

Appendix 1

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



The DFSA Rulebook

General Module

(GEN)

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;
- (aa) Operating an Employee Money Purchase Scheme; and
- (bb) Acting as the Administrator of an Employee Money Purchase Scheme.

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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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- 2.2.8** (1) A Financial Service may be carried on with or for a Retail Client only by an Authorised Firm which is permitted to do so by endorsement on its Licence.
- (2) An endorsement under (1) is not required by an Authorised Firm when:
- (a) Operating an Employee Money Purchase Scheme; or
 - (b) Acting as the Administrator of an Employee Money Purchase Scheme.

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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).

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(4) For the purposes of this Rule and Rule 2.11.2, a “financial product” is an Investment, Deposit, Profit Sharing Investment Account, rights under a contract of Long-Term Insurance, that is not a contract of reinsurance or rights under an Employee Money Purchase Scheme.

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.
2. An ‘Insurance Aggregation Site’ is defined in GLO. In summary, it is a website or other form of electronic 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 the user can 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 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.
4. An operator of an Insurance Aggregation Site that can be used by Retail Clients will need an endorsement on its Licence to deal with Retail Clients (see Rule 2.2.8).

5. As a ‘financial product’ is defined in Rule 2.11.1(4) to include rights under an Employee Money Purchase Scheme, advice on rights under an Employee Money Purchase Scheme will fall within Advising on Financial Products. It should be noted that an Operator of an Employee Money Purchase Scheme or an Administrator of an Employee Money Purchase Scheme are not licensed to provide such advice to Members of the Scheme.

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 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.
- (2) If a Scheme is established under a master trust, the master trustee and each sub-trustee are taken to be Operating that Scheme.
- (3) To the extent that any activity under (1) constitutes:
 - (a) Dealing as Principal;
 - (b) Dealing as Agent;
 - (c) Providing Trust Services; or
 - (d) Managing Assets,such a Financial Service is taken to be incorporated within Operating an Employee Money Purchase Scheme.

Exclusion

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.

2.31 Acting as the Administrator of an Employee Money Purchase Scheme

2.31.1 (1) In Rule 2.2.2, Acting as the Administrator of an Employee Money Purchase Scheme means performing one or more of the following functions for or on behalf of the Operator of the Scheme:

- (a) technical operational functions relating to the Scheme;
- (b) communicating with Members or providing support services to Members;
- (c) operating an Investment Platform; or
- (d) reporting functions relating to the Scheme.

(2) To the extent that any activity under (1) constitutes:

- (a) Dealing as Agent;
- (b) Providing Trust Services;
- (c) Managing Assets;
- (d) Arranging Deals in Investment; and
- (e) Arranging custody,

such a Financial Service is taken to be incorporated within Acting as the Administrator of an Employee Money Purchase Scheme.

(3) In (1), “Investment Platform” means a facility on which investment options available to Members are offered to, or accessible by, Members.

Guidance

1. In (1)(a), technical operational functions include:

- (a) identifying and verifying employers participating in the Scheme;
- (b) on-boarding Members of the Scheme including performing AML customer due diligence;
- (c) collecting and processing contributions and monitoring payments by Participating Employers;
- (d) issuing notices to a Member if a contribution in respect of that Member has not been made;
- (e) processing and making payment of benefits to Members or their Beneficiaries;
- (f) undertaking transaction monitoring and reconciliation functions relating to Member accounts;
- (g) arranging for Scheme assets to be held by an Eligible Custodian;
- (h) maintaining bank accounts and carrying out other cash related functions;
- (i) arranging the appointment of Third Party Service Providers and monitoring their performance;

- (j) maintaining registers of Participating Employers and the Members relevant to each Participating Employer; and
 - (k) keeping records in relation to the Scheme.
2. In (1)(b), communicating with Members and providing support services includes:
- (a) providing information to Members and prospective members relating to:
 - (i) investment options (e.g. underlying funds) available to Members using the Investment Platform;
 - (ii) the manner and the frequency of selecting investment options; and
 - (iii) the manner and frequency of Member account reporting;
 - (b) providing reports to Members relating to their accounts; and
 - (c) handling inquiries and complaints by Members and Beneficiaries.
3. In (1)(c), providing an Investment Platform includes:
- (a) adding and removing investment options offered on the Investment Platform;
 - (b) monitoring the performance of the investment options on the Investment Platform;
 - (c) allocation of a Member's contributions and earnings to appropriate investment options selected by the Members; and
 - (d) carrying out record keeping and reconciliation functions relating to investments in the Member's account in accordance with a Member's choice.
4. In (1)(d), performing reporting functions relating to a Scheme includes:
- (a) producing financial statements relating to the Scheme, other than as the Scheme's registered auditor, to enable the Operator to fulfil its regulatory obligations; and
 - (b) giving to the Operator any other information or operational statistics as may be required from time to time.

Exclusion

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.

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2A. DEFINITION OF FINANCIAL PRODUCT IN THE GENERAL PROHIBITION AGAINST MISCONDUCT

Definition of Financial Product in the general prohibition against misconduct.

- 2A.1.1** For the purposes of Article 41B of the Regulatory Law, a “Financial Product” means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account or a Contract of Insurance, or a Crowdfunding Loan Agreement or rights under an Employee Money Purchase 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, ~~or a~~ Contract of Insurance, or a Crowdfunding Loan Agreement or rights under an Employee Money Purchase Scheme.

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7.2 Application for a Licence

7.2.1 A Person, who intends to carry on one or more Financial Services in or from the DIFC must apply to the DFSA for a Licence, in accordance with the Rules in this section.

7.2.2 (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2), ~~and (4)~~ and (5), 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 Acting as the Administrator of an Employee Money Purchase Scheme, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.

Guidance

(1) Section 2.2.8 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment under Rule 7.2.2.

(2) A Body Corporate incorporated under the DIFC Companies Law can be a Private Company or a Public Company.

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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.
5. In accordance with COB Rule 2.1.2(5), a Member, Beneficiary or Participating Employer of an Employee Money Purchase Scheme is treated as a Retail Client of an Operator or Administrator of the Scheme. Therefore, the complaints handling procedures in this chapter relating to Retail Clients will apply to those persons.

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