

**Appendix 7**

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



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# The DFSA Rulebook

## Conduct of Business Module

### **(COB)**

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## 2 CLIENT CLASSIFICATION

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### 2.3 Types of Clients

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#### Market Counterparties

**2.3.9** (1) An Authorised Firm may classify a Person as a Market Counterparty if:

(a) that Person is either:

- (i) a 'deemed' Professional Client pursuant to Rule 2.3.4; or
- (ii) an 'assessed' Professional Client pursuant to Rule 2.3.8(2)(b) which is wholly owned by a Holding Company that is a 'deemed' Professional Client pursuant to Rule 2.3.4(1)(g) or (h); or

(iii) a 'deemed' Market Counterparty pursuant to Rule (1A); and

(b) in the case of Persons referred to in (a)(i) and (ii), the requirements in (2) have been met.

(1A) An Insurer, Insurance Intermediary or Insurance Manager may 'deem' any one or more of the following Persons to be a Market Counterparty:

(a) a ceding insurer; and

(b) in respect of the services provided to that ceding insurer, any reinsurer, insurance agent or insurance broker that facilitates the provision of the services to the ceding insurer.

(2) For the purposes of (1)(b), an Authorised Firm must, before classifying a Person as a Market Counterparty, ensure that:

(a) the Person has been given a prior written notification of the classification as a Market Counterparty; and

- (b) that Person has not requested to be classified otherwise within the period specified in the notice.
- (3) The notification in (2)(a) may be given in respect of particular Financial Services or Transactions or in respect of all Financial Services and Transactions.
- (4) The notification in (2)(a) need only be given:
  - (a) in the case of a Fund, either to the Fund or its Fund Manager; and
  - (b) in the case of a pension fund, either to such fund or its management company.

**Guidance**

When an Authorised Firm carries on, or provides or obtains, Financial Services with or from another Authorised Firm or a Regulated Financial Institution, as those entities are 'deemed' Professional Clients under Rule 2.3.4(1), they could be classified as Market Counterparties, provided the procedures set out in Rule 2.3.9(2) are complied with. ~~Examples of For example, such services are~~ may include:

- a- ~~providing reinsurance or insurance management services to an insurer; and~~
- b- providing ~~one or more~~ the Financial Services of custody, managing assets, or fund administration services to a Fund Manager of a Collective Investment Fund or a pension fund.

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**7 CORE RULES - INSURANCE****7.1 Application and interpretation**

- 7.1.1** (1) The Rules in this chapter apply to an Authorised Firm with respect to the conduct in or from the DIFC of Insurance Business, Insurance Intermediation or Insurance Management to the extent specified in any Rule.
- (2) The Rules in this chapter do not apply to an Insurer that is an Authorised ISPV with the exception of the Rules in section 7.2.

- (3) Only section 7.2, Rules 7.3.1, 7.6.1 and 7.9.1 and sections 7.10 and 7.12 in this chapter apply to an Insurer, Insurance Intermediary or Insurance Manager when it carries on a Financial Service with or for a Market Counterparty.

**7.1.2** In this chapter, unless otherwise stated, a reference to an “insurer” is a reference to both an Insurer and a Non-DIFC insurer.

**7.1.3** (1) In this chapter, unless otherwise stated, a reference to a Client of an Insurance Manager is a reference to:

- (a) an insurer to whom the Insurance Manager provides its Insurance Management services; and
- (b) a Policyholder with whom the Insurance Manager interacts when carrying out its Insurance Management activities.

(2) In section 7.12, when an Insurance Manager provides Insurance Management services to a Captive Insurer, a reference to a Client in (1)(a) is a reference to:

- (a) the Captive Insurer;
- (b) any shareholder of the Captive Insurer; and
- (c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.

(3) In (2):

- (a) a Captive Insurer includes a Cell of a Protected Cell Company which is an Insurer; and
- (b) a shareholder includes a holder of Cell Shares.

### **Guidance**

The Rules in this chapter apply to Authorised Firms conducting Insurance Business and Insurance Management in relation to all classes of Contracts of Insurance. However, those Rules apply to Authorised Firms conducting Insurance Intermediation only in relation to Contracts of Insurance that are not contracts of Long-Term Insurance. Other COB Rules relating to the Financial Services of Advising on Financial Products or Credit and Arranging Credit or Deals in Investments will apply to advising and arranging on contracts of Long-Term Insurance.

