

## **Appendix 4**

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

A number of Rules included in the text are not being amended, but are included for reference.

\*This text includes amendments proposed in CP [109]: [Crowdfunding: SME Financing through Lending]



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# **The DFSA Rulebook**

**Prudential – Investment, Insurance  
Intermediation and  
Banking Module**

**(PIB)**

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## **1 APPLICATION, INTERPRETATION AND CATEGORISATION**

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### **Branches**

**1.1.2** Unless otherwise directed by the DFSA, an Authorised Firm that is a Branch is required to comply with the Rules in chapters 2 to 11 as specifically provided in “Application Table A” which forms part of this Rule.

### **Guidance**

1. The effect of Rule 1.1.1(1) is that these Rules apply to all Authorised Firms, except those carrying on Insurance Business (that is, Insurers), that operate a Representative Office and those that are CRAs. Those Authorised Firms that are authorised to effect or carry out Contracts of Insurance should refer to the PIN module. Authorised Firms that are authorised to Operate a Representative Office should refer to the REP module.
2. These Rules apply both to Domestic Firms and, to the extent specified in Rule 1.1.2, to Authorised Firms conducting Financial Services through a Branch in the DIFC.
3. The Rules in PIB reinforce the fitness and propriety requirements found in GEN chapter 5 - Management Systems and Principle 4 for Authorised Firms. The PIB module is set out in:
  - a. an initial chapter establishing a categorisation of firms for the application of PIB;
  - b. two general chapters setting overall requirements: General Requirements and Capital;
  - c. six chapters setting specific requirements relating to the following particular risks or issues: Credit Risk, Market Risk, Operational Risk, Interest Rate Risk in the Non-Trading Book, Group Risk and Liquidity Risk;
  - d. a chapter imposing processes for supervisory assessment, by which an Authorised Firm which is a Domestic Firm in Category 1, 2 or 5 has obligations to establish and conduct an IRAP and an ICAAP, and to provide documented assessments to the DFSA; and
  - e. a final chapter imposing public disclosure requirements.

### **Domestic Firms**

4. To assist Authorised Firms that are Domestic Firms there is a table “Application Table B” which sets out in general the application of the provisions in this module to different Categories of Authorised Firms. This table is for Guidance purposes only. The Rules in this module apply to Authorised Firms in accordance with this Chapter and as specified in Rules elsewhere in this module.
5. With regards to Authorised Firms carrying on Islamic Financial Business, there are additional matters that should be included in their report to the DFSA which are in the Islamic Finance Rules (IFR) module (see section 5.4 of IFR module).

*[This Rule is included for reference only]*

**APPLICATION TABLE A FOR AUTHORISED FIRMS THAT OPERATE AS A BRANCH IN THE DIFC**

<b>PIB Chapters</b>	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3A</b>	<b>Category 3B</b>	<b>Category 3C</b>	<b>Category 4</b>	<b>Category 5</b>
Chapter 1: Application, Interpretation and Categorisation	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter
Chapter 2: General Requirements	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter	Whole Chapter
Chapter 3: Capital	Only Rule 3.2.4	Only Rule 3.2.4	Only Rule 3.2.4	Only Rule 3.2.4	Only Rule 3.2.4	Whole Chapter for a <u>Branch of a Loan-based Crowdfunding Operator</u>  Only Rule 3.2.4 for Branches of other types of firms	Only Rule 3.2.4
Chapter 4: Credit Risk	Only sections 4.1 to 4.4 and Rules 4.5.1 to 4.5.7 and 4.5.9	Only sections 4.1 to 4.4 and Rules 4.5.1 to 4.5.7 and 4.5.9	Only sections 4.1 to 4.4 and Rules 4.5.1 to 4.5.7 and 4.5.9				Only sections 4.1 to 4.4 and Rules 4.5.1 to 4.5.7 and 4.5.9
Chapter 5: Market Risk	Only sections 5.1 and 5.2	Only sections 5.1 and 5.2	Only sections 5.1 and 5.2				Only sections 5.1 and 5.2
Chapter 6: Operational Risk	Whole Chapter, except sections 6.11 and 6.12	Whole Chapter, except sections 6.11 and 6.12	Whole Chapter, except sections 6.11 and 6.12	Whole Chapter, except sections 6.10 and 6.11	Whole Chapter, except sections 6.10 and 6.11	Whole Chapter, except sections 6.10 and 6.11	Whole Chapter, except sections 6.11 and 6.12
Chapter 7: Interest Rate Risk In the Non-Trading Book	Whole Chapter	Whole Chapter					
Chapter 8: Group Risk	Only sections 8.1, 8.2 and 8.5	Only sections 8.1, 8.2 and 8.5	Only sections 8.1 and 8.5	Only sections 8.1 and 8.5	Only sections 8.1 and 8.5	Only sections 8.1 and 8.5	Only sections 8.1, 8.2 and 8.5
Chapter 9: Liquidity Risk	Whole Chapter, except Rule 9.2.2(3)	Only Rule 9.2.2 (3)					Whole Chapter, except Rule 9.2.2(3)



