



CONSULTATION PAPER NO. 22

DECEMBER 2005

TRUST SERVICE PROVIDERS RULES (TSP)

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THE DUBAI FINANCIAL SERVICES AUTHORITY (“DFSA”) CONSULTATION PAPER ADDRESSED TO PARTIES INTERESTED IN THE DEVELOPMENT OF FINANCIAL SERVICES WITHIN DUBAI’S FINANCIAL FREE ZONE (THE “DIFC”)

1. *Introduction*

This paper consults on the DFSA’s proposed Rules in respect of the regulation of Trust Service Providers in the DIFC.

The amendments to the GEN module are attached as Annex A; the amendments to the AUT module are attached as Annex B; the amendments to the COB module are attached as Annex C; the amendments to the AML module are attached as Annex D; the amendments to the PIB module are attached as Annex E; the amendments to the ASP module are attached as Annex F; and the amendments to the GLO module are attached as Annex G.

The draft Rules are published for consultation purposes only. Please note that, although the draft Rules are in near final form, the DFSA reserves the right to amend the drafts at its sole discretion.

The Rules will be made under powers contained in the Regulatory Law 2004.

Comments are invited on any aspect of the regime proposed in this paper, on both the principles and the detailed drafting. The DFSA would be particularly interested to have the views of firms considering using the proposed Rules and views on how this regime compares with those in other major centres. In the light of the comments received, the DFSA may determine to adopt in whole, or in part, the proposals outlined in these papers, or may amend the proposals.

Anyone wishing to submit comments should provide details of the organisation he or she represents. The names of commentators and the content of their submissions may be published on the DFSA website and in other documents to be published by the DFSA. If you wish your name to be withheld from publication, please indicate this when you make your submission.

Any comments should be addressed to:

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All comments should be provided in writing, on or before 9 January 2006.

2. *Background and context*

The draft Rules in relation to Trust Service Providers and the associated changes to the Glossary (GLO) of the DFSA Rulebook need to be considered in the context of the following laws – the Regulatory Law 2004, and the Trust Law 2005 and the objectives or purposes set out therein.

The DFSA has not previously consulted upon these Rules.

3. *The DFSA Rulebook*

The Regulatory Law 2004 provides the DFSA with a wide range of powers, including powers to make Rules and to issue Guidance. This Guidance is not binding on the DFSA, nor does it create a “safe harbour” protecting those who comply with it from action for breach of the underlying Rule.

The Rules together make up a Rulebook containing a number of modules. The DFSA Rulebook may be viewed on the DFSA’s website (www.dfsa.ae) along with all the DIFC Laws and Regulations.

The DFSA has power to waive or modify Rules, and is prepared to use this to adapt the Rules to specific circumstances which may arise.

4. *Interpreting the Rulebook*

Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO). Please note that Annex G contains further definitions. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

Every provision in the Rulebook must be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the

provision in question and its context among other relevant provisions. A provision means every type of provision, including Rules and Guidance.

Where reference is made in the Rulebook to another provision of the Rulebook or other DIFC legislation, it is a reference to that provision as amended from time to time. If a provision in the Rulebook refers to a communication, notice, agreement, or other document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly. Any reference to 'dollars' or '\$' is a reference to United States Dollars unless the contrary intention appears. References to Articles made throughout the Rulebook are references to Articles in the Regulatory Law 2004 unless otherwise stated.

Unless the contrary intention appears:

- words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
- words in the Rulebook in the singular include the plural and words in the plural include the singular.

Unless the contrary intention appears, a day or business day refers to:

- in relation to anything done or to be done in (including to be submitted to a place in) the UAE any day which is not a Friday or Saturday or an official UAE bank holiday; and
- in relation to anything done or to be done by reference to a market outside the UAE any day on which that market is normally open for business.

5. *Introduction to the regulatory regime for Trust Service Providers*

Trust Service Providers are firms that engage in the business of acting as trustees or administering trusts. They may also create trusts or arrange for third parties to act as trustees. The DFSA has defined Trust Service Providers as Authorised Firms carrying on the Financial Service of Providing Trust Services. Providing Trust Services has been defined as:

- (a) the provision of services with respect to the creation of an express trust;
- (b) arranging for any Person to act as a trustee in respect of any express trust;
- (c) acting as trustee in relation to an express trust;
- (d) the provision of Trust Administration Services in relation to a trust; or
- (e) acting as protector or enforcer.

Carrying on a Financial Service in or from the DIFC requires a Person to be licensed by the DFSA in accordance with the Regulatory Law 2004 and the DFSA Rulebook. As Authorised Firms, Trust Service Providers need to comply with the full regulatory regime prescribed in the DFSA Rulebook, except as provided otherwise. The rationale of the DFSA in adopting this approach was to ensure that Trust Service Providers are fully regulated in

accordance with international standards and best practice adopted in other financial centres.

6. Purpose and summary of the material provisions of the Rules relating to the regulation of Trust Service Providers.

The Rules in respect of the regulation of Trust Service Providers are created under powers contained in the Regulatory Law 2004, however they have to be read in conjunction with the Trust Law 2005 which provides the basic legal framework for trusts and the powers, duties and functions of trustees. The purpose of these Rules is to:

- Prescribe a new Financial Service activity, namely Providing Trust Services.
- Exclude certain categories of Persons from the requirement to obtain a Licence.
- Provide Rules in relation to the conduct of a Trust Service Provider in respect of exercise of discretion, conflicts of interest, communications, marketing material, professional indemnity insurance cover, dual control, internal reporting, qualification of staff and fitness and propriety of third parties acting on behalf of the Trust Service Provider.
- Amend the Glossary module (GLO) by the addition of new defined terms with regard to the Provision of Trust Services.

In addition to the aforementioned rules, various consequential and clarificatory amendments have been made to the General module, Authorisation module and Prudential module (PIB).

The Rules in the General module (GEN) create the new Financial Service of Providing Trust Services. An exclusion to the "by way of business" Rule has been provided only for an individual who acts as trustee, enforcer, protector or arranges for a Person to act as a trustee in respect of less than three trusts. In addition, Private Trust Companies as defined in the Glossary Module (GLO), lawyers and accountants have been excluded from the requirement to obtain a Licence subject to certain conditions outlined below. Private Trust Companies have been excluded as long as they provide trustee services to Related Persons as defined in the Glossary module (GLO) and they appoint a Trust Service Provider for the administration of the trust. Lawyers and accountants have been excluded when arranging for a Person to act as trustee or providing services with respect to the creation of an express trust if such activities are incidental to the practice of law or accounting as the case may be.

