

FINANCIAL SERVICES REGULATORY AUTHORITY
سلطة تنظيم الخدمات المالية

Supplementary Guidance – Authorisation for Investment Management Activities

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1 Purpose

- 1.1 This Guidance is issued under section 15(2) of the Financial Services and Markets Regulations 2015 (“FSMR”). It should be read in conjunction with the FSMR and the ADGM Rulebooks.
- 1.2 The Guidance sets out the Regulator’s expectations on the minimum criteria for an applicant seeking a Financial Services Permission to carry on the regulated activities of Managing Assets or Managing a Collective Investment Fund (collectively referred to as “Investment Management Activities”). The Guidance is not an exhaustive source of the Regulator’s policy on the exercise of its statutory powers and discretions. In the discharge of its regulatory mandate, the Regulator may impose other requirements to address any specific risks posed to the objectives of the Regulator by the proposed activities of the applicant. The Regulator is not bound by the requirements set out in this Guidance and may waive or modify these requirements at its discretion where appropriate.
- 1.3 Unless otherwise defined or the context otherwise requires, the terms contained in the Guidance have the same meaning as defined in the FSMR and the GLO Rulebook.

2 Consideration and Assessment of Applications

- 2.1 As set out in GEN Rule 5.2.7, the applicant shall demonstrate to the satisfaction of the Regulator that it:
- (a) has adequate and appropriate resources, including financial resources;
 - (b) is fit and proper;
 - (c) is capable of being effectively supervised; and
 - (d) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements.

- 2.2 In assessing the adequacy and appropriateness of an applicant’s resources, systems and controls, the Regulator will consider the risks posed by the applicant taking into account the nature, size and complexity of the proposed activities. For instance, a Start-up entity¹ without investment management track record may seek authorisation to conduct Investment Management Activities, subject to certain restrictions and other conditions to limit the scale and impact of its activities.
- 2.3 The Regulator will apply a risk-based assessment according to the categories of investment management companies (“Manager”) as set out in Table 1 below.

Table 1 – Categories of Managers

Category	Permissible Activities
Retail Manager	Carrying on business in investment management activities with all types of Clients, including Retail Clients.
Restricted Manager	Carrying on business in investment management activities with Professional Clients only, without restriction on the number of Professional Clients.
Start-up Manager	Carrying on business in investment management with no more than 30 Professional Clients (which may be in the form of funds or other investment vehicles) <u>and</u> the total value of the assets under management (“AUM”) ² does not exceed US\$250 million.

- 2.4 For the purpose of the clientele restrictions, a “look through” approach is adopted. For instance, an investment vehicle that is not wholly owned by Professional Clients or in which not all the beneficiaries are Professional Clients will not qualify as a Professional Client. Restricted and Start-up Managers should not target Retail Clients through the use of investment structures that circumvent clientele class restrictions.

¹ A “Start-up” entity is:

- (a) any newly set up business entity which is not part of a Group subject to financial services regulation; or
- (b) any existing business entity which, or whose Group is not subject to financial services regulation.

² In determining the value of the AUM:

- (a) Moneys committed by investors but not drawn down should be excluded from the Manager’s AUM.
- (b) AUM should be based on the net value of the assets being managed. Any leverage to which the managed assets are exposed should be excluded from the Manager’s AUM.

3 Minimum Criteria for Authorisation

- 3.1 **Track Record** – The applicant should demonstrate that it or its Group has a minimum 5-year proven track record in the investment management or related business, in a jurisdiction which has a regulatory framework that is comparable to ADGM. The applicant or its parent / related entities, where applicable, should be subject to proper supervision by a competent regulatory authority.
- 3.2 To be a Retail Manager, the applicant should have a total Group AUM of at least US\$1 billion.
- 3.3 Where the applicant does not satisfy the 5-year track record requirement, the Regulator may take into account the (i) track record of the applicant’s Controllers/substantial shareholders; and (ii) experience and qualifications of the applicant’s key management staff, when assessing the application. In the case of a Start-up entity, the applicant should demonstrate that it has an effective resolution mechanism in the event of any shareholder dispute.
- 3.4 **Competency of Key Individuals** – A Manager should ensure that the minimum competency criteria, set out in **Appendix 1**, are met.
- 3.5 **Capital Requirements** – As set out in section 3 of the PRU Rulebook, a Manager must satisfy a Base Capital Requirement or Expenditure-Based Capital Minimum, whichever is higher.

The table below sets out the Base Capital Requirement for the different categories of Managers.

Regulated Activity	Base Capital Requirement
Managing Assets	US\$250,000
Managing a Public Fund	US\$150,000
Managing an Exempt Fund or Qualified Investment Fund	US\$50,000

The applicant should make a reasonable assessment of the amount of additional capital buffer it needs, bearing in mind the scale and scope of its operations.

Use of shareholders’ loans to meet Capital Requirements. Under current rules, the Capital Requirement of a Manager can only be met by certain forms of capital instruments. Recognising that Managers in general have relatively simple capital structures, the Regulator may consider granting a waiver to allow Managers who do not hold client money to use shareholders’ loans as eligible capital resources to meet Capital Requirement exceeding the BCR, subject to appropriate ring-fencing conditions.

