

Appendix 1

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



Notice of Amendments

General Module

(GEN)

<u>Changes in relation to Consultation Paper No. 82</u>
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2 FINANCIAL SERVICES

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2.2 Financial Service activities

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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) Managing 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 Intermediation;
- (q) Insurance Management;
- (r) Managing a Profit Sharing Investment Account;
- (s) Operating an Alternative Trading System;
- (t) Providing Trust Services;

- (u) Providing Fund Administration;
- (v) Acting as the Trustee of a Fund; and
- (w) Operating a Representative Office; and
- (x) Operating a Credit Rating Agency.

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2.27 Operating a Credit Rating Agency

2.27.1 (1) In Rule 2.2.2, Operating a Credit Rating Agency means undertaking one or more Credit Rating Activities for the purpose of producing a Credit Rating with a view to that Credit Rating being:

- (a) disseminated to the public; or
- (b) distributed to a Person by subscription;

whether or not it is in fact disseminated or distributed.

(2) For the purposes of (1):

- (a) Credit Rating Activities are data and information analysis relating to a Credit Rating or the evaluation, approval, issue or review of a Credit Rating; and
- (b) a Credit Rating is an opinion expressed using an established and defined ranking system of rating categories regarding the creditworthiness of a Rating Subject.

(3) In (2), a Rating Subject means:

- (a) a Person other than a natural person;
- (b) a credit commitment; or
- (c) a debt or debt-like Investment.

Exclusions

2.27.2 A Person does not Operate a Credit Rating Agency where that Person prepares any credit scores, credit scoring systems or similar assessments relating to obligations arising from consumer, commercial or industrial relationships.

Guidance

1. The effect of Rule 2.27.1 is that even if a Person undertakes from a place of business in the DIFC some but not all of the Credit Rating Activities for the purpose of producing a Credit Rating, that Person needs to have a Licence authorising it to Operate a Credit Rating Agency.

2. Where a Credit Rating Agency outsources some of its Credit Rating Activities, it will need to ensure that it meets the relevant requirements, including those relating to outsourcing, in Rule 5.3.21.
3. There is no express prohibition against carrying on the Financial Service of Operating a Credit Rating Agency by Persons who are authorised to carry on other Financial Services. However, the specific conduct requirements applicable to Credit Rating Agencies in COB chapter 8, include a prohibition against certain types of consultancy and advisory services being provided by a Credit Rating Agency. Therefore, even if a Credit Rating Agency has an appropriate Licence authorising it to provide advice on financial products, it will not be able to provide the prohibited type of consultancy and advisory services.
4. A Person may provide a private Credit Rating for the exclusive use of another Person (Second Person) without seeking a License authorising it to Operate a Credit Rating Agency where the Credit Rating is produced based on the request of the Second Person and is not intended to be disseminated to the public or distributed by subscription. Such a Person may wish to include an express warning in the Credit Rating that it is intended only for the exclusive use of the Second Person and obtain from such Second Person a prior written undertaking that the Credit Rating will not be disseminated to the public or distributed on subscription.
5. Credit scoring referred to in Rule 2.27.2 is a method of assessing creditworthiness. A credit score is primarily based on credit report information typically sourced from credit bureaus. A Person does not become a Credit Rating Agency merely by preparing or providing credit assessments. Lenders, such as banks and credit card companies, use credit scores to evaluate the potential risk posed by lending money to consumers and to mitigate losses due to bad debt. Insurance companies, and government departments also employ the same techniques.

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4 CORE PRINCIPLES

4.1 Principles for Authorised Firms – application

- 4.1.1 (1) The twelve Principles for Authorised Firms, set out in section 4.2, apply subject to (2) and (3) to every Authorised Firm, ~~other than a Representative Office~~, in accordance with Rules 4.1.2 and 4.1.3.
- (2) The twelve Principles for Authorised Firms, set out in section 4.2, do not apply to an Authorised Firm which is a Representative Office.
- (3) An Authorised Firm which is a Credit Rating Agency does not have to comply with the Principles set out in Rules 4.2.6, 4.2.7, 4.2.8 and 4.2.9.