In relation to fees, it is proposed that the fee for the Financial Service of Providing Trust Services is \$10,000. The application, initial annual and subsequent annual fees are calculated on a case by case basis in accordance with Appendix 5 of the General module (GEN). The DFSA may also charge a supplementary fee under GEN Rule 7.2.4 in circumstances where it expects to incur substantial additional costs in dealing with an application or conducting ongoing supervision in relation to a Trust Service Provider.

The Rules contained in the Authorisation module (AUT) implement provisions in relation to the assessment by the DFSA of an application by a Person or an Authorised Firm to Provide Trust Services. Specific requirements have been prescribed when a Trust Service Provider applies to have its Licence withdrawn and when the status of an Authorised Individual is withdrawn or suspended. A restriction has been imposed on the Compliance Officer and Money Laundering Reporting Officer who cannot also act as trustees on behalf of the Trust Service Provider.

The Conduct of Business Rules (COB) have been amended by the inclusion of a new Chapter 18 which is intended to regulate the conduct of Trust Service Providers operating in or from the DIFC. Trust Service Providers are required to maintain adequate knowledge of, and comply with, all applicable laws, rules and regulations relevant to the Provision of Trust Services in addition to complying with appropriate standards of corporate governance. Specific provisions have been inserted to ensure that Trust Service Providers deal with conflicts of interest in a specified manner to ensure fair treatment of Clients. Specific requirements have been imposed on Trust Services Providers in respect of communications with, and marketing material to, the public. A Trust Service Provider must maintain at all times professional indemnity insurance cover and must notify the DFSA of any changes or renewal of the cover. All staff employed or Persons recommended by a Trust Service Provider must have appropriate qualifications and experience. The DFSA has not at present prescribed what types of qualifications such Persons must have but it expects Trust Service Providers to exercise their discretion and use their experience in establishing what would be appropriate qualifications for specific roles. All relevant staff must be kept up to date through training and continuous professional development as appropriate. When a Trust Service Provider arranges for a Person who is not an employee of the firm to act as a trustee, it must ensure that such Person is fit and proper and it must contractually bind such Person to comply with the same legal and regulatory requirements as if he was an employee of the Trust Service Provider.

In relation to prudential requirements, the DFSA considered it adequate that Trust Service Providers fall within prudential Category 3 which requires a minimum level of capital of \$500,000. Consequential amendments have been made to the Prudential – Investment, Insurance Intermediation and Banking Business module - (PIB) to reflect the new Financial Service of Providing Trust Services.

The Glossary module has been amended to include new definitions such as Trust Service Provider, Private Trust Company and Related Persons.

ANNEX A

This Annex sets out the proposed amendments to the GEN module.
In this Annex, underlining indicates new text.



The DFSA Rulebook

General Module

(GEN)

2.2 Financial Service activities

2.2.1 An activity constitutes a Financial Service under the Regulatory Law 2004 and these Rules where:

- (a) it is an activity specified in Rule 2.2.2; and
- (b) such activity is carried on by way of business in the manner described in section 2.3.

2.2.2 The following activities are specified for the purposes of Rule 2.2.1:

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Providing Money Services;
- (d) Dealing in Investments as Principal;
- (e) Dealing in Investments as Agent;
- (f) Arranging Credit or Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products or Credit;
- (i) Operating a Collective Investment Fund;
- (j) Providing Custody;
- (k) Arranging Custody;
- (l) Effecting Contracts of Insurance;
- (m) Carrying Out Contracts of Insurance;
- (n) Operating an Exchange;
- (o) Operating a Clearing House;



- (p) Insurance Broking;
- (q) Insurance Management;
- (r) Managing a Profit Sharing Investment Account;
- (s) Operating an Alternative Trading System; and
- (t) Providing Trust Services.

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB and may be fettered by the continuing operation of Federal Law.

2.2.3 Each activity specified in Rule 2.2.2:

- (a) is to be construed in the manner provided under these Rules; and
- (b) is subject to exclusions under these Rules which may apply to such an activity.

2.3.3 A Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an investment company or investment limited liability partnership, provided that:

- (a) such Shares carry at least 50% of the voting rights or the acquisition will take an existing holding to at least 50%; or
- (b) the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the Body Corporate; and
- (c) he is to enter as principal into the transaction.

2.3.4 (1) A Person who is an Exchange does not carry on any of the other activities, save for the activity of Operating a Clearing House or Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity, is carried on as a necessary part of the Exchange's business as an exchange. [Amended][VER4/08-05]

(2) A Person who is a Clearing House does not carry on any of the other activities, save for the activity of Operating an Exchange or Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity is carried on for the purpose of, or in connection with the provision of clearing or settlement services by the Clearing House. [Amended][VER4/08-05]

(3) A Person who is an Authorised Market Institution and authorised to operate both as an Exchange and as a Clearing House does not carry on any of the other activities save for the activity of Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity:

- (a) is carried on as a necessary part of the Authorised Market Institution's business as an Exchange; or
- (b) is carried on for the purposes of, or in connection with, the provision of clearing or settlement services by the Authorised Market Institution.

2.3.5 A Person who is an individual does not carry on an activity specified under paragraph (t) by way of business where he is acting as trustee, enforcer or protector or where he is arranging for a Person to act as trustee, in respect of less than three (3) trusts.

2.23 Providing Trust Services

2.23.1 In Rule 2.2.2 Providing Trust Services means:

- (a) the provision of services with respect to the creation of an express trust;
- (b) arranging for any Person to act as a trustee in respect of any express trust;
- (c) acting as trustee in respect of an express trust;
- (d) the provision of Trust Administration Services in respect of an express trust; or
- (e) acting as protector or enforcer in respect of an express trust.

Exclusions

2.23.2 Subject to 2.23.3 the following Persons are exempt from the requirement to hold a Licence in respect of Providing Trust Services:

- (a) a Private Trust Company; or
- (b) an ASP which Provides Legal Services or Accountancy Services.

2.23.3 Under 2.23.2(b) an ASP may only:

- (a) arrange for a Person to act as trustee in respect of an express trust; or
- (b) provide services with respect to the creation of an express trust;
provided that:
 - (i) the provision of such services is solely incidental to the practice of law or accounting as the case may be; and
 - (ii) the ASP is not holding itself out as Providing Trust Services.

Guidance

Acting as trustee, protector or enforcer or Providing Trust Administration Services are not activities incidental to the practice of law or accounting and require a Licence.

