and (r) of Rule 2.2.2 by way of business if:
- (a) the Person enters into transactions solely as a nominee for another Person and is bound to and does act on that other Person's instructions;
  - (b) the Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporates:
    - (i) which are within the same Group as that Person; or
    - (ii) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise;
- provided:
- (iii) and for the purposes of the activities specified in paragraphs (g), (j), (k) and (r) of Rule 2.2.2 the assets in question belong to a Body Corporate falling within (i) or (ii); and
  - (iv) for the purposes of the activities specified in paragraphs (f), (h), (p) and (q) of Rule 2.2.2, the activity does not involve an insurance policyholder who is not a Group member; or
- (c) the Person carries on the activity solely for the purposes of or in connection with the sale of goods or the supply of services to a customer of the Person or a member of the same Group, provided that:
    - (i) the supplier's main business is to sell goods or supply services and not to carry on any Financial Service; and
    - (ii) the customer is not an individual;

and for the purposes of the activities specified in paragraphs (g), (j), (k) and (r) of Rule 2.2.2 the assets in question belong to that customer or member.

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## **2.9 Arranging credit or deals in investments**

**2.9.1** (1) In Rule 2.2.2, Arranging Credit or Deals in Investments means:

- (a) making arrangements with a view to another Person, whether as principal or agent, buying, selling, subscribing for or underwriting an Investment; or
- (b) making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility.

(2) The arrangements in (1) include:

- (a) arrangements which do not bring about the transaction; and
- (b) arrangements comprising or involving the receipt and transmission of Client orders in relation to Investments.

(3) The arrangements in (1) do not include:

- (a) arrangements which amount to Operating an Alternative Trading System; or
- (b) arrangements of the kind described in Rule 2.26.1 that constitute marketing.

(4) In this Rule and in Rules 2.9.2 to 2.9.7, an “Investment” includes rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

### **Guidance**

1. In regard to arrangements under Rule 2.9.1(3)(b), pursuant to Rule 2.2.10, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so. Examples of activities referred to in that Rule include merely providing information on financial products or financial services or making introductions or referrals.
2. As an Investment is defined in Rule 2.9.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance), arranging activities relating to contracts of Long-Term Insurance fall within Arranging Credit or Deals in Investments

instead of Insurance Intermediation. Long-Term Insurance is defined in GLO, in summary, as a contract of the type described in GEN Rule A4.1.2 (life insurance) that is expressed to be in force for more than one year and meets specified conditions.

### **Exclusions**

- 2.9.2** There are excluded from Rule 2.9.1 any arrangements for a transaction into which the Person making the arrangements enters or is to enter whether as principal or agent for some other Person.
- 2.9.3** A Person does not Arrange Credit or Deals in Investments merely by providing means by which one party to a transaction is able to communicate with other such parties.
- 2.9.4** A Person does not Arrange Credit or Deals in Investments by making arrangements under which another Person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which he or his principal has made or provided.
- 2.9.5** A Person does not Arrange Credit or Deals in Investments merely by making arrangements having as their sole purpose the provision of finance to enable a Person to buy, sell, subscribe for or underwrite Investments.
- 2.9.6** A Person does not Arrange Credit or Deals in Investments by making arrangements for the issue or redemption of Securities issued by it.
- 2.9.7** A Person does not Arrange Credit or Deals in Investments if the activity:
- (a) is carried on in the course of Providing Legal Services or Providing Accountancy Services, which does not otherwise consist of the carrying on of Financial Services;
  - (b) may reasonably be regarded as a necessary part of any other services provided in the course of Providing Legal Services or Providing Accountancy Services; ~~and~~
  - (c) is not remunerated separately from the other services; and
  - (d) in the case of a contract of Long-Term Insurance, does not assist in the conclusion or performance of the contract.

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## **2.11 Advising on financial products or credit**

- 2.11.1** (1) In Rule 2.2.2, Advising on Financial Products or Credit means giving advice to a Person:
- (a) 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); or
  - (b) in his capacity as a borrower or potential borrower or as agent for a borrower or potential borrower on the merits of his entering into a particular Credit Facility.
- (2) Advice in (1)(a) and (b) 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 to enter into a particular Credit Facility; or
  - (b) which could reasonably be regarded as being intended to have such an influence.
- (3) Giving advice under (1)(a) includes operating an Insurance Aggregation Site relating to contracts of Long-Term Insurance, other than contracts of reinsurance.
- (34) 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.

