

**CONSULTATION PAPER
NO.125
PROPOSALS FOR MONEY
SERVICES**



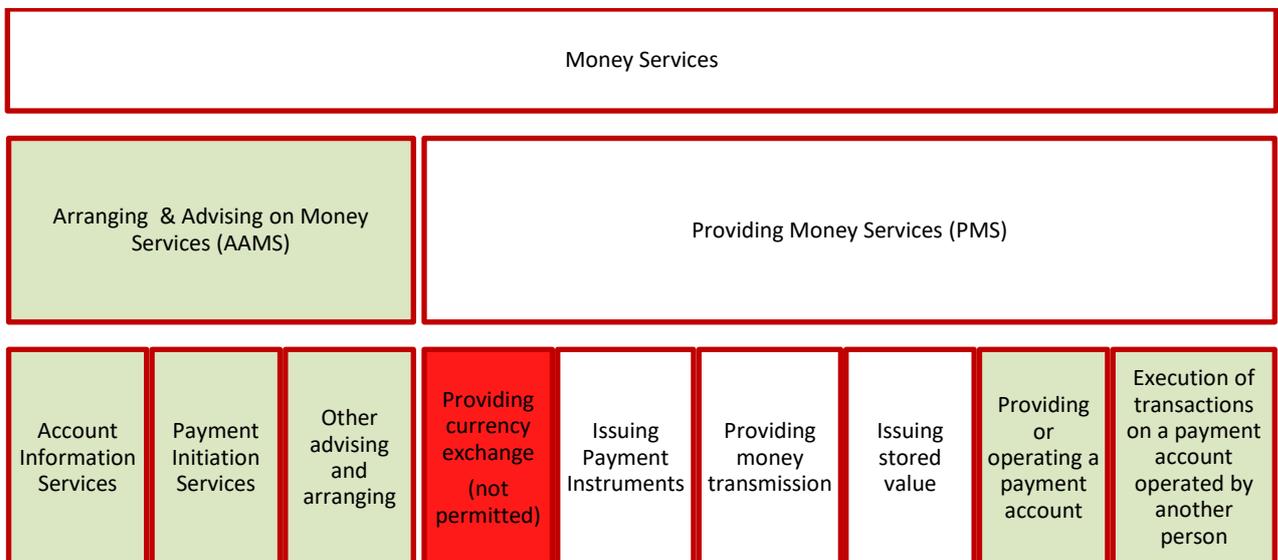
11 NOVEMBER 2019

PREFACE

Why are we issuing this paper?

1. Under the current regime administered by the Dubai Financial Services Authority (DFSA), the Financial Service of Providing Money Services is a prohibited activity.¹ This activity covers Money Transmission (MT)² and Currency Exchange (FX).³ We now propose to retain the current prohibition only in relation to Currency Exchange, and allow other activities relating to money services to be conducted in or from the Dubai International Financial Centre (DIFC), subject to appropriate regulation.
2. Our proposals are designed to capture a range of activities relating to money services which have emerged due to rapid advancements in technology, and to address risks associated with such activities. They encompass:
 - (a) expanding the definition of Providing Money Services (PMS) to cover two new activities - 'providing a payment account' and 'performing transactions on a payment account held by another person';
 - (b) allowing PMS in respect of electronic currency only (no physical cash);
 - (c) continuing the current prohibition against FX as a standalone service; and⁴
 - (d) introducing Arranging and Advising on Money Services (AAMS)⁵ as a new Financial Service.

Figure 1. Structure of the proposed Money Services activities



¹ GEN Rule 2.2.4.

² GEN 2.6.1(2) defines MT as "(a) selling or issuing payment instruments; (b) selling or issuing stored value; or (c) Receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC".

³ See GEN 2.6.1.

⁴ FX will continue to be allowed under GEN 2.6.2 if it is a necessary part of providing another service, including a permitted PMS activity.

⁵ AAMS will explicitly include providing Account Information Services and Payment Initiation Services.

Who should read this paper?

3. The proposals in this paper will be of interest to:
 - (a) persons interested in PMS, or AAMS, in or from the DIFC;
 - (b) persons intending to obtain a licence for PMS, or AAMS;
 - (c) service providers who intend to assist persons conducting the activities referred to above;
 - (d) potential Users of money services;
 - (e) licensees conducting money services in connection with, and as an incidental part of, their regulated activities; and
 - (f) other industry participants.

Terminology

4. Defined terms are identified by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning. More commonly used terms in this CP have the following meanings:
 - (a) 'AAMS' means Arranging or Advising on Money Services, as defined in draft GEN 2.30.1;
 - (b) 'FX' means providing Currency Exchange services;
 - (c) 'Money Service Provider' or 'Money Services' (MS) means a person carrying on Providing Money Services;
 - (d) 'payee' means a person who is the intended recipient of funds that have been the subject of a Payment Transaction;
 - (e) 'payer' means a person who holds a payment account and either:
 - (i) initiates, or consents to the initiation of, a Payment Order from that payment account; or
 - (ii) gives a Payment Order, although there is no payment account;
 - (f) 'Payment Account' means an account that is held in the name of one or more Users that is used to execute Payment Transactions;
 - (g) 'Payment Instrument' means:
 - (i) a personalised device; or
 - (ii) a personalised set of procedures agreed between the User and the provider, that is used by the User to initiate a Payment Order;
 - (h) 'Payment Order' means any instruction issued by a payer or payee to their respective payment service provider requesting the execution of a Payment Transaction;
 - (i) 'Providing Money Services' (PMS) or MS has the meaning in draft GEN 2.6.1;
 - (j) 'Payment Service' means any activity defined in draft GEN 2.6.1(2)(a)(e), other than issuing Stored Value or providing Currency Exchange;
 - (k) 'Payment Service Provider' means a person providing a Payment Service;
 - (l) 'Remote payment transaction' means a payment transaction initiated through the

internet or otherwise initiated through a device that can be used for distance communication;

- (m) 'Stored Value' means an electronically (including magnetically) stored monetary value as represented by a claim on the issuer which is issued on receipt of funds (or other assets) for the purpose of making Payment Transactions;
- (n) 'User' in relation to PMS or AAMS services means the Client of the firm providing the relevant service, and could be the payer, the payee or both (see GLO); and
- (o) 'User Security Credentials' means personalised features provided by a Payment Service Provider to a payment service User for the purposes of authentication.

What are the next steps?

- 5. Please send any comments using the [online response form](#). You will need to identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. The deadline for providing comments is **15 December 2019**.
- 6. Following public consultation, we will proceed to make the relevant changes to the DFSA's Rulebook. You should not act on the proposals until the relevant changes to the laws and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Structure of this CP

Introduction

Part I – Issues relating to the current prohibition, classification and definitions relevant to Money Service Providers;

Part II – General and Conduct of Business requirements;

Part III – Prudential requirements;

Part IV – Application of the AML regime;

Part V – Reporting regime;

Part VI – Fees regime;

Annex 1 – Questions in this Consultation Paper

Appendix 1 – Draft Amendments to GLO;

Appendix 2 – Draft Amendments to GEN;

Appendix 3 – Draft Amendments to COB;

Appendix 4 – Draft Amendments to AML;

Appendix 5 – Draft Amendments to FER;

Appendix 6 – Draft Amendments to PIB; and

Appendix 7 – Draft Amendments to AUD.

INTRODUCTION

7. This Consultation Paper (CP) proposes a Money Services regime that provides a regulatory framework for the effective supervision of such activities in a manner that supports the DFSA's objectives, namely protecting the users of the financial services and maintaining stability in the market.
8. We are proposing this regime in response to the considerable interest we have received from firms in this area, and because of the potential benefits we can see to consumers and the market from the provision of such products and services.

