

Appendix 2

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



The DFSA Rulebook

Conduct of Business Module

(COB)

12 OPERATING OR ACTING AS THE ADMINISTRATOR OF AN EMPLOYEE MONEY PURCHASE SCHEME

12.1 Application and Interpretation

Guidance

The terms “Member”, “Participating Employer” and “Scheme” are defined in GEN Rule 2.30.1 and the term “Non-DIFC Scheme” is defined in GLO.

Application

12.1.1 The Rules in this chapter apply to an Authorised Firm when:

- (a) Operating an Employee Money Purchase Scheme; or
- (b) Acting as the Administrator of an Employee Money Purchase Scheme.

Guidance

1. The Rules in this Chapter apply to an Operator or Administrator of a Scheme regardless of whether it is a DIFC established Scheme, or a Non-DIFC Scheme, except where otherwise provided. For example, the requirements in Rule 12.2.3 apply to the Operator or Administrator of a Non-DIFC Scheme.
2. Under GEN Rule 2.2.10H, an Operator or Administrator of a Non-DIFC Scheme cannot receive into such a scheme contributions from any:
 - a. DIFC employer in respect of their employees under the Employment Law; or
 - b. any other employer in respect of their employees under a Dubai law.

Interpretation

12.1.2 In this Chapter:

- (a) “Administrator” means an Authorised Firm Acting as the Administrator of an Employee Money Purchase Scheme;

- (b) “Beneficiary” means a Person nominated by a Member, or a Person legally entitled to a benefit if there is no valid nomination by a Member;
- (c) “Constitution”, in relation to an Employee Money Purchase Scheme, means:
 - (i) if the Scheme uses a trust structure, the trust deed and trust rules of the trust;
 - (ii) if the Scheme is a body corporate, the articles of association or other equivalent governing documents of the body corporate; or
 - (iii) in any other case, the documents that set out the relevant terms of the scheme;
- (d) “Core Benefits” means contributions payable by a DIFC employer under Article 66(7) of the the Employment Law or any other Dubai law;
- (e)(d) “Operator” means an Authorised Firm that is acting as the Operator of an Employee Money Purchase Scheme;
- (f)(e) “Payment Schedule” has the meaning given in COB Rule 12.3.7; and
- (g)(f) “Third Party Service Provider” means a Person to whom the Operator of a Scheme has delegated or outsourced an activity relating to the Scheme.

12.2 General duties and functions

General duties

12.2.1 The Operator and Administrator of a Scheme must:

- (a) act in the best interests of the Members of the Scheme and, if there is a conflict between the interests of the Operator or Administrator of a Scheme and the interests of Members of the Scheme, give priority to the interests of Members;
- (b) not improperly make use of information acquired through being the Operator or Administrator of a Scheme to:

- (i) gain an advantage for itself or another Person; or
- (ii) cause detriment to Members of the Scheme;

(c) ensure that its officers, employees and agents do not improperly make use of information acquired through being officers, employees or agents of the Operator or Administrator of a Scheme to:

- (i) gain an advantage for itself or another Person; or
- (ii) cause detriment to Members of the Scheme;

(d) ensure that any Related Party Transaction is on terms at least as favourable to the Scheme as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party; and

(e) report to the DFSA, any breach of legislation administered by the DFSA or other applicable laws that relates to the Scheme and has had, or is likely to have, a materially adverse effect on the interests of Members of the Scheme, as soon as practicable after it becomes aware of the breach.

Guidance

1. The general duties set out in Rule 12.2.1 that apply to an Operator and Administrator, are in addition to the Principles for Authorised Firms that also apply to all firms.

Application of the AML procedures

2. An Administrator that performs AML functions as the delegate of the Operator of a Scheme, is required to satisfy, among other requirements, those in the AML module. The AML module provides flexibility for a risk-based approach to be applied, taking into account the nature of the product or service involved, and the customer relationship. For example, under AML Rule 6.1.1(1), the Administrator:
 - a. is expected to undertake a risk-based assessment of every Participating Employer of the Scheme, and assign a risk rating proportionate to that employer;
 - b. may assign to Members of an Employee Money Purchase Scheme a low AML risk rating, taking into account the low AML risks associated with schemes or arrangements that provide employment benefits, such as pension, gratuity, retirement and superannuation schemes where:

- (i) the contributions are made by the Participating Employer in respect of each Member, and not by the Member (except Member voluntary contributions in 3.);
- (ii) the employment benefits of the Member are not assignable to any third-party; and
- (iii) there are no other factors that suggest a higher risk of money laundering, such as in 3.

3. If voluntary contributions are to be accepted to a Scheme in respect of a Member, an AML screening of that Member may be warranted before permitting voluntary contributions in circumstances such as where the voluntary contributions:

- a. exceed substantially the amount of mandatory contributions in respect of that Member; or
- b. are fully or freely withdrawable or assignable by the Member before the release of the mandatory contributions.

Approval of Scheme

12.2.2 An Operator of a Scheme must obtain the DFSA's prior written approval for:

- (a) that Scheme before it operates the Scheme in or from the DIFC; and
- (b) any material change to the Scheme after it has been approved under (a).

~~Scheme must be established in DIFC or recognised jurisdiction~~

12.2.3 An Operator must not operate a Scheme unless the Scheme is established under the laws of the DIFC or Recognised Jurisdiction.

Guidance

For the purposes of Rule 12.2.3, a Scheme may be established directly by the laws of the DIFC or other jurisdiction (e.g. a statutory scheme) or in accordance with laws that permit the establishment of the particular vehicle that is to be used for the scheme e.g. a trust under the trust law or a gratuity or pension scheme under a pensions law.