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7 AUTHORISATION

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Consideration and assessment of application

7.2.5

Guidance

A Credit Rating Agency is not subject to any specific capital requirements in PIB. Instead, it is required, pursuant to Rules 4.2.4 and 7.2.5 to have and maintain adequate financial resources to manage its affairs prudently and soundly.

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7.5 Mandatory appointments

7.5.1 (1) An Authorised Firm must, subject to (2), make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer;
- (c) Compliance Officer; and
- (d) Money Laundering Reporting Officer.

(2) An Authorised Firm which is a Credit Rating Agency:

- (a) need not make the appointment referred to in (1)(b) and (d);
and
- (b) must ensure that the appointments referred to in 1(a) and (c)
are held by separate Authorised Individuals at all times.

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9 COMPLAINTS HANDLING AND DISPUTE RESOLUTION

9.1 Application

9.1.1 This chapter applies to every ~~an~~ Authorised Firm, other than a Representative Office and a Credit Rating Agency, 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.

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11 SUPERVISION

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11.8 Changes relating to control

11.8.1 (1) This ~~chapter~~ section applies, subject to (2), to:

- (a) an Authorised Firm; or
- (b) a Person who is, or is proposing to become, a Controller specified in Rule 11.8.3.

(2) A Credit Rating Agency must comply with the requirements in this section as if it were a non-DIFC established company.

Guidance

The requirements in respect of notification of changes relating to control of Branches (i.e. Non-DIFC established companies) are set out in Rule 11.8.10. Although some Credit Rating Agencies may be companies established in the DIFC, such companies will only be subject to the notification requirements relating to their Controllers. Accordingly, regardless of whether a Credit Rating Agency is a company established in the DIFC or a Branch operation, it is subject to the notification requirements only and not to the requirement for prior approval by the DFSA of changes relating to its Controllers.

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Major acquisitions

- 11.10.8** (1) Subject to (2), an Authorised Firm which makes or proposes to make a Major Acquisition as defined in (3) must:
- (a) if it is a Domestic Firm, comply with the requirements in Rule 11.10.9; and
 - (b) if it is not a Domestic Firm, comply with the requirements in Rule 11.10.10.
- (2) The requirement in (1) does not apply to an Authorised Firm which is a Credit Rating Agency or a firm in Category 3 (as defined in PIB Rule 1.3.3) or Category 4 (as defined in PIB Rule 1.3.4).

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Changes in relation to Consultation Paper No. 84

5 MANAGEMENT, SYSTEMS AND CONTROLS

5.3 Systems and controls

General requirement

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Organisation

- 5.3.2** (1) An Authorised Person must establish and implement, taking due account of the nature, scale and complexity of its business and structure, adequate measures to ensure that:
- (a) ~~clearly defined~~ the roles and responsibilities assigned to its Governing Body and the members of that body, senior management and Persons Undertaking Key Control Functions are clearly defined;
 - (b) there are clear reporting lines applicable to the individuals undertaking those functions; and
 - (c) the roles, responsibilities and reporting lines referred to in (a) and (b) are documented and communicated to all relevant Employees; ~~and~~

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- (d) ~~in the case of an Authorised Firm, the Employees who will be delivering Financial Services to its customers are also clearly identified, together with their respective lines of accountability and supervision.~~
- (2) An Authorised Firm must ensure that any Employee who will be delivering Financial Services to its customers is clearly identified, together with his respective lines of accountability and supervision.
- (3) An Authorised Firm which is conducting Investment Business or the Financial Services of Providing Fund Administration or Providing Trust Services, must ensure it makes publically available details of any Employee who delivers Financial Services to its customers, by including such information:
- (a) in a register, maintained by the Authorised Firm at its place of business and open for inspection during business hours; or
- (b) on the website of the Authorised Firm.
- (4) An Authorised Firm referred to in (3), must have complete and up to date information on its register or website, including:
- (a) the date on which the relevant Employee commenced delivering of Financial Services to customers; and
- (b) the Financial Services which that Employee is permitted by the Authorised Firm to deliver to customers.

