

Appendix 2

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



The DFSA Rulebook

General Module

(GEN)

1 INTRODUCTION

1.1 Application

- 1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law 2005 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

Guidance

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive of GEN apply to a Representative Office.

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2 FINANCIAL SERVICES

2.1 Application

- 2.1.1** This chapter applies to every Person to whom the Regulatory Law 2004 applies, and to the same extent in relation to every such Person as that law.

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 Intermediation;
- (q) Insurance Management;
- (r) Managing a Profit Sharing Investment Account;
- (s) Operating an Alternative Trading System;
- (t) Providing Trust Services;
- (u) Providing Fund Administration; ~~and~~
- (v) Acting as the Trustee of a Fund; and
- (w) Operating a Representative Office.

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP 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.

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2.9 Arranging credit or deals in investments

2.9.1 (1) In Rule 2.2.2 Arranging credit or deals in Investments means:

- (a) making arrangements with a view to another Person whether as principal or agent buying, selling, subscribing for or underwriting an Investment; or
- (b) making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility.

(2) The arrangements in (1) include:

- ~~(a)~~ arrangements which do not bring about the transaction; ~~and~~
- ~~(b)~~ ~~making invitations or, engaging in any other conduct with a view to influencing another Person to enter into a transaction referred to in (1).~~

~~(3)~~ In ~~(2)(b)~~:

- ~~(a)~~ ~~invitations mean any communications that directly or indirectly invite a Person to enter into any transaction referred to in (1); and~~
- ~~(b)~~ ~~other conduct means any conduct, though not amounting to an invitation, that can be viewed as a step in the chain that directly or indirectly leads a Person to enter in to a transaction referred to in (1) and includes the making of a referral.~~

~~(4)~~ (3) The arrangements in (1) do not include:

- (a) arrangements which amount to Operating an Alternative Trading System; or
- (b) activities which amount to Operating a Representative Office.

Guidance

Activities referred to in (2)(b) may include providing communications that contain generic advice, in which case authorisation for both arranging and advising may be required.

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2.11 Advising on financial products or credit

2.11.1 (1) In Rule 2.2.2 Advising on financial products or credit means giving advice to a Person which:

- (a) ~~is given to a Person~~ in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product (whether as principal or agent); or
 - (b) ~~is given to a Person~~ in his capacity as a borrower or potential borrower or as agent for a borrower or potential borrower on the merits of his entering into a particular Credit Facility; ~~or~~
 - (c) ~~constitutes generic advice.~~
- (2) Advice in (1)(a) and (b) includes a statement, opinion or report:
- (a) where the intention is to influence a Person, in making a decision, to select a particular financial product or an interest in a particular financial product or to enter into a particular Credit Facility; or
 - (b) which could reasonably be regarded as being intended to have such an influence.
- (3) In (1)(c), 'generic advice' means any communication, subject to (4), that:
- (a) ~~contains information about a particular financial product or Credit Facility;~~
 - (b) ~~could reasonably be regarded as being intended to influence a Person when making a decision relating to any financial product or Credit Facility to which the communication relates; and~~
 - (c) ~~does not contain any advice on the merits of that particular Person entering into a transaction to buy, sell, hold, subscribe for or underwrite those financial products or enter into a particular Credit Facility, whether as principal or agent.~~

- ~~(4) Any communication which contains generic advice where issued by or on behalf of a government or government entity does not constitute generic advice for the purposes of this Rule.~~

Guidance

~~Promotional material that does not contain any information about any particular financial product (such as flyers containing general information about any financial service provider) would not be generic advice. However, their distribution may amount to arranging and may therefore require authorisation. In any case, an Authorised Firm distributing such material is required to comply with COB section 3.2. Communication can be oral, printed or in electronic form.~~

- ~~(5)~~ (3) For the purposes of this Rule and Rule 2.11.2, a financial product is an Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.

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2.19 Insurance intermediation

2.19.1 (1) In Rule 2.2.2 Insurance Intermediation means:

- (a) advising on insurance;
- (b) acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or
- (c) making arrangements with a view to another Person, whether as principal or agent, buying insurance.