3.2 Permitted Financial Services for Authorised Firms

3.2.1 Pursuant to Article 42(1)(a) an Authorised Firm, subject to the Rules in this section, may carry on any one or more of the following Financial Services:

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Dealing in Investments as Principal;
- (d) Dealing in Investments as Agent;
- (e) Arranging Credit or Deals in Investments;
- (f) Managing Assets;
- (g) Advising on Financial Products or Credit;
- (h) Providing Custody;
- (i) Arranging Custody;
- (j) Effecting Contracts of Insurance;
- (k) Carrying Out Contracts of Insurance;
- (l) Insurance Broking;
- (m) Insurance Management;
- (n) Managing a Profit Sharing Investment Account;
- (o) Operating an Alternative Trading System; and
- (p) Providing Trust Services.

A1.1.3 A sum is not a Deposit if it is received:

- (a) by a lawyer registered as an Ancillary Service Provider and acting in his professional capacity;
- (b) by an accountant registered as an Ancillary Service Provider and acting in his professional capacity;
- (c) by an Authorised Firm or an Authorised Market Institution authorised under its Licence to carry on any one or more of the following Financial Services:
 - (i) Dealing in Investments as Principal;
 - (ii) Dealing in Investments as Agent;
 - (iii) Arranging Credit or Deals in Investments;
 - (iv) Managing Assets;
 - (v) Operating a Collective Investment Fund;
 - (vi) Effecting Contracts of Insurance;
 - (vii) Carrying Out Contracts of Insurance;
 - (viii) Operating an Exchange;
 - (ix) Operating a Clearing House;
 - (x) Insurance Broking;
 - (xi) Insurance Management;
 - (xii) Managing a Profit Sharing Investment Account; or
 - (xiii) Providing Trust Servicesin the course of or for the purpose of any such Financial Service disregarding any applicable exclusions in chapter 2; or
- (d) by a Person as consideration for the issue by him of a Debenture.



App 5 FEES

A5.1 Fees table

A5.1.1 The fees table.

(a)	Accepting Deposits or Providing Credit	\$50,000
(b)	Dealing in Investments as Principal	\$30,000
(c)	(i) Dealing in Investments as Agent; or (ii) Arranging Credit or Deals in Investments; or (iii) Managing Assets; or (iv) Advising on Financial Products or Credit; or (v) Providing Custody; or (vi) Arranging Custody; or (vii) Insurance Broking; or (viii) Insurance Management; or (ix) Effecting Contracts of Insurance or Carrying out Contracts of Insurance: (A) where the applicant is intending to carry on business as a Captive Insurer; or (B) where the Authorised Firm is carrying on business as a Captive Insurer; or (x) Managing a Profit Sharing Investment	\$10,000

<p style="text-align: center;">Account; or</p> <p>(xi) <u>Providing Trust Services.</u></p>	
<p>(d) Operating an Alternative Trading System.</p>	\$30,000
<p>(e) Effecting Contracts of Insurance or Carrying out Contracts of Insurance:</p> <p style="padding-left: 40px;">(i) where the applicant is not also intending to carry on business as a Captive Insurer; or</p> <p style="padding-left: 40px;">(ii) where the Authorised Firm is not carrying on business as a Captive Insurer.</p>	\$50,000

ANNEX B

This Annex sets out the proposed amendments to the AUT module.
In this Annex, underlining indicates new text.



The DFSA Rulebook

Authorisation Module

(AUT)

6 WITHDRAWAL OF A LICENCE

6.1 Application

6.1.1 This chapter applies to an Authorised Firm applying to have its Licence withdrawn.

6.2 Withdrawal of a licence at an Authorised Firm's request

6.2.1 An Authorised Firm seeking to have its Licence withdrawn must submit a request in writing stating:

- (a) the reasons for the request;
- (b) that it has ceased or will cease to carry on Financial Services in or from the DIFC;
- (c) the date on which it ceased or will cease to carry on Financial Services in or from the DIFC;
- (d) that it has discharged, or will discharge, all obligations owed to its customers in respect of whom the Authorised Firm has carried on, or will cease to carry on, Financial Services in or from the DIFC; and
- (e) if it is providing Trust Services, that it has made appropriate arrangements for the transfer of business to a new trust service provider and the appointment, where necessary, of new trustees.

9.5 Fitness and propriety of Authorised Individuals

9.5.1 In considering whether an individual is fit and proper to be an Authorised Individual in respect of one or more Licensed Functions, the DFSA will consider the individual's:

- (a) integrity;
- (b) competence and capability;
- (c) financial soundness;
- (d) proposed role within the Authorised Firm; and
- (e) any other matters set out in App1.3.

9.5.2 In Rule 9.5.1, an individual may not be considered as fit and proper where:

- (a) he is bankrupt;
- (b) he has been convicted of a serious criminal offence; or
- (c) he is incapable, through mental or physical incapacity, of managing his affairs.

Guidance

Article 58 provides that the DFSA may suspend or withdraw an Authorised Individual's status where he is no longer considered fit and proper to hold such status.



When suspending or withdrawing an Authorised Individual status of a Person acting as trustee, the DFSA shall ensure that the Trust Service Provider appoints a new trustee to replace the trustee in question and makes proper arrangements for the transfer of legal ownership.

10.2 Functions

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10.2.2 Licensed representative

- (h) The Licensed Representative function is carried out by an individual who is performing one or more of the following Financial Services:
- (i) Managing Assets;
 - (ii) Arranging Credit or Deals in Investments;
 - (iii) Advising on Financial Products or Credit;
 - (iv) Dealing in Investments as Agent;
 - (v) Dealing in Investments as Principal;
 - (vi) Managing a Profit Sharing Investment Account; or
 - (vii) Providing Trust Services;

on behalf of an Authorised Firm where such Financial Services are carried on from an establishment maintained by the Authorised Firm in the DIFC.

10.3 Mandatory appointments

10.3.1 An Authorised Firm must make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer;
- (c) Compliance Officer; and
- (d) Money Laundering Reporting Officer.

Guidance

1. The DFSA will only authorise an individual to perform more than one Licensed Function where it is satisfied that the individual is fit and proper to perform each Licensed Function or combination of Licensed Functions concerned.
2. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.
3. Notwithstanding this Rule an Authorised Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not expect to be combined with that of Licensed Representative unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Authorised Firm. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible.

