

Appendix 2

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



The DFSA Rulebook

Conduct of Business Module

(COB)

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2 CLIENT CLASSIFICATION

2.1 Application

- 2.1.1** (1) This chapter applies, subject to Rule 2.1.2, to an Authorised Firm, which carries on, or intends to carry on, any Financial Service with or for a Person.
- (2) For the purposes of this chapter, a Person includes a Fund, pension fund or trust, even if it does not have a separate legal personality.

Exclusions

- 2.1.2** (1) This chapter does not apply to a Credit Rating Agency in so far as it carries on, or intends to carry on, the Financial Service of Operating a Credit Rating Agency.
- (2) This chapter does not apply to an Authorised Firm in so far as it carries on the activity described in GEN Rule 2.26.1, provided that no other Financial Service is carried on.
- (3) This chapter does not apply to an Authorised ISPV.
- (4) Except as provided in (5), this chapter does not apply to an Authorised Firm that is Operating an Employee Money Purchase Scheme or Acting as the Administrator of an Employee Money Purchase Scheme.
- (5) An Authorised Firm referred to in (4) must treat the Members, Beneficiaries and Participating Employers of an Employee Money Purchase as Retail Clients.

Guidance

1. The activity described in GEN Rule 2.26.1 is marketing of financial services and financial products which are offered in a jurisdiction outside the DIFC. Such marketing activities can be conducted by an Authorised Firm, which holds a Representative Office Licence, provided the financial services or financial products marketed by it are those offered by its head office or a member of its Group.
2. As a Representative Office conducting marketing activities of the kind described in GEN Rule 2.26.1 does not have a client relationship with a Person to whom it markets a financial

service or financial product, the client classification requirements in this chapter do not apply to the firm with regard to that Person.

3. Other Authorised Firms can also conduct marketing activities, of the kind described in GEN Rule 2.26.1, under the exclusion in GEN Rule 2.26.2.

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3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, PROVIDING TRUST SERVICES AND, OPERATING A CROWDFUNDING PLATFORM, OPERATING AN EMPLOYEE MONEY PURCHASE SCHEME AND ACTING AS THE ADMINISTRATOR OF AN EMPLOYEE MONEY PURCHASE SCHEME

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3.1 Application

3.1.1 This chapter applies to an Authorised Firm which carries on or intends to carry on:

- (a) Investment Business;
- (b) Accepting Deposits;
- (c) Providing Credit;
- (d) Providing Trust Services; or
- (e) Operating a Crowdfunding Platform;
- (f) Operating an Employee Money Purchase Scheme; or
- (g) Acting as the Administrator of an Employee Money Purchase Scheme,

except where it is expressly provided otherwise.

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3.3 Key information and Client Agreement

Application

3.3.1 The Rules in this section do not apply to an Authorised Firm when it is:

- (a) carrying on a Financial Service with or for a Market Counterparty;
- (b) Accepting Deposits;
- (c) Providing Credit;
- (d) carrying on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing; or
- (e) a Fund Manager of a Fund Offering the Units of a Fund it manages;
- (f) Operating an Employee Money Purchase Scheme; or
- (g) Acting as the Administrator of an Employee Money Purchase Scheme.

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3.4 Suitability

Application

3.4.1 The Rules in this section do not apply where the Authorised Firm:

- (a) undertakes a Transaction with a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits or Providing Credit;
- (d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing; or
- (e) carries on the activity of operating an MTF;

- (f) carries on the activity of Operating an Employee Money Purchase Scheme; or
- (g) carries on the activity of Acting as the Administrator of an Employee Money Purchase Scheme.