(2) In (1)(a), 'advising' means giving advice:

- ~~(a) which is given to a Person in his capacity as a policyholder or potential policyholder, or in his capacity as agent for a policyholder or potential policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent; or~~
- (b) that constitutes generic advice.

(3) In (2)~~(a)~~, 'advice' includes a statement, opinion or report:

- (a) where the intention is to influence a Person, in making a decision, to select a particular Contract of Insurance or insurance cover; or
- (b) which could reasonably be regarded as being intended to have such influence.

- ~~(4) In (2)(b), 'generic advice' means any communication, subject to (5), that:~~
- ~~(a) contains information about a particular Contract of Insurance or insurance cover; and~~
 - ~~(b) could reasonably be regarded as being intended to influence a Person when making a decision relating to any particular Contract of Insurance or type of insurance cover to which the communication relates,~~

~~although the communication does not contain any advice on the merits of the Particular person entering into those Contracts of Insurance or obtaining insurance cover referred to in the communication.~~

- ~~(5) Any communication which contains generic advice where issued by or on behalf of a government or government entity does not constitute generic advice for the purposes of this Rule.~~

- ~~(6) (4) The arrangements in (1)(c) include:~~

- ~~(a) arrangements which do not bring about the transaction; and~~
- ~~(b) making invitations or, engaging in any other conduct with a view to influencing another Person when making a decision in relation to a particular Contract of Insurance or insurance cover.~~

- ~~(5) The arrangements in (1)(c) do not include activities which amount to Operating a Representative Office.~~

- ~~(7) In (6)(b):~~

- ~~(a) invitations mean any communications that directly or indirectly invite a Person to enter into a particular Contract of Insurance; and~~
- ~~(b) other conduct means any conduct, though not amounting to an invitation, that can be viewed as a step in the chain that directly or indirectly leads a Person to enter in to a particular Contract of Insurance.~~

Guidance

~~An Authorised Firm when distributing material relating to Insurance Contracts or cover must comply with the requirements in section 7.3 of COB. Communications can be oral, electronic or in print.~~

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2.26 Operating a Representative Office

- 2.26.1** (1) In Rule 2.2.2 Operating a Representative Office means the marketing of one or more financial services which are offered in a jurisdiction other than the DIFC.
- (2) For the purposes of (1) 'marketing' means:
- (a) providing information on one or more financial products or services; or
 - (b) engaging in promotions in relation to (a);
- provided that such activities do not constitute Advising on Financial Products or Credit.
- (3) For the purposes of (2), 'financial product' means an Investment, Credit Facility, Deposit, Profit Sharing Investment Account or Contract of Insurance.

Exclusions

2.26.2 An Authorised Firm other than a Representative Office does not Operate a Representative Office if it undertakes any of the activities specified in Rule 2.26.1.

2.26.3 Any communication which amounts to marketing in respect of a financial service or financial product, which is issued by or on behalf of a government or non-commercial government entity, does not constitute marketing for the purposes of this Rule.

3 FINANCIAL SERVICES WHICH MAY BE CARRIED ON IN OR FROM THE DIFC

3.1 Application

3.1.1 Chapter 3 applies to every Authorised Firm and Authorised Market Institution.

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) Operating a Collective Investment Fund
- (i) Providing Custody;
- (j) Arranging Custody;
- (k) Effecting Contracts of Insurance;
- (l) Carrying Out Contracts of Insurance;
- (m) Insurance Intermediation;
- (n) Insurance Management;
- (o) Managing a Profit Sharing Investment Account;
- (p) Operating an Alternative Trading System;
- (q) Providing Trust Services;

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- (r) Providing Fund Administration; ~~and~~
 - (s) Acting as the Trustee of a Fund; and
 - (t) Operating a Representative Office.

Guidance

The consequence of Rule 3.2.1 is that no Person may carry on the Financial Service of Providing Money Services.

- 3.2.2** The Financial Services of Effecting Contracts of Insurance and Carrying Out Contracts of Insurance may be carried on only by an Authorised Firm which by virtue of its Licence is permitted to carry on such Financial Services and no other Financial Services.
- 3.2.3** The Financial Service of Managing a Profit Sharing Investment Account may be carried on only by an Authorised Firm which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.
- 3.2.4** The Financial Service of Operating a Collective Investment Fund may be carried on in respect of an Islamic Fund only by an Operator which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.
- 3.2.5** A Financial Service may be carried on with or for a Retail Client only by an Authorised Firm which is permitted to do so by endorsement on its Licence.
- 3.2.6** An Authorised Firm which is licenced to carry on the Financial Service of Operating a Representative Office may not be licenced to carry on any other Financial Service.

