

OSR

1 INTRODUCTION

1.1 Application

1.1.1 The Rules in this module (OSR) are made to further the purpose of the Markets Law 2004. This module, OSR, applies to every Person to whom the Markets Law 2004 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of OSR provides for a narrower application.

1.1.2 (1) This module applies, subject to (2), to a Person in relation to an Offer of Securities.

2) Pursuant to Article 11 of the Collective Investment Law 2006, this module does not apply to a Person in relation to an Offer of a Unit or any right of interest in a Unit.

1.1.3 This module applies to:

(a) a Person applying to have Securities admitted to an Official List of Securities; and

(b) a Person who is a Reporting Entity;

including for these purposes, an Operator of a Fund applying to have Units admitted to an Official List of Securities and to an Operator which is a Reporting Entity.

1.1.4 This module applies to:

(a) a Person who is, or was, a Connected Person; and

(b) a Person who has, or had, a significant interest in a Listed Fund.

1.1.5 The module also applies to an Authorised Market Institution in relation to its operation and administration of an Official List of Securities.

1.1.6 Where a Rule prescribes a requirement on an Undertaking, each Director, Partner or other Person charged with the management of that Undertaking must take all reasonable steps within its control to secure compliance with the requirement by the Undertaking.

1.1.7 Where a Rule prescribes a requirement relating to a Director, Partner or Employee of an Undertaking:

- (a) the Director, Partner or Employee, as the case may be, is bound to take all reasonable steps within his control to secure compliance with the requirement; and
- (b) the Undertaking must take all reasonable steps to ensure compliance with the requirement by the Director, Partner or Employee.

1.2 Overview of Module

Guidance

Units and Listed Units

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10. Article 12 of the Markets Law 2004 provides as follows:

“The application of this Part 3 and any Offered Securities Rules made for the purpose of this Part is subject to any provision of a DIFC collective investment law or of any rules made for the purpose of that law which may govern the offer of Securities comprised of units or shares in a collective investment fund or any rights or interests in such units or shares”.

11. Article 11 of the Collective Investment Law 2006 provides as follows:

(1) Subject to Article 11(2), the Markets Law 2004 applies to the offer, issue or sale of a Unit or any right or interest in a Unit.

(2) Part 3 of the Markets Law 2004 and the Offered Securities Rules made for the purpose of that Part do not apply to the offer, issue or sale of a Unit or any right or interest in a Unit.

12. Article 12 of the Collective Investment Law 2006 defines what an Offer is for the purposes of that Law in relation to the Units of Funds. It also prescribes the circumstances in which such an Offer is to be construed as being made “in the DIFC” and also “from the DIFC”. Consequently, all the provisions in this module (OSR) relating to Offers do not apply to a Fund or its Operator. The provisions relating to Offers concerning Funds, both Foreign Funds and Domestic Funds, are set out in the conduct of business module (COB).

13. Accordingly, chapters 2 to 6 of this module inclusive do not apply to a Person in respect of Offers of Securities which are Units.

14. However, the other provisions of OSR do apply to a Fund in relation to the listing of Units, Listed Funds and to Operators which are Reporting Entities. Consequently, chapters 7 to 13 of this module apply as appropriate in relation to Funds and Operators.

2 OFFERS OF SECURITIES

2.1 Application

2.1.1 ~~This chapter applies to a Person in relation to an Offer of Securities in accordance with Rule 1.1.2. This chapter applies to every Person to whom the Markets Law 2004 applies and to the same extent in relation to every such Person as that law.~~

2.2 Offers

Guidance

Article 13(1) of the Markets Law 2004 reads as follows:

“(1) A person is to be regarded as making an offer of Securities if he:

- (a) makes an offer which, if accepted, would give rise to a contract for the issue of Securities by him or by another person with whom he has made arrangements for the issue of Securities; or
- (b) makes an offer or invitation in relation to an issue or sale of Securities in circumstances prescribed by the Offered Securities Rules.”