10.3.2 The Authorised Individuals referred to in Rule 10.3.1(a), (c) and (d) must be ordinarily resident in the U.A.E.

10.3.3 The Authorised Individuals referred to in Rule 10.3.1 (c) and (d) must not act also as trustees on behalf of the Trust Service Provider.

10.3.4 An Authorised Firm which is a Body Corporate, other than a Limited Liability Partnership:

- (a) whose head office and registered office is located in the DIFC, must register with the DFSA all of its Directors as Licensed Directors;
- (b) whose head office and registered office is not located in the DIFC must register with the DFSA at least one of its Directors as a Licensed Director who is ultimately responsible for the Authorised Firm's Financial Services carried on in or from the DIFC.

11.2 Assessing competence

11.2.1 (1) An Authorised Firm must not permit an individual to perform a Licensed Function on its behalf, except as permitted by section 9.4 unless that individual is an Authorised Individual who:

- (a) has been assessed by the Authorised Firm as competent to perform that Licensed Function in accordance with Rule 11.2.2; and
- (b) in respect of the Licensed Function of Licensed Representative;
 - (i) that individual holds, or is exempt from having to hold, a relevant qualification in accordance with Rule 11.3.1; or
 - (ii) only performs that Licensed Function while under appropriate supervision by an Authorised Individual assessed as competent under Rule 11.2.2 and Rule 11.3.1 in respect of the same activity.

11.2.2 In assessing the competence of an individual, an Authorised Firm must:

- (a) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
- (b) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
- (c) determine whether the individual holds any relevant qualifications with respect to the Licensed Function or Licensed Functions performed, or proposed to be to performed, within the Authorised Firm;
- (d) determine the individual's relevant experience; and

- (e) determine the individual's knowledge of the Authorised Firm's relevant systems and procedures with respect to the type of business to be, or being, conducted by the individual on behalf of the Authorised Firm.

11.2.3 An Authorised Firm must be satisfied that an Authorised Individual:

- (a) continues to be competent in his proposed role;
- (b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
- (c) is able to apply his knowledge.



12.3 Dismissal or resignation of an Authorised Individual

- 12.3.1** An Authorised Firm must request the withdrawal of an Authorised Individual status within seven days of the Authorised Individual ceasing to be employed by the Authorised Firm to perform a Licensed Function.
- 12.3.2** In requesting the withdrawal of an Authorised Individual status, the Authorised Firm must submit the appropriate form in PFN, including details of any circumstances where the Authorised Firm may consider that the individual is no longer fit and proper.
- 12.3.3** If an Authorised Individual is dismissed or requested to resign, a statement of the reason, or reasons, for the dismissal or resignation must be given to the DFSA by the Authorised Firm.
- 12.3.4** If the Authorised Individual was acting as trustee, the Trust Service Provider must confirm to the DFSA in writing that a new trustee has been appointed in place of the trustee in question.

ANNEX C

This Annex sets out the proposed amendments to the COB module.
In this Annex, underlining indicates new text.



The DFSA Rulebook

Conduct of Business Module

(COB)



1 INTRODUCTION

1.1 Application

1.1.1 This module (COB) applies to every Authorised Firm with respect to the carrying on in or from the DIFC of:

- (a) any Financial Service, except to the extent that a provision of COB provides for a narrower application; and
- (b) any activity, which is in connection with or for the purposes of a Financial Service, to the extent specified in any provision of COB.

1.2 General

Guidance

This module is divided into six parts:

- a. COB part 1 prescribes certain restrictions in respect of the conduct of Insurance Business, Investment Business, Banking Business, Insurance Intermediation Business and Providing Trust Services pursuant to Article 42(1) of the Regulatory Law 2004.
- b. COB part 2 deals with the conduct of Investment Business, that is, the relationship between the Authorised Firm and its Clients and how business is to be conducted with its Clients. The term Client includes Persons who are Market Counterparties. In their wholesale dealings, Market Counterparties do not expect nor require the same degree of protection as is afforded to Clients that are not Market Counterparties. Such dealings are mutually self-disciplining and Market Counterparties are expected to take responsibility for their own actions and decisions. Consequently, in their dealings with Market Counterparties, Authorised Firms are not required to comply with all the provisions of COB part 2, the sections which are not applicable are outlined in section 5.1.
- c. COB part 3 deals with the conduct of Insurance Intermediation Business, that is, the relationship between the Authorised Firm and its Commercial Customers and how business is to be conducted with its Commercial Customers.
- d. COB part 4 deals with the conduct of Insurance Business, that is, the relationship between the Authorised Firm and its Commercial Customers and how business is to be conducted with its Commercial Customers.
- e. COB part 5 contains additional Rules in relation to Operating Alternative Trading Systems.
- f. COB part 6 deals with the conduct of Providing Trust Services by a Trust Service Provider to its Clients.



3 INVESTMENT BUSINESS AND BANKING BUSINESS

3.1 Application

3.1.1 This chapter applies to an Authorised Firm intending to conduct, in or from the DIFC, Investment Business or Banking Business with or for a Person.

3.1.2 For the purposes of this chapter, Person includes a Collective Investment Fund, even if it does not have a separate legal personality.

3.2 Restrictions

3.2.1 (1) An Authorised Firm must ensure that it does not conduct Investment Business, Banking Business or Provide Trust Services with or for a Retail Customer.

(2) An Authorised Firm must only conduct Investment Business, Banking Business or Provide Trust Services with or to a Person who is a Client.

(3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on Investment Business, Banking Business or Provide Trust Services is acting as agent for another Person, the 'second person' in relation to a particular transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must not effect the transaction unless the second person is a Client.

PART 6 – CONDUCT OF TRUST COMPANIES

18 TRUST SERVICE PROVIDERS

18.1 Application

18.1.1 This chapter applies to a Trust Service Provider with respect to the conduct of Providing Trust Services.

18.1.2 For the purposes of this Part, the settlor and named beneficiaries of a trust in respect of whom the Trust Service Provider Provides Trust Services are to be treated as Clients of the firm.

18.2 **General**

18.2.1 For the purposes of this Part, the settlor and named beneficiaries of a trust in respect of which the Trust Service Provider Provides Trust Services are to be treated as Clients of the firm.

18.2.2 A Trust Service Provider must maintain adequate knowledge of, and comply with, all applicable laws, rules and regulations relevant to Providing Trust Services.

18.2.3 A Trust Service Provider must be able to demonstrate that it is in compliance with appropriate standards of corporate governance.

