

Appendix 2

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



The DFSA Rulebook

General Module

(GEN)

2 FINANCIAL SERVICES

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2.2 Financial Service activities

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2.2.7A (1) An Authorised Firm may use a Fund Platform only if it:

(a) is a Fund Manager; and

(b) has an endorsement on its Licence permitting it to use a Fund Platform.

(2) In (1), an Authorised Firm uses a Fund Platform if it uses an Incorporated Cell Company (ICC) to provide infrastructure that facilitates the establishment, management, operation or winding up of a Fund that is an Incorporated Cell of the ICC.

Guidance

1. A Fund Platform is an Incorporated Cell Company (ICC) that provides infrastructure to one or more Funds that are Incorporated Cells of the ICC.
2. Infrastructure that facilitates a Fund Manager to manage Funds includes common rules and procedures, technical facilities, human resources, risk management tools and procedures, compliance and oversight facilities and other infrastructure relating to fund administration and asset management activities.
3. Both CIR and the ICC Regulations contain additional requirements that apply to a Fund Manager using a Fund Platform.

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2.12 Managing a collective investment fund

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

(a) being legally accountable to the Unitholders in the Fund for the management of the property held for or within a Fund under the Fund's Constitution; and

(b) establishing, managing or otherwise operating or winding up a ~~Collective Investment~~ Fund.

(2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Managing a Collective Investment Fund.

(3) The Person referred to in (1) is a Fund Manager.

Guidance

A Fund Manager can Provide Custody under Rule 2.12.1(2) only to the extent that a Fund Manager is expressly permitted under the Collective Investment Law 2010 or CIR to hold Fund Property without having to appoint an Eligible Custodian to do so. See CIR 8.2.2(3) for an example of the circumstances in which an Eligible Custodian is not required. Similarly, where a Fund Manager uses the Fund Platform structure, the Fund Platform can carry out the custody function in relation to Fund Property of the Funds established on the Fund Platform only to the extent that the Fund Manager is permitted to do so.

Exclusions

2.12.2 Pursuant to Article 20(3) of the Collective Investment Law 2010, a Person is hereby prescribed by the DFSA as not Managing a Collective Investment Fund merely because that Person:

- (a) is acting as an agent, employee or delegate of the Fund Manager; or
- (b) takes steps to wind up or dissolve a Fund or remedy a defect that led to a Fund being deregistered.

2.12.3 An Incorporated Cell Company (ICC) does not Manage a Collective Investment Fund, or carry on a Financial Service referred to in Rule 2.12.1(2), if:

- (a) the operator of the ICC is a Fund Manager that has an endorsement permitting it to use a Fund Platform; and
- (b) the ICC merely provides infrastructure in relation to a Fund that is an Incorporated Cell of the ICC.

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7 AUTHORISATION

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7.3 Applications for endorsements

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Endorsement to use a Fund Platform

7.3.6 A Person applying for an endorsement to use a Fund Platform must:

- (a) be authorised to Manage a Collective Investment Fund; and
 - (b) satisfy the DFSA that the Incorporated Cell Company that is to be the Fund Platform;
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- (i) has adequate systems and controls to establish, manage, operate or wind up the type or specialist classes of Funds proposed to be established as Incorporated Cells of that Incorporated Cell Company; and
- (ii) can carry out those activities in accordance with the requirements under the Collective Investment Law 2010 and CIR that apply to the relevant type or specialist classes of Fund referred to in (i).

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11 SUPERVISION

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~~11.9 Creation of additional cells of a protected cell company for an Insurer Deleted~~

~~11.9.1 This section applies to Insurers that are Protected Cell Companies.~~

~~Guidance~~

- ~~1. An Insurer that is a Protected Cell Company is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the DIFC Company Regulations.~~
- ~~2. Under the provisions of the DIFC Company Regulations dealings or transactions between Cells in relation to an Insurer may take place only with the approval of the Court.~~
- ~~3. An Authorised Firm which intends to apply to the Court for approval under the provisions is invited to consult with the DFSA before making the necessary application to the Court.~~

~~11.9.2 An Insurer that is a Protected Cell Company may not create a new Cell unless approval has been granted by the DFSA.~~

~~11.9.3 An application to the DFSA for the approval for the creation of a new Cell must be made on the appropriate form in AFN, and shall be accompanied by such documents and information and verified in such manner, as the DFSA may require.~~

- ~~11.9.4 (1) The DFSA may:~~
- ~~(a) grant approval;~~
 - ~~(b) grant approval with conditions or restrictions; or~~
 - ~~(c) refuse approval;~~

for the creation of a new Cell.

- (2) ~~The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (1)(b) and (c).~~
- (3) ~~If the DFSA decides to exercise its power under (1)(b) and (c), the Insurer may refer the matter to the FMT for review.~~

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11.10 Notifications

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Accuracy of information

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- 11.10.19** In the case of an Insurer which is a Protected Cell Company or an Incorporated Cell Company, an Insurer must advise the DFSA immediately if it becomes aware of any actual or prospective significant change in the type or scale of the business conducted through a Cell, or in the ownership of the Cell shares of the Protected Cell Company or of an Incorporated Cell of the ICC.