## **7.1A Table illustrating the application of the Rules in this chapter**

### **Guidance**

<b>Rule</b>	<b>Insurer</b>	<b>Insurance Intermediary</b>	<b>Insurance Manager</b>
<u>Section 7.1: Application and interpretation</u>	✓	✓	✓
<u>Section 7.1A: Table illustrating the application of Rules</u>	✓	✓	✓
<u>Section 7.2: Insurance business, management and intermediation restrictions</u>	✓	✓ (other than Rules 7.2.3, 7.2.4 and 7.2.5)	✓ (only Rules 7.2.2 and 7.2.6)
<u>Section 7.3: Communication of information and marketing material</u>	✓	✓	✓ (other than Rule 7.3.1(3))
<u>Section 7.4: Client's duty of disclosure</u>	✓ (other than Rules 7.4.2, 7.4.3)	✓	✗
<u>Section 7.5: Authorised Firm's duty of disclosure</u>	✓ (other than Rules 7.5.2 and 7.5.3)	✓	✓ (other than Rule 7.5.3)
<u>Section 7.6: Disclosure of costs and remuneration</u>	✓	✓	✓ (other than Rule 7.6.2)
<u>Section 7.7: Information about the proposed insurance</u>	✓	✓	✗
<u>Section 7.8: Suitability</u>	✓	✓	✗
<u>Section 7.9: Managing Conflicts of Interests</u>	✗	✓	✓
<u>Section 7.10: Placement of Insurance</u>	✗	✓	✓
<u>Section 7.11: Providing an ongoing service</u>	✓	✓	✗
<u>Section 7.12: Insurance Monies</u>	✗	✓	✓

## **7.2 Insurance business, management and intermediation restrictions**

**7.2.1** An Authorised Firm may only conduct Insurance Business or Insurance Intermediation with or for a Client to the extent specified in this section.

**7.2.2** An Authorised Firm must ensure that it does not:

- (a) if it is an Insurer, Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC; ~~or~~
- (b) if it is an Insurance Intermediary, act in relation to a Contract of Insurance; or
- (c) if it is an Insurance Manager, act in relation to a Contract of Insurance.

where the contract is in relation to a risk situated within the StateU.A.E, unless the risk is situated in the DIFC, or the contract is one of re-insurance.

**Guidance**

The classes of insurance are set out in GEN App4. These include both insurance and reinsurance contracts relating to life insurance and non-life insurance (such as accident, sickness, property and travel insurance). However, the prohibition in Rule 7.2.2 only applies to a Contract of Insurance that is not a contract of re-insurance.

- 7.2.3** An Insurer must ensure that it does not carry on, through an establishment maintained by it in the DIFC, both Long-Term Insurance Business and General Insurance Business unless the General Insurance Business is restricted to Class 1 or Class 2 or both.
- 7.2.4** An Insurer which is a Protected Cell Company must ensure that all Insurance Business is attributable to a particular Cell of that Insurer.
- 7.2.5** An Insurer must not carry on any activity other than Insurance Business unless it is an activity in direct connection with or for the purposes of such business. For the purposes of this Rule, Managing Assets is not an activity in connection with or for the purposes of Insurance Business.

**Guidance**

1. The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:
  - a. investing, reinvesting or trading, as investor or rabb ul maal and for the Insurer's own account, that of its Subsidiary, its Holding Company or any Subsidiary of its Holding Company but not any other party, in Securities, loans, investment accounts, units or shares in collective investment funds, certificates of mudaraba, certificates of musharaka or other forms of investments that are intended to earn profit or return for the investor;

- b. rendering other services related to Insurance Business operations including, but not limited to, actuarial, risk assessment, loss prevention, safety engineering, data processing, accounting, claims handling, loss assessment, appraisal and collection services;
  - c. acting as agent for another insurer in respect of contracts of insurance in which both insurers participate; ~~and~~
  - d. establishing Subsidiaries or Associates engaged or organised to engage exclusively in one or more of the businesses specified above; and
  - e. giving advice relating to its own Contracts of Insurance.
2. The DFSA may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.

**7.2.6** An Insurance Manager must not underwrite on behalf of a Non-DIFC insurer in relation to a Contract of Insurance with or for a Retail Client, unless the Insurance Manager has obtained the prior written approval of the DFSA in respect of that insurer.

**Guidance**

For the purposes of Rule 7.2.6, an Insurance Manager should submit to the DFSA sufficient information to establish that the Non-DIFC insurer for which it proposes to act is fit and proper and is subject to adequate regulation in its home jurisdiction.