### **Guidance**

1. As a “financial product” is defined in Rule 2.11.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance), advice on contracts of Long-Term Insurance will fall within Advising on Financial Products or Credit or Deals in Investments instead of Insurance Intermediation.
2. An Insurance Aggregation Site is defined in GLO. In summary, it is a website or other form of media that provides a facility for a user to search for, and then to conclude, directly or indirectly, a Contract of Insurance. The site may, for example, enable the user to conclude a Contract of Insurance:
  - (a) directly, if it enables the user to enter into the Contract of Insurance by clicking a button on the website itself; or
  - (b) indirectly, if it provides a link to the insurer, transmits the details of one party to the other party or otherwise facilitates contact between the parties.

3. Operating an Insurance Aggregation Site will fall under Advising on Financial Products or Credit to the extent that it relates to contracts of Long-Term Insurance, and under Insurance Intermediation to the extent that it relates to other types of Contracts of Insurance.

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## **2.15 Effecting contracts of insurance**

- 2.15.1** (1) In Rule 2.2.2, Effecting Contracts of Insurance means effecting such contracts as principal.
- (2) An Insurer authorised to Effect Contracts of Insurance is taken, by virtue of that authorisation, to be authorised to carry out an activity that:
- (a) is referred to in Rule 2.9.1(1)(a), 2.11.1(1)(a) or 2.19(1)(a) or (c); and
  - (b) relates to a Contract of Insurance entered into, or to be entered into, as principal by the Insurer or by another insurer in the Insurer's Group.

### **Guidance**

1. A Contract of Insurance is defined in GEN App 4 to include a contract of reinsurance.
2. An Insurer that provides advice relating to its own Contracts of Insurance, or those of another insurer in its Group, will need to demonstrate to the DFSA that it has the necessary skills, expertise and competencies to advise on those contracts. The DFSA will assess such competencies at the time of assessing an application for a Licence and expects the Insurer to be able to continue to demonstrate to the DFSA, upon request, that it maintains such competencies.

## **2.16 Carrying out contracts of insurance**

- 2.16.1** In Rule 2.2.2, Carrying Out Contracts of Insurance means carrying out such contracts as principal.

### **Guidance**

- A Contract of Insurance is defined in GEN App 4 to include a contract of reinsurance.

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## 2.19 Insurance intermediation

- 2.19.1** (1) In Rule 2.2.2, Insurance Intermediation means:
- (a) advising on a Contract of Insurance;
  - (b) acting as agent for another Person in relation to the buying or selling of a Contract of Insurance for that other Person; or
  - (c) making arrangements with a view to another Person, whether as principal or agent, buying a Contract of Insurance; or
  - (d) operating an Insurance Aggregation Site.
- (2) In (1)(a), 'advising' means giving advice to a Person in his capacity as a policyholder or potential policyholder, or in his capacity as agent for a policyholder or potential policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent.
- (3) In (2), 'advice' includes a statement, opinion or report:
- (a) where the intention is to influence a Person, in making a decision, to select a ~~particular~~ Contract of Insurance or insurance cover; or
  - (b) which could reasonably be regarded as being intended to have such influence.
- (4) The arrangements in (1)(c) include arrangements which do not bring about the transaction.
- (5) The arrangements in (1)(c) do not include arrangements of the kind described in Rule 2.26.1 that constitute marketing.

### Guidance

1. Insurance Intermediation activities may be carried on by an Insurance Agent (i.e. a Person who acts as an agent of one or more insurers), an Insurance Broker (i.e. a Person who acts as an agent of a policyholder or potential policyholder) or an Insurer itself in relation to its own Contracts of Insurance or those of an insurer in its Group.
2. In regard to arrangements under Rule 2.19.1(5), pursuant to Rule 2.2.10, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so. Examples of activities referred to in that Rule include merely providing information on financial products or financial services or making introductions or referrals.



### **Exclusions**

**2.19.2** A Person does not carry on the activities specified in Rule 2.19.1(1)(~~b~~) or (~~c~~) if he enters or is to enter into a transaction in respect of a Contract of Insurance as principal.

**2.19.3** A Person does not carry on Insurance Intermediation if the activity:

- (a) is carried on in the course of any professional business which does not otherwise consist of the carrying on of Financial Services;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of that professional business; ~~and~~
- (c) is not remunerated separately from the other services; and
- (d) does not assist in the conclusion or performance of a Contract of Insurance.