Suitability assessment

- 3.4.2**
- (1) Subject to (2), an Authorised Firm must not recommend to a Client a financial product or financial service, or execute a Transaction on a discretionary basis for a Client, unless the Authorised Firm has a reasonable basis for considering the recommendation or Transaction to be suitable for that particular Client. For this purpose, the Authorised Firm must:
 - (a) undertake an appropriate assessment of the particular Client's needs and objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and
 - (b) take into account any other relevant requirements and circumstances of the Client of which the Authorised Firm is, or ought reasonably to be aware.
 - (2) An Authorised Firm may, subject to (3), limit the extent to which it will consider suitability when making a recommendation to, or undertaking a Transaction on a discretionary basis for or on behalf of, a Professional Client if, prior to carrying on that activity, the Authorised Firm:
 - (a) has given a written warning to the Professional Client in the form of a notice clearly stating either that the Authorised Firm will not consider suitability, or will consider suitability only to the extent specified in the notice; and
 - (b) the Professional Client has given his express consent, after a proper opportunity to consider the warning, by signing that notice.
 - (3) Where an Authorised Firm manages a Discretionary Portfolio Management Account for a Professional Client, it must ensure that the account remains suitable for the Professional Client, having regard to the matters specified in (1) (a) and (b).

Guidance

1. An Authorised Firm Providing Trust Services does not have to undertake an assessment of the factors such as risk tolerance, knowledge and experience of a Client when assessing the suitability of the service to a particular Client. This is because those considerations are not relevant to the activity of Providing Trust Services.
2. The extent to which an Authorised Firm needs to carry out a suitability assessment for a Professional Client depends on its agreement with such a Client. The agreement may limit the suitability assessment to a specified extent, or may dispense with the suitability assessment completely. To the extent a limited suitability assessment is agreed upon, the firm must carry out the suitability assessment as agreed. Limitations may, for example, relate to the objectives of the Client or the product range in respect of which the recommendations are to be made.
3. The Financial Services of Operating an Employee Money Purchase Scheme or Acting as the Administrator of such a Scheme do not permit the Operator or Administrator to advise Members of the Scheme, particularly on the suitability of investments offered on the Investment Platform. If an Operator or Administrator wishes to give such advice, it must obtain an authorisation for Advising on Financial Products.

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6 ADDITIONAL RULES - INVESTMENT BUSINESS**6.1 Application**

- 6.1.1**
- (1) The Rules in this chapter apply to an Authorised Firm when conducting Investment Business.
 - (2) Sections 6.11, 6.12, 6.13 and 6.14 also apply to an Authorised Firm in respect of Client Assets that it holds or controls (within the meaning of Rule 6.11.4) in the course of, or in connection with, Operating a Crowdfunding Platform.
 - (3) Sections 6.2 and 6.3 also apply to an Authorised Firm when:
 - (a) Operating an Employee Money Purchase Scheme; or
 - (b) Acting as the Administrator of an Employee Money Purchase Scheme.

- (34) The requirements in this chapter apply to an Authorised Firm regardless of the classification of the Client, unless expressly provided otherwise.

Guidance

The requirements in chapter 3 also apply to the conduct of Investment Business.

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[Note: As the following chapter is all new text that is to be inserted, it is not underlined]

12 OPERATING OR ACTING AS THE ADMINISTRATOR OF AN EMPLOYEE MONEY PURCHASE SCHEME

12.1 Application and Interpretation

Guidance

The terms ‘Member’, ‘Participating Employer’ and ‘Scheme’ are defined in GEN Rule 2.30.1.

Application

12.1.1 The Rules in this chapter apply to an Authorised Firm when:

- (a) Operating an Employee Money Purchase Scheme; or
- (b) Acting as the Administrator of an Employee Money Purchase Scheme.

Interpretation

12.1.2 In this Chapter:

- (a) ‘Administrator’ means an Authorised Firm Acting as the Administrator of an Employee Money Purchase Scheme;

- (b) “Beneficiary” means a Person nominated by a Member, or a Person legally entitled to a benefit if there is no valid nomination by a Member;
- (c) “Constitution”, in relation to an Employee Money Purchase Scheme, means:
 - (i) if the Scheme uses a trust structure, the trust deed and trust rules of the trust;
 - (ii) if the Scheme is a body corporate, the articles of association or other equivalent governing documents of the body corporate; or
 - (iii) in any other case, the documents that set out the relevant terms of the scheme;
- (d) “Operator” means an Authorised Firm that is acting as the Operator of an Employee Money Purchase Scheme;
- (e) “Payment Schedule” has the meaning given in COB Rule 12.3.7; and
- (f) “Third Party Service Provider” means a Person to whom the Operator of a Scheme has delegated or outsourced an activity relating to the Scheme.