## **7.3 Communication of information and marketing material**

### **General obligation**

- 7.3.1**
- (1) When communicating any information in relation to Insurance Business, Insurance Intermediation or Insurance Management to a Person, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.
  - (2) An Insurer, Insurance Intermediary or Insurance Manager must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under the Regulatory Law 2004 or Rules.
  - (3) An Insurer or Insurance Intermediary must, when providing or directing marketing material to a ~~Retail~~ Client, comply with the requirements in section 3.2, if the marketing material relates to a Direct Long-Term Insurance Contract.

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## **7.5 Authorised Firm's duty of disclosure**

### **Guidance**

If an Authorised Firm is required to provide information to a Client or potential Client under this section or any other section in this Chapter before providing a service or doing anything, then the information should be provided in good time before providing the service or doing the thing so that the Client has sufficient time to make an informed decision.

- 7.5.1** (1) An Insurer, ~~or Insurance Intermediary~~ or Insurance Manager must, subject to (3), disclose to a Client:
- (a) the name and address of the insurer or insurers effecting the Contract of Insurance;
  - (b) its own name and address where different; and
  - (c) contact details of the Person to whom a claim is to be notified.
- (2) The disclosures in (1) must be made before effecting or placing the Contract of Insurance, or as soon as reasonably practicable thereafter.
- (3) An Insurance Manager is not required to make the disclosure under (1) to an insurer to whom it provides Insurance Management services.
- 7.5.2** (1) An Insurance Intermediary or Insurance Manager must, subject to (3), disclose to a Client if:
- (a) it has a direct or indirect holding representing 10% or more of the voting rights or capital in an insurer; or
  - (b) an insurer, or its parent undertaking, has a direct or indirect holding representing 10% or more of the voting rights or capital in the Insurance Intermediary or Insurance Manager.
- (2) The disclosures in (1) must be made before providing Insurance Intermediation or Insurance Management services to the Client.
- (3) An Insurance Manager is not required to make a disclosure under (1) to an insurer to whom it provides Insurance Management services.

**Guidance**

An Insurance Intermediary or Insurance Manager is required to disclose the information under Rule 7.5.1(1) and Rule 7.5.2(1) to any Policyholder with whom it interacts when carrying out its Insurance Intermediation or Insurance Management activities.

- 7.5.23** (1) An Insurance Intermediary must, before providing any Insurance Intermediation service to a Person as a Retail Client, disclose whether any advice or information is or will:
- (a) be provided on the basis of a fair analysis of the market;
  - (b) not be provided on the basis of a fair analysis of the market because of any contractual agreement it has with any particular insurer or insurers to deal with only their products; or
  - (c) even if there are no contractual agreements of the type referred to in (b), not be provided on the basis of a fair analysis of the market.
- (2) If (1) (b) or (c) applies, the Insurance Intermediary must, if requested by the Retail Client, provide to that Client a list of insurers with whom it deals or may deal in relation to the relevant Contracts of Insurance.
- (3) An Insurance Intermediary must, before providing any Insurance Intermediation service to a Client, disclose to that Client whether it acts on behalf of an insurer or any other Person or acts independently on behalf of Clients.

**Guidance**

1. An Insurance Intermediary should not represent itself as providing advice or information on the basis of a fair analysis of the market under Rule 7.5.3(1) unless it has considered a sufficiently broad range of Contracts of Insurance and based its decision on an adequate analysis of those contracts.
2. Insurance Brokers act for Clients who are Policyholders. In doing so, they may claim under Rule 7.5.3(3) that they act ‘independently’ for the Clients.
3. The DFSA expects an Insurance Broker which holds itself out to a Client as acting ‘independently’ for the Client to be able to demonstrate its independence to the DFSA. Factors that the DFSA would take into account when assessing if an Insurance Broker has acted independently include whether that broker:
  - (a) has assessed a sufficiently large number of insurance products available on the market, and those products are sufficiently diverse in terms of their types and the issuers, to be able to suit the Client’s needs and objectives;

- (b) is free to select insurance products from a sufficiently large number of insurers – for example, if a broker has close links with insurers, or exclusivity clauses in arrangements with insurers whose products they can select, the broker may not be able to claim it is independent; and
- (c) has disclosed clearly to the Client all commissions and other economic benefits it or a Group member receives from insurers with whom it places insurance.

