

ANNEX A

In this Annex, underlining indicates new text and striking through indicates deleted text.



GENERAL (GEN)



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.

1.2 Overview of the module

Guidance

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5. Chapter 6 contains mainly guidance ~~for Authorised Firms and Authorised Market Institutions~~ in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, close links, complaints against the DFSA and the public register.
6. Chapter 7 sets out the fees provisions for Authorised Persons, Firms, and Authorised Market Institutions, applicants for a Licence and auditors registered with the DFSA.
7. Chapter 8 specifies, in relation to Authorised Persons, Firms, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and regulatory returns and the functions of an auditor. There are also requirements for auditors to register with the DFSA.

2 FINANCIAL SERVICES

2.2 Financial Service activities.....

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; and
- (r) Managing a Profit Sharing Investment Account; and
- (s) Operating an Alternative Trading System.

2.3 By way of business.....

- 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.
- (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.
- (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 ~~Exchange~~ Authorised Market Institution.

[Added][VER3/04-05]

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 arrangements which do not bring about the transaction.
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(3) The arrangements in (1)(a) do not include arrangements which amount to Operating an Alternative Trading System.

2.17 Operating an exchange

2.17.1

Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.3(1) is that the activity in Rule 2.17.1 of Operating an Exchange also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating a Clearing House and Operating an Alternative Operating System, if the activity is carried on as part of an Exchange’s business as an Exchange. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House. [Added][VER3/04-05]

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Exclusions

2.17.2 A Person does not carry on an activity of the kind specified in Rule 2.17.1 if he operates a facility which merely amounts to an Alternative Trading System.

2.18 Operating a clearing house

2.18.1

Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.3(2) is that the activity in Rule 2.18.1 of Operating a Clearing House also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating an Exchange or Operating an Alternative Trading System, if the activity is carried on for the purpose of, or in connection with, the provision of clearing services by a Clearing House. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House. [Added][VER3/04-05]

2.22 Operating an alternative trading system

- 2.22.1 (1) In Rule 2.2.2 Operating an Alternative Trading System means making arrangements with a view to another Person whether as principal or agent buying or selling an Investment by way of operating a facility:
- (a) which is organised on a temporary or permanent basis, whether or not governed by enforceable rules;
 - (b) which provides a means by which over the counter (OTC) trading of Investments can take place; and
 - (c) which provides a system or mechanism, whether an order driven system, a quote driven system or a hybrid of such systems, which enables electronic trading or trading by other means and through which;
 - (i) offers to buy or sell Investments are made or accepted;
 - (ii) buyers and sellers can negotiate the purchase or sale of Investments;
 - (iii) contracts can be entered into for the transfer of ownership of or the title to Investments; or
 - (iv) the prices of Investments, price movements and price and size of the most recent trades are displayed and updated.
- (2) For the purposes of (1), "OTC" means in relation to a transaction in an Investment, a transaction not effected on an Exchange or its equivalent in any other jurisdiction.
- (3) In (1), a facility is not an Alternative Trading System if it is merely an order routing system where buying and selling interests or orders are merely transmitted but do not interact.
- (4) In (1) a Person providing the facility still operates an Alternative Trading System even though that Person may from time to time deal as agent for another Person or deal as principal with another Person using the facility.
- (5) For the purposes of (1) a Person operates an Alternative Trading System even though the facility itself is provided by a third party on behalf of that Person and that Person merely provides use of that facility to other Persons.
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Exclusions

2.22.2 A Person does not carry on an activity of the kind specified in Rule 2.22.1 if he as the operator of the facility:

- (a) is a counterparty to every transaction effected on the facility;
- (b) acts as a central counterparty accepting the risk of default of any of its Clients or otherwise becomes the guarantor of the performance of every transaction effected using the facility;
- (c) exercises discretion as to how the buying or selling interests interact on the facility; or
- (d) is an Authorised Market Institution.

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

3.1 Application.....

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)
- (l) Insurance Broking; ~~and~~
- (m) Insurance Management; ~~and~~
- (n) Managing a Profit Sharing Investment Account; and
- (o) Operating an Alternative Trading System.

3.3 Permitted Financial Service for Authorised Market Institutions

3.3.1

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.

App 5 FEES

A5.1 Fees table

A5.1.1 The fees table.

[Amended] [VER2/10-04][Amended]VER3/04-05]

(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	\$10,000

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(x)	Managing a Profit Sharing Investment Account.	
(d)	<u>Operating an Alternative Trading System.</u>	\$30,000
(e)	Effecting Contracts of Insurance or Carrying out Contracts of Insurance:	\$50,000
(i)	where the applicant is not also intending to carry on business as a Captive Insurer; or	
(ii)	where the Authorised Firm is not carrying on business as a Captive Insurer.	

A5.2 Fees in relation to an application for a licence.....

A5.2.3 An applicant under Rule A 5.2.2(a) or (c) seeking an endorsement to its Licence authorising it to maintain an Official List of Securities must pay to the DFSA an additional application fee of \$100,000. [Added][VER3/0405]