Part I Issues relating to the current prohibition, classification and definitions applicable to Money Service Providers

The General Prohibition on Providing Money Services

9. The Financial Service of PMS is defined in GEN 2.6.1 and has two components; FX and MT.⁶
10. The activities falling within the definition of PMS are currently prohibited activities,⁷ except where such activities are conducted in connection with and a necessary part of another Financial Service⁸ (which we propose to retain to avoid any disruption to firms currently relying on this exclusion).
11. The DFSA took the view in 2006 that it was desirable to prohibit the Financial Service of PMS in or from the DIFC because the money laundering risks associated with such activities could lead to reputational damage to the DIFC. However, with advances in technology and the ability to closely monitor activities of these types of firms, we are now of the view that - provided we have adequate controls to address potential money laundering risks - allowing PMS activities in the DIFC could:
 - (a) promote the growth of regulated financial services activities; and
 - (b) provide greater protection and choices to Users of money services.
12. The DFSA believes that allowing PMS in electronic format only (e.g. no physical cash) may also help to reduce AML risks associated with PMS activities, because:
 - (a) it is harder to ascertain the source of funding where physical cash enters the financial system, whether through a DFSA regulated firm or other financial institution; and
 - (b) our AML regime, which we propose to apply fully to PMS firms, would require them to carry out full Customer Due Diligence (CDD) on the Users of its services. If relying on any third party involved in the transmission of money, our regime would permit DIFC firms to rely on CDD carried out by such third parties (who would often be regulated financial institutions, such as banks), only if certain conditions are met. For example, if:
 - (i) such a third party is regulated to Financial Action Task Force (FATF) standards; and

⁶ See footnote 2.

⁷ GEN Rule 2.2.4.

⁸ GEN 2.6.2.

- (ii) the DIFC firm has obtained all the necessary CDD information from that third party, including access to all relevant documentation.

UAE Federal Law and Money Services

13. The UAE Federal Law No.8 of 2004 (the Federal Law) sets out, in Article 4, the following:

“1. With regard to Financial Banking Activities:⁹

...

(b) Companies and Establishments licensed in the Financial Free Zones shall not engage in taking deposits from the national market and shall not enter into transactions in the UAE Dirham.

...”

14. Our view is that money services of the type discussed and proposed in this CP are not usually considered to be financial banking activities. The payments system covers a vast range of activities, carried out by a wide variety of players. Some aspects at the heart of the payments system, such as settlement using Central Bank money, might rightly be regarded as financial banking activities, as only banks are (usually) in a position to undertake such activities. Other activities are more peripheral and can be carried out by a range of entities. Firms carrying out the activities discussed in this CP do not need to be either clearing or settling members of the payments system. Nonetheless, it is important that DIFC firms recognise the spirit of the Federal Law, as well as respecting the letter of the law.
15. Under our proposals a DIFC firm, conducting money services, would handle client money not as a deposit taker but, instead, in a transient manner as needed for money services transactions.¹⁰ If any customer funds are held by the firm for a longer period, we propose to prohibit the firm from paying any interest or other benefits/incentives to the customers to remove the possibility or perception that such funds are held by the firm as deposits (see Proposal 17).
16. If undertaking any payment transactions denominated in the UAE Dirham (AED), a DIFC firm would always have to use a bank regulated by the UAE Central Bank, as such banks are the only institutions that can deal in the AED, by clearing and settling transactions (see Proposal 1).
17. The DFSA also proposes to continue to prohibit FX as a standalone service to remove the possibility that PMS providers in the DIFC are exposed to, or used by others, for currency speculation. FX will still be permitted to the extent that it is in connection with, and a necessary part of, other regulated Financial Services, including for firms conducting PMS.
18. Lastly, as will be clear from the discussion above, the regulation and supervision of standalone money service providers would be a new activity for the DFSA. Given this, it is likely that the DFSA will take a cautious approach to the licensing and supervision of entrants into this area. For example, the DFSA is likely to decide to restrict the nature, or volume, or size, of transactions that a newly licensed firm could undertake and is likely to limit the nature of the clients they can deal with. We expect this to be the case whether a

⁹ Defined in Article 1 of the Federal Law as ‘Financial banking operations and banking operations’.

¹⁰ Where they do hold client money, our proposals require such money to be treated as client money.

firm applies for a licence under the regime proposed in this CP, or they choose to apply under the DFSA's [Innovation Testing Licence](#) (ITL) programme.

Proposal 1

See draft GEN Rules 2.6, 2.2.10G, 2.2.10H and 2.2.10I at Appendix 2

19. For the reasons set out in paragraphs 9 to 18, we propose to:
- (a) remove the current prohibition against PMS, except in relation to FX as a standalone service;
 - (b) require that PMS activities are undertaken only in electronic format (no physical cash);
 - (c) retain the current exclusion in GEN Rule 2.6.2 where Authorised Firms can undertake PMS activities in connection with and as an incidental part of PMS;
 - (d) require any PMS transactions denominated in the UAE Dirham to be cleared and settled through a UAE bank; and
 - (e) no longer use the term MT in the general sense in which it is currently defined in GEN 2.6.1, and instead to use the term Providing Money Services (PMS) to describe the services in that Rule.

Question 1

Do you have any concerns about our proposals set out in paragraph 19?

Other activities relating to Money Services

Introducing a new Financial Service covering Arranging and Advising on Money Services

20. The current definition of the Financial Service of PMS in GEN Rule 2.6.1, which is a prohibited activity, does not cover the full range of possible PMS activities, including AAMS. The result is that those wider activities, although related to PMS activities, can be carried out in or from the DIFC without being subject to the prohibition. We consider that some of those activities should be regulated as Financial Services activities, particularly given the risks associated with rapid digital transformation of financial services activities. Such a gap relating to PMS is the role played by arrangers and advisers of MS.¹¹
21. Arrangers and advisers would not hold or control funds of MS Users, but would facilitate payments by providing seamless and timely information to Users. Two notable services in this area are Account Information Services and Payment Initiation Services. Although they differ from the conventional methods of advising or arranging,¹² in substance they are similar to 'advising or arranging' activities.
22. Account Information Service Providers (AISPs) provide aggregate information about the User's account balances across multiple Payment Accounts and track the User's spending patterns, facilitating budgeting and financial planning. They gather and aggregate financial

¹¹ The proposals in this CP do not deal with open banking. Open banking envisages banks being mandated to provide open access to their customer data to non-bank service providers. Our proposals, instead, are predicated on customers, through their own agreement with their banks and MS providers, agreeing to banks allowing access to customer account information as required by a MS provider such as an AISP (see paragraph 22).

¹² Advising generally involves giving a person advice on merits of him buying or selling a financial product; arranging generally involves making arrangements to bring a willing buyer and seller together, including order routing.

information of a specific User to enable the User to make informed decisions about the movement of his money/value. It also involves accessing sensitive data about the User's financials and, hence, it is likely to fall within data protection laws. If unregulated, such activities could cause considerable damage to the reputation of the DIFC should such information be mishandled or compromised.

23. Payment Initiation Service Providers (PISPs) allow the User to make a payment for goods or services, using a Payment Account (or instrument) provided by another service provider, by establishing a software 'bridge' between the website of a merchant and the online banking platform of a User's Payment Account provider. This enables the User to initiate payments using his account. This service would typically be made available as a payment option on a merchant's website.
24. PISPs, although facilitating payment services, are not in contact with funds at any stage of the Payment Transaction and they will not issue any Payment Instruments. The customer will have to use a Payment Instrument, for example, by logging into his/her bank account to pay, provided by another service provider. The service they provide is to facilitate the payment initiation and give an independent verification to the merchant that the User has sufficient funds and has made a payment using his/her bank account in favour of the merchant.
25. The proposals to regulate PISPs bring firms arranging spot FX deals within the scope of DFSA regulation. This closes a gap in our current regime where PMS (including FX) has so far been prohibited but not the activity of arranging PMS. In addition, the proposals:
 - (a) capture firms advising on or arranging third party issued 'Stored Value/E-Money'; and;¹³
 - (b) allow firms in the Centre to advise on, or arrange money services involving foreign firms providing such services.

Proposal 2

See draft GEN Rule 2.30.1 at Appendix 2

26. For the reasons set out in paragraphs 20 to 25, we propose to introduce AAMS as a new financial services activity.

Introducing Operating Payment Accounts and Transaction execution on a Payment Account held by another as regulated PMS activities

27. The existing definition of PMS in GEN Rule 2.6.1 does not explicitly cover the following two key payment services:
 - (a) providing or operating a Payment Account; and
 - (b) execution of payment transactions on a payment account provided or operated by another Payment Service Provider (PSP).
28. Including these two activities under the scope of PMS will ensure that our PMS regime captures non-bank business models providing Payment Accounts to clients, for example, by using an omnibus bank account. It will also cover models that use the customer's

¹³ The DFSA policy proposals relating to the creation, use and trading of Digital Assets that use Distributed Ledger Technology (DLT) are still under development. We will consider in due course what impact those policy proposals would have on the proposal to allow non-fiat currencies being included for the purposes of 'Stored Value'.