- 3.6 **Compliance Arrangements** – A Manager shall have in place compliance arrangements that are appropriate to the nature, scale and complexity of its business. The minimum criteria in respect of compliance arrangements are set out in **Appendix 2**. While compliance support may be provided by a related entity and/or third party service providers, the ultimate responsibility for compliance with applicable laws and regulations lies with the Manager’s Senior Executive Officer (“SEO”) and Board of Directors.
- 3.7 **Risk Management** – The risk management function should be subject to adequate oversight by the SEO and Board of the Manager. It should be segregated from and independent of the investment management function. The Manager should have policies and procedures to ensure that management is kept informed of the risk exposures in a regular and timely basis. Staff of the risk management function should have adequate knowledge and expertise in risk management.
- 3.8 **Internal Audit** – The internal audit arrangements should be appropriate to the scale, nature and complexity of its operations. The internal audit may be conducted by the internal audit function within the Manager, an internal audit team from the head office of the Manager, or outsourced to a third party service provider, as set out in **Appendix 3**.
- 3.9 **Independent Custody** – A Manager should ensure that assets under management are subject to independent custody³. The independent custodians should be suitably authorised in their respective jurisdictions.

³ Unless otherwise provided in the Rules.

3.10 Valuation & Reporting – A Manager should ensure that assets under management are subject to independent valuation and customer reporting. The Manager may have:

- (a) a third party service provider, such as a fund administrator or custodian, perform the valuation; or
- (b) an in-house asset valuation function⁴ that is segregated from the investment management function. Such arrangements may be adopted within larger financial services groups where there are sufficient resources and internal controls to provide for effective segregation of both functions.

The annual audit performed by the independent auditor is intended to serve as a periodic check on the valuation of the assets. Taken on its own, the annual audit will not fulfil the requirement for independent valuation.

3.11 Professional Indemnity Insurance [“PII”] – As set out in section 6.12 of the PRU Rulebook, a Manager shall maintain PII cover appropriate to the nature, size, and risk profile of the Manager’s business. A Retail Manager should obtain a minimum PII coverage as set out in **Appendix 4**. For Restricted and Start-up Managers, we may consider granting a waiver of the requirement under appropriate circumstances acceptable to the Regulator.

⁴ Unless otherwise required in the Rules, e.g. Fund Managers of Property Funds pursuant to the FUNDS Rulebook.

Appendix 1 – Minimum Competency Criteria

	Start-Up Manager	Restricted Manager	Retail Manager
<p>(i) Number of Licensed Directors: <i>A Licensed Director is a Controlled Function set out in GEN 5.3.3. Nominee directors such as legal advisers or corporate secretaries will not count towards meeting this requirement.</i></p> <p>Of these Directors,</p> <ul style="list-style-type: none"> • Minimum years of individual relevant experience[#]: • Number of Directors resident in the U.A.E. 	<p>At least 2</p> <p>5 years</p> <p>At least 1</p>	<p>At least 2*</p> <p>5 years</p> <p>At least 1</p>	<p>At least 2*</p> <p>5 years</p> <p>At least 1</p>
<p>(ii) Number of Approved Persons residing in the U.A.E: <i>Approved Persons (as set out in GEN 5.3) will include the Licensed Directors, Licensed Partners and Senior Executive Officer [“SEO”] of the Manager.</i></p> <p>Minimum years of relevant experience[#]:</p>	<p>At least 2</p> <p>5 years</p>	<p>At least 2</p> <p>5 years</p>	<p>At least 3</p> <p>5 years (10 years for the SEO)</p>
<p>(iii) Number of employees / professionals conducting the regulated activities residing in the U.A.E:</p>	<p>At least 2</p>	<p>At least 2</p>	<p>At least 3</p>

	Start-Up Manager	Restricted Manager	Retail Manager
<i>Such employees / professionals may include the Approved Persons and Recognised Persons (as set out in GEN 5.4) of the Manager.</i>			

#: The relevance of an individual’s experience should be assessed in the context of the role that the individual will perform in the Manager. For example, experience in proprietary trading for financial institutions could be counted towards meeting the relevant experience criteria for a relevant professional conducting regulated activities in respect of discretionary portfolio management activities. Relevant experience may also include sector experience (e.g. corporate strategy and management of businesses), particularly for private equity and venture capital Managers. Directors/Partners, SEO and Senior Managers should have managerial experience or experience in a supervisory capacity as part of their relevant experience.

*: For a Manager that is deemed as high impact or systemically important, the Regulator may require the Manager to have more than 2 directors.