**PRUDENTIAL – INVESTMENT, INSURANCE INTERMEDIATION AND BANKING (PIB)**

<b>PIB Chapters</b>	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3A</b>	<b>Category 3B</b>	<b>Category 3C</b>	<b>Category 4</b>	<b>Category 5</b>
Chapter 10:Supervisory Review and Evaluation Processes							
Chapter 11:Disclosure Requirements							

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## 1.3 Categories of Authorised Firms

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### Category 4

**1.3.6** An Authorised Firm is in Category 4 if:

- (a) its Licence authorises it to carry on one or more of the Financial Services of Arranging Deals in Investments, Advising on Financial Products, Arranging Custody, Insurance Intermediation, Insurance Management, Operating an Alternative Trading System, Providing Fund Administration, Providing Trust Services (where it is not acting as trustee in respect of an express trust), Arranging Credit and Advising on Credit or Operating a ~~Loan-based~~ Crowdfunding Platform; and
- (b) it does not meet the criteria of Categories 1, 2, 3A, 3B, 3C or 5.

#### Guidance

An Authorised Firm in Category 4 may not be authorised to conduct any other Financial Service beyond those listed in Rule 1.3.6(a); if it were so authorised it would belong to another Category.

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## 3 CAPITAL

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## PART 2 – Basic Requirements

### 3.2 Requirements

#### Application

##### 3.2.1 In this section:

- (a) Rules 3.2.2 to 3.2.5 apply to an Authorised Firm in any Category;
- (b) Rule 3.2.6 applies only to an Authorised Firm in Category 3B, 3C or 4; and
- (c) Rule 3.2.7 applies only to an Authorised Firm in Category 1, 2, 3A or 5.

*[This Rule is included for reference only]*

#### Maintaining Capital Resources

##### 3.2.2 An Authorised Firm that is a Domestic Firm, and a ~~Loan-based~~ Crowdfunding Operator that is a Branch, must:

- (a) have and maintain, at all times, Capital Resources of the kinds and amounts specified in, and calculated in accordance with, the Rules in PIB; and
- (b) ensure that it maintains capital and liquid assets in addition to the requirement in (a) which are adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due.

#### Guidance

1. For the purposes of Rule 3.2.2, an Authorised Firm's Governing Body should assess whether the Capital Resources which are required by the DFSA as set out in PIB are adequate in relation to the Authorised Firm's specific business. Additional resources should be maintained by the Authorised Firm where its Governing Body has considered that the required Capital Resources do not adequately reflect the nature and risks of the Authorised Firm's business.
2. The liabilities referred to in Rule 3.2.2(b) include an Authorised Firm's contingent and prospective liabilities, such as liabilities arising from a change in business strategy or claims made against the Authorised Firm, but not liabilities that might arise from prospective transactions which the Authorised Firm could avoid, for example by ceasing its operations. Liabilities from prospective transactions refers to the potential liabilities which can be avoided by either adequate risk management, risk transfer or avoiding the transaction completely. This refers to any prospective transaction, for example, lending money to a borrower or entering into a contract for the provision of services by a service provider.
3. An Authorised Firm subject to the requirements in chapter 10 may be required to meet Individual Capital Requirements under those Rules.

##### 3.2.3 An Authorised Firm must have, at all times, Capital Resources which exceed the amount of its Capital Requirement.

**Guidance**

The specific Capital Requirements for the various Categories of Authorised Firms are dealt with in sections 3.3, 3.4 and 3.5.

**Systems and controls****Guidance**

For the purposes of section 3.2, an Authorised Firm is required to have systems and controls in place to enable it to be certain that it has adequate Capital Resources to comply with Rule 3.2.3 at all times. An Authorised Firm's systems and controls should be such as to allow it to demonstrate its capital adequacy at any particular time if required to do so by the DFSA. Where through the operation of those systems and controls an Authorised Firm forms the view that it may not be able to satisfy the requirements of Rule 3.2.3 in the future, that Authorised Firm is required to immediately inform the DFSA in accordance with Rule 3.2.5.