Payment Account with another provider to execute Payment Transactions (e.g. by controlling the underlying Account/Credit Card).

Proposal 3

See draft GEN Rule 2.6.1(1)(c) & (d) at Appendix 2

29. For the reasons set out in paragraphs 27 and 28, we propose to include in the definition of PMS the activities of 'providing or operating a Payment Account' and 'executing Payment Transactions on a Payment Account provided or operated by another Person'.

The terms Payment Instruments, Payment Order and Stored Value used in the current definition of PMS

30. Two critical terms used in defining MT in GEN 2.6.1, namely Payment Instruments¹⁴ and Stored Value are not defined terms. We also propose to introduce the term Payment Order in connection with Payment Transactions used in the proposed new definition of PMS. To provide greater clarity and certainty, we propose to define them as follows:

- (a) a Payment Instrument is:

- I. a personalised device; or*
- II. personalised set of procedures agreed between the payment service user and the payment service provider,*

that is used by the user to initiate a Payment Order;

- (b) a Payment Order is:

Any instruction by a payer or a payee to their respective payment service provider requesting the execution of a payment transaction; and

- (c) Stored Value, is:

An electronically (including magnetically) stored monetary value as represented by a claim on the issuer which is issued on receipt of funds or 'other assets'¹⁵ for the purpose of making Payment Transactions.

31. We propose to exclude any Stored Value issued by a merchant that is accepted only by the merchant himself (e.g. 'closed loop' Stored Value), such as gift cards and reward programmes, because the cost and administrative burden involved in regulation would far exceed the benefit of regulating such closed loop Stored Value. We also propose the exclusion of own account Payment Transactions. We invite public comment on whether there are other categories of Stored Value that do not warrant regulation and, thus, need to be excluded from the definition of Stored Value.

¹⁴ Payment Instruments referred to in these definitions are not instruments of the kind that enable payments – such as cheques, money orders, bills of exchange and other forms of negotiable instruments. Instead, they are personalised electronic devices or set of personalised protocols to enable Users to 'initiate' Payment Orders.

¹⁵ Which includes, for example, non-*fiat* currency or a pool of liquid assets that may be accepted by the issuer to issue Payment Instruments.

Proposal 4

See draft GEN Rules 2.6.1 - 2.6.4 at Appendix 2

32. We propose:
- (a) to provide more clarity and certainty in the terminology used in the definition of Providing Money Services by including the additional definitions noted in paragraph 30; and
 - (b) to exclude from regulation 'closed-loop Stored Value' noted in paragraph 31.

Question 2:

Do you agree with our proposals to introduce a new regime to accommodate activities relating to Money Services?

Part II General and Conduct of Business requirements

Applying the General (GEN) module to PMS and AAMS firms

33. We propose to apply to PMS and AAMS firms all the GEN Rules covering core principles, systems and controls requirements, requirements relating to controllers of regulated firms, authorisation procedures and requirements, accounting and audit requirements¹⁶, and the associated supervision-related requirements and procedures, including supervisory reporting.
34. We propose to do so because these rules are of a general nature and relevant to all financial services activities, and are designed to apply taking into account the nature, scale and complexity of the firm's business. While no specific changes are needed to these rules, some enhancements are needed relating to accounts and audit, and to complaints handling procedures, as noted in Table A below.

Table A – The proposed application of the GEN module to AMS and PMS firms

GEN Section	Proposed Application to PMS & AAMS
GEN 2 Financial Services	Applies with changes to implement proposals 1 to 4
GEN 2A Prohibition Against Misconduct	Applies in full
GEN 3 Financial Promotions	Applies in full
GEN 4 Core Principles	Applies in full
GEN 5 Systems & Controls	Applies in full
GEN 6 General Provisions	Applies in full
GEN 7 Authorisation	Applies in full
GEN 8 Accounting & Auditing	Applies with changes that will introduce a new audit report requirement for Money Services (see proposal 5).
GEN 9 Complaints & Disputes	Applies with additional changes to protect the users of PMS and AAMS
GEN 11 Supervision	Applies in full

¹⁶ We propose to enhance the complaints handling procedures applicable to PMS and AAMS firms.

Proposed independent Money Services Audit Report

35. We propose that PMS and certain AAMS firms be subjected to an independent annual MS audit report conducted by technical experts, because of the varied nature of their activities and the heavy reliance on the adequacy and integrity of their IT systems. This will give the DFSA independent assurance that firms are fully implementing the DFSA requirements in relation to IT security, authentication and technical standards (to be introduced as part of addressing 'operational risk' in PIB 6) and are not in contravention of the DFSA MS regime.
36. Under GEN 8.6, all firms are required to provide Audit reports, including a specialised Client Money Audit report if holding or controlling such money. The proposed MS specific Audit report will be in addition to these existing requirements. In practice, a PMS or AAMS provider should be able to combine into one audit report all three components as applicable.¹⁷
37. We believe that, although the proposed MS audit report would add to the cost of operating PMS or AAMS activities, the benefit of such a report far outweighs the associated costs for the reasons noted in paragraph 36.¹⁸

Proposal 5

See draft GEN Rule 8.6.1(f) at Appendix 2 and Draft AUD Rules at APP 7 at Appendix 7

38. We propose to require an MS Audit Report from PMS and certain AAMS firms for the reasons noted in paragraphs 35 to 37, the details of which would be included in AUD module.

Complaints and Dispute Resolution

39. We propose to introduce a more detailed complaint and dispute resolution requirement applicable to PMS and AAMS firms in addition to the existing general requirements. These requirements are designed to ensure that:
- (a) PMS and AAMS are obliged to resolve disputes within a tighter time frame than allowed for other firms; and
 - (b) where a complaint is not resolved to the satisfaction of the complainant, access to an independent third-party complaint's resolution service (such as the DIFC Court's 'small claims' section), free of cost to the complainant (unless unsuccessful), is available. We believe that these proposals would provide a strong incentive for PMS and AAMS firms to resolve complaints speedily and efficiently in-house.

Proposal 6

See draft GEN Rules 9.1.1(c) and 9.4 at Appendix 2

40. We propose to introduce complaints and dispute resolution requirements as set out in paragraph 39.

¹⁷ AAMS firms are not required to have a Client Money Audit report as they do not hold or control Client Money.

¹⁸ Cost of the audit would also vary, depending on the nature of business conducted by the firm, with PMS audit being more extensive and, therefore, likely to be more costly than for a firm conducting AAMS business.

Applying the Conduct of Business (COB) module to PMS and AAMS Firms

41. The DFSA COB module applies to all Financial Services providers, except that certain sections are specific to certain types of Financial Services. Table B below sets out the proposed application of COB provisions to firms conducting PMS or AAMS, including the specific activities they are permitted to undertake under their respective Licences.

Table B – The proposed application of the COB Module to PMS and AAMS firms

COB Section	Application to PMS and AAMS
COB 2 Client classification	Applies to PMS & AAMS
COB 3 Core Rules	Applies to PMS & AAMS
COB 4 Accepting Deposits & Providing Credit	Does not apply
COB 5 Providing Trust Services	Does not apply
COB 6 Investment Business	COB 6.11 (Client Assets), COB 6.12 (Client Money), COB 6.13 (Client Investments) & COB 6.14 (Record Keeping) apply to PMS firms only
COB 7 Core Rules (Insurance)	Does not apply
COB 8 Operating a Credit Rating Agency	Does not apply
COB 9 Operating an Alternative Trading System	Does not apply
COB 10 Custody providers Acting as a CSD	Does not apply
COB 11 Crowdfunding	Does not apply
COB 12 Proposed new section specific to PMS/AAMS	Applies to PMS & AAMS as relevant

Client Classification

42. COB 2 contains the Client Classification requirements applicable to firms conducting all Financial Services, except those operating a Credit Rating Agency or Representative Office (as these firms do not have Clients). MS are, by their nature, retail services. Therefore, we consider that PMS and AAMS firms will generally be providing retail services (for which they need a Retail Endorsement¹⁹). However, the need for this would be dependent on the restrictions discussed in paragraph 18.

