

Appendix 4

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



The DFSA Rulebook

General Module

(GEN)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

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9 **INTERNAL DISPUTE RESOLUTION and complaints handling**
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- 9.3 Complaints recording procedures for Professional Clients

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1 INTRODUCTION

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1.1 Overview of the module

Guidance

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8. Chapter 9 prescribes the manner in which an Authorised Firm must handle Complaints made against it by Retail Clients or Professional Clients.

2 FINANCIAL SERVICES

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2.12 Operating a collective investment fund

~~2.12.1 (1) — In Rule 2.2.2 Operating a Collective Investment Fund means establishing, operating or winding up a Collective Investment Fund;~~

~~(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.~~

(1) In Rule 2.2.2, Operating a Collective Investment Fund means:

(a) establishing, operating or winding up a Collective Investment Fund; and

(b) being responsible for the management of the property held for or within a Fund under the Fund’s Constitution.

(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 Operating a Collective Investment Fund.

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.

Guidance

1. Rule 2.12.1(2) alleviates any requirement upon an 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 these such Investments or Fund Property.
- (2) In (1) the following activities do not constitute the ‘administration of these 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.

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2.21 Managing a profit sharing investment account

2.21.1 In Rule 2.2.2 Managing a Profit Sharing Investment Account means managing an account, or portfolio of fund which is a Profit Sharing Investment Account.

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2.25 Acting as the Trustee of a Fund

2.25.1 ~~In Rule 2.2.2, Acting as the Trustee of a Fund means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of trust~~

- (1) In Rule 2.2.2, Acting as the Trustee of a Fund means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of an Investment Trust.
- (2) To the extent that any activity under (1) constitutes Providing Fund Administration or Providing Custody, such a Financial Service is taken to be incorporated within Acting as the Trustee of a Fund.

Guidance

Rule 2.25.1(2) alleviates any requirement upon a Trustee to obtain further authorisations for certain Financial Services where the activities fall within the ordinary scope of the activity of Acting as the Trustee of a Fund. The provision also facilitates the delegation of these discrete activities under CIR section 7.3.

Exclusions

2.25.2 A Person is not Acting as the Trustee of a Fund merely because he is acting as an agent, employee or delegate of a Trustee.

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

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3.2 Permitted Financial Services for Authorised Firms

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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.

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5 MANAGEMENT, SYSTEMS AND CONTROLS

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5.3 Systems and controls

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- 5.3.1 (1) An Authorised Firm must ensure, as far as reasonably practical, that its Employees are: [Amended][VER10/06-06]
- (a) fit and proper;
 - (b) ~~appropriately trained for the duties they perform; and~~
 - (b) competent and capable of performing the functions which are to be assigned to those Employees; and
 - (c) trained in the requirements of the legislation applicable in the DIFC.
- (2) An Authorised Firm must establish and maintain systems and controls to comply with (1). An Authorised Firm must be able to demonstrate that it has complied with these requirements through appropriate measures, including the maintenance of relevant records. [Amended][VER10/06-06]

Guidance

1. When considering whether an Employee is fit and proper, competent and capable, an Authorised Firm should consider any training undertaken or required by an Employee, the nature of the Clients to whom an Employee provides Financial Services, and the type of activities performed by an Employee in the provision of such Financial Services including any interface with Clients.
- 1.2. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in AUT section A1.3 and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.
- 2.3. ~~In particular, when~~ When assessing the competence and capability of an Employees, an Authorised Firm should:
 - a. obtain details of the skills, knowledge and experience ~~skills~~ of the ~~individual~~ Employee relevant to the nature and requirements of the role in relation to the knowledge and skills required for the role;

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- b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained; ~~and~~
 - c. determine, in light of the ~~individual's~~ Employee's relevant skills, qualifications, knowledge and experience, that the Employee person is competent and capable of fulfilling the duties of the role to be assigned to the person. it; and
 - d. consider the level of responsibility that the Employee will assume within the Authorised Firm, including whether the Employee will be providing Financial Services to Retail Clients in an interfacing role.
- 3 4. An Authorised Firm should also satisfy itself that an Employee:
- a. continues to be competent and capable of performing in his proposed his role;
 - b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the Employee's role, through training or other means; and
 - c. is able to apply his knowledge.

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Complaints

- 5.3.2** ~~-[Deleted] An Authorised Person must establish and maintain a register of Customer Complaints and their resolutions. Records of the complaints must be maintained for a minimum of six years.~~

Guidance

~~Depending on the nature, size and complexity of its business, it may be appropriate for an Authorised Person to have a suitable complaint handling procedure in place in order to ensure that Customer Complaints are properly handled and that remedial action is taken promptly. Such complaint handling procedures would be expected to include provisions about the independence of staff investigating the complaint and bringing the matter to the attention of senior management.~~

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9 COMPLAINTS HANDLING AND DISPUTE RESOLUTION

9.1 Application

9.1.1 This chapter applies to an Authorised Firm 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.

9.2 Complaints handling procedures for Retail Clients

Written Complaints handling procedures

9.2.1 An Authorised Firm must have adequate policies and procedures in place for the investigation and resolution of Complaints made against it by Retail Clients, and the manner of redress (including compensation for acts or omissions of the Authorised Firm).

9.2.2 The policies and procedures for handling Complaints must be in writing and provide that Complaints are handled fairly, consistently and promptly.