Non-DIFC Scheme

12.2.3 A person who acts as the Operator or Administrator of a Non-DIFC Scheme must:

- (a) comply with the applicable requirements in the jurisdiction in which the Scheme is established; and**
- (b) notify the DFSA, as soon as is practicable, of any event or matter that has, or could have, a material adverse impact on its ability to operate the Scheme in accordance with the applicable requirements.**

Guidance

An Operator or Administrator of a Non-DIFC Scheme is prohibited under GEN Rule 2.2.10H from receiving contributions from a DIFC employer in respect of their employees under the Employment Law or the contributions of any other employer in respect of their employees under a Dubai law.

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12.2.7 An Operator of a Scheme must ensure that if it delegates or outsources an activity that is a financial service, the activity is carried on by a person who is either:

- (a) authorised by the DFSA to carry on that activity; or**
- (b) regulated and supervised for that activity by a Financial Services Regulator a Recognised Jurisdiction.**

12.3 Key Information about the Scheme

Information for prospective members

12.3.1 An Operator of a Scheme must ensure that before a person becomes a Member of the Scheme, that person is provided with the following information:

- (a) the name of the Scheme;**
- (b) the name and address of the Operator and Administrator of the Scheme and how they can be contacted;**
- (c) how the person can obtain up-to-date information about the Participating Employer's contributions in respect of the Member;**

- (d) a short description of:
 - (i) the type of investment options offered on the Investment Platform;
 - (ii) the investment objectives of each investment option, the strategy for achieving those objectives and any associated risks;
 - (iii) how detailed information relating to each investment option can be obtained, and who is responsible for providing that information; and
 - (iv) the comparative risk rating for each investment option, if available;
- (e) how and when a Member can switch their investments;
- (f) costs for which Members are responsible, with costs and charges associated with the administration of the Scheme, and the management fees and charges of the investment options offered on the Investment Platform, shown separately;
- (g) whether voluntary contributions can be:
 - (i) made by a Member and, if so, how such contributions will be managed, including fees and charges; and
 - (ii) withdrawn before the mandatory contributions, and if so, the frequency of such withdrawals, and the fees and charges associated with withdrawals;
- (h) the events upon which Member benefits are payable, and the method of calculating such benefits;
- (i) details relating to how Member inquiries and complaints will be handled and the contact details for inquiries and complaints; and
- (j) that the investment managers of the investment options offered on the Investment Platform are responsible for the information provided to Members relating to those investment options.

Guidance

1. An Operator in providing the information under Rule 12.3.1 must not offer investment selection assistance tools to Members, as such tools may be construed as Advising on Financial Products. However, if such a tool is offered by an investment manager of an investment option, the Operator may let Members know how the tool may be accessed and the investment manager responsible for the tool.
2. An HR department may give information and conduct information sessions for Members and prospective Members about the Employee Money Purchase Scheme to which contributions will be made in respect of the Members. However, HR departments should not give advice to Members on matters such as selecting investment options, or the merits of making voluntary contributions. Such advice should be given by a firm licensed to give financial product advice.

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Voluntary Contributions

12.3.6A The Operator of a Scheme may accept a Member's voluntary contributions to the Scheme, on the following conditions:

- (a) the voluntary contributions must be made by salary sacrifice by the relevant Member and paid by the Member's Participating Employer in to the Scheme;
- (b) the voluntary contributions must be managed in the same manner as the mandatory contributions made in respect of that Member; and
- (c) if the voluntary contributions, or any part of them, are permitted to be withdrawn, the withdrawal must:
 - (i) not be made more frequently than twice a year; and
 - (ii) not adversely impact on the rights and interests of:
 - (A) the Member's Core Benefits;
 - (B) the Core Benefits of the other Members of the Scheme; or
 - (C) the Scheme in itself.

Guidance

1. An Operator may accept voluntary contributions under Rule 12.3.6A into a DIFC Scheme or Non-DIFC Scheme only if the Constitution of the scheme permits it and, subject to the requirements applicable to voluntary contributions.
2. A Member will only be able to make voluntary contributions as long as the contributions come through the employer making mandatory contributions. If the Member decides to retain the accrued benefit beyond the termination of employment with that employer, no further contributions to the Scheme can be made by the Member.
3. The Authorised Firm is required to have adequate systems and controls in place to be able to clearly distinguish between mandatory contributions and voluntary contributions in respect of a Member, including the assets in which those contributions are invested.
4. See Guidance items 2 and 3 under Rule 12.2.1 relating to AML screening if a Member makes voluntary contributions.

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Investment Options

12.3.9 (1) The Operator of a Scheme must:

- (a) establish a range of investment options offered on the Investment Platform, which are suitable for the investment objectives and risk profile of the different classes of Members of the Scheme;
- (b) ensure that the investment options include investments that are suitable for Members who are:
 - (i) highly risk averse, and therefore, for whom capital preservation is paramount; or
 - (ii) seeking Shari'a compliant options;
- (c) take appropriate action to remove any investment option that is found to not be meeting the applicable criteria; and
- (d) implement adequate measures to protect the interests of Members when an investment option is to be removed from the Investment Platform.

- (2) The Operator of a Scheme must consult with a Professional Adviser before carrying out its functions under (1).
- (3) Where the Operator of a Scheme does not act on a recommendation provided by the Professional Adviser, the Operator must do so on reasonable grounds which are clearly documented.
- (4) The Professional Adviser referred to in (2) must be a person who:
 - (a) is either:
 - (i) authorised under its Licence for Advising on Financial Products; or
 - (ii) regulated and supervised for that activity by a Financial Services Regulator ~~a Recognised Jurisdiction~~;
 - (b) has appropriate skills and expertise relating to the type of investment options that are to be offered on the Investment Platform; and
 - (c) is independent of the Operator and Administrator of the Scheme.