Core COB Rules

43. COB 3 contains Core Rules applicable to most Financial Services.²⁰ Given the general nature and importance of these Core Rules, we believe that they should apply in their entirety to both AAMS and PMS firms.

¹⁹ A Retail Endorsement to carry on a Financial Service with or for a Retail Client is USD 20,000 as per FER 2.1.6(b).

²⁰ Areas covered by COB 3 include requirement relating to clear, fair and not misleading communications; Suitability; and conflicts of interest.

Proposal 7

See Draft COB Rule 3.1.1(f) & (g) at Appendix 3

44. We propose to apply COB 2 (Client Classification) and COB 3 (Core Rules) to AAMS and PMS firms for the reasons set out in paragraphs 42 and 43.

Client Asset Rules

45. COB 6 contains the Client Asset Rules, which are applicable to firms that hold or control Client Assets (defined as Client Money or Client Investments). A firm conducting PMS will hold Client Money. Therefore, we propose to apply the Client Asset Rules in COB 6.11, Client Money Rules in COB 6.12, and Record Keeping Rules in COB 6.14 to firms conducting MS. These provisions would not be applicable to AAMS firms, as they will not hold or control Client Assets.
46. COB Appendix 5 (A5) contains more detailed Client Money Rules, which we believe should apply to firms conducting PMS. However, COB A5.5.1(b) excludes Client Money temporarily held by a firm before forwarding to a person nominated by the Client, for which a firm has a period of 3 days. Only where a firm does not forward funds within the said 3-day period, it is required to comply with the Client Money Rules. To provide maximum protection to clients at all times, we propose to remove this exemption when it comes to PMS firms. This is particularly important because the very nature of most of the activities of a PMS firm would generally require User funds to be held by the firm for short intervals of time (except in the case of Stored Value).
47. We also propose, in line with the DFSA's risk-based approach to regulation, to exclude the application of the Client Assets provisions to any funds received by the PMS firm in relation to other goods or non-financial services the firm may provide to such Users, such as for a pre-purchase of goods and services from the firm that are not relevant to the conduct of Financial Services.²¹

Proposal 8

See draft COB Rules 6.1.1(2), 6.11.1, 6.12.1, 6.12.1A and A5.5.4 at Appendix 3

48. We propose to:
- apply to PMS firms Rules relating to Client Assets (COB 6.11), Client Money (COB 6.12), Client Investments (COB 6.13) and Record Keeping (COB 6.14) where such firms hold Client funds to ensure adequate investor protection;
 - remove the exemption for money held temporarily under COB A5.5 to PMS for the reasons set out in paragraph 46; and
 - exclude the application of the Client Assets provisions to any funds held by a PMS firm if unrelated to providing Financial Services.

Question

3. Do you agree with our proposals to apply certain provisions in the current

²¹ For example, several ride-hailing services offer wallets. If a ride-hailing service decided to allow its customers to use the wallet to make payments to third parties (e.g., to buy a coffee), the portion of funds in the wallet that is likely to be used to pay third parties is the "Stored Value" and needs to be safeguarded. The remaining balance is likely to be used to pay for ride-hailing services and is, therefore, not Stored Value.

GEN and COB module to the proposed Money Services activities?**Proposed new COB Rules specific to AAMS and PMS firms**

49. We are proposing to introduce a new section in COB to address conduct related issues in relation to PMS and AAMS. The proposed new section (see Appendix 3) would contain requirements relating to:
- (a) overarching obligations;
 - (b) information to be provided to users;
 - (c) rights and obligations of the parties relating to MS; and
 - (d) Stored Value Issuers (SVI).

Scope

50. We are proposing to apply the proposed new section to all PMS and AAMS firms. Where payment transactions involve multiple parties, who are in different jurisdictions, the regulated firm will be required to ensure that it complies with the requirements in this section for those parts of the transaction that are under its control, whilst also taking appropriate measures to mitigate against risks that could arise from non-compliance or misconduct by other parties to the transaction.

Overarching obligations

51. We consider that a number of overarching obligations are needed to ensure User protection, given that it is likely that most Users of AAMS and PMS services would be retail clients and taking also into account DIFC specific factors. These obligations include:
- (a) an obligation, when it comes to elements of a transaction that are not under the Authorised Firm's control, such as sending enquiries to other money service providers in the transaction, who may or may not be regulated firms in the DIFC, to ensure that the third-party carries out those parts of the transaction;
 - (b) shifting the onus of proving compliance with the requirements in the new section to PMS and AAMS firms, as many Users of their services would not have the resources or understanding to be able to establish their case in a dispute with the firm relating to their services; and
 - (c) restricting the access and use of a payment account only for the purposes of making Payment Transactions.
52. We propose to provide PMS and AAMS firms more flexibility by not requiring them to comply with the proposed overarching obligations in paragraph 51, if the User is a Market Counterparty, and by prior agreement with that party (as Market Counterparties have the expertise and resources to negotiate on an equal footing with the Authorised Firm).

Proposal 9

See draft COB Rules 12.1.2, 12.2.1, 12.2.2 and A7.2.17 at Appendix 3.

53. We propose to:
- (a) impose overarching obligations as specified in paragraph 51 on PMS and AAMS firms; and

- (b) not apply those obligations to a Market Counterparty for the reasons set out in paragraph 52.

Information to be provided to Users

54. Consistent with the disclosure-based requirements in our regime which aim to provide customers adequate information to make informed decisions, we propose to impose on PMS and AAMS firms disclosure obligations to Users, relating to their services.
55. In addition to the broad Key Information and Client Agreements provisions under COB 3.3, which we propose to apply to PMS and AAMS (see proposal 7), we also propose to apply additional information disclosure requirements to PMS and AAMS firms, which are specific to the nature of their activities.
56. The key areas of the proposals include the disclosure of fees, rates and charges, rights and obligations of the parties, criteria for the variation or termination of the contract, how User information will be handled, when and how confirmations of payments executions, statements, and dispute resolution services will be provided or accessed. Such information needs to be provided at no cost to the customer, and in a durable format (e.g. can be stored for future reference).
57. To reduce the regulatory burden, we propose that the information referred to in paragraph 56 is:
- (a) provided as relevant to the PMS/AAMS service accessed by the particular User;
 - (b) provided to the User in good time before obtaining the relevant service to make an informed decision in obtaining that service;
 - (c) not required to the extent the firm is satisfied that another regulated entity has already provided or will provide the information to the User in a timely manner (e.g. a bank making the payment); and
 - (d) 'made available' instead of being 'provided'²² where the information is of a general nature and the firm is aware that the customer can readily access that information.

Proposal 10

See draft COB Rule 12.2.4, 12.3.1 & 12.3.2 and App 7.1 at Appendix 3

58. We propose to introduce the additional information disclosure noted in paragraphs 56 and 57 to PMS and AAMS firms as relevant to their activities.

Rights and Obligations of Parties

Charges

59. To protect Users of MS services from exorbitant or unjustified charges and fees, we propose that all charges be commensurate with the actual costs incurred by the Authorised Firm and charges need to be clearly agreed to in the contract between the parties. PMS

²² We distinguish between 'provide' and 'make available', where providing involves pushing the information to the user (e.g. email it to the customer), while 'making available' involves the user actively taking steps to obtain the information (e.g. requesting it from the provider or accessing a link).

and AAMS firms need to communicate their charges in a clear, transparent and easy to understand manner to the Users before they enter into a contract.

60. Given the retail nature of Users, we propose to limit the circumstances in which a PMS or AAMS firm may charge its Users for failure to discharge their obligations to the circumstances specified in Table C below.

Table C – Charges that can be levied for Customer's breaches

Event	Charge
Refusal of a Payment Order	For a justified refusal in line with the contractual terms with the User.
Revocation of a Payment Order	If permitted under Rules and the contractual terms with the User.
Incorrect identifier provided by the User	If the unique identifier provided by the User is incorrect, the authorised firm is not liable for the non-execution, but may charge for recovery efforts.
Early termination or late redemption for Stored Value	If the User terminates the contract prior to its end date or redeems the Stored Value after more than one year from the end date of the contract, early/late fees as agreed in the contract.
Unauthorised transactions from lost or stolen Payment Instruments	Maximum of USD 50 for the aggregate of all transactions relating to a compromised Payment Instrument only if a customer fails to promptly report the incident, provided the firm made available adequate means for reporting.