*[The above text is included for reference only]*

**3.2.4** An Authorised Firm (other than a ~~Loan-based~~ Crowdfunding Operator) that is a Branch must:

- (a) ensure that it has and maintains, at all times, liquid assets and access to financial resources which are adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due;
- (b) ensure that it complies with its home state Financial Services Regulator's prudential requirements;
- (c) submit to the DFSA a copy of every capital adequacy summary report and leverage ratio report submitted to its home state Financial Services Regulator within ten business days of the due date for submission to that regulator; and
- (d) in the event of any anticipated or actual breach of any prudential requirements set by its home state Financial Services Regulator, notify the DFSA forthwith with any relevant documents.

**3.2.5** (1) An Authorised Firm must have systems and controls to enable it to determine and monitor:

- (a) its Capital Requirement; and
  - (b) whether the amount of its Capital Resources is, and is likely to remain, greater than the amount of its Capital Requirement.
- (2) Such systems and controls must include an analysis of:
- (a) realistic scenarios which are relevant to the circumstances of the Authorised Firm; and
  - (b) the effects on the Capital Requirement of the Authorised Firm and on its Capital Resources if those scenarios occurred.

- (3) An Authorised Firm must notify the DFSA immediately and confirm in writing any breach, or expected breach, of any of the provisions of this chapter by the Authorised Firm.

**Guidance**

1. App3 provides Guidance on the nature and type of stress and scenario testing that Authorised Firms should be undertaking to support their view that they have adequate financial resources to meet their obligations.
2. The requirements in this chapter apply to Authorised Firms on a solo basis. An Authorised Firm may also be subject to Capital Resources requirements at a Group level. Group requirements are addressed in chapter 8.

*[The above text is included for reference only]*

**Notifications to the DFSA**

- 3.2.6** (1) This Rule applies to an Authorised Firm in Category 3B, 3C or 4.
- (2) An Authorised Firm must notify the DFSA immediately and confirm in writing if its Capital Resources fall below 120% of its Capital Requirement.

*[The above text is included for reference only]*

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**3.6 Base Capital Requirement**

- 3.6.1** This section applies to an Authorised Firm in any Category.

**Guidance**

The Base Capital Requirement is a component of the calculation of the Capital Requirement under sections 3.3, 3.4 and 3.5.

*[The above text is included for reference only]*

- 3.6.2** The table below sets out the Base Capital Requirement for each Category of an Authorised Firm.



Category	Base Capital Requirement
Category 1	US \$10 million
Category 2	US \$2 million
Category 3A	US \$500,000
Category 3B	US \$4 million
Category 3C	<p style="text-align: center;">US \$500,000</p> <p>Except if the only Financial Service referred to in Rule 1.3.5(a) that the Authorised Firm is authorised to carry on is Managing a Collective Investment Fund in which case its Base Capital Requirement is:</p> <p>(a) US \$140,000 if it manages any Public Fund; or</p> <p>(b) US \$70,000 otherwise.</p>
Category 4	<p style="text-align: center;">US \$ 10,000</p> <p><u>Except if the Authorised Firm is authorised to Operate a Crowdfunding Platform and it holds Client Assets, in which case its Base Capital Requirement is US \$140,000.</u></p>
Category 5	US \$10 million

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## **6 OPERATIONAL RISK**

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### **6.1 Application**

**6.1.1** This chapter applies to an Authorised Firm as follows:

- (a) Sections 6.1 to 6.9 apply to an Authorised Firm in any Category;
- (b) Sections 6.10 and 6.11 apply only to an Authorised Firm in Category 1, 2, 3A or 5;
- (c) Section 6.12 applies only to an Authorised Firm in Category 3B, 3C or 4 which undertakes one or more of the following Financial Services:
  - (i) Arranging Deals in Investments;
  - (ii) Managing Assets;
  - (iii) Advising on Financial Products;

- (iv) Managing a Collective Investment Fund;
- (v) Providing Custody;
- (vi) Insurance Intermediation;
- (vii) Insurance Management;
- (viii) Managing a Profit Sharing Investment Account (unrestricted);
- (ix) Providing Trust Services;
- (x) Providing Fund Administration;
- (xi) Acting as the Trustee of a Fund;
- (xii) Arranging Credit and Advising on Credit; or
- (xiii) Operating a ~~Loan-based~~ Crowdfunding Platform.