3.3 Permitted Financial Services for Authorised Market Institutions

- 3.3.1** Pursuant to Article 42(1)(b) an Authorised Market Institution may carry on any one or more of the following Financial Services:
 - (a) Operating an Exchange; or
 - (b) Operating a Clearing House.

Guidance

1. An Authorised Market Institution may in addition to the Financial Services set out in Rule 3.3.1 also carry on one or more ancillary activities specified under Rule 2.2.2 but only in circumstances where the relevant activity is carried on as a necessary part of the AMI's business as an Exchange or for the purpose of, or in connection with the provisions of clearing or settlement services.

2. The majority of these activities do not amount to Financial Services as the activities are not carried on by way of business (see Rule 2.3.4). However, pursuant to Rule 2.3.4 certain activities do amount to Financial Services. One of the activities is Operating an Alternative Trading System which cannot, pursuant to Rule 3.3.1, be carried on by an AMI.

4 CORE PRINCIPLES

4.1 Principles for Authorised Firms – application

4.1.1 The eleven Principles for Authorised Firms, set out in section 4.2, apply to every Authorised Firm, other than a Representative Office, in accordance with Rules 4.1.2 and 4.1.3.

- 4.1.2** (1) For the purposes of Rule 4.1.3 the term ‘activities’ means:
- (a) Financial Services;
 - (b) activities carried on in connection with a Financial Service;
 - (c) activities held out as being for the purpose of a Financial Service;
and
 - (d) in relation to any particular Principle, any activity specified in (2), (3) and (4).
- (2) Principles 3 and 4 also apply in a Prudential Context to an Authorised Firm with respect to the carrying on of all its activities.
- (3) Principles 3 and 4 also take into account any activities of other members of the Group of which the Authorised Firm is a member.
- (4) Principles 10 and 11, to the extent that it relates to disclosing to the DFSA, also applies to an Authorised Firm with respect to the carrying on of all its activities, and takes into account any activities of other members of the Group of which the Authorised Firm is a member.

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5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

- 5.1.1** (1) Subject to (5) and (6), this chapter applies to every Authorised Person with respect to Financial Services carried on in or from the DIFC.
- (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
- (3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch's activities wherever they are carried on.
- (4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance.
- (5) Rules 5.3.13, 5.3.14, 5.3.15, 5.3.23, and 5.3.24 do not apply to an Authorised ISPV.
- (6) This chapter does not apply to a Representative Office.

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6 GENERAL PROVISIONS

6.1 Application

- 6.1.1** (1) Sections 6.1, 6.2, 6.3 and 6.9 apply to every Person to whom any provision in the Rulebook applies.
- (2) Section 6.4 applies to every Authorised Person.
- (3) Sections 6.5 and 6.6 apply to every Authorised Firm, Authorised Market Institution and Person who has submitted an application for authorisation to carry on one or more Financial Services.
- (4) Section 6.7 applies to any Person who has been affected by the activities of the DFSA.
- (5) Section 6.8 applies to the DFSA.
- (6) This chapter does not apply to a Representative Office.

8 ACCOUNTING AND AUDITING

8.1 Application

8.1.1 This chapter applies to every:

- (a) Authorised Person other than a Representative Office;
- (b) applicant for registration as an auditor with the DFSA; and
- (c) Auditor registered with the DFSA.

8.1.2 In this chapter in relation to an Authorised Person which is a Domestic Firm a reference to “auditor” include references to an “Auditor”.

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9 Complaints Handling and Dispute Resolution

9.1 Application

9.1.1 This chapter applies to an Authorised Firm, other than a Representative Office, carrying on a Financial Service in or from the DIFC as follows.

- (a) Section 9.2 applies to an Authorised Firm carrying on a Financial Service with or for a Retail Client; and
- (b) Section 9.3 applies to an Authorised Firm carrying on a Financial Service with or for a Professional Client.

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