Proposal 11

See draft COB Rule A7.2.1 at Appendix 3

61. We propose requirements governing fees and charges as noted in paragraphs 59 and 60.

Authorised Firm's access to information

62. To mitigate against fraud, we propose that the payer's consent be required to authorise and initiate a transaction on her/his account. The payer is allowed to give consent in any form agreed between the parties,²³ as well as through a payee or another Authorised Firm acting on the payer's behalf and holding prior authorisation given by the payer. This will cater for PMS and AAMS that rely on third parties providing consent on behalf of the payer.
63. Similarly, we also propose to limit the manner in which an AAMS or PMS firm can access a User's account, and also can use and hold information relating to, or of, Users. These include the firm having to:
- only access a User's payment account for transactions or information with explicit consent and restrict such access to the information needed to provide the service requested by the User; and
 - limit the time the information is stored to the time needed to perform the agreed service and to use the information exclusively for the purposes of providing that service.

²³ For example, by inputting a password, fingerprint, a code or other indicia.

Proposal 12

See draft COB Rules A7.2.3 & A7.2.4 at Appendix 3

64. We propose to introduce requirements governing User consent and the firm's access to the User's account as set out in paragraphs 62 and 63.

User's access to payment services

65. To provide protection to the Users of PMS and AAMS firms from arbitrary suspension of their services, we propose to limit the instances in which a firm may suspend or restrict the User's access to such services:
- (a) where it is in line with spending limits agreed between the User and the Authorised Firm;
 - (b) due to security reasons or fraudulent use; or
 - (c) due to an increased risk of payer's default, if a credit line is attached.²⁴
66. In addition, we also propose that a PMS or AAMS:
- (a) informs the User of the reason why it intends to suspend the use of the service before suspending or, if it is not possible, immediately after, unless disclosing such information is unlawful;
 - (b) restores access if the reason for suspension is no longer valid; and
 - (c) informs the Users of major operational or security incidents affecting the service as soon as possible, and the measures taken by the firm to address and mitigate their effect.

Proposal 13

See draft COB Rules A7.2.4 and A7.2.15 at Appendix 3

67. We propose to introduce controls against arbitrary suspension or restriction of services by a PMS or AAMS of a User's access to their services as noted in paragraphs 65 and 66 to protect those User's rights.

Payment Instruments, unauthorised access and incorrectly executed payment transactions

68. To minimise the risk of fraud, we propose to require a PMS/AAMS firm to:
- (a) safeguard Payment Instruments; and
 - (b) ensure the User of the services is also required to do so by including provisions to that effect in the contract.
69. We also propose to clarify the firm's responsibilities with regard to incorrectly executed payment transactions, for example, by:
- (a) limiting when the firm can deny liability for such transactions (for example if the User has been grossly negligent or has acted fraudulently);
 - (b) requiring the firm to restore the account to its status prior to the defective payment if the User is not responsible for the incorrect payment; and

²⁴ Providing Credit is a separate Financial Services activity.

- (c) requiring the firm to assist the User to trace funds if there is a defective transaction, regardless of liability.

Proposal 14

See draft COB Rules A2.1.7, A7.1.4, and A7.2.6 at Appendix 3

- 70. We propose to clarify the respective rights and obligations of the firm and the User in relation to Payment Instruments, unauthorised access and incorrectly executed payment transactions as specified in paragraphs 68 and 69.

Refunds and funds block for authorised Payment Transactions initiated by third parties

- 71. To protect Users of PMS firms that provide Payment Services or Payment Initiation Services involving third parties, we propose to provide some controls, such as:
 - (a) requiring the firm to make a full refund to the User in relation to a payee/third-party initiated payment transaction despite the payment being authorised by the User (e.g. a direct debit), if the authorisation did not specify the payment amount and the amount is not reasonable; and
 - (b) not allowing the firm to block funds in respect of a payment transaction if the amount of the transaction is not known at the time the third-party User authorised the transaction.

Proposal 15

See draft COB Rule A7.2.7 at Appendix 3

- 72. We propose to introduce controls relating to third party-initiated transactions and the firm's ability to block User funds as set out in paragraph 71.

Payment Orders, transaction amounts and value dates

- 73. To provide User protection, we propose to clarify how a PMS firm providing payment services or payment initiation services should accept, refuse or revoke a Payment Order. These include requiring such a firm to:
 - (a) only debit a payment account after receipt of a Payment Order; and
 - (b) only refuse a Payment Order in line with the terms of the contract with the User, unless otherwise provided in the applicable laws.
- 74. To support and facilitate efficient and fast processes at firms using unique identifiers, we propose:
 - (a) that a Payment Order executed using the correct unique payee identifier to be deemed as correctly executed by all firms involved in the transaction, irrespective of any other information provided by the User; and
 - (b) if the unique identifier provided by the User is incorrect, the firm is not liable for non-execution, provided it takes reasonable efforts to recover the funds and to facilitate such recovery.
- 75. To ensure transparency and timely movement of funds, we propose to impose obligations on firms providing payment services or payment initiation services to ensure that transaction amounts are received on a timely basis and in full with no fees deducted unless explicitly agreed before the transaction is executed under the relevant contract.

Proposal 16

See draft COB Rules A7.2.8 - A7.2.13 at Appendix 3

76. We propose to regulate:
- (a) when and how a firm can accept, refuse or revoke a Payment Order as set out in paragraph 73; and
 - (b) the transaction amounts, the execution time and value dates as specified in paragraphs 74 and 75.

Proposals relating to Stored Value

Issuance and redemption of Stored Value

77. We propose that a PMS firm that is a SVI be required to:
- (a) on receipt of funds, issue, without delay, Stored Value at par;
 - (b) upon request of the Stored Value holder, redeem at any time, and at par, the Stored Value held, except if such a request is received after six years from the termination of the contract to provide SVI;
 - (c) have in place a contract with the holder of Stored Value which clearly states the conditions of redemption, including any fees relating to redemption; and
 - (d) inform the holder of Stored Value of the conditions referred to in (c) before entering into the contract.
78. Where a PMS which is a SVI allows the User to use the Stored Value with third parties, our proposals do not apply for the benefit of those third parties (as they are not the User of the firm's services).
79. We also propose that a SVI must not pay interest or any other benefit on the Stored Value amount held in the account of a User in order to:
- (a) mitigate the risk of SVIs becoming, or being construed as, deposit takers; and
 - (b) ensure that SVIs will not be able to incentivise Users to place assets with them by promises of return/profit on the Stored Value held in the account.

Proposal 17

See draft COB Rules A7.1.2(c), A7.2.1(5), A7.3.1 and A7.3.2 at Appendix 3

80. We propose to introduce requirements relating to Stored Value as specified in paragraphs 77 to 79.

Question 4:

Do you agree with our proposals to apply new COB rules to the proposed Money Services Activities?

Part III – Prudential Requirements

Capital requirements for PMS and AAMS

81. Authorised Firms are required to hold adequate capital to:
- (a) act as a barrier to entry to those who do not, or are unable to, commit adequate resources to the business model they propose;
 - (b) be able to absorb unexpected losses and allow the firm to continue as a going concern; and
 - (c) provide for an orderly winding down of the firm, by having sufficient capital to pay fixed operational expenses during the liquidation period.
82. In line with the similar requirements applicable to other regulated firms, we consider that a PMS or AAMS firm should be required to hold the highest of:
- (a) the applicable Base Capital Requirement (see Table D), subject to the further refinements proposed under paragraphs 85 to 88; or
 - (b) the Expenditure Based Capital Minimum (EBCM) (see paragraphs 90 to 92), or
 - (c) either:
 - (i) a Transaction (Volume) Based Capital Minimum (TBCM) for firms Providing Payment Services only; or
 - (ii) a percentage of the amount of Stored Value Capital Requirement (SVCR) issued if the firms is a SVI only,with a firm conducting both the activities referred to in (c)(i) and (c)(ii) being required to aggregate both the amounts referred to therein, for the purposes of (c).
83. The capital requirements referred to in paragraph 82 will apply to all firms conducting PMS and AAMS, with the exception of branch offices where we rely on the adequacy of capital in the home jurisdiction of the branch.