12.2 General duties and functions

General duties

12.2.1 The Operator and Administrator of a Scheme must:

- (a) act in the best interests of the Members of the Scheme and, if there is a conflict between the interests of the Operator or Administrator of a Scheme and the interests of Members of the Scheme, give priority to the interests of Members;
- (b) not improperly make use of information acquired through being the Operator or Administrator of a Scheme to:
 - (i) gain an advantage for itself or another Person; or
 - (ii) cause detriment to Members of the Scheme;

- (c) ensure that its officers, employees and agents do not improperly make use of information acquired through being officers, employees or agents of the Operator or Administrator of a Scheme to:
 - (i) gain an advantage for itself or another Person; or
 - (ii) cause detriment to Members of the Scheme;
- (d) ensure that any Related Party Transaction is on terms at least as favourable to the Scheme as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party; and
- (e) report to the DFSA, any breach of legislation administered by the DFSA or other applicable laws that relates to the Scheme and has had, or is likely to have, a materially adverse effect on the interests of Members of the Scheme, as soon as practicable after it becomes aware of the breach.

Guidance

The general duties set out in Rule 12.2.1 that apply to an Operator and Administrator, are in addition to the Principles for Authorised Firms that also apply to all firms.

Approval of Scheme

12.2.2 An Operator must obtain the DFSA's prior written approval for:

- (a) a Scheme before it operates the Scheme in or from the DIFC; and
- (b) any material change to the Scheme after it has been approved under (a).

Scheme must be established in DIFC or recognised jurisdiction

12.2.3 An Operator must not operate a Scheme unless the Scheme is established under the laws of the DIFC or of another jurisdiction recognised by the DFSA.

Guidance

For the purposes of Rule 12.2.3, a Scheme may be established directly by the laws of the DIFC or other jurisdiction (e.g. a statutory scheme) or in accordance with laws that permit the establishment of the particular vehicle that is to be used for the scheme e.g. a trust under the trust law or a gratuity or pension scheme under a pensions law.

Constitution of the Scheme

12.2.4 An Operator of a Scheme must:

- (a) manage the Scheme and any property of the Scheme in accordance with the terms of the Constitution and any applicable laws;
- (b) perform the functions and duties conferred on it by the Constitution and applicable laws; and
- (c) ensure that the Administrator carries out the functions and duties in accordance with the Constitution and applicable laws.

12.2.5 An Operator of a Scheme must ensure that the Constitution of the Scheme:

- (a) does not contain any provision that is inconsistent with the requirements of legislation administered by the DFSA that apply to the Operator or Administrator of a Scheme or a Third Party Service Provider;
- (b) requires the property of the Scheme to be held irrevocably for the benefit of the Members of the Scheme;
- (c) does not permit the payment of benefits in circumstances contrary to any applicable legislation; and
- (d) provides for any amount due to a Member, which has not been paid by a Participating Employer, to be recoverable as a debt due to the Scheme.

12.2.6 Any provision in the Constitution of a Scheme is void to the extent that it is inconsistent with a requirement in these Rules.

Delegations and Outsourcing

Guidance

1. GEN Rules 5.3.21 and 5.3.22 provide overarching requirements that govern outsourcing of functions and activities by an Authorised Firm. The Rules in this section apply in addition to the requirements in GEN Rules where an Operator of a Scheme delegates or outsources functions and activities in relation to the Scheme.
2. Under GEN Rule 5.3.21, if the Operator of a Scheme delegates any activities or outsources any functions to an Administrator of a Scheme or a Third Party Service Provider, it is not relieved of its regulatory obligations and remains responsible for its compliance with the legislation applicable in the DIFC.

12.2.7 An Operator of a Scheme must ensure that if it delegates or outsources an activity that is a financial service, the activity is carried on by a person who is either:

- (a) authorised by the DFSA to carry on that activity; or
- (b) regulated and supervised for that activity by a Financial Services Regulator in a jurisdiction recognised by the DFSA.

