

QUESTIONS AND ANSWERS

TRANSPARENCY FOR FIRMS HOLDING OR CONTROLLING CLIENT ASSETS OR DEALING IN INSURANCE MONIES

Q1:	Who will need an endorsement under the new requirements in GEN?
A:	<p>An endorsement will be required by:</p> <ul style="list-style-type: none"> • an Authorised Firm that holds or controls Client Assets; or • an Insurance Intermediary or Insurance Manager that holds Insurance Monies.
Q2:	What is meant by ‘hold or control’ Client Assets and how are they different?
A:	<p>COB Rule 6.11.4 defines when Client Assets are ‘held or controlled’ by an Authorised Firm.</p> <p>Holding and controlling, as used in this context, are not terms specifically defined in the DFSA Rulebook. Consequently, they take on their natural meanings as are customarily applied in relation to Financial Services. The following is a non-exhaustive list of examples of business conduct addressed by this rule:</p> <ul style="list-style-type: none"> • an Authorised Firm holds Client Assets where it has physical possession of the relevant assets, such as holding, in connection with its business, share certificates or debenture notes for a Client in a safety box at its premises or at another location within its control; • an Authorised Firm may also hold Client Assets in contexts other than physical possession of certificated assets, such as an omnibus arrangement where, while the relevant assets are held by a third party in the name of the Authorised Firm, the Authorised Firm is accountable to its clients to record their respective beneficial interests in those assets; • an Authorised Firm ‘controls’ Client Assets where a third party holds the relevant assets but acts only on instructions given by the Authorised Firm in relation to those assets; • In the case of Client Assets which are Investments held in dematerialised or

	<p>uncertificated form, an Authorised Firm controls such assets if such assets are registered in the firm's name or the depository acts on the instructions of the firm.</p>
Q3:	What is the difference between “holding client assets” and “providing custody?”
A:	<p>Providing Custody is a Financial Service where custody is provided as a stand-alone business (i.e. by way of business). Holding client assets is an activity ancillary to investment business and requires an endorsement.</p>
Q4:	Who is eligible to have the endorsement?
A:	<p>In principle, any Authorised Firm is eligible to have the endorsement, if their business activities require it, provided they have adequate systems and controls to meet the relevant requirements.</p>
Q5:	Are there any other restrictions on who can hold or control Client Assets?
A:	<p>A firm that is prudentially treated as being in PIB Category 4 is prohibited from holding Client Assets which are Client Money (see COB 6.12.2(1)).</p>
Q6:	When do we need to have the endorsement?
A:	<p>Any firm that holds or controls Client Assets, or that deals in Insurance Monies, must obtain the endorsement by 3 October 2016, which is <u>six</u> months after the rules come in to force.</p>
Q7:	We currently have an authorisation to ‘Provide Custody’. Do we also need to obtain an endorsement to hold or control Client Assets?
A:	<p>No, you do not need the endorsement.</p>
Q8:	We currently have authorisation to ‘Arrange Custody’. Are we exempted from the requirement for an endorsement to our licence?
A:	<p>No.</p> <p>Arranging Custody is a limited activity where the Authorised Firm arranges for a third party to hold custody of the Client Assets and there is an agreement in place between the third party and the Client regarding the Custody</p>

	<p>arrangements.</p> <p>If, under the custodial arrangement, the Authorised Firm controls the client assets, then the endorsement is necessary. For the meaning of holding or controlling Client Assets please see Q2.</p>
Q9:	We currently have authorisation to ‘Accept Deposits’. Are we exempt from the requirement to add an endorsement to our licence?
A:	<p>An Authorised Firm licensed to Accept Deposits will not be required to obtain an endorsement to hold or control Client Assets provided that it strictly holds money in the form of Deposits as a Bank. If the Authorised Firm holds money in the form of Client Money, or if it holds Client Investments, then it is required to obtain the appropriate endorsement.</p> <p>An Authorised Firm licensed to Accept Deposits must implement appropriate systems and controls to differentiate between holding money in the form of Deposits and holding money in the form of Client Money. Holding money in form of Deposits falls under the Financial Service activity of Accepting Deposits and is subject to all applicable rules and regulations relevant to such activity, including the provisions under COB Chapter 4 and the UAE Federal Law prohibition against taking deposits from the State’s markets. Deposits are not subject to the Client Money Provisions in the COB Rules. Holding money in the form of Client Money does require the firm to obtain an endorsement to hold or control Client Assets. Such activity is not subject to the provisions under COB Chapter 4 but only to the applicable Client Assets provisions under COB Sections 6.11 to 6.14.</p>
Q10:	We don’t hold client assets in the DIFC; however, we manage the client’s assets only. Do we still need to have an endorsement to our license?
A:	<p>Any firm that holds or controls Client Assets ancillary to carrying out Financial Services (aside from Providing Custody) must have the endorsement.</p> <p>As an example, Asset Managers often control Client Investments in connection with buying and selling them under a discretionary mandate. Similarly, they often control Client Money in connection with the settlement of those transactions. Depending on its business model, an Asset Manager could</p>