Proposal 18

See draft PIB Rules 1.3.5, 1.3.5A, 1.3.6, 3.5.1 & 3.5.2 at Appendix 6

84. We propose to further link the capital requirements for AAMS and PMS firms to their risk profile and the level of activities they are undertaking, as set out in paragraph 82.

Proposed prudential categorisation and the base capital requirement

85. For firms who are only AAMS, we believe a prudential classification of Category 4 to be appropriate, as they do not hold or control client assets.
86. We also believe it is appropriate to classify as prudential Category 4 a PMS firm which only provides MT. However, such a firm will be in possession of the funds received for transmission for a short period until the funds are sent to the payee. Handling of funds by such firms poses a higher risk to Users than other prudential Category 4 firms which do not hold or control client assets. Therefore, we believe that a higher base capital of USD 140,000, similar to that required of crowdfunding platforms that temporarily hold client money, would be appropriate for such firms.

87. A PMS firm which is a SVI will hold client money for longer periods of time than a PMS who only conducts MT. This warrants an SVI to be classified as a prudential Category 3C firm, attracting a higher base capital requirement of USD 500,000. This is similar to the treatment of firms providing custody, which are currently classified as prudential Category 3C firms.
88. A PMS which provides or operates payment accounts, or executes transactions on a third party provided payment accounts, is to be classified in the new prudential Category 3D, with a minimum base capital requirement of USD 200,000, as such a firm will hold and control User funds.

Table D – The proposed minimum base capital requirement for PMS/AAMS activities

Activity	Prudential Category	Minimum Base Capital Requirement
Arranging or Advising on Money Services	4	USD 10,000
Money Transmission Services	4	USD 140,000
Providing or Operating a Payment Account, executing Payment Transactions on a payment account operated or provided by another, or issuing Payment Instruments	New 3D	USD 200,000
Issuing Stored Value	3C	USD 500,000

Proposal 19

See draft PIB Rule 3.6.2 at Appendix 6

89. We propose to set the minimum capital base for AAMS and PMS firms, conducting certain activities, based upon their prudential categorisation reflecting the risk profile of their activities, as set out in paragraphs 85 to 88.

Proposed Expenditure Based Capital Minimum

90. The EBCM is a relatively dynamic capital requirement applicable to all regulated firms. It is linked to the key expense items incurred by the firm in the previous year and aims to provide sufficient funds to enable an orderly wind down of the firm.
91. The length of time the firm is required to cover the expenses varies depending on the activities of the firm. Where a firm's activities involve holding or controlling client assets, it is expected that such a firm would require a longer period to wind down, warranting a longer period being covered under EBCM.
92. Based on the above considerations, we propose that:
- an AAMS firm classified as prudential Category 4 under paragraph 85, and also a PMS firm, has EBCM cover of 6/52 weeks in line with other regulated firms that fall into this prudential category;
 - a PMS firm classified as prudential Category 4 under paragraph 86 also has EBCM cover of 6/52 weeks, as they hold client funds temporarily for transmission;
 - a PMS firm classified as prudential Category 3D under paragraph 88 has EBCM cover of 9/52 (which is also the EBCM for insurance intermediaries holding insurance monies); and

- (d) a PMS firm which is a SVI classified as prudential Category 3C under paragraph 87 has an EBCM of 18/52 weeks.

Proposal 20

See draft PIB Rule 1.3.5, 1.3.5A, 1.3.6 and 3.7.2 at Appendix 6

93. For the reasons set out in paragraph 91, we propose to apply the minimum EBCM requirements set out in paragraph 92 to AAMS and PMS firms.

Transaction Based Capital Requirement (TBCM)

94. The proposed Transaction (Volume) TBCM in paragraph 83(c)(i) is specific to PMS firms that are PSPs, and not to other PMS firms issuing Stored Value, where a different approach is proposed – see paragraph 99.
95. The TBCM links the required amount of capital to the historical volume of transactions performed, or the potential volume, if no historical data are available. It recognises that the most important risk that needs to be addressed is the demand on capital of the PSP to absorb unexpected losses from operational risks. This method uses the actual historical (or potential) volume of transactions as an indicator of the level of operational risk events that might occur, based on the assumption that the higher the volume transacted, the higher is the likelihood of an operational risk eventuating. We propose to adopt the same percentages adopted under the UK²⁵ and the EU regimes²⁶ in linking the average volumes²⁷ with the amount of capital required as follows:
- (a) 4% of the first USD 5m of payment volume;
 - (b) 2.5% of the next USD 5m of payment volume;
 - (c) 1% of the next USD 90m of payment volume;
 - (d) 0.5% of the next USD 150m of payment volume; and
 - (e) 0.25% of any remaining payment volume.
96. A PMS receiving money or MT as a standalone activity will only hold or control client money for short periods and, as such, faces a lower level of operational risk. Therefore, a discount factor of 50% is applied to the percentages above for such firms.
97. To avoid double holding of capital, a firm that is both a SVI and a PSP will be allowed to exclude, from the TBCM calculation, the volume of payments that is directly linked to Stored Value issuing activity. Similarly, the 50% reduction for MT only applies to payment volumes linked directly to money received for the sole purpose of being transmitted.

Proposal 21

See draft PIB Rule 3.8B at Appendix 6

98. We propose to introduce a Transaction (Volume) Based Capital Minimum (TBCM) to apply to PSPs (e.g. PMS firms other than Stored Value Issuers) as specified in paragraphs 94 to 97.

²⁵ See Method (B) Schedule 3 of The Payment Services Regulations 2017.

²⁶ Payment Services Directive 2 (PSD2) 2015/2366.

²⁷ Average monthly volume calculated by dividing the annual volume by 12.

Stored Value Capital Requirement (SVCR)

99. We propose a new method to determine the capital required to be held by PMS firms which are SVIs, which is an amount equal to 3% of the average outstanding Stored Value issued over a six-month period, calculated monthly. If the firm has not been in business long enough to have reasonable estimates, a forecast can be used, based on the business plan and subject to prior approval by the DFSA.
100. Although the proposed 3% is a somewhat arbitrary number - it does not have an empirical backing - we consider it to be appropriate to provide an adequate level of loss absorbency that is linked to the amount of Stored Value or E-Money issued. Similar to the payment volume above, the amount of Stored Value on issue is used as an indicator of the level of operational risk.

Proposal 22

See Draft PIB Rule 3.8A at Appendix 6

101. We propose to introduce a SVCR to apply to SVIs as specified in paragraphs 99 and 100.

Application of the Internal Risk Assessment Process

102. The DFSA has a Supervisory Review and Evaluation Process (SREP), outlined in Chapter 10 of the PIB module, as a tool to assess the adequacy of systems and controls of firms. The process starts with firms in prudential Categories 1, 2, 3A, 3B, 3C and 5 being required to conduct an Internal Risk Assessment Process (IRAP) covering all key risks faced by the firm, and the effectiveness of the systems and controls in place to manage those risks. The results of the IRAP are then submitted to the DFSA for review and evaluation (e.g. the SREP).
103. We propose to apply the IRAP process to all PMS firms, regardless of their classification. To the extent such firms are likely to be small firms, with low impact, we do not propose to subject them to continuous DFSA oversight. Instead, we propose to rely on their IRAP of the key risks faced by the firm, including operational and security risks they face, and the adequacy of the associated controls, followed by a DFSA review of that assessment. This will result in a more effective allocation of DFSA resources, enabling us to focus our efforts on higher risk firms.
104. Firms classified as prudential Category 4 firms do not, under the current PIB requirements, face the IRAP requirement. However, we propose to include, in the application of IRAP, AAMS firms that provide Account Information Services or Payment Initiation Services because their activities have higher operational risks compared to other prudential Category 4 firms.

Proposal 23

See draft PIB Rule 10.3.1 at Appendix 6

105. We propose to extend the IRAP to cover some AAMS firms, and all PMS firms, for the reasons specified in paragraphs 102 to 104.