12.3 Key Information about the Scheme

Information for prospective members

12.3.1 An Operator of a Scheme must ensure that before a person becomes a Member of the Scheme, that person is provided with the following information:

- (a) the name of the Scheme;
- (b) the name and address of the Operator and Administrator of the Scheme and how they can be contacted;
- (c) how the person can obtain up-to-date information about the Participating Employer's contributions in respect of the Member;
- (d) a short description of:
 - (i) the type of investment options offered on the Investment Platform;
 - (ii) the investment objectives of each investment option, the strategy for achieving those objectives and any associated risks;
 - (iii) how detailed information relating to each investment option can be obtained, and who is responsible for providing that information; and
 - (iv) the comparative risk rating for each investment option, if available;
- (e) how and when a Member can switch their investments;
- (f) costs for which Members are responsible, with costs and charges associated with the administration of the Scheme, and the management fees and charges of the investment options offered on the Investment Platform, shown separately;

- (g) whether voluntary contributions can be made by a Member and, if so, how such contributions will be managed, including fees and charges;
- (h) the events upon which Member benefits are payable, and the method of calculating such benefits;
- (i) details relating to how Member inquiries and complaints will be handled and the contact details for inquiries and complaints; and
- (j) that the investment managers of the investment options offered on the Investment Platform are responsible for the information provided to Members relating to those investment options.

Guidance

An Operator in providing the information under 12.3.1 must not offer investment selection assistance tools to Members, as such tools may be construed as Advising on Financial Products. However, if such a tool is offered by an investment manager of an investment option, the Operator may let Members know how the tool may be accessed and the investment manager responsible for the tool.

Notification of any material change

- 12.3.2** An Operator of a Scheme must ensure that a person to whom information is provided under Rule 12.3.1 is notified promptly if there is any material change to information referred to in that Rule, whether the change occurs before or after the person becomes a Member of the Scheme.

Segregation of Scheme Property

- 12.3.3** An Operator of a Scheme must ensure that property of the Scheme is:
- (a) held by an Eligible Custodian;
 - (b) clearly identified as the property of the Scheme; and
 - (b) held separately from the property of the Operator or Administrator of a Scheme or any Third Party Service Provider.

Valuation of Scheme Property

- 12.3.4** The Operator of a Scheme must ensure that:

- (a) the property of the Scheme is valued, at least annually, for the purposes of the annual report of the Scheme; and
- (b) a valuation of the property of the Scheme specific to each Member's benefits is carried out for each valuation period set out in the Constitution of the Scheme, and the valuation is made available to the respective Member as soon as possible after the valuation.

Fees and charges

12.3.5 The Operator of a Scheme must ensure that fees or charges payable by Members of the Scheme:

- (a) represent good value for the Members of the Scheme;
- (b) can be demonstrated by the Operator to be reasonable, taking into account the fees and charges of similar schemes in comparable jurisdictions;
- (c) do not exceed any ceiling specified in the Constitution or any applicable laws;
- (d) are expressly permitted under the terms of the Constitution or applicable laws or agreements;
- (e) are communicated clearly to the Members of the Scheme at the time of joining the scheme and in the event of any subsequent change; and
- (f) are not materially increased, unless the DFSA has given its prior written consent to such an increase.

Guidance

1. In considering if fees and charges represent good value for the Members of the Scheme, the Operator should take into account established principles, such as guidance issued by the UK Pension Regulator on what constitutes good value for members.
2. In ensuring that the fees and charges of a Scheme are reasonable and represent value for money for Members, an Operator should take into account any reduction in costs that should be achievable due to economies of scale as assets under management increase, and due to efficiencies gained from market and technological advances.

12.3.6 A Participating Employer may make additional contributions to meet, in whole or in part, the administration costs of the Scheme.

Guidance

The additional contributions referred to in Rule 12.3.6 are voluntary contributions a Participating Employer may make, over and above Member contributions in respect of its Employees' gratuity. If such additional contributions are made, the Operator needs to ensure that they are used for defraying costs borne by Members, rather than additional contributions available for investment.

