

## ANNEX A

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



**GENERAL (GEN)**

## **2 FINANCIAL SERVICES**

### **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~~ [Added][VER4/08-05]
- (t) Providing Trust Services; and
- (u) Providing Fund Administration

#### 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.

## 2.12 Operating a collective investment fund

- 2.12.1** (1) In Rule 2.2.2 Operating a Collective Investment Fund means: ~~(a) establishing, operating, establishing or winding up a Collective Investment Fund.~~
- ~~(b) acting as the trustee or as the depository of a Collective Investment Fund or;~~
  - ~~(c) acting as the responsible entity or authorised corporate director of a Collective Investment Fund. or~~
  - ~~(d) acting as the administrator of a Collective Investment Fund, which includes the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds.~~
- (2) For the purposes of (1), “operating” a Collective Investment Fund includes being responsible for the management of the property held for or within a Fund under the Fund’s constitution.

## 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 Operator, the fund managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund.

### **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;

- (i) Arranging Custody;
- (k) Effecting Contracts of Insurance;
- (l) Carrying Out Contracts of Insurance;
- (m) Insurance Broking;
- (n) Insurance Management;
- (o) Managing a Profit Sharing Investment Account;
- (p) Operating an Alternative Trading System; and [Added][VER4/08-05]
- (q) Providing Trust Services; and
- (r) Providing Fund Administration

#### Guidance

The consequence of Rule 3.2.1 is that no Person may carry on the Financial Service of Providing Money Services. ~~or Operating a Collective Investment Fund. The prohibition in respect of Operating a Collective Investment Fund is of a temporary nature and will be in force until the relevant legislation has been drafted and is in effect.~~

**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.

## 5 MANAGEMENT, SYSTEMS AND CONTROLS

### 5.1 Application

#### 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. [Amended][VER3/04-05]
3. In relation to an Authorised Firm which is an Operator, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates.

## App3 COLLECTIVE INVESTMENT FUNDS

### ~~A3.1 Definition of a collective investment fund~~

#### Guidance

~~Article 18 of the Collective Investment Law 2006 sets out arrangements which amount to collective investment as follows:~~

### ~~A3.2 Arrangements constituting a Collective Investment Fund~~

~~(1) A Collective Investment Fund ("Fund") is, subject to Article 19, any arrangement with respect to property of any description, including money, where:~~

~~(a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;~~

~~(b) — the arrangements must be such that the persons who are to participate (“Participants”) in the arrangement do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and~~

~~(c) — the arrangements have either or both of the following characteristics:~~

~~(i) — the contributions of the Participants and the profits or income out of which payments are to be made to them are pooled; or~~

~~(ii) — the property is managed as a whole by or on behalf of the Operator of the Fund.~~

~~(2) — If the arrangement provides for such pooling as is mentioned in Article 18 (1)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Collective Investment Fund unless the Participants are entitled to exchange rights in one part for rights in another.~~

### **A3.3 Exclusions**

#### **Guidance**

~~Article 19 of the Collective Investment Law 2006 empowers the DFSA to make Rules excluding certain arrangements or types of arrangements from constituting a Collective Investment Fund. Pursuant to that Article, Section 4.2 of CIR prescribes the arrangements in A3.4 as not amounting to Collective Investment:~~

### **A3.4 Prescribed Arrangements**

#### **Guidance**

~~1. — Arrangements do not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund if:~~

~~(a) — the whole amount of each participant's contribution is a Deposit which is accepted by an Authorised Firm authorised under its Licence to carry on the Financial Service of Accepting Deposits;~~

~~(b) — (i) — the arrangements are arrangements under which the rights or interests of participants are rights or interests in money held in a common account; and~~

~~(ii) — the money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied in making payments to him or in satisfaction of sums owed by him or in the acquisition of property for him or the provision of services to him;~~