#### **Guidance**

Section 5.3 of the GEN Module contains Rules and Guidance in relation to Systems and Controls, some of which may relate to the management of Operational Risk. The Corporate Governance rules in the GEN module set out overarching requirements in relation to Board responsibilities, including risk management. The Rules and Guidance in this section seek to complement the aforementioned requirements, while providing for a framework to address matters which directly relate to Operational Risk management.

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## **6.12 Professional indemnity insurance**

**6.12.1** This section applies to an Authorised Firm in Category 3B, 3C or 4 which undertake one or more of the Financial Services prescribed in Rule 6.1.1(c).

**6.12.2** An Authorised Firm must:

- (a) take out and maintain professional indemnity insurance cover appropriate to the nature, size, complexity and risk profile of the Authorised Firm's business;
- (b) at least annually, provide the DFSA with a copy of the professional indemnity insurance cover in (a) covering the following twelve month period; and
- (c) notify the DFSA of any material changes to the cover in (a), including the level of cover, its renewal or termination.

**6.12.3** (1) An Authorised Firm is not required to comply with Rule 6.12.2 in respect of its business of Operating a ~~Loan-based~~ Crowdfunding Platform if it has taken reasonable steps to try to obtain professional indemnity insurance cover for its business, but no cover is reasonably available.

- (2) If professional indemnity insurance cover becomes reasonably available to the Authorised Firm referred to in (1):
  - (a) the exclusion in (1) ceases to apply; and
  - (b) the Authorised Firm must obtain the insurance as soon as practicable.

**Guidance**

1. In complying with Rule 6.12.2, an Authorised Firm should take out and maintain a contract for professional indemnity insurance (PII) from a reputable and well-capitalised insurer and such contract should include cover in respect of claims for which the Authorised Firm may be liable as a result of the conduct of itself and its Employees and appropriate cover in respect of legal costs arising from a claim.
2. Pursuant to Rule 6.4.1(c), an Authorised Firm should notify the DFSA of any significant PII claim made. What amounts to a significant claim will depend on the nature size and complexity of the Authorised Firm and the DFSA would expect the Authorised Firm to treat a series of small single claims which are significant in aggregate as significant for the purposes of Rule 6.4.1(c).
3. An Authorised Firm can fulfil the requirements under this section by ensuring coverage of its activities under a group-wide PII policy, provided that policy covers the Authorised Firm and its activities and that policy meets the conditions specified in this section. Where the Authorised Firm's group PII cover does not meet the requirements specified under this section, the Authorised Firm will be required to obtain PII cover that meets those requirements.
4. A ~~Loan-based~~ Crowdfunding Operator is not required to obtain a PII policy if it has taken appropriate steps to try to obtain that insurance for its business, but no cover is reasonably available. The exclusion ceases to apply if PII cover does become reasonably available to the Operator, in which case the operator must obtain the policy as soon as practicable.

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## **APP1 CATEGORIES OF AUTHORISED FIRMS**

### **A1.1 Categorisation of Authorised Firms**

**Guidance**

1. This section contains the table referred to in the Guidance notes at the commencement of section 1.3 of PIB. This table is for guidance purposes only.
2. The Financial Services described in the emboldened boxes in the table are the determinants for the prudential Category. The activities set out in the boxes in the table are Financial Services (see GEN chapter 2). The Financial Services that an Authorised Firm is authorised to carry on are specified on its Licence.
3. If a Person carries on any one or more of the Financial Services specified in an emboldened box under a particular Category, then the highest such Category is that Person's Category for the purposes of this module.

4. An exception to the above is an Islamic Financial Institution which Manages a PSIA which is an PSIAu. Such an institution falls in Category 5.

**PRUDENTIAL – INVESTMENT, INSURANCE INTERMEDIATION AND BANKING (PIB)**

Category 1	Category 2	Category 3A	Category 3B	Category 3C	Category 4	Category 5
Accepting Deposits	Dealing in Investments as Principal (not as Matched Principal)	Dealing in Investments as Principal (only as a Matched Principal)	Providing Custody (only if for a Fund)	Managing a Collective Investment Fund	Arranging Deals in Investments	An Islamic Financial Institution which Manages a PSIAu
Managing a PSIAu	Providing Credit	Dealing as Agent	Acting as the Trustee of a Fund	Managing Assets	Advising on Financial Products	
				Providing Trust Services as a trustee of an express trust	Arranging Custody	
				Managing a PSIAr	Insurance Intermediation	
				Providing Custody (other than for a Fund)	Insurance Management	
					Operating an Alternative Trading System	
					Providing Fund Administration	
					Providing Trust Services other than as a trustee of an express trust	
					Arranging Credit and Advising on Credit	
					Operating a Loan-based Crowdfunding Platform	