Payment Schedule

12.3.7 The Operator of a Scheme must ensure that a Payment Schedule is prepared setting out in respect of each Participating Employer:

- (a) the rates, including the due dates, of all contributions payable to the Scheme by the Participating Employer;
- (b) each Member's name, address and nominated Beneficiary; and
- (c) the amounts likely to be payable by each Member by way of fees or charges for the relevant year.

12.3.8 (1) The Operator of a Scheme must ensure that the Administrator notifies a Member of the Scheme in respect of whom a payment is due:

- (a) if payment under the Payment Schedule is not paid on the due date; and
- (b) if the amount is not recovered, of the consequences of the non-payment to the Member.

(2) The Administrator of the Scheme must notify the Operator:

- (a) if any payment under the Payment Schedule is not paid on the due date; and
- (b) if the amount is not recovered, of the consequences of the non-payment for the Members of the Scheme.

Investment Options

12.3.9 (1) The Operator of a Scheme must:

- (a) establish a range of investment options offered on the Investment Platform, which are suitable for the investment objectives and risk profile of the different classes of Members of the Scheme;
 - (b) ensure that the investment options include investments that are suitable for Members who are:
 - (i) highly risk averse, and therefore, for whom capital preservation is paramount; or
 - (ii) seeking Shari'a compliant options;
 - (c) take appropriate action to remove any investment option that is found to not be meeting the applicable criteria; and
 - (d) implement adequate measures to protect the interests of Members when an investment option is to be removed from the Investment Platform.
- (2) The Operator of a Scheme must consult with a Professional Adviser before carrying out its functions under (1).
- (3) Where the Operator of a Scheme does not act on a recommendation provided by the Professional Adviser, the Operator must do so on reasonable grounds which are clearly documented.
- (4) The Professional Adviser referred to in (2) must be a person who:
- (a) is either:
 - (i) authorised under its Licence for Advising on Financial Products; or
 - (ii) regulated and supervised by a Financial Services Regulator in a jurisdiction recognised by the DFSA;
 - (b) has appropriate skills and expertise relating to the type of investment options that are to be offered on the Investment Platform; and
 - (c) is independent of the Operator and Administrator of the Scheme.

12.3.10 The Operator of a Scheme must:

- (a) enter into an agreement with each person who is responsible for an investment option (investment manager) to be offered on the Investment Platform, that sets out:
 - (i) the criteria to be met by the investment manager;
 - (ii) a requirement for the investment manager to ensure that its fees and charges are reasonable, taking into account the fees and charges of similar investments;
 - (iii) the obligation of the investment manager to provide information relating to the investment options which Members are to use when making their investment options;
 - (iv) the circumstances in which an investment option is to be removed from the Investment Platform and the procedures that apply to the removal; and
 - (v) the measures to protect the interests of Members on the removal of an investment option from the Investment Platform;
- (b) make available to Members and prospective members of the Scheme, information relating to each investment option offered on the Investment Platform; and
- (c) provide Members with a facility to switch, free of charge at specified intervals, between investment options offered on the Investment Platform.

Register of Members

12.3.11 The Operator of the Scheme must ensure that the Administrator:

- (a) maintains a register of the Members of the Scheme and the Participating Employer in respect of each Member;
- (b) keeps the register at the principal place of business of the Administrator in the DIFC;
- (c) includes in the register the name of each Member and the date on which contributions commenced in respect of the Member; and

- (d) permits a Member and Participating Employer to access the relevant part of the register that contains information relevant to the Member or the Participating Employer during normal working hours and free of charge.

Member enquiries

- 12.3.12** The Operator of a Scheme must ensure that the Administrator has in place adequate arrangements to deal efficiently and effectively with enquiries from Members and Participating Employers.

Guidance

See GEN chapter 9.2 and Guidance under GEN Rule 9.2.2 for complaints handling procedures that an Operator or Administrator needs to have in place to deal with Member complaints.

12.4 Financial Statements, Reports and Audit Requirements

Financial Statements

- 12.4.1** The Operator of a Scheme must ensure that:
 - (a) financial statements relating to the Scheme are prepared in respect of each financial year of the Scheme; and
 - (b) the financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) or any other standard approved by the DFSA.