Guidance

1. The term Employee is defined in the GLO widely and includes members of the Governing Body or directors and senior managers of the Authorised Firm. Therefore, the requirements relating to Employees in Rules 5.3.3 and 5.3.6 apply to all Employees including those across the organisation.
2. The division of responsibilities between the Governing Body and the senior management should be clearly established and set out in writing. In assigning duties, the Governing Body should take care that no one individual has unfettered powers in making material decisions.
3. Members of the Governing Body may include individuals undertaking senior management functions (such as the chief executive of the firm) and ~~or~~ Persons Undertaking Key Control Functions. In assigning specific functions to such individuals, care should be taken to ensure that the integrity and effectiveness of the functions they are to perform are not compromised. For example, if the Chairperson of the Governing Body is also the chief executive officer of the Authorised Person, the Governing Body should ensure that the performance assessment of that individual in his roles should be undertaken by a senior non-executive member of the Governing Body or an independent external consultant.
4. Persons Undertaking Key Control Functions are defined in the GLO in an inclusive manner to encompass Persons such as the heads of risk control, compliance and internal audit functions. In the case of an Insurer, the actuary also is a Person who Undertakes a Key Control Function.

5. An example of an Employee providing Financial Services to a customer is a client relationship manager employed by an Authorised Firm providing wealth management services. In contrast, an Employee who may be employed in the back office of an Authorised Firm with responsibility for setting up client accounts would not be client facing.

5.3.3 ~~Deleted~~ An Authorised Person must ensure that key duties and functions are segregated. Such segregation must ensure that the duties and functions to be performed by the same individual do not conflict with each other, thereby impairing the effective discharge of those functions by the relevant individuals (such as undetected errors or any abuse of positions) and thus exposing the Authorised Person or its customers or users to inappropriate risks.

~~**5.3.4** An Authorised Person must ensure that key duties and functions are segregated so as to avoid the situation where the allocation of duties and functions to be performed by the same individual could result in undetected errors or be vulnerable to abuse and thus expose the Authorised Person or its customers or users to inappropriate risks.~~

Risk management

5.3.54 An Authorised Person must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks.

5.3.65 An Authorised Person must develop, implement and maintain policies and procedures to manage the risks to which the Authorised Person and where applicable, its customers or users, are exposed.

5.3.76 (1) An Authorised Person must appoint an individual to advise its Governing Body and senior management of such risks.

(2) An Authorised Person which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

Compliance

5.3.87 An Authorised Firm must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.

5.3.98 An Authorised Firm must document the organisation, responsibilities and procedures of the compliance function.

5.3.109 An Authorised Firm must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.

5.3.110 An Authorised Firm must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Firm's Governing Body and senior management.

5.3.4211 An Authorised Firm must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.

5.3.4312 An Authorised Firm must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

Guidance

Similar requirements to those in Rules 5.3.7 to 5.3.12 are set out in the AMI module in relation to Authorised Market Institutions.

Internal audit

5.3.4413 (1) An Authorised Person must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.

(2) The internal audit function must be independent from operational and business functions.

5.3.4514 An Authorised Person must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the Authorised Person's Governing Body or the relevant committee, established by its Governing Body for this purpose.

5.3.4615 An Authorised Person must document the organisation, responsibilities and procedures of the internal audit function.

Business plan and strategy

5.3.4716 (1) An Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its customers are exposed.

(2) The business plan must take into account the Authorised Person's current business activities and the business activities forecast for the next twelve months.

(3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in the business of the Authorised Person.

Management information

5.3.4817 An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise, monitor and control its activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

Staff and agents

5.3.4918 An Authorised Person must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

- 5.3.2019** (1) An Authorised Firm must ensure, as far as reasonably practical, that its Employees are:
- (a) fit and proper;
 - (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.

