

**Appendix 3**

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



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# The DFSA Rulebook

## Conduct of Business Module

### (COB)

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#### **4.4 Depositor protection**

**4.4.1** (1) Subject to (2), to the extent that the Rules in this section are inconsistent with the Insolvency Law ~~2009~~2019 and any regulations made for the purposes of that law the Rules in this section will prevail.

(2) The following provisions of laws, Rules and Regulations prevail over the Rules in this section:

- (a) parts A5.13.2 (a), (b), (c) and (d)(ii) of the Client Money Distribution Rules;
- (b) Article ~~65~~98 of the Insolvency Law ~~2009~~2019;
- (c) the DIFC Preferential Creditor Regulations; and
- (d) Regulations 5.45.4 and 5.52 of the DIFC Insolvency Regulations.

**4.4.2** (1) In the event of:

- (a) the appointment of a provisional liquidator, liquidator, receiver or administrator, or trustee in bankruptcy, over a Bank which is a Domestic Firm; or
- (b) a direction by the DFSA to a Bank which is a Domestic Firm under Article 76 of the Regulatory Law 2004 to deal with all or substantially all its Deposits in a specified manner,

eligible depositors of the Bank have priority over, and shall be paid in priority to, all other unsecured creditors of the Bank.

(2) In (1), an “eligible depositor” means, subject to (3), a Person who, at the relevant time, is a creditor of a Bank referred to in (1) by virtue of being owed an amount of Money held by the Bank as a Deposit.

(3) In (2), eligible depositor excludes any creditor which is:

- (i) a Market Counterparty; or
- (ii) a bank.

**Guidance**

Article ~~404~~136 of the DIFC Insolvency Law ~~2009~~2019 gives the DFSA a power to modify the application of provisions of that law and the Regulations made for the purposes of it in particular cases or classes of case. It permits the DFSA to make Rules which provide for the orderly conduct of affairs or winding up of an Authorised Firm and to prescribe procedures and priorities for dealing with assets of the Authorised Firm or other persons in the event of pending or actual insolvency or other default.

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**7.2 Insurance business, management and intermediation restrictions**

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- 7.2.2** (1) An Insurer must ensure that it does not Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC where the contract is in relation to a risk situated within the State, unless the risk is situated in the DIFC or another Financial Free Zone, or the contract is one of re-insurance.
- (2) An Insurance Intermediary must ensure that it does not act as agent in relation to a Contract of Insurance where the contract is in relation to a risk situated within the State, unless the risk is situated in the DIFC or another Financial Free Zone, or the contract is one of re-insurance.
- (3) An Insurance Manager must ensure that it does not act in relation to a Contract of Insurance where the contract is in relation to a risk situated within the State, unless the risk is situated in the DIFC or another Financial Free Zone, or the contract is one of re-insurance.

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**11.3 Requirements for Crowdfunding Platforms****Information about default or failure rates**

- 11.3.2** (1) An operator must disclose prominently on its website:



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- (a) ~~for Loan Crowdfunding, the actual and expected default rates for loans entered into on the platform; and :~~
    - (i) the number and aggregate value of loans in default;
    - (ii) the actual default rates as a percentage of loans entered into on the platform; and
    - (iii) the expected default or failure rates; and
  - (b) for Investment Crowdfunding, the actual and expected failure rate of Issuers who use the platform.
- (2) The information referred to in (1) must:
- (a) for actual default or failure rates, cover the period since the operator began providing the service;
  - (b) for expected default or failure rates, set out a summary of the assumptions used in determining those expected rates; and
  - (c) be presented in a way that is fair, clear and not misleading.
- (3) A Loan Crowdfunding Operator must, in addition to the information referred to in (1) and (2), disclose prominently on its website, as at the end of each quarter of a calendar year (being March 31, June 30, September 30 and December 31), the total number of loans entered into on the platform for which repayment has not been made by the due date, and include a breakdown of late payments according to the following categories:
- (a) 60 days or less past the due date;
  - (b) 61 to 90 days past the due date;
  - (c) 91 to 120 days past the due date;
  - (d) 121 to 180 days past the due date; and
  - (e) more than 180 days past the due date.
- (4) The disclosures required under this Rule must be updated within seven days after the end of each relevant quarter.

**Guidance**

1. Rule 11.3.2 requires a Loan Crowdfunding Operator to disclose historical information about the default rates of loans entered into on the platform. It also requires the operator to set out expected default rates in the future for loans entered into on the platform.
2. An Investment Crowdfunding Operator is required to disclose similar information about the failure rates of Issuers on its platform. In this context, failure of an Issuer should include where an Issuer defaults on payments, becomes insolvent, is wound up or ceases to carry on business.
3. Information about default and failure rates is intended to assist potential lenders or investors to assess the risks of lending or investing using the platform.
4. If an operator is a start-up entity, it may base the information on crowdfunding services provided by other members of the Group, provided it states clearly the basis for the information it provides.
5. Rule 11.3.2 does not apply to Property Investment Crowdfunding due to the different nature of the Investment i.e. the Investment is in a property rather than a business or project.
6. In compiling information relating to loan defaults, a Loan Crowdfunding Operator is expected to:
  - (a) consider loans where it reasonably believes full repayment is unlikely, regardless of whether the loan is currently past the due date or not; and
  - (b) treat loans that are over 90 days past the due date as being in default.
7. In order to meet the requirements in Rule 11.3.2 (3), the Loan Crowdfunding Operator should measure the number of days past the due date from the earliest contractual date on which a payment is due but has not been made.

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**A5.13 Client money distribution rules**

**A5.13.1** This section is referred to as the Client Money Distribution Rules and to the extent that these Rules are inconsistent with part 5.52 of the DIFC Insolvency Regulations, and the DIFC Preferential Creditor Regulations, these Rules will prevail.

**A5.13.2** Following a Distribution Event, the Authorised Firm must distribute Money in the following order of priorities:

- (a) firstly, in relation to Client Money held in a Client Account on behalf of Segregated Clients, claims relating to that Money must be paid to each Segregated Client in full or, where insufficient funds are held in a Client Account, proportionately, in accordance with each Segregated Client's valid claim over that Money;
- (b) secondly, where the amount of Client Money in a Client Account is insufficient to satisfy the claims of Segregated Clients in respect of that Money, or not being immediately available to satisfy such claims, all other Money held by the Authorised Firm must be used to satisfy any outstanding amounts remaining payable to Segregated Clients but not satisfied from the application of (a) above;
- (c) thirdly, upon resolution of claims in relation to Segregated Clients, any Money remaining with the Authorised Firm must be paid to each Client in full or, where insufficient funds are held by the Authorised Firm, proportionately, in accordance with each Client's valid claim over that Money; and
- (d) fourthly, upon satisfaction of all claims in (a), (b) and (c) above, in the event of:
  - (i) the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy over the Authorised Firm, payment must be made accordance with the Insolvency Law ~~2009~~ 2019; or
  - (ii) all other Distribution Events, payment must be made in accordance with the direction of the DFSA.

**Guidance**

A Segregated Client would not have a valid claim over Client Money held in a Client Account if that Client Account was not established to hold Client Money for that Client.