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## **7.9 Managing conflicts of interest**

- 7.9.1**
- (1) An Insurance Intermediary or Insurance Manager must manage any conflict of interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.
  - (2) An Insurance Intermediary or Insurance Manager must manage the conflict of interest by disclosing such conflict to the Clients in writing either generally or in relation to a specific Transaction.
  - (3) If an Insurance Intermediary or Insurance Manager is unable to manage a conflict of interest, it must decline to act for the Client.

### **Guidance**

- 1. An Insurance Intermediary, when considering how it manages conflicts of interests, should clearly identify the capacity in which it acts and to whom it owes duties. For example, if it is acting as an Insurance Broker, it is acting as an agent for the policyholder and it has a duty to act in the best interests of the policyholder. If it is acting as an Insurance Agent, it has a duty to act in the best interests of its principal i.e. the insurer or insurers from whom it holds an authority to act as agent.
- 2. While the Rules do not prohibit an Insurance Intermediary from acting for both an insurer and policyholder in relation to the same risk, such an arrangement could result in conflicts of interest that are hard to manage. If an Insurance Intermediary proposes to act for both an insurer and policyholder in relation to the same risk, it should, under Rule 7.9.1(2), clearly disclose that information in a timely manner. The DFSA expects the firm to at least:
  - a. notify both parties about the procedures it will follow if acting in the interest of the policyholder or the insurer is likely to impair its ability to act in the interests of the other party; and
  - b. if one or both parties express concerns relating to the proposed process, decline to act for both parties under Rule 7.9.1(3) and instead act for only one party.

3. An Insurance Manager will also need to identify and manage conflicts of interest that arise in the course of carrying on its business, for example, in the course of settling claims.

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## **7.10 Placement of Insurance**

### **Instructions**

- 7.10.1** An Insurance Intermediary or Insurance Manager must not place a Contract of Insurance with or on behalf of an insurer unless it has satisfied itself on reasonable grounds that the insurer may lawfully effect that contract under the laws of the jurisdictions in which the insurer and the risk are located.

### **Quotations**

- 7.10.2** When giving a quotation, an Insurance Intermediary or Insurance Manager must take due care to ensure the accuracy of the quotation and its ability to obtain the insurance at the quoted terms.

### **Confirmation of cover**

- 7.10.3** (1) An Insurer, in Effecting Contracts of Insurance, must promptly document the principal economic and coverage terms and conditions agreed upon under any Contract of Insurance and finalise such contract in a timely manner.
- (2) An Insurer, ~~or~~ Insurance Intermediary or Insurance Manager must, as soon as reasonably practicable, provide a Client with written confirmation and details of the insurance which it has effected for the Client or has obtained on behalf of the Client, including any changes to an existing Contract of Insurance.
- (3) An Insurer, ~~or~~ Insurance Intermediary or Insurance Manager must, as soon as reasonably practicable, provide the Client with the full policy documentation where this was not included with the confirmation of cover.
- (4) In (2) and (3), a Client of an Insurance Manager is any Policyholder with whom the Insurance Manager interacts when carrying on its Insurance Management activities.

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## **7.12 Insurance monies**

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### **General**

- 7.12.2** (1) Insurance Monies are, subject to (2), any monies arising from Insurance Intermediation or the Insurance Management business which are any of the following:
- (a) premiums, additional premiums and return premiums of all kinds;
  - (b) claims and other payments due under Contracts of Insurance;
  - (c) refunds and salvages;
  - (d) fees, charges, taxes and similar fiscal levies relating to Contracts of Insurance;
  - (e) discounts, commissions and brokerage; or
  - (f) monies received from or on behalf of a Client of an Insurance Manager, in relation to his Insurance Management business.
- (2) Monies are not Insurance Monies where there is a written agreement in place between the Insurance Intermediary or Insurance Manager and the insurer to whom the relevant monies are to be paid (or from whom they have been received) under which the insurer agrees that:
- (a) the Insurance Intermediary or Insurance Manager, as the case may be, holds as agent for the insurer all monies received by it in connection with Contracts of Insurance effected or to be effected by the insurer;
  - (b) insurance cover is maintained for the Client once the monies are received by the Insurance Intermediary or the Insurance Manager, as the case may be; and
  - (c) the insurer's obligation to make a payment to the Client is not discharged until actual receipt of the relevant monies by the Client.