2.2.1 (1) The DFSA, for the purposes of Article 13(1)(b) of the Markets Law 2004, prescribes the following activities, in relation to a sale of Securities, as constituting an Offer:

- (a) (i) where a Person makes an offer to another Person which, if accepted, would give rise to a contract for the sale of Securities by him or by another Person with whom he has made arrangements for the sale of Securities; or
- (ii) where a Person (the ‘first Person’) invites another Person to make an offer which, if accepted by the first Person, would give rise to a contract for the sale of Securities by him or by another Person with whom he has made arrangements for the sale of Securities; and
- (b) the offer or invitation is a financial promotion of the Securities.

(2) ~~For the purposes of (1): (a) a~~Admitting a Security or having a Security admitted to an Official List of Securities does not amount to an invitation or an offer for the purposes of (1)(a)(i) and (ii).; ~~and~~

~~(b) an invitation or offer of a Unit by an Authorised Firm does not amount to an Offer.~~

- (3) In (1) a financial promotion is an advertisement or any other form of promotion or marketing inviting a Person to:
- (a) enter into an agreement;
 - (b) offer to enter into an agreement; or
 - (c) exercise any rights conferred by a Security;
- to acquire, dispose of, underwrite or convert a Security.
- (4) In (3) the financial promotion may be communicated in any manner including, but not limited to, the following:
- (a) orally;
 - (b) electronically; or
 - (c) in writing.
- (5) For the purposes of (1) and (3) where a Reporting Entity discloses information in accordance with the requirements of OSR, disclosure of such information is not a financial promotion provided the disclosure of the information does not:
- (a) include an express invitation or offer; or
 - (b) expressly encourage a Person;
- to engage in any of the activities specified in (3)(a), (b) or (c).

Guidance

- ~~1. The exception in Rule 2.2.1(2)(b) is of a temporary nature and will be in effect until the relevant collective investment legislation is in force. The effect of this exception is that an Offer of a Unit by a Person who is an Authorised Firm is not subject to the OSR. However, an Offer of a Unit by an Authorised Firm is governed under other provisions of the DFSA Rulebook, in particular, the Rules in COB. Conversely, the Offer of a Unit by a Person other than an Authorised Firm will be governed by OSR.~~
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2.3 Prohibition on offers

Guidance

1. Article 13(2) of the Markets Law 2004 sets out the prohibition on Offering Securities in the DIFC as follows:

“A person shall not make an offer of Securities in the DIFC unless the offer of Securities is made by way of an Exempt Offer or Prospectus Offer in accordance with this Part and the Offered Securities Rules.”

2. Article 13(2) refers to Exempt Offers and these are dealt with under section 2.4 and chapter 3 of this module.
3. Article 13(2) also refers to Prospectus Offers and these are dealt with under section 2.5 and chapter 4 of this module.
4. Article 13(4) prohibits a Person from making an Offer of Securities from the DIFC unless it is in accordance with the Offered Securities Rules. Rules in relation to Offering Securities from the DIFC are set out in section 2.7

5. ~~Article 12 of the Markets Law 2004 provides as follows:~~

~~“The application of this Part 3 and any Offered Securities Rules made for the purpose of this Part is subject to any provision of a DIFC collective investment law or of any rules made for the purpose of that law which may govern the offer of Securities comprised of units or shares in a collective investment fund or any rights or interests in such units or shares”.~~

5. The effect of Rule 1.1.2(2) is that chapters 2 to 6 do not apply to a Person in respect to Offers of Securities which are Units or any rights or interests in such Units.