18.2.4 A Trust Service Provider must transact its business (including the establishing, transferring or closing of business relationships with its Clients) in an expeditious manner where appropriate unless there are reasonable grounds to do otherwise.

Exercise of Discretion

18.2.5 Where a Trust Service Provider is responsible for exercising discretion for, or in relation to, its Clients, it must take all reasonable steps to obtain sufficient information in order to exercise, subject to 18.2.6, its discretion or other powers in a proper manner.

18.2.6 A Trust Service Provider must only exercise its power or discretion for a proper purpose.



18.2.7 The Trust Service Provider must ensure that its understanding of Client's business is refreshed with regular reviews.

18.2.8 The Trust Service Provider must ensure that any trustee exercises his discretion in accordance with his fiduciary and other duties under the laws governing the trust of which he is a trustee.

18.3 Conflicts of interest

18.3.1 (1) A Trust Service Provider must manage any conflict of interest or material interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.

(2) Where a Trust Service Provider has knowledge of a conflict or a material interest, it must manage that interest by:

(a) establishing and maintaining effective Chinese Walls to restrict the communication of that knowledge;

(b) disclosing the material interest or conflict of interest to the Client in writing either generally or in relation to a specific transaction; or

(c) relying on a written policy of independence, which requires an Employee to disregard any conflict of interest or material interest when advising a Client or exercising discretion.

(3) If a Trust Service Provider is unable to ensure fair treatment for a Client, it must decline to act for that Client.

Delegation of duties or powers

18.3.2 Any delegation of duties or powers by a Trust Service Provider, whether by Power of Attorney or otherwise, must only be entered into for a proper purpose, permissible by law, limited and monitored as appropriate.

18.4 Reviews

18.4.1 A Trust Service Provider must ensure that adequate procedures are implemented to ensure that regular reviews at appropriate intervals are conducted in respect of the Provision of Trust Services to its Clients.



18.5 Communications

- 18.5.1** When communicating information to a Person in relation to Providing Trust Services, a Trust Service Provider must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- 18.5.2** A Trust Service Provider must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under relevant legislation.
- 18.5.3** Where a Rule in COB requires information to be sent to a Client, the Trust Service Provider must provide that information directly to the Client and not to another Person, unless it is on the written instruction of the Client.

18.6 Marketing material

- 18.6.1** (1) Before a Trust Service Provider communicates any marketing material to a Person, it must ensure the material contains the following information:
- (a) the name of the Trust Service Provider communicating the marketing material or on whose behalf the marketing material is being communicated;
 - (b) a statement that the marketing material is directed at wholesale customers and not Retail Customers;
 - (c) a statement to the effect that the Provision of Trust Services to which the marketing material relates will only be made available to a wholesale customer who the Trust Service Provider is satisfied meets the regulatory criteria to be a Client; and
 - (d) the Trust Service Provider 's regulatory status as required under GEN section 6.4.
- (2) In (1) marketing material means any invitation or inducement to enter into an agreement in relation to the Provision of Trust Services by a Trust Service Provider.
- 18.6.2** A Trust Service Provider must take reasonable steps to ensure that no other Person communicates or otherwise uses marketing material on behalf of a Trust Service Provider unless it is in compliance with the Rules in this section.

Record Keeping

- 18.6.3** (1) A Trust Service Provider must keep records of any marketing material issued by, or on behalf of, the Trust Service Provider.
- (2) The records in (1) must be maintained for a minimum of six years.

18.7 Professional indemnity insurance cover

- 18.7.1** Professional indemnity insurance cover appropriate to the nature and size of the Trust Service Provider's business must be maintained.
- 18.7.2** A Trust Service Provider must (a) provide the DFSA with a copy of professional indemnity insurance cover and (b) notify the DFSA of any changes to the cover including termination and renewal.
- 18.7.3** A Trust Service Provider must provide the DFSA on yearly basis details of the arrangements in force together with evidence of the cover. Any claims in excess of \$10,000 or changes to the arrangements previously notified to the DFSA under this paragraph must be notified to the DFSA as they arise.

18.8 Dual control

- 18.8.1** The Trust Service Provider must have adequate internal controls, including having two persons with appropriate skills and experience managing the business.
- 18.8.2** While a Trust Service Provider may have a single Person with overall responsibility, the "four eyes" requirement demands that at least another Person must have the skills and experience to be able to run the business of the Trust Service Provider in the absence of the senior Person and must be in a position to challenge the actions of the senior Person where they consider that those actions may be contrary to the provisions of DIFC Laws, Rules or Regulations or any other applicable legislation, may not be in the interests of the Client, or may be contrary to sound business principles.

18.9 Internal reporting

- 18.9.1** The Trust Service Provider must have arrangements for internal reporting to ensure that the directors or the partners can satisfy themselves that:
- (a) the requirements of the relevant legislation are being met on an on going basis;

- (b) the Trust Service Provider 's business is being managed according to sound business principles and, in particular, that it can meet its financial commitments as they fall due;
- (c) the affairs of the Clients are being managed in accordance with the service agreements;
- (d) trustees are acting in accordance with their fiduciary and other duties;
- (e) the affairs of Clients are being properly monitored and in particular that the client is not using the trust structure to hide assets from legitimate enquiry, to avoid proper obligations in other jurisdictions or to engage in illegal activities in other jurisdictions;
- (f) the assets of Clients are properly managed and safeguarded; and
- (g) the recruitment, training and motivation of staff is sufficient to meet the obligations of the business.

18.10 Recording of Selection Criteria

18.10.1 Where the Trust Service Provider seeks the advice of a third party in connection with a Client's affairs, for example to advise on or manage investments, the Trust Service Provider must record the criteria for selection of the adviser and the reasons for the selection made.

18.10.2 The Trust Service Provider must monitor the performance of the adviser and ensure that it is in a position to change advisers if it is in the interests of the Client.



- 18.11** **Qualification and experience of Trust Service Provider staff**
- 18.11.1** Staff employed or Persons recommended by the Trust Service Provider must have appropriate qualifications and experience.
- 18.11.2** A Trust Service Provider must ensure that all transactions or decisions entered into, taken by or on behalf of Clients are properly authorised and handled by Persons with an appropriate level of knowledge, experience, qualifications and status according to the nature and status of the transactions or decisions involved (this applies also to decisions taken by trustees who are recommended by, but not employed by, a Trust Service Provider).
- 18.11.3** A Trust Service Provider must ensure that, each of its officers and employees, agents, Persons acting with its instructions and Persons it recommends to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.
- 18.11.4** A Trust Service Provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.
- 18.11.5** A Trust Service Provider must ensure that staff receives appropriate training on the defences against money laundering and terrorist financing.