**2.19.3A** A Person does not carry on an Insurance intermediation activity if:

- (a) the activity is carried on in the course of a business of providing goods or services (other than Financial Services);
- (b) providing goods or services referred to in (a) is the principal business of that Person; and
- (c) the activity:
  - (i) can reasonably be regarded as being ancillary and complementary to the principal business of that Person; and
  - (ii) does not relate to a contract of Long-Term Insurance.

### **Guidance**

Rules 2.19.3 and 2.19.3A set out exclusions that apply to certain Insurance Intermediation activities which occur in the course of carrying on other businesses. Rule 2.19.3 applies to activities carried on as a necessary part of a professional service, such as insurance advice provided by an accountant or solicitor as part of estate planning or tax advice. Rule 2.19.3A applies to activities that are ancillary and complementary to a business of providing goods or services. This might include, for example, a travel agent arranging travel insurance or a supplier of electrical goods arranging insurance of those goods.

**2.19.4** A Person does not give advice in relation to a Contract of Insurance by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) that of giving advice of the kind mentioned in Rule 2.19.1; nor
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(b) that of leading or enabling Persons to buy types of insurance.

**2.19.5** A Person does not arrange a Contract of Insurance merely by providing the means by which one party to a transaction is able to communicate with other such parties.

**2.19.6** A Person who is an Authorised Firm does not advise in relation to an Insurance Contract if it is authorised under its Licence to carry on the Financial Service of Advising on Financial Products or Credit, to the extent the advice relates to a contract of Long-Term Insurance, that is not being a contract of reinsurance.

**2.19.7** A Person who is an Authorised Firm does not arrange a Contract of Insurance if it is authorised under its Licence to carry on the Financial Service of Arranging Credit or Deals in Investments, to the extent that the arranging relates to rights under a contract of Long-Term Insurance, that is not being a contract of reinsurance.

**2.19.8** An Authorised Firm does not carry on Insurance Intermediation to the extent that it carries on an activity that constitutes Insurance Management, if it is authorised under its Licence to carry on the Financial Service of Insurance Management.

**2.19.9** A Person does not carry on Insurance Intermediation by reason only of providing either or both of the following services:

- (a) an insurance loss adjustment service; or
- (b) the expert appraisal of insurance claims.

## **2.20 Insurance management**

~~**2.20.1** (1) In Rule 2.2.2, Insurance Management means providing management services or exercising managerial functions for an insurer.~~

~~(2) In (1) management services and managerial functions include administration and underwriting.~~

~~(3) In (1) an 'insurer' means a Person effecting or carrying out Contracts of Insurance.~~

**2.20.1** (1) In Rule 2.2.2, Insurance Management means performing underwriting or administration functions for or on behalf of an insurer, for the purposes of that insurer effecting or carrying out a Contract of Insurance as principal.

(2) In (1):

- (a) “underwriting” includes, without limitation, one or more of the following activities:
    - (i) assessing underwriting risks;
    - (ii) negotiating and settling terms of Contracts of Insurance including exclusions;
    - (iii) negotiating and settling premiums;
    - (iv) negotiating commissions; or
    - (v) countersigning, stamping and issuing Contracts of Insurance; and
  - (b) “administration” includes, without limitation, one or more of the following activities:
    - (i) processing applications for, and endorsements on, Contracts of Insurance;
    - (ii) collecting and processing premiums;
    - (iii) negotiating terms of settlement of claims; or
    - (iv) settling claims.
- (3) In this Rule, a reference to an “insurer” is a reference to:
- (a) an Insurer; or
  - (b) a Non-DIFC insurer.

### **Guidance**

As a Contract of Insurance is defined in GEN App4 to include a contract of reinsurance, Insurance Management includes functions performed for or on behalf of a reinsurer. A Person may carry on Insurance Management for or on behalf of a domestic (i.e. DIFC) Insurer or a Non-DIFC insurer (i.e. an insurer located and regulated outside the DIFC). A Person may also do so for a single insurer or a number of insurers.

### **Exclusions**

**2.20.2** A Person does not provide Insurance Management to an insurer if he is an Employee of that insurer.

**2.20.3** A Person who is an Authorised Firm does not provide carry on Insurance Management if it is an Insurer.

**2.20.4** A Person does not carry on Insurance Management by reason only of providing to an insurer any one or more of the following services:

- (a) an actuarial service;
- (b) an insurance loss adjustment service; or
- (c) advice relating to insurance risks.

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