- The following are examples where the Regulator would consider a Start-up/Restricted Manager as having met the minimum competency criteria:

Example 1

The Manager has two resident Licensed Directors, one of whom is the SEO, who is responsible for the conduct of investment management activities. The other is the Chief Operating Officer, who is responsible for back office functions such as trade reconciliation and reporting (i.e. not conducting a regulated activity). Both directors have at least 5 years of relevant experience in their respective functions. The Manager will meet the minimum competency criteria if it employs at least one additional resident full-time employee/professional, who will conduct investment management

activities. There will not be any minimum experience criteria for this additional employee, although the employee should be suitably competent.

Example 2

The Manager has two Licensed Directors conducting investment management activities. Both directors are resident in the U.A.E and have at least 5 years of relevant experience in investment management. One of the directors is the SEO. The Manager should appoint another Recognised Person independent of the front office to be the Compliance Officer / Finance Officer / Money Laundering Reporting Officer.

Example 3

The Manager in ADGM (“ADGM Manager”) is a subsidiary of a foreign-based Manager who is regulated in its home jurisdiction. The ADGM Manager has one resident Licensed Director appointed as the SEO, who has 5 years of relevant experience and carries out investment management activities. The ADGM Manager has another director based overseas. The ADGM Manager will meet the criteria if it employs an additional resident full-time employee/professional to conduct the investment management activities, and this employee will be required to have at least five 5 years of relevant experience.

Appendix 2: Minimum Compliance Arrangements

Category	Compliance Arrangements
Retail Manager	<ul style="list-style-type: none"> • The Manager should put in place an independent and dedicated compliance function in the U.A.E with staff who are suitably qualified and independent from the front office. • Compliance staff may perform other non-conflicting and complementary roles such as that of an in-house legal counsel.
Restricted Manager	<ul style="list-style-type: none"> • A Manager should have an independent compliance function with staff who are suitably qualified and independent from the front office. • The Manager may, depending on the size and scale of the business: <ul style="list-style-type: none"> (i) rely on compliance oversight and support from an independent and dedicated compliance team at its holding company or related entity; or (ii) engage an external service provider to support its compliance arrangements. The Manager should ensure that the service provider is competent and familiar with the regulatory requirements for Managers in ADGM. The service provider should be able to provide meaningful onsite presence at the Manager. <p>In either case, the Manager should designate a senior staff independent from the front office (e.g. COO or CFO) to oversee the compliance arrangement;</p>
Start-up Manager	<ul style="list-style-type: none"> • A Start-up Manager should ensure that it has adequate compliance arrangements appropriate to the scale, nature and complexity of its operations. This may take the form of an independent

Category	Compliance Arrangements
	compliance function, compliance support from overseas affiliates and/or use of external service providers that meet the requirements set out above.

Appendix 3 – Internal Audit Arrangements

Category	Internal Audit Arrangements
Retail Manager	<ul style="list-style-type: none"> • The Manager should have an independent and dedicated internal audit function. • The internal audit function may be undertaken by an internal audit team within the Manager, a group internal audit team from the parent or related company of the Manager, or outsourced to a third party service provider.
Restricted Manager	<ul style="list-style-type: none"> • The internal audit function may be undertaken by an internal audit team within the Manager independent from the business functions, a group internal audit team from the parent or related company of the Manager, or outsourced to a third party service provider. • Where the Manager does not have a dedicated internal audit function, the adequacy of the Manager’s internal audit arrangements should be assessed against the context of the Manager’s overall business scale and control environment i.e. whether there are periodic checks similar to those performed by internal auditors, which are performed by control functions such as risk management and compliance.
Start-up Manager	

- The SEO and Board of the Manager are ultimately responsible for ensuring there are adequate internal controls within the Manager and should take reasonable measures to ensure that the internal controls are complied with.

Appendix 4 – PII Coverage for Retail Managers

- PII coverage – A Retail Manager should maintain a PII coverage as follows:

Min PII	Remarks
0.15% x AUM (subject to a cap of US\$15mil)	<ul style="list-style-type: none"> • Copy of PII to be submitted to the Regulator on an annual basis. • Amount of PII deductible should not exceed 20% of the Manager's CET1 Capital.

- Alternative PII – The Regulator may consider alternative forms of PII subject to the following conditions:

Type	Conditions
Group PII	<ul style="list-style-type: none"> • Minimum coverage to be at least 5 times the required quantum under a standalone non-hybrid PII. • If the deductible of the Group PII is greater than 20% of the applicant's base capital, an undertaking from the applicant's parent company to cover the excess in the event of a claim would be required.
Hybrid PII	<ul style="list-style-type: none"> • Sub-limits to be set for the non-PII sections of the hybrid PII. • Total coverage under the hybrid PII less the sub-limits for the non-PII sections should be at least equivalent to the required quantum under a standalone non-hybrid PII.
Group Hybrid PII	<ul style="list-style-type: none"> • Sub-limits to be set for the non-PII sections of the Group hybrid PII. • Total coverage of the Group hybrid PII less the sub-limits for the non-PII sections has to be at least 5 times the required quantum under a standalone non-hybrid PII. • If the deductible of the Group hybrid PII is greater than 20% of the applicant's base capital, an undertaking from the applicant's parent company to cover the excess in the event of a claim would be required.