18.12 **Books and records**

18.12.1 A Trust Service Provider 's books and records must be sufficient to demonstrate adequate and orderly management of Clients' affairs. There must be proper accounts prepared, at appropriately regular intervals on the trusts and underlying companies administered for Clients. Where trusts and underlying companies are governed by the laws of a jurisdiction that require accounts to be kept in a particular form, the Trust Service Provider must meet those requirements. In any case, the Trust Service Provider's books and records must be sufficient to allow the recreation of the transactions of the business and its Clients and to demonstrate what assets are due to each Client and what liabilities are attributable to each Client.

18.13 **Due diligence**

18.13.1 A Trust Service Provider must, at all times, have verified documentary evidence of the settlors, trustees (in addition to the Trust Service Provider itself) and principal named beneficiaries of trusts for which it Provides Trust Services. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, a Trust Service Provider must also have verified documentary evidence of any Person who receives a distribution from the trust and any other Person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust.

18.13.2 A Trust Service Provider must demonstrate that it has knowledge of the source of funds that have been settled into trusts or have been used to provide capital to companies, or have been used in transactions with which the Trust Service Provider has an involvement.

18.14 **Suitability**

18.14.1 (1) Subject to (2), a Trust Service Provider may only Provide Trust Services to a Client which are suitable for that Client having regard to:



CONDUCT OF BUSINESS (COB)

- (a) that Client's needs, and objectives; and
 - (b) any other requirements or relevant facts about that Client of which the Trust Service Provider is, or ought reasonably to be, aware.
- (2) A Trust Service Provider must ensure that the facts it holds about a Client are accurate, complete and up to date.

Record Keeping

- 18.15.2** A Trust Service Provider must keep record of information required under 18.14.1 for a minimum of six years.

Attribution of knowledge

- 18.15.3** When a COB Rule applies to a Trust Service Provider that acts with knowledge, the Trust Service Provider will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved on behalf of the Trust Service Provider acts with that knowledge as a result of a Chinese Wall arrangement established under Rule 18.3.1(3).

Inducements

- 18.15.4** A Trust Service Provider must have systems and controls, policies and procedures to ensure that neither it, nor any of its Employees, offers, gives, solicits or accepts any inducement which is likely to conflict significantly with any duty that it owes to its Clients.

18.16 DOCUMENTATION**Client agreement**

18.16.1 Subject to Rule 8.16.3, a Trust Service Provider must before Providing Trust Services to a Client provide him with a written client agreement containing the matters referred to in Rule 8.16.2 or if impractical to do so, provide it within a reasonable period.

Content

- 18.16.2**
- (1) The client agreement must set out in sufficient detail the type of services the Trust Service Provider intends to provide to the Client and the terms upon which it intends to Provide Trust Services.
 - (2) The agreement must be easy to understand, not likely to be misunderstood and conform to the requirements in these Rules.
 - (3) All client agreements must contain the information outlined in App2 section A2.1 as applicable.

Changes to client agreement

18.16.3 If the client agreement provided to a Client allows a Trust Service Provider to amend its client agreement without the Client's consent, the Trust Service Provider must give at least ten days notice to a Client before Providing Trust Services to that Client on any amended terms, unless it is impractical to do so.

18.17 Fitness and Propriety of Persons acting as trustees

18.17.1 Where a Trust Service Provider arranges for a Person who is not an employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.

18.17.2 A Trust Service Provider must notify the DFSA of the appointment of a Person under 18.17.1, including the name and business address if applicable and the date of commencement of the appointment.



- 18.17.3** Prior to the appointment of such Person to act as trustee, the Trust Service Provider must take reasonable steps to ensure that the Person has the required skills, experience and resources to act as trustee for a Client of the Trust Service Provider.
- 18.17.4** A Trust Service Provider must notify the DFSA immediately if the appointment of such Person is or is about to be terminated, or on the resignation of such Person, giving the reasons for the resignation of such Person and the measures which have been taken to ensure that a new trustee has been appointed.
- 18.17.5** A Person appointed to act as trustee for a Client of a Trust Service Provider who is not an employee of the Trust Service Provider, must agree in writing to be bound by and comply with the same legal and regulatory requirements as if he were an employee of the Trust Service Provider.

Record keeping

- 18.17.6** A Trust Service Provider must make a record of each client agreement including any amendments it provides to a Client and retain them for a minimum of six years from the date the Client ceases to be a Client of the Authorised Firm.

App2 CLIENT AGREEMENT

A2.1 Content of client agreement

General requirements

- A2.1.1** (1) An Authorised Firm's client agreement provided to a Client must include, as a minimum, the following general information:
- (a) when and how the client agreement is to come into force and how the agreement may be terminated;
 - (b) the regulatory status of the Authorised Firm;
 - (c) any restrictions on the types of Investments or markets in which the Client wishes to invest or a statement to the effect that there are no such restrictions;
 - (d) the services that the Authorised Firm will provide, including details of fees and charges or the basis upon which the Authorised Firm will charge for services;
 - (e) where appropriate, the Client's investment objectives;
 - (f) where appropriate, the extent to which the Authorised Firm will consider the Clients' personal circumstances when considering suitability under section 6.2 or 18.15 and the details of such matters that will be taken into account;
 - (g) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty;
 - (h) any conflict of interest disclosure as required by section 6.3 or 18.3;
 - (i) any disclosure of soft dollar agreement under section 6.7;
 - (j) the arrangements for notifying the Client of any Transaction Executed on his behalf;

- (k) that the Authorised Firm may act as principal in a Transaction, if that is the case;

ANNEX D

This Annex sets out the proposed amendments to the AML module.

In this Annex, underlining indicates new text.