	indeed hold those assets. If an Asset Manager's business model involves any of the functions addressed in COB 6.11.4, and the firm is not already licensed to Provide Custody, it must have this endorsement.
Q11:	Must an Authorised Firm that holds or controls Client Money in connection with a one-off, or singularly occurring, transaction have the endorsement?
A:	Yes. If an Authorised Firm holds or controls Client Assets in connection with its business, it is required to obtain the endorsement. This requirement is not based on the frequency of transactions and there is not a carve-out for singular transactions.
Q12:	Are there transitional provisions for the endorsement?
A:	<p>Yes.</p> <p>Any firm that submitted, in the 12 months before 3 April 2016, a Client Money Auditor's Report, Safe Custody Auditor's Report, or an Insurance Monies Auditor's Report, under GEN 8.6.2, can self-certify to the DFSA during the period from 3 April to 2 October this year (but please see Q7 for Firms licensed to Provide Custody).</p> <p>The self-certification needs to cover:</p> <ul style="list-style-type: none"> • that the firm wishes to have the endorsement; • that the firm submitted the relevant report under GEN 8.6.2; and • that the firm's systems and controls are adequate to meet the applicable requirements. <p>You should use the template provided in the Dear SEO letter on this topic to provide your self-certification.</p> <p>The self-certification should be submitted to the firm's usual contact at the DFSA, if the firm has an assigned supervisor, or otherwise using the supervised firm contact form.</p>
Q13:	Will an Authorised Firm be provided an endorsement to hold or control Client Assets without having to apply for such endorsement?
A:	No. All firms who hold or control Client Assets (other than those who Provide

	<p>Custody, see Q7) need to self-certify following the instructions provided in the transitional provisions; see the answer to Q12.</p> <p>Any firm that does not qualify for that self-certification process would need to apply to the DFSA for the endorsement.</p>
Q14:	We already hold Client Assets. Do we need an endorsement?
A:	<p>Yes, you do (but see Q7). However, any firm that submitted, in the 12 months before 3 April 2016, a Client Money Auditor's Report, or a Safe Custody Auditor's Report, or an Insurance Monies Auditor's Report, under GEN 8.6.2, can take advantage of the transitional provisions that have been put in place (see Q12).</p>
Q15:	We already control Client Assets. Do we need an endorsement?
A:	<p>Yes, you do. However, any firm that submitted, in the 12 months before 3 April 2016, a Client Money Auditor's Report, or a Safe Custody Auditor's Report, or an Insurance Monies Auditor's Report, under GEN 8.6.2, can take advantage of the transitional provisions that have been put in place (Q12).</p>
Q16:	Do Authorised Firms that are yet to carry on activities that will result in them holding or controlling Client Assets need to apply for an endorsement?
A:	<p>The firm does not need to apply for the endorsement if it is not holding or controlling Client Assets. However, after the transitional period (i.e., from 3 October 2016 onwards), the firm will not be able to hold or control Client Assets without an endorsement on their licence.</p> <p>The firm could continue to conduct at any time the business that its licence allows, however it could not hold or control Client Assets until it obtained an endorsement.</p>
Q17:	What happens if we don't self-certify before 3 October 2016?
A:	<p>Firms that don't self-certify by this date will not be able to hold or control Client Assets, or Deal in Insurance Monies, after this date until they obtain the endorsement.</p> <p>After 3 October 2016, the firm would need to apply to the DFSA for the</p>

	endorsement and pay the USD 5,000 application fee, as set out in FER 2.2.6.
Q18:	We are considering applying to be authorised by the DFSA. Do we need to apply for an endorsement?
A:	<p>If your business model would involve you holding or controlling Client Assets, or Dealing in Insurance Monies, then you need to apply for the endorsement using the relevant Form.</p> <p>You would not need to pay the endorsement fees as it is included within the overall application fee.</p>
Q19:	We have a written agreement in place with the insurers that we act for which include the requirements under COB 7.12.2(2). Do we need to apply for an endorsement?
A:	No, because any monies subject to the written agreement are not regarded as insurance Monies.