

Appendix 5

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



The DFSA Rulebook

General Module

(GEN)

2 FINANCIAL SERVICES

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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) Managing ~~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; [Amended][VER6/12-05]
- (q) Insurance Management;

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- (r) Managing a Profit Sharing Investment Account;
 - (s) Operating an Alternative Trading System;
 - (t) Providing Trust Services; [Added][VER7/01-06] [Amended][VER11/08-06]
 - (u) Providing Fund Administration; [Added][VER8/04-06] [Amended][VER11/08-06]
 - (v) Acting as the Trustee of a Fund; and [Added][VER11/08-06]
 - (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.

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2.10 Managing assets

2.10.1 In Rule 2.2.2 Managing Assets means managing on a discretionary basis assets belonging to another Person if the assets include any Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.

Exclusions

2.10.2 A Person who is not an Authorised Firm or an Authorised Market Institution does not Manage Assets if:

- (a) he is a Person formally appointed in writing by the owner of the assets to manage the assets in question; and
- (b) all day-to-day decisions relating to the Investments which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.

Guidance

A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Managing Assets to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the proper management of the Fund in accordance with its Constitution and Prospectus.

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2.12 Operating Managing a collective investment fund

- 2.12.1** (1) In Rule 2.2.2, Managing ~~Operating~~ a Collective Investment Fund means:
- ~~(b)~~ (a) being legally responsible ~~accountable to the Unitholders in the Fund~~ for the management of the property held for or within a Fund under the Fund's Constitution; ~~and~~
 - (a) (b) establishing, managing and otherwise operating or winding up a Collective Investment Fund; and
- (2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Credit or Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Managing ~~Operating~~ a Collective Investment Fund.
- (3) The Person referred to in (1) is a Fund Manager.

Exclusions

- 2.12.2** ~~Without limiting the application of Article 17(4) of the Collective Investment Law 2006, a Person is not Operating a Collective Investment Fund merely because he is acting as an agent, employee or delegate of an Operator.~~

Pursuant to Article 20(3) of the Collective Investment Law [2010], a Person is hereby prescribed by the DFSA as not managing a Collective Investment Fund where that Person merely:

- (a) acts as an agent or Employee of the Fund Manager;
- (b) carries on Managing Assets, Providing Custody, Providing Fund Administration or any other Financial Service or function for or on behalf of a Fund under any delegation or outsourcing arrangement which he has entered into with the Fund Manager in respect of that Financial Service or function;
- (c) winds up or takes steps to wind up or dissolve a Fund or remedies a defect that led to a Fund being deregistered; or
- (d) acts as the Trustee of an Investment Trust.

Guidance

Article 20(3) of the Collective Investment Law [2010] confers on the DFSA the power to prescribe a Person who carries on any activities that constitute managing a Fund not to be a Fund Manager.

1. ~~Rule 2.12.1(2) alleviates any requirement upon a n Operator to obtain further authorisations for certain Financial Services where the activities fall within the~~

~~ordinary scope of the activity of Operating a Collective Investment Fund. The provision also facilitates the delegation of these discrete activities under CIR section 7.3.~~

~~2. In relation to Rule 2.12.2, note that Article 17(3) of the Collective Investment Law prescribes circumstances where a Person is not to be regarded as operating a Fund.~~

2.13 Providing custody

- 2.13.1** (1) In Rule 2.2.2 Providing Custody means both:
- (a) safeguarding Investments belonging to another Person or, in the case of a Fund, Fund Property; and
 - (b) the administration of such Investments or Fund Property.
- (2) In (1) the following activities do not constitute the ‘administration of such Investments or Fund Property’:
- (a) providing information as to the number and value of any Investments or Fund Property safeguarded;
 - (b) converting currency; or
 - (c) receiving documents relating to an Investment or Fund Property for the purpose of onward transmission to, from or at the direction of the Person to whom the Investment or Fund Property belongs.

Guidance

A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Providing Custody to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the safe custody and proper management of the Fund in accordance with its Constitution and Prospectus.

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2.24 Providing fund administration

2.24.1 In Rule 2.2.2, Providing Fund Administration means providing one or more of the following services in relation to a Fund:

- (a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements;
- (b) valuing of assets and performing net asset value calculations;
- (c) maintaining the share register and Unitholder registration details;
- (d) performing anti money laundering requirements;
- (e) undertaking transaction monitoring and reconciliation functions;
- (f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange;
- (g) producing financial statements, other than as the Fund's registered auditor; or
- (h) communicating with participants, the Fund, the Fund Manager Operator, the and investment fund managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund.

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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) ~~Managing~~ 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;
- (r) Providing Fund Administration;
- (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 Managing ~~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.
- 3.2.7** An Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.

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5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

- 5.1.1** (1) Subject to (5), this chapter applies to every Authorised Person with respect to the 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.

Guidance

1. The purpose of this chapter is:
 - a. to set out the requirements for senior management within an Authorised Person to take direct responsibility for their Authorised Person's arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA's objectives or they affect the DFSA's functions under the legislation applicable in the DIFC; and
 - b. to require an Authorised Firm to vest responsibility in senior management for effective and responsible organisation and to have effective systems and controls.
2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module.
3. In relation to an Authorised Firm which is a Fund Manager ~~Operator~~ or the Trustee, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates or for which it acts as the Trustee.

8 ACCOUNTING AND AUDITING

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8.7 Registration of Auditors

Registration of an Auditor

- 8.7.1** A Person intending to audit Authorised Firms and Authorised Market Institutions (that are Domestic Firms), or Domestic Funds must apply to the DFSA for registration in accordance with the Rules in this Chapter.

Guidance

Authorised Firms and Authorised Market Institutions that are Domestic Firms and Fund Managers ~~Operators~~ of Domestic Funds are required to appoint and retain Auditors who are registered for the duration of the audit. See Rule 8.4.1(c) and CIR Rule 12.2.1 (c).

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10 TRANSITIONAL RULES

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10.4 ~~Specific relief – CIR Module~~

~~10.4.1~~ Within a period no later than 6 months after the Commencement Date:

- ~~(a) an Operator of a Fund may make an Offer in respect of a Unit of a Fund it operates by means of a Prospectus that complies with the requirements under the Previous Regime; and~~
- ~~(b) an Authorised Firm may, for the purpose of complying with the requirements in CIR 3.2.1(1) or 3.4.3(1), make available to a Client a Prospectus in respect of a Unit of a Fund where that Prospectus complies with the requirements under the Previous Regime.~~

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