The DFSA Rulebook

Anti Money Laundering
Module

(AML)



App1 CUSTOMER IDENTIFICATION REQUIREMENTS

A1.1 Duties and responsibilities

Guidance relating to Rules 3.4.1 and 3.4.2

1. Pursuant to Rule 3.4.1, an Authorised Firm is required to be satisfied that a prospective customer is who he claims to be and obtain evidence to prove this.
2. 'Know your Customer' and knowing the Persons with or for whom the customer acts or proposes to act, pursuant to Rule 3.4.2 consists of several aspects:
 - a. personal details: an Authorised Firm should obtain and verify details which include the true full name or names used and the current permanent address;
 - b. the nature and level of business to be conducted: an Authorised Firm should ensure that sufficient information is obtained regarding the nature of the business that the customer expects to undertake, and any expected or predictable pattern of Transactions. This information should include the purpose and reason for opening the account or establishing the business relationship, the anticipated level and nature of the activity that is to be undertaken and the various relationships of signatories to the account and the underlying Beneficial Owners;
 - c. the origin of funds: an Authorised Firm should identify how all payments were made, from where and by whom. All payments should be recorded to provide an audit trail; and
 - d. the source of wealth: an Authorised Firm should establish a source of wealth or income, including how the funds were acquired, to assess whether the actual Transaction pattern is consistent with the expected Transaction pattern and whether this constitutes any grounds for suspicion of money laundering.
3. It is important for an Authorised Firm to obtain such information because this process should allow for the risk of being exploited for the purpose of money laundering to be reduced to a minimum. It should also enable suspicious Transactions to be detected because they are incompatible with the information received.
4. Any unusual facts of which an Authorised Firm becomes aware during the identification process may be an indication of money laundering and should prompt the Authorised Firm to request supplementary information and evidence.
5. The DFSA expects an Authorised Firm to establish the full identity of all relevant parties to the business relationship. Further, an Authorised Firm should apply adequate measures to understand the relationship between the counterparties involved. The following list includes some identification checks for particular relationships:



ANTI MONEY LAUNDERING (AML)

- a. joint account holders and joint applicants: identification should be performed and evidence obtained for all applicants and account holders;
 - b. pooled accounts which are managed by professional intermediaries such as mutual funds, pension funds, money funds, lawyers, stockbrokers on behalf of entities or other Persons: all Beneficial Owners of the account held by the intermediary should be identified;
 - c. power of attorney: identification and evidence should be obtained for the applicants and account holders as well as for the holder of the power of attorney; and
 - d. minors: an account for a minor should be opened by a family member or guardian whose identification evidence should be obtained in addition to the birth certificate or passport of the minor.
6. With regard to insurance companies, the following 'Know Your Customer' verification and identification should be taken into account:

Verification

- a. In accordance with Rules 3.4.1 and 3.4.2, an insurance company undertaking verification should establish to its satisfaction that every verification subject exists. All verification subjects of joining applicants for insurance business should normally be verified. In the case of arrangements such as trust, nominee companies and front companies, verification should include an assessment of the substance of the arrangement, for example in relation to settlors, trustees and beneficiaries.
- b. An insurance company should carry out verification in respect of the parties entering into the insurance contract. On some occasions there may be underlying principals and if this is the case, the true nature of the relationship between principals and the policyholders should be established and appropriate enquiries performed about the former, especially if the policyholders are accustomed to acting on their instructions. 'Principal' should be understood in its widest sense to include, for example, Beneficial Owners, settlors, controlling shareholders, directors and major beneficiaries.

Customer Identification

- c. A customer includes the person or entity that holds a policy with the insurance company or, when it appears that the person or entity asking for a policy to be opened or a Transaction to be carried out, might not be acting on its own behalf, those on whose behalf a policy is maintained; and the beneficiaries of policies held by professional financial intermediaries and any Person connected with a policy who could pose a significant reputational or other risk to the insurance company.



ANTI MONEY LAUNDERING (AML)

- d. Insurance companies should establish a systematic procedure for verifying the identity of customers and should not issue a policy until the identity of a new customer is satisfactorily established, see Rule 3.4.3.
7. In addition to the requirements specified above, a Trust Service Provider must carry out verification, where reasonably possible, in respect of all the parties related to a trust including the settlor, the protector, the enforcer, beneficiaries and any Person likely to be entitled to receive a distribution whether or not such Person is a named beneficiary.

ANNEX E

**This Annex sets out the proposed amendments to the PIB module.
In this Annex, underlining indicates new text.**



The DFSA Rulebook

**Prudential – Investment, Insurance
Intermediation and
Banking Business Module**

(PIB)



PRUDENTIAL – INVESTMENT, INSURANCE INTERMEDIATION AND BANKING BUSINESS (PIB)

Category 3

1.3.3 An Authorised Firm:

- (a) whose Licence authorises it to carry on one or more of the Financial Services of Dealing in Investments as Agent, Managing Assets, Operating a Collective Investment Fund, Providing Custody or Providing Trust Services; and
- (b) does not meet the criteria of Categories 1, 2 or 5;

is in Category 3.

[Amended][VER2/08-05]

Guidance

A Category 3 Authorised Firm may be authorised to conduct other Financial Services but it is the authorisation for Dealing in Investments as Agent, Managing Assets, Operating a Collective Investment Fund or Providing Custody, and the absence of authorisation for the activities specified in Rules 1.3.1 and 1.3.2 that are determinative of it as belonging to Category 3.



PRUDENTIAL – INVESTMENT, INSURANCE INTERMEDIATION AND BANKING BUSINESS (PIB)

Table 1 – Categorisation of Authorised Firms

	Category 1	Category 2	Category 3	Category 4	Category 5	
DFSA authorisations	Accepting Deposits	Dealing in Investments Dealing in Investments as Agent	Dealing in Investments as Agent		Islamic Financial Institution Entire business conducted in accordance with Shari'a and Manages a Profit Sharing Investment Account	
	Providing Credit		Operating a Collective Investment Fund			
	Dealing in Investments as Principal		Providing Custody			
	Dealing in Investments as Agent		Providing Trust Services			
	Operating a Collective Investment Fund	Operating a Collective Investment Fund	Arranging Credit or Deals in Investments			
	Managing Assets	Managing Assets				
	Providing Custody	Providing Custody		Operating an Alternative Trading System		
	Managing a Profit Sharing Investment Account	Managing a Profit Sharing Investment Account	Managing a Profit Sharing Investment Account	X		
	Advising on Financial Products or Credit	Advising on Financial Products or Credit	Advising on Financial Products or Credit	Advising on Financial Products or Credit		
	Arranging Custody	Arranging Custody	Arranging Custody	Arranging Custody		
	Insurance Broking	Insurance Broking	Insurance Broking	Insurance Broking		
	Insurance Management	Insurance Management	Insurance Management	Insurance Management		
	Operating an Alternative Trading System	Operating an Alternative Trading System	Operating an Alternative Trading System			
						Islamic Financial Institution Entire business conducted in accordance with Shari'a and Manages a Profit Sharing Investment Account

ANNEX F

This Annex sets out the proposed amendments to the ASP module.
In this Annex, underlining indicates new text and striking through
indicates deleted text.