**Guidance**

If an Insurance Manager does not have in place risk transfer arrangements referred to in Rule 7.12.2(2), the Insurance Manager holds Insurance Monies, so far as they belong to Policyholders, at the risk of those Policyholders.

~~7.12.3~~ In this section, a Client of an Insurance Manager means:

- ~~(a) any insurer for which the Insurance Manager provides Insurance Management;~~
- ~~(b) any shareholder of an insurer mentioned in (a); or~~
- ~~(c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.~~

~~7.12.4~~ For the purposes of Rule 7.12.3:

- ~~(a) an insurer includes a Cell of a Protected Cell Company which is an Insurer; and~~
- ~~(b) a shareholder includes a holder of Cell Shares.~~

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**Insurance money segregation**

**7.12.5** (1) An Insurance Intermediary or Insurance Manager when dealing with Insurance Monies must:

- (a) maintain one or more separate Insurance Bank Accounts with an Eligible Bank ~~in the U.A.E.~~;
- (b) ensure that each Insurance Bank Account contains in its title the name of the Authorised Firm, together with the designation Insurance Bank Account (or IBA);
- (c) prior to operating an Insurance Bank Account, give written notice to, and ~~receive~~ request written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the

- Authorised Firm, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;
- (d) pay all Insurance Monies directly and without delay into an Insurance Bank Account;
  - (e) use an Insurance Bank Account only for the following purposes:
    - (i) the receipt of Insurance Monies;
    - (ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Firm with any conditions or requirements prescribed by the DFSA;
    - (iii) the payment to Clients or to insurers of monies due under Insurance Intermediation Business transactions;
    - (iv) the payment of all monies payable by the Authorised Firm in respect of the acquisition of or otherwise in connection with Approved Assets;
    - (v) the withdrawal of brokerage, management fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;
    - (vi) the withdrawal of monies that are required to be transferred under (2) or Rule 7.12.9A;
    - (vii) the withdrawal of monies paid into the Insurance Bank Account in error; and
    - (viii) the withdrawal of any monies credited to the Insurance Bank Account in excess of those required by any conditions and requirements prescribed by the DFSA;
  - (f) ensure that any amount held in the Insurance Bank Account or other Approved Assets, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and
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- (g) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.
- (2) If an Eligible Bank has not provided the written confirmation referred to in (1)(c) within 40 business days after the Authorised Firm made the request, the Authorised Firm must as soon as possible withdraw Insurance Monies held in the Insurance Bank Account with that Eligible Bank and deposit them in an Insurance Bank Account with another Eligible Bank.
- (3) An Insurance Intermediary or Insurance Manager is not required to comply with the requirement in (1)(c) if it has no account, other than one or more Insurance Bank Accounts, with the Eligible Bank.

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**7.12.8** An Insurance Intermediary or Insurance Manager must ensure that Approved Assets are:

- (a) registered in the name of the Insurance Intermediary or Insurance Manager and designated as being an 'Insurance Bank Account'; or
- (b) held for the Insurance Bank Account of the Insurance Intermediary or Insurance Manager at the bank at which such Insurance Bank Account is held.

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**7.12.9A** (1) An Insurance Intermediary or Insurance Manager must not hold Insurance Monies for a Client in an Insurance Bank Account with an Eligible Bank outside the State, unless it has previously disclosed in writing to the Client:

- (a) that the money may be held in an Insurance Bank Account outside the State;
- (b) that in such circumstances, the legal and regulatory regime applying to the Eligible Bank may be different from that in the State;

- (c) in the event of failure of the Eligible Bank, the money may be treated in a different way to that which would apply if the money were held by a bank in the State;
  - (d) if it is the case, that the particular Eligible Bank has not accepted that it has no right of set-off or counterclaim against money held in the Insurance Bank Account in respect of any sum owed on any other account of the Authorised Firm; and
  - (e) that the Client may notify the Authorised Firm if he does not wish the money to be held in an Insurance Bank Account outside the State or in a particular jurisdiction.
- (2) If a Client notifies an Insurance Intermediary or Insurance Manager in writing that he does not wish the Insurance Monies to be held in an Insurance Bank Account outside the State or in a particular jurisdiction, the Insurance Intermediary or Insurance Manager must ensure that, no later than 20 days after receiving the notice, either:
- (a) the Insurance Monies are transferred into an Insurance Bank Account with an Eligible Bank in the State, or in a jurisdiction to which the Client has not objected, as the case may be; or
  - (b) if no such alternative arrangement can be made, the Insurance Monies are returned to the Client.

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