

Appendix 2

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



The DFSA Rulebook

Conduct of Business Module

(COB)

6 ADDITIONAL RULES - INVESTMENT BUSINESS

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6.11 Client Assets

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General requirements

- 6.11.2** (1)
- (2)
- (3) An Authorised Firm which Arranges Custody must comply with the requirements in Rule A6.5.1A (on suitability of non-DIFC custodians) and A6.7.1(1) (on disclosure) in APP 6 and in section 6.14 (Record keeping).

[This Rule is not being amended but the text is included for reference as it refers to APP 6 which is being amended]

- 6.11.3** (1) An Authorised Firm must have systems and controls to ensure that Client Assets are identifiable and secure at all times.
- (2) Where the Authorised Firm holds a mandate, or similar authority over an account with a third party, in the Client's own name, its systems and controls must:
- (a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Firm on the use of the mandate;
 - (b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and
 - (c) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Firm entering into such Transactions.

Guidance

Authorised Firms are reminded that they must ensure that their auditor produces a Client Money Auditor's Report and a Safe Custody Auditor's Report as applicable, in accordance with GEN 8.6.

Holding or controlling client assets**6.11.4** Client Assets are held or controlled by an Authorised Firm if they are:

- (a) directly held by the Authorised Firm;
- (b) held in an account in the name of the Authorised Firm;
- (c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Firm; or
- (d) held in the Client's own name, but the Authorised Firm has a mandate from the Client to manage those assets on a discretionary basis.

Guidance

- 1 For the purposes of Rule 6.11.4, the DFSA would consider a Person to be controlled by an Authorised Firm if that Person is inclined to act in accordance with the instructions of the Authorised Firm.
2. The DFSA would consider an account to be controlled by an Authorised Firm if that account is operated in accordance with the instructions of the Authorised Firm.
3. If an Authorised Firm has a discretionary portfolio mandate from a Client, even though the assets are to be held in the name of the Client (for example, under a power of attorney arrangement), the firm controls those assets as it can execute transactions relating to those assets, within the parameters set out in the mandate.

[The above Rules are not being amended but the text is included for reference as it is relevant to COB 6.12 which is being amended]

6.12 Client money**6.12.1** All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business or the Operation of a Crowdfunding Platform in or from the DIFC is Client Money, except Money which is:

- (a) held by the Authorised Firm as a Bank in an account with itself, provided the Authorised Firm notifies the Client in writing that the Client Money is held by it as a Bank and not in accordance with this chapter;
 - (b) immediately due and payable by the Client to the Authorised Firm;
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- (c) belonging to another Person within the Authorised Firm's Group unless that Person is an Authorised Firm or Regulated Financial Institution and that Person has confirmed to the Authorised Firm, in writing, that the beneficial owner of the Money is a Person who is not part of the Authorised Firm's Group;
- (d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and ~~where~~ where the Authorised Firm is in compliance with Rule 6.11.3(2), provided it is not a mandate to manage the Money on a discretionary basis;
- (e) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Firm, provided the cheque or other payable order is intended to be forwarded to the third party within 1 business day of receipt; or
- (f) Fund Property of a Fund.

Guidance

1. Authorised Firms are reminded that the exemption in Rule 6.12.1(a) would not apply to Money which is passed to a third party i.e. not held in an account with the Authorised Firm itself.
2. Pursuant to Rule 6.12.1(b), examples of Money which is immediately due and payable to an Authorised Firm includes Money which is:
 - a. paid by the way of brokerage, fees and other charges to the Authorised Firm or where it is entitled to deduct such remuneration from the Client Money held or controlled;
 - b. paid by the Authorised Firm in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or
 - c. owed by the Client to the Authorised Firm in respect of unpaid purchases by or for the Client if delivery of Investments has been made to the Client or credited to his account.
3. The CIR module contains specific provisions relating to the handing of Fund Property and also provisions relating to a Fund Administrator holding or controlling monies or assets belonging to third parties.

Client money provisions

- 6.12.2** (1)
- (2) An Authorised Firm which holds or controls Client Money for a Client must, subject to (3), comply with the Client Money Provisions in App5.

(3)

[This Rule is not being amended but the text is included for reference as it refers to APP 5 which is being amended]

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APP5 CLIENT MONEY PROVISIONS

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A5.9 Client disclosure

A5.9.1 Before, or as soon as reasonably practicable after, an Authorised Firm receives Client Money belonging to a Segregated Client, it must disclose to the Client on whose behalf the Client Money is held:

- (a) the basis and any terms governing the way in which the Client Money will be held;
- (b) that the Client is subject to the protection conferred by the DFSA's Client Money Provisions and as a consequence:
 - (i) this Money will be held separate from Money belonging to the Authorised Firm; and
 - (ii) in the event of the Authorised Firm's insolvency, winding up or other Distribution Event stipulated by the DFSA, the Client's Money will be subject to the DFSA's Client Money Distribution Rules;
- (c) whether interest is payable to the Client and, if so, on what terms;
- (d) if applicable, that the Client Money may be held in a jurisdiction outside the DIFC and a clear and concise summary of how the market practices, insolvency and legal regime applicable in that jurisdiction ~~may~~ differ from the regime applicable in the DIFC and any consequent risks to the Client;
- (e) if applicable, details about how any Client Money arising out of Islamic Financial Business are to be held;

- (f) if applicable, that the Authorised Firm holds or intends to hold the Client Money in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and
- (g) details of any rights which the Authorised Firm may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise, and of any rights which the Authorised Firm may have to close out or liquidate contracts or positions in respect of any of the Client's Investments.

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A5.12 Auditor's reporting requirements

Guidance

In accordance with GEN chapter 8, an Authorised Firm which holds or controls Client Money for Segregated Clients must arrange for a Client Money Auditor's Report to be submitted to the DFSA on an annual basis.

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APP6 SAFE CUSTODY PROVISIONS

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A6.7 Client disclosure

- A6.7.1** (1) Before an Authorised Firm Arranges Custody for a Client it must disclose to that Client, if applicable, that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC.
- (2) Before an Authorised Firm Provides Custody for a Client it must disclose to the Client on whose behalf the Safe Custody Investments will be held:
- (a) a statement that the Client is subject to the protections conferred by the Safe Custody Provisions;

- (b) the arrangements for recording and registering Safe Custody Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody Investments;
- (c) the obligations the Authorised Firm will have to the Client in relation to exercising rights on behalf of the Client;
- (d) the basis and any terms governing the way in which Safe Custody Investments will be held, including any rights which the Authorised Firm may have to realise Safe Custody Investments held on behalf of the Client in satisfaction of a default by the Client;
- (e) the method and frequency upon which the Authorised Firm will report to the Client in relation to his Safe Custody Investments;
- (f) if applicable, a statement that the Authorised Firm intends to mix Safe Custody Investments with those of other Clients;
- (g) if applicable, a statement that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and a clear and concise summary of how the market practices, insolvency and legal regime applicable in that jurisdiction ~~may~~ differ from the regime applicable in the DIFC and any consequent risks to the Client;
- (h) if applicable, a statement that the Authorised Firm holds or intends to hold Safe Custody Investments in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and
- (i) the extent of the Authorised Firm's liability in the event of default by a Third Party Agent.