The DFSA Rulebook

Ancillary Service Providers Module

(ASP)



2.2 By way of business

2.2.1 A Person carries on an activity specified in Rule 2.1.1(2) by way of business only if he carries on that activity from a permanent place of business maintained by him in the DIFC and:

- (a) engages in that activity in a manner which constitutes the carrying on of a business by him;
- (b) holds himself out as willing and able to engage in that activity; or
- (c) regularly solicits other Persons to engage with him in transactions constituting that activity.

Exclusions

2.2.2 A Person does not carry on an activity specified in Rule 2.1.1(2) by way of business where he enters into transactions solely as ~~trustee or~~ nominee for another Person and is acting on that Person's instructions.

ANNEX G

This Annex sets out the proposed amendments to the GLO module.
In this Annex, underlining indicates new text.



The DFSA Rulebook

Glossary Module

(GLO)

B

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Defined Term	Definition
Bank	An Authorised Firm which holds a Licence authorising it to carry on either or both of the Financial Services of Accepting Deposits or Providing Credit.
Banking Business	The business of Accepting Deposits or Providing Credit.
Base Capital Requirement	Has the meaning given in PIB section 2.4.
Bearer Share	A Share that cannot be registered in the name of the holder and proof of ownership is possession of the Share certificate. [Added][VER3/04-05]
Beneficial Owner	<ol style="list-style-type: none"> (1) an individual who ultimately owns customers' assets or controls a customer account; (2) a Person on whose behalf a Transaction is being conducted; (3) a Person who exercises ultimate effective control over a legal Person or arrangement; (4) a Person on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act; or (5) <u>in relation to a trust means a beneficiary as defined in the Trust Law 2005.</u>
Bid	includes a Takeover transaction however effected, including a reverse Takeover, partial bid, and also a bid by a parent entity for Shares in its subsidiary. [Added][VER5/09-05]
Bidder	includes, but is not limited to, companies wherever incorporated and individuals wherever resident who or which make a Bid under TKO. [Added][VER5/09-05]
Bid Document	means a document issued by a Bidder containing information as stipulated under TKO (particularly Chapter 8) and posted in accordance with those Rules (particularly Chapter 11). [Added][VER5/09-05]



Principal Representative	An individual designated by an Ancillary Service Provider in accordance with ASP Rule 6.2.1.
Principle	A principle prescribed in GEN chapter 4 for Authorised Firms or Authorised Individuals as the case may be.
<u>Private Trust Company</u>	<p><u>Means a body corporate:</u></p> <p>(1) <u>(a) the purpose of which is solely to provide trust business services in respect of a specific trust or trusts where:</u></p> <ul style="list-style-type: none">i. <u>each settlor of a trust is a Related Person in relation to any other settlor of any other trust to which the body corporate Provides Trust Services;</u>ii. <u>each beneficiary of such a trust is a Related Person in relation to the settlor of the same trust, except that the beneficiary of the residual estate of the settlor may be a charity;</u> <p>(b) <u>that does not solicit trust business from, or Provide Trust Services to, the public; and</u></p> <p>(c) <u>which acts as trustee only for trusts for which all Trust Administration Services are carried out by a Trust Service Provider.</u></p> <p>(2) <u>For the purposes of the definition in (1) a Related Person means:</u></p> <p>(a) <u>the individual's spouse; children both present and future, including step children, and their spouses; parents including step-parents; grandparents; grandchildren, both present and future, including step-grandchildren, and their spouses; parents in law, including step-parents in law; brothers, step-brothers, sisters, step-sisters and their spouses and children; parent's</u></p>

	<p><u>brothers, step-brothers, sisters, step-sisters and their spouses; children of a brother, step-brother, sister or step-sister of the individual's parents both present and future, including step-children, and their spouses; children of the individual's brothers, step-brothers, sisters or step-sisters, both present and future, including step-children, and their spouses.</u></p> <p>(b) <u>a firm or a body corporate in which the individual or any of the Persons mentioned in (a) has control of not less than 20% of the voting power in the firm or body corporate, whether such control is exercised individually or jointly.</u></p> <p>(3) <u>For any of the relationships listed in 2(a) that may be established by blood, that same relationship may also be established by adoption.</u></p>
Privileged Communication	A privilege arising from the provision of professional legal advice and any other like privilege properly applicable at law to the communication in question, but does not include a general duty of confidentiality.
Professional Investor	A Person whose ordinary activities involve him in acquiring, holding, managing or disposing of Investments and any other Person prescribed by the Offered Securities Rules. [Added][VER3/04-05]
Profit Equalisation Reserve	Represents the amount appropriated out of the Mudaraba income, before allocating the Mudarib's share, in order to maintain a certain level of investment returns for investment account holders and to increase owners' equity.
Profit Sharing Investment Account (PSIA)	An account, portfolio part of the manager.
<u>Providing Trust Services</u>	<u>Has the meaning given in GEN section 2.22</u>



GLOSSARY (GLO)

Related	<p>In respect of one entity, the first entity, being in the position relative to that entity of:</p> <ul style="list-style-type: none">(a) a second entity that is a Subsidiary, Associate or Holding Company of the first entity;(b) a second entity that is a Subsidiary or Associate of the Holding Company of the first entity;(c) a director or officer of the first entity or of an entity that is related to the first entity by reason of (a) or (b) above;(d) the spouse or minor child of a natural person referred to in (c) above; or(e) a company that is a Subsidiary of or subject to significant influence by or from a natural person referred to in (c) or (d) above.
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GLOSSARY (GLO)

<u>Trust Administration Services</u>	<p><u>The provision of Trust Administration Services include:</u></p> <ul style="list-style-type: none">(a) <u>the keeping of accounting records relating to an express trust and the preparation of trust accounts;</u>(b) <u>the preparation of trust instruments or other documents relating to an express trust;</u>(c) <u>the management and administration of trust assets subject to an express trust;</u>(d) <u>dealing with trust assets subject to an express trust, including the investment, transfer and disposal of such assets;</u>(e) <u>the distribution of trust assets subject to an express trust; and</u>(f) <u>the payment of expenses or remuneration out of an express trust.</u>
<u>Trust Law</u>	<u>The Trust Law 2005.</u>
<u>Trust Service Provider</u>	<u>Means an Authorised Firm whose Licence allows it to carry on the activity of Providing Trust Services.</u>