Other prudential risks relevant to PMS and AAMS Firms

Applying the existing Operational Risk requirements in PIB 6

106. Operational Risk is the primary financial risk to which firms engaged in PMS and AAMS are exposed. To address this risk, we propose to apply relevant sections from PIB Chapter 6²⁸ to these firms as discussed below.
107. Firms that are not subject to the Operational Risk capital requirement (e.g. Basel III capital requirements) are required to hold appropriate Professional Indemnity Insurance (PII) cover against this risk. Under PIB 6.12, PII already applies to firms in prudential Categories 3B, 3C and 4. We propose to extend this requirement to cover PMS firms that fall under the proposed new prudential Category 3D. This is because, although the main risk faced by such firms is operational risk, we do not propose to apply the operational risk capital requirement to these firms. These requirements are designed primarily for banks and are not always suited for PMS firms.
108. We propose to apply PIB 6 (Operational Risk) to AAMS and PMS firms, except PIB 6.10 (Management of Operational Risk in Trading Activities) and PIB 6.11 (Operational Risk Capital Requirement), given that AAMS and PMS firms will not be engaged in trading activities and their operational risk capital is not determined using the Basel III capital requirements.
109. The table below explains the relevant sections in PIB 6 for AAMS and PMS firms.

Table E - The proposed application of PIB chapter 6 to PMS and AAMS firms

PIB	Description	Key Requirements
6.1	Application	Already applies to CAT 4 & CAT 3 C, we are proposing to extend the application to include the new CAT 3D.
6.2	Risk Management Framework & Governance	Requires an Operational Risk policy that includes a clear framework to identify, assess, mitigate, control and monitor operational risk. The policy should be approved by the Board and periodically updated.
6.3	Risk Identification and assessment	Requires Operational Risk to be identified, assessed and systematically tracked under key Operational risk events types (as per Basel III).
6.4	Risk Monitoring & Reporting	Requires monitoring and reporting of Operational Losses.
6.5	Control & Mitigation	Requires good Corporate Governance & effective control.
6.6	Information Technology Systems	Requires appropriate IT policies, processes and infrastructure to meet its current and projected business requirements, in both normal and stressed periods.
6.7	Information Security	Requires all firm to have systems to manage information security risk.
6.8	Outsourcing	Requires systems and controls to manage outsourcing risk.
6.9	Business Continuity & Disaster Recovery	Refers to GEN 5, which requires a BCP and DR site to ensure continued operation in the event of a disruption to usual business. This requirement is essential for these firms as most are engaged in

²⁸ Except for PIB 6.10, 6.11 and 6.12, which apply on a selective basis depending on the prudential category of the firm.

		providing day-to-day essential services to Users with consequences for any disruptions.
6.10	Management of Operational Risk in Trading Books	We do not propose to apply this section.
6.11	Operational Risk Capital	We do not propose to apply this section.
6.12	Professional Indemnity Insurance	We are proposing to require all MS firms to hold an adequate PII to cover operational risk losses.
6.13	<i>Management of operational risk in Money Services</i> <i>(A new section - see proposals 24 to 29)</i>	<i>New requirements added to cover:</i> <ul style="list-style-type: none"> • <i>Strong Customer Authentication, and when to apply it;</i> • <i>protecting User security credential;</i> • <i>secure communication with Users and other providers;</i> • <i>fraud rates tracking and reporting.</i>

Proposal 24

See draft PIB Rule 6.1.1 at Appendix 6

110. We propose to apply the existing DFSA Rules in relation to operational risk, in PIB chapter 6, to AAMS and PMS firms except PIB 6.10 (Management of Operational Risk in Trading Books) and PIB 6.11 (Operational Risk Capital).

Introducing new Operational Risk requirements specific to AAMS (PISPs & AISPs only) and PMS firms

111. As noted before, the most significant financial risk which PMS and some AAMS firms face is operational risk. The nature of the operational issues facing such firms is not, in our view, fully covered by the existing Operational Risk requirements in PIB 6. Therefore, in addition to applying the relevant sections of PIB 6, as proposed above, we are proposing to introduce further Operational Risk requirements. These would require PMS firms, and AAMS firms that are PISPs and AISPs, to:

- (a) report to the DFSA fraud rates in the prescribed format, at specified frequency or upon request (further details to be included in PRU module);
- (b) have adequate Systems and Controls to detect fraud;
- (c) apply Strong Customer Authentication (SCA), unless exempted in specified circumstances;
- (d) protect User Security Credentials (USC); and
- (e) communicate securely with other payment services providers and with the Users of such services.

Reporting of fraud rate and major incidents to DFSA

112. We already require firms to notify the DFSA of major operational risk incidents under PIB 6.4 (monitoring and reporting). In addition, we propose to require these firms to track and report fraud rates to the DFSA to assist the DFSA in identifying vulnerabilities in the firm's authentication and security measures, enabling the DFSA to focus on higher risk firms in line with its risk-based approach to supervision. This data also acts as the basis for identifying areas for thematic review.

113. We propose the additional data to be captured at a frequency determined by the DFSA, and to cover the following information:
- (a) the total value of fraudulent transactions and the total value of all payment transactions;
 - (b) the average transaction value, including a breakdown of transactions initiated through SCA, and under each category of the SCA exemptions; and
 - (c) the number of transactions under each exemption, and as a % of the total number of transactions.

Systems and Controls to Detect Fraud

114. To ensure Users are protected from fraud, we propose that firms have in place transaction monitoring systems and controls to detect unauthorised or fraudulent payment transactions. At a minimum, the firm should consider the following fraud risk factors in designing its monitoring systems and controls:
- (a) compromised or stolen authentication elements;
 - (b) the amount of each payment transaction;
 - (c) known fraud scenarios in the provision of payment services;
 - (d) analysis of payment transactions typical of the type of Users;
 - (e) signs of malware infection in any sessions of the authentication procedure; and
 - (f) if the access device or software (Payment Instrument) is provided by the Authorised Firm, a log of the use of the access device or software and abnormal use.

Proposal 25

See draft PIB Rule 6.13.6 at Appendix 6

115. We propose to require firms that are PMS, and AAMS that are PISPs and AISPs to:
- (a) have systems and controls to detect and prevent fraud that consider the fraud risk factors outlined in paragraph 114; and
 - (b) report fraud rate and relevant information to the DFSA with the breakdown specified in paragraph 113.

Strong Customer Authentication and User Security Credentials

116. We propose to require firms that are PMS, and AAMS that are PISPs or AISPs, to adopt procedures based on best practice relating to SCA, which, at a minimum, covers aspects relating to the creation of SCA, maintaining the integrity of the SCA, and applying additional dynamic linking security measures when it comes to SCA.
117. SCA means an authentication code generated based on the use of two or more elements that are independent. Here, independent means that the breach of one element does not compromise the reliability of the other elements. The authentication elements are also designed to protect the confidentiality of the authentication data.
118. SCA requirement is commensurate with the security and fraud risk, we propose to allow firms certain exemptions from the SCA requirements, for example, when the User accesses its own payment account information and makes payment of small amounts.

119. To ensure the confidentiality of the USC throughout the authentication process, to minimise the risk of fraud and the resulting loss to both the firm and the User, we also propose to require firms to adopt procedures based on best practice standards to ensure the integrity of the USC. We will provide guidance to the firms in this area.

Proposal 26

See draft PIB Rules 6.13.2, 6.13.3, and 6.13.4 and Guidance under PIB Rule 6.13.3 at Appendix 6

120. We propose that PMS firms, and AAMS firms that are PISPs or AISPs, adopt SCA as discussed in paragraphs 116 and 119, with appropriate exemptions from this requirement as proposed in paragraph 118.

Common Secure Standards for Communication

121. To protect the security and the integrity of money services, we propose to require PMS, and AAMS firms that are AISPs and PISPs, to maintain adequate systems and controls to ensure secure identification and traceability of transactions, by:
- (a) requiring secure identification when communicating between devices used for electronic payments such as mobile phones or payment terminals;
 - (b) addressing the risk of misdirection of communication to unauthorised parties; and
 - (c) being able to trace all payment transactions and interactions with all relevant parties to the payment service
122. We also propose to require Authorised Firms that are not providers of Payment Accounts themselves, but rely on an interface made available to them by the Payment Account Provider (PAP), to be required to ensure the reliability and continuity of the interface. We will provide guidance in relation to best practice in this area.
123. To safeguard the confidentiality and the integrity of the data, we propose that PMS firms, and AAMS firms that are AISPs and PISPs, develop and implement secure standards of communication with their Users or other Authorised Firms.