~~2.3.1 A Person must not Offer Units in or from the DIFC to any Person other than to an Authorised Firm.~~

Guidance

1. ~~The prohibition will remain in place until such time as a collective investment law and rules are in force and thereby create a regime for Offering Units other than through Authorised Firms in accordance with Rule 2.2.1(2)(b).~~
2. ~~Mere Listing of a Unit would not amount to an offer in accordance with Rule 2.2.1(2)(a).~~
3. ~~See also Guidance note 5 above Rule 2.3.1.~~

[Added][VER2/08-05]

2.4 Exempt offers

- 2.4.1** (1) The DFSA, for the purposes of Article 14(2)(d) of the Markets Law 2004, prescribes an Offer as an Exempt Offer if where:
- (a) the Offer satisfies at least one of the following conditions:
 - (i) the Securities are Commercial Paper, certificates of deposit or bills of exchange;
 - (ii) the Offer is made to no more than 50 Offerees in the DIFC in any 12 month period;
 - (iii) the total consideration payable for the Securities does not exceed one million dollars; or
 - (iv) the Securities are Debentures and the minimum consideration which may be paid by any Person for the Securities acquired by him pursuant to the Offer is at least ~~50 thousand dollars~~ \$50,000; or

 - (b).....

2.5 Prospectus offers

- 2.5.1** A Person intending to make a Prospectus Offer in relation to the issue of Securities must be able to satisfy the DFSA before making the Offer that the Governing Body of the Undertaking whose ~~s~~Securities are to be offered:
- (a) is fulfilling or has systems and controls to enable it to comply with any applicable requirements set out in App2 and App4; and [Amended][VER2/08-05]
 - (b) has obtained all the necessary consents from the holders of Securities in accordance with App3.
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5 PROSPECTUS REQUIREMENTS

5.1 Application

- 5.1.1 (1) Sections 5.1 to 5.5 apply to an Offeror who is required under chapter 4 to file a Prospectus with the DFSA.
- (2) Sections 5.1 and 5.6 apply to a Reporting Entity other than a Reporting Entity which is an Operator of a Fund.
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7 LISTED SECURITIES

7.1 Application

- 7.1.1 (1) This chapter applies to:
- (a) a Person applying to have Securities admitted to an Official List of Securities;
 - (b) a Reporting Entity with Securities admitted to an Official List of Securities; and
 - (c) an Authorised Market Institution in relation to its operation and administration of an Official List of Securities.
- (2) For the purposes of (1)(a), this chapter applies, to the extent shown in Rule 7.1.2, to an Operator of a Fund applying to have the Units of its Fund admitted to an Official List of Securities.
- (3) For the purposes of (1)(b), this chapter applies to an Operator of a Listed Fund.

Guidance

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4. The effect of Rule 1.1.3 is that this chapter, and those that follow which are relevant, apply to an Operator applying to have Units admitted to an Official List of Securities and to a Reporting Entity with Units admitted to an Official List of Securities, that is, the Operator of a Listed Fund.

- 7.1.2** (1) The Units of a Domestic Private Fund, cannot be listed on an Authorised Market Institution.
- (2) The Units of a Foreign Fund, which are Offered, issued or sold only by means of private placement, cannot be listed on an Authorised Market Institution.
- (3) In addition to the restrictions in (2), where a Foreign Fund is a Property Fund in respect of which 60% or more of the Fund's assets comprise Real Property, it may be listed on an Authorised Market Institution but only if the Fund is a closed-ended investment vehicle.
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8 OBLIGATIONS OF REPORTING ENTITIES

8.1 Application

8.1.1 This chapter applies to a Reporting Entity.

Guidance

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8.1.2 In relation to a Fund, the Operator of the Fund is the Reporting Entity.

A2.3 Disclosures relating to Listed Funds [Added][VER2/08-05]

- A2.3.1** (1) On occurrence of an event in the “event” column, a the Reporting Entity (Operator) of a Listed Fund must make the type of disclosure described in accordance with the “requirements” column and the “time” column.
- (2) In cases where the Listed Fund is in the form of the trust, a the Reporting Entity (Operator) of that Listed Fund must construe the items specified in the event column in an appropriate manner so as to achieve the fundamental purpose of disclosing relevant equivalent information in respect of the trust.

[Amended] [VER3/09-05]