Annual and half year Reports

- 12.4.2** The Operator of a Scheme must:
 - (a) prepare a financial report relating to the Scheme in respect of each
 - (i) financial year of the Scheme; and
 - (ii) half year of the Scheme;
 - (b) prepare and maintain all financial statements in accordance with IFRS or any other reporting standard approved by the DFSA;

- (c) keep accounting records in sufficient detail to enable the financial statements of the Scheme to be prepared for the relevant financial year and half year that shows the financial position of the Scheme, including:
 - (i) records of contributions received in respect of Members of the Scheme;
 - (ii) investment earnings of the underlying investment options in which Member contributions are invested;
 - (iii) fees and charges of the Scheme, and any other outgoings, showing separately:
 - (A) the Operator's overall fees and charges, with a breakdown of the amounts paid to the Administrator, Eligible Custodian and other Third Party Service Providers and, the fees and charges of the Professional Adviser; and
 - (B) the fees and charges of the investment managers whose products are offered on the Investment Platform;
 - (iv) transactions in respect of Scheme property; and
 - (v) any other matters as specified by the DFSA;
- (d) retain the accounting records for at least six years from the date to which the record relates; and
- (e) have the accounting records open for inspection by the Registered Auditor of the Scheme and the DFSA.

Annual Statements and Exit Statements

12.4.3 The Operator of a Scheme must ensure that the Administrator prepares and provides to each Member an annual statement for each financial year, in respect of the Member account, setting out:

- (a) the mandatory contributions received for or on behalf of the Member;
- (b) the voluntary contributions, if any, received from the Member;
- (c) the value of the investments attributed to the Member's account, whether chosen by the Member or applying by default;

- (d) the earnings attributed to the Member's account in respect of the investments referred to in (c);
- (e) the fees and charges deducted from the Member's account; and
- (f) any other information required by the DFSA.

12.4.4 The Operator of the Scheme must ensure that the Administrator prepares and provides upon the exit of a Member an exit statement setting out the full details of the benefit payment, including any permitted deductions made from the benefit payment.

Auditor

12.4.5 The Operator of a Scheme must ensure that:

- (a) an Auditor is appointed for the Scheme;
- (b) the Auditor conducts an audit of the financial statements of the Scheme in accordance with the requirements of the relevant standards published by the IAASB; and
- (c) the Auditor produces an Auditor's Report on the audited financial statements of the Scheme.

12.5 Management of financial resources

General duty

12.5.1 An Operator of a Scheme must ensure:

- (a) that the financial resources of the Scheme are managed soundly and prudently; and
- (b) that there are sufficient liquid assets in the Scheme to meet:
 - (i) the payment of Member benefits; and
 - (ii) expenses and other charges relating to the operation of the Scheme.

Policies and strategies

- 12.5.2** (1) The Operator of a Scheme must ensure that there are well documented policies and strategies to meet the requirements in Rule 12.5.1, which include:
- (a) maintaining appropriate liquid buffers (including any reserves) and limits on illiquid assets; and
 - (b) access to other resources (such as lines of credit).
- (2) The policies and strategies referred to in (1) must take into account, among other things:
- (a) the nature of the liquidity of the underlying investments in which Member contributions and earnings are invested;
 - (b) if the underlying investments are securities traded on an exchange, liquidity on the exchange;
 - (c) the benefit Payment Schedule, including any contingencies;
 - (d) reserves established to meet fees, charges and any other outgoings of the Scheme; and
 - (e) any other factors that may potentially affect the liquidity of the assets available for the payment of Member benefits.
- 12.5.3** The Operator of a Scheme must ensure that the Administrator adopts and implements appropriate mechanisms to:
- (a) measure, monitor, stress-test and manage the policies and strategies referred to in Rule 12.5.2;
 - (b) assess whether the policies and strategies are adequate and are operating as intended in both normal and stressed conditions; and
 - (c) address any gaps and failures identified.
- 12.5.4** The Operator of a Scheme must:
- (a) ensure that there are:

- (i) clear measures to identify and address liquidity stresses arising within the Scheme; and
 - (ii) clear triggers to require the exercise of those measures; and
- (b) report promptly to the DFSA if any liquidity stresses are identified, and any action that is taken or to be taken.