Guidance

1. In establishing adequate Complaints handling policies and procedures, an Authorised Firm should have regard to:
 - a. the nature, scale and complexity of its business; and
 - b. its size and organisational structure.
2. In handling Complaints, an Authorised Firm should consider its obligations under the Data Protection Law 2007.
3. An Authorised Firm should consider its obligations under GEN Rule 5.3.19 and accompanying guidance.
4. The DFSA considers 60 days from the receipt of a Complaint to be an appropriate period in which an Authorised Firm should be able to resolve most Complaints.

9.2.3 On receipt of a Complaint, an Authorised Firm must:

- (a) acknowledge the Complaint promptly in writing;
- (b) provide the complainant with:
 - (i) the contact details of any individual responsible for handling the Complaint;
 - (ii) key particulars of the Authorised Firm's Complaints handling procedures; and
 - (iii) a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11; and
- (c) consider the subject matter of the Complaint.

9.2.4 Where appropriate, an Authorised Firm must update the complainant on the progress of the handling of the Complaint.

Guidance

1. The DFSA considers 7 days to be an adequate period in which an Authorised Firm should be able to acknowledge most Complaints.
2. The DFSA expects an update to be provided to the complainant in circumstances where the resolution of the Complaint is taking longer than 30 days.

Resolution of Complaints

9.2.5 Upon conclusion of an investigation of a Complaint, an Authorised Firm must promptly:

- (a) advise the complainant in writing of the resolution of the Complaint;
- (b) provide the complainant with clear terms of redress, if applicable; and
- (c) comply with the terms of redress if accepted by the complainant.

9.2.6 If the complainant is not satisfied with the terms of redress offered by the Authorised Firm, the Authorised Firm must inform the complainant of other avenues, if any, for resolution of the Complaint and provide him with the appropriate contact details upon request.

Guidance

Other avenues for resolution of a Complaint may include an external dispute resolution scheme, arbitration or the DIFC Court.

Employees handling Complaints

9.2.7 Where appropriate, taking into account the nature, scale and complexity of an Authorised Firm's business, an Authorised Firm must ensure that any individual handling the Complaint is not or was not involved in the conduct of the Financial Service about which the Complaint has been made, and is able to handle the Complaint in a fair and impartial manner.

9.2.8 An Authorised Firm must ensure that any individual responsible for handling the Complaint has sufficient authority to resolve the Complaint or has access to individuals with the necessary authority.

Complaints involving other Authorised Firms or Regulated Financial Institutions

9.2.9 If an Authorised Firm considers that another Authorised Firm or a Regulated Financial Institution is entirely or partly responsible for the subject matter of a Complaint, it may refer the Complaint, or the relevant part of it, to the other Authorised Firm or Regulated Financial Institution in accordance with Rule 9.2.10.

9.2.10 To refer a Complaint, an Authorised Firm must:

- (a)** inform the complainant promptly and in writing that it would like to refer the Complaint, either entirely or in part, to another Authorised Firm or Regulated Financial Institution, and obtain the written consent of the complainant to do so;
- (b)** if the complainant consents to the referral of the Complaint, refer the Complaint to the other Authorised Firm or Regulated Financial Institution promptly and in writing;
- (c)** inform the complainant promptly and in writing that the Complaint has been referred and include adequate contact details of any individual at the other Authorised Firm or Regulated Financial Institution responsible for handling the Complaint; and
- (d)** continue to deal with any part of the Complaint not referred to the other Authorised Firm or Regulated Financial Institution, in accordance with this chapter.

Guidance

The referral of a Complaint may involve the transfer of Personal Data, as defined under the Data Protection Law 2007, DIFC Law No 1 of 2007. In this respect, an Authorised Firm should consider its obligations under the Data Protection Law 2007.

Retail Client awareness

- 9.2.11** An Authorised Firm must ensure that a copy of its Complaints handling procedures is available free of charge to any Retail Client upon request.

Retention of records

- 9.2.12** An Authorised Firm must maintain a record of all Complaints made against it for a minimum period of six years from the date of receipt of a Complaint.

- 9.2.13** This record must contain the name of the complainant, the substance of the Complaint, a record of the Authorised Firm's response, and any other relevant correspondence or records, and the action taken by the Authorised Firm to resolve each Complaint.

Systems and controls

- 9.2.14** In accordance with GEN Rules 5.3.4 and 5.3.5, an Authorised Firm must put in place adequate systems and controls in order for it to identify and remedy any recurring or systemic problems identified from Complaints.

Guidance

An Authorised Firm should consider whether it is required to notify the DFSA, pursuant to SUP Rule 7.3.1, of any recurring or systemic problems identified from Complaints.

Outsourcing

Guidance

An Authorised Firm may outsource the administration of its Complaints handling procedures in accordance with GEN Rule 5.3.21.

9.3 Complaints recording procedures for Professional Clients

- 9.3.1** An Authorised Firm must have adequate policies and procedures in place for the recording of Complaints made against it by Professional Clients.

- 9.3.2** An Authorised Firm must maintain a record of any Complaint made against it for a minimum period of six years from the date of receipt of the Complaint.

Guidance

Depending on the nature, scale and complexity of its business, it may be appropriate for an Authorised Firm to have in place a suitable Complaints handling procedure for Professional Clients in order to ensure that such Complaints are properly handled and remedial action is taken promptly. Such Complaints handling procedures would be expected to include provisions about the independence of staff investigating the Complaint and bringing the matter to the attention of senior management.