- ~~(c) — each of the participants carries on a business which does not involve any activities in GEN Rule 2.2.2(d) to (k) or (n) to (q) or activities which would be apart from any applicable exclusion and enters into the arrangements for commercial purposes related to that business except where the participant would carry on the business in question by virtue of being a participant in the arrangements;~~
  - ~~(d) — each of the participants is a Body Corporate in the same Group as the operator;~~
  - ~~(e) — the arrangements are franchise arrangements;~~
  - ~~(f) — the purpose is the provision of clearing services and the services are operated by an Authorised Market Institution;~~
  - ~~(g) — the rights or interests of the participants are Investments of the kind specified under GEN Rule A2.1.1(d);~~
  - ~~(h) — the rights or interests of the participants are time share rights; or~~
  - ~~(i) — (i) — a predominant purpose of the arrangements is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and~~
    - ~~(ii) — the property to which the arrangements relate does not consist of the currency of any country or territory and does not consist of or include any Investment of the kind specified in GEN Rule A2.1.1 or which would be of such a kind apart from any applicable exclusion.~~
- ~~2. — Arrangements do not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund if:~~
- ~~(a) — the arrangements are arrangements under which the rights or interests of the participants are represented by the following:~~
    - ~~(i) — Debentures which are issued by a single Body Corporate which is not an open ended investment company or which are issued by a single issuer which is not a Body Corporate and are guaranteed by the government of any country or territory;~~
    - ~~(ii) — Debentures falling within (i) which are convertible into or exchangeable for Shares provided that those Shares are issued by the same Person as issued the Debentures falling within (i) or issued by a single other issuer;~~
    - ~~(iii) — Debentures issued by the same government or public authority; or~~
    - ~~(iv) — Warrants which are issued otherwise than by a Collective Investment Fund and which confer rights in respect of Shares or Investments, falling within (i), (ii) or (iii), issued by the same issuer; or~~
  - ~~(b) — the arrangements are arrangements which would fall within (a) were it not for the fact that the rights or interests of a participant (counterparty) whose ordinary business involves him engaging in activities which fall within GEN chapter 2 or would do so apart from any applicable exclusions or include rights or interests under a swap agreement, that is to say, arrangements the purpose of which are to facilitate the making of payments to participants whether any particular amount or currency or at a~~

~~particular time or rate of interest or any combination of those things, being arrangements under which:~~

- ~~(i) the counterparty is entitled to receive amounts, whether representing principal or interest, payable in respect of any property subject to the arrangement or sums determined by reference to such amount; and~~
- ~~(ii) the counterparty makes payments, whether or not all of the same amount and whether or not in the same currency as those referred in (i), which are calculated in accordance with agreed formula by reference to the amounts or sums referred to those amounts or sums.~~

- ~~3. A Contract of Insurance does not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund.~~
- ~~4. Unless it is operated for collective investment purposes a Body Corporate, whether it is a closed ended or open ended company, does not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund.~~
- ~~5. Unless it is operated for collective investment purposes a Partnership, whether or not it is in the form of a limited partnership, does not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund.~~
- ~~6. Arrangements do not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund if the arrangements constitute an account, portfolio or fund which is a Profit Sharing Investment Account.~~
- ~~7. Arrangements do not, for the purposes of Article 18 of the Collective Investment Law 2006, amount to a Collective Investment Fund if the arrangements constitute individual portfolios or accounts managed under a separate investment management agreement with each Client whereby the Authorised Firm agrees to manage that particular Client's Investments and monies on a discretionary basis and such individual portfolios or accounts are grouped together on the basis of the relevant Clients having similar risk profiles solely for the purposes of facilitating the buying and selling by the Authorised Firm of Investments for each Client's portfolio or account on a group or pooled basis.~~

## **App 5 FEES**

### **A5.1 Fees table**

#### **A5.1.1** The fees table.

[Amended] [VER2/10-04] [Amended]VER3/04-05] [Amended]VER4/08-05]

(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; (x) Managing a Profit Sharing Investment Account; or (xi) Providing Trust Services; <u>or</u> (xii) <u>Providing Fund Administration.</u>	\$10,000
(d)	(i) Operating an Alternative Trading System <u>or</u> (ii) <u>Operating a Collective Investment Fund.</u>	\$30,000
(e)	Effecting Contracts of Insurance or Carrying out Contracts of Insurance: (i) where the applicant is not also intending	\$50,000

(ii) to carry on business as a Captive Insurer; or where the Authorised Firm is not carrying on business as a Captive Insurer.	