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.
2. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in section 2.3 of the RPP Sourcebook and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.
3. When assessing the competence and capability of an Employee, an Authorised Firm should:
 - a. obtain details of the skills, knowledge and experience of the Employee relevant to the nature and requirements of the role;
 - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained;
 - c. determine, in light of the Employee's relevant skills, knowledge and experience, that the Employee is competent and capable of fulfilling the duties of the role; 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.
4. An Authorised Firm should also satisfy itself that an Employee:
 - a. continues to be competent and capable of performing the role;
 - b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the role, through training or other means; and
 - c. is able to apply his knowledge.
5. Refer to section 2.2.13 of the RPP Sourcebook for criteria for suitability of members of the Governing Body of the Authorised Firm.

Conduct

5.3.2120 An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market misconduct;
- (b) money laundering; or
- (c) a financial crime under any applicable U.A.E. laws.

Outsourcing

5.3.2221 (1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to service providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.

(2) The outsourced function under this Rule shall be deemed as being carried out by the Authorised Person itself.

(3) An Authorised Person which uses such service providers must ensure that it:

- (a) has undertaken due diligence in choosing suitable service providers;
- (b) effectively supervises the outsourced functions or activities; and
- (c) deals effectively with any act or failure to act by the service provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

5.3.2322 (1) An Authorised Person must inform the DFSA about any material outsourcing arrangements.

(2) An Authorised Person which has a material outsourcing arrangement must:

- (a) establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;
- (b) enter into an appropriate and written outsourcing contract; and
- (c) ensure that the outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder supervision of the Authorised Person by the DFSA.

- (3) An Authorised Person must ensure that the terms of its outsourcing contract with each service provider under a material outsourcing arrangement require the service provider to:
 - (a) provide for the provision of information under section 11.1 in relation to the Authorised Person and access to their business premises; and
 - (b) deal in an open and co-operative way with the DFSA.

Guidance

1. An Authorised Person's outsourcing arrangements should include consideration of:
 - a. applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or
 - b. any equivalent principles or regulations the Authorised Person is subject to in its home country jurisdiction.
2. An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of that service would cast serious doubt on the Authorised Person's continuing ability to remain fit and proper or to comply with DFSA administered Laws and Rules.

Business continuity and disaster recovery

- 5.3.2423** (1) An Authorised Person must have in place adequate arrangements to ensure that it can continue to function and meet its obligations under the legislation applicable in the DIFC in the event of an unforeseen interruption.
- (2) These arrangements must be kept up to date and regularly tested to ensure their effectiveness.

Guidance

1. In considering the adequacy of an Authorised Person's business continuity arrangements, the DFSA will have regard to the Authorised Person's management of the specific risks arising from interruptions to its business including its crisis management and disaster recovery plans.
2. The DFSA expects an Authorised Person to have:
 - a. arrangements which establish and maintain the Authorised Person's physical security and protection for its information systems for business continuity purposes in the event of planned or unplanned information system interruption or other events that impact on its operations;
 - b. considered its primary data centres' and business operations' reliance on infrastructure components, for example transportation, telecommunications networks and utilities and made the necessary arrangements to minimise the risk of interruption to its operations by arranging backup of infrastructure components and service providers; and
 - c. considered, in its plans for dealing with a major interruption to its primary data centre or business operations, its alternative data centres' and business operations' reliance on infrastructure components and made the necessary arrangements such that these do not rely on the same infrastructure

components and the same service provider as the primary data centres and operations.

Records

- 5.3.2524** (1) An Authorised Person must make and retain records of matters and dealings, including accounting records and corporate governance practices which are the subject of requirements and standards under the legislation applicable in the DIFC.
- (2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding 3 business days.
- 5.3.2625** Subject to Rule 5.3.26, the records required by Rule 5.3.24 or by any other Rule in this Rulebook must be maintained by the Authorised Person in the English language.
- 5.3.2726** If an Authorised Person's records relate to business carried on from an establishment in a territory outside the DIFC, an official language of that territory may be used instead of the English language as required by Rule 5.3.25.
- 5.3.2827** An Authorised Person must have systems and controls to fulfil the Authorised Person's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

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