Proposal 27

See draft PIB Rule 6.13.5 and Guidance at Appendix 6

124. We propose to require PMS firms, and AAMS firms that are ASPs and PISPs, to adopt Technical Standards for traceability of transactions and Secure Communications as specified in paragraphs 121 to 123 and provide guidance in relation to best practice in this area.

Question 5:

Do you agree with our proposals to apply existing and new prudential requirements to the proposed Money Services activities?

Part IV Application of the AML Module

Current requirements

125. In recognition of the importance of the FATF, its work, and the recent FATF Mutual Evaluation carried out in the United Arab Emirates (UAE), we propose that the DFSA AML module (which reflects all FATF Recommendations) be applied to all firms that are licensed to conduct PMS and/or AAMS activities. We would also refer firms to the guidance on Money and Value Transfer Service providers (MVTs)²⁹ issued by the FATF, and recommend that firms continue to be alert to the publication of any information on financial crime risks and threats associated with MVTs from the FATF or indeed any other relevant domestic or international bodies.
126. We are including proposals to apply the AML module to those carrying out AISP activities, even though there is no direct access and/or ability to move money, based on concerns relating to fraud that were raised during negotiations in the European Union on the Payment Services Directive 2 (PSD2). Concerns included potential identity fraud and persons obtaining access to bank accounts and, consequently, a large amount of confidential information without having proper checks undertaken. We also believe that FATF Recommendation 15 relating to New Technologies³⁰ necessitates this approach.
127. In order to mitigate any other unnecessary AML risks as part of this proposal, and for the reasons explained in paragraph 18, the DFSA proposes to continue with the prohibition of FX as a standalone service. FX will still be permitted if it is in connection with and a necessary part of other regulated Financial Services, including firms conducting PMS.

Table F – The proposed application of the AML Module to MS firms

DFSA AML Rule Book	
AML 4 Applying a Risk Based Approach	Apply in full
AML 5 Business Risk Assessment	Apply in full
AML 6 Customer Risk Assessment	Apply in full
AML 7 Customer Due Diligence	Apply in full
AML 8 Reliance and Outsourcing	Apply in full
AML 9 Correspondent Banking, Electronic Funds Transfer and Audit	Apply in full
AML 10 Sanctions and Other International Obligations	Apply in full
AML 11 Money Laundering Reporting officer	Apply in full
AML 12 Training and Awareness	Apply in full
AML 13 Suspicious Activity Reports	Apply in full
AML 14 General Obligations	Apply in full

²⁹ According to the FATF 2016 MVTs guidance, MVTs are considered to be financial institutions under and as such, they are subject to the full range of AML/CFT preventive measures in FATF Recommendations 9-23.

³⁰ Recommendation 15 states that “countries and financial institutions should identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products and that financial institutions should be required to: (a) undertake the risk assessments prior to the launch or use of such products, practices and technologies; and (b) take appropriate measures to manage and mitigate the risks.”

128. We expect that firms licensed to carry out PMS or AAMS will establish and maintain systems and controls to comply with the DFSA's AML module. We also expect that they will be able to demonstrate that they have appropriate policies and procedures in place that are proportionate to the nature, scale and complexity of their business activities to allow for proper identification, assessment, monitoring, and management of financial crime risks to which they are exposed.
129. In identifying its financial crime risk, a firm should consider a wide range of factors, including (where relevant) its:
- (a) customer, product and activity profiles;
 - (b) distribution channels;
 - (c) type, complexity and volume of permitted transactions,
 - (d) processes and systems; and
 - (e) operating environment.
130. Special consideration should also be given where services are provided to merchants or retailers and whether any special risk mitigation measures are necessary for these types of customers. This is because merchants can be involved in activities that are associated with an increased risk of money laundering. Firms should be alert to the possibility that merchants may abuse their products to further illegal activity, such as the sale of age-restricted goods to minors.
131. Under the FATF 2016 MVTs guidance, a list of the agents used by an Authorised Firm needs to be maintained. This can be done by the firm or the regulator. We propose that PMS firms should maintain a register of the agents they use, to conduct full due diligence on them, and make the register available to the DFSA upon request. In addition, we propose to require the firm to include agents in the firm's AML systems and controls, AML training programme, as well as the firm's compliance monitoring programme.
132. Just like any other Authorised Firm, a regular assessment of AML policies and procedures must be carried out to ensure that they remain relevant and appropriate. As part of this, Firms should be alert to any change in their operating environment that will have an impact on the way that they conduct their business.
133. Lastly, we are considering whether further Guidance in this area may need to be issued to provide firms with more detail regarding our expectations of them.

Proposal 29

See Draft AML Rules at Appendix 4

134. We propose to apply the AML module to PMS and AAMS firms and introduce a new requirement in relation to the use of agents as specified in paragraph 131.

Question 6:

Do you agree with our proposals to apply the AML modules to the proposed Money Services Activities?

Part V Reporting regime

135. In addition to the reporting requirements set out under Proposal 24, relating to reporting of fraud, we are proposing to apply additional reporting requirements relating to MT, at the detailed transaction level (e.g. details of the sender, recipient, amount, firms involved). Access to this data would enable the DFSA to analyse, for example, the size, frequency and number of transactions being facilitated by DIFC firms as well as identifying certain transfer patterns. This analysis will help the DFSA to understand further market dynamics as well as helping to identify any AML/CTF risks in the sector as per FATF requirements.
136. We are considering the frequency with which this information should be reported to the DFSA. For example, data could be submitted on a real time basis, at the end of each working day, weekly, or monthly. The DFSA wishes to balance the potential benefits arising from access to, and analysis of, data from firms with the burden for firms of producing such data. However, as firms providing Money Services are expected to be heavily technology-driven, our initial view is that data provision to the DFSA should be a relatively straightforward matter. We would welcome feedback on this issue, particularly from potential applicant firms.

Proposal 30

See Draft PIB Rule 6.13.8

137. We propose to apply reporting requirements as discussed in paragraph 136 to those firms undertaking MT activities.

Question 7:

Do you agree with our proposals for a reporting regime for the proposed Money Services Activities?

Part VI Fees regime

138. In line with our current approach to fees, which reflects the risk profile of activities that can be undertaken under a licence, we propose to apply to:
- a firm Providing Money Services which includes the activity of Issuing Stored Value – an application and annual fee of USD 25,000 each (consistent with firms Providing Custody);
 - a firm Providing Money Services other than the issue of Stored Value, or MT – an application and annual fee of USD 15,000 each;
 - a firm Providing Money Services which comprises only MT – an application and annual fee of USD 10,000 each; and
 - a firm Arranging and Advising on Money Services – an application and annual fee of USD 10,000 each.

Proposal 31

See Draft FER Rules

139. We propose to apply the fees in paragraph 138 to PMS and AAMS firms.

Question 8:

Do you agree with our proposed fees in paragraph 139?

Question 9:

Do you have any other concerns or issues relating to the proposals in this paper? If so, what are they, and how should they be addressed?

Annex 1 – Questions in this Consultation Paper

Question 1: Do you have any concerns about our proposals set out in paragraph 19?

Question 2: Do you agree with our proposals to introduce a new regime to accommodate activities relating to Money Services?

Question 3: Do you agree with our proposals to apply certain provisions in the current GEN and COB module to the proposed Money Services activities?

Question 4: Do you agree with our proposals to apply new COB rules to the proposed Money Services Activities?

Question 5: Do you agree with our proposals to apply existing and new prudential requirements to the proposed Money Services activities?

Question 6: Do you agree with our proposals to apply the AML modules to the proposed Money Services Activities?

Question 7: Do you agree with our proposals for a reporting regime for the proposed Money Services Activities?

Question 8: Do you agree with our proposals for fees?

Question 9: Do you have any other concerns or issues relating to the proposals in this paper? If so, what are they, and how should they be addressed?