

---

**INVESTMENT TRUST LAW**  
**DIFC LAW No. 5 of 2006**

---

Consolidated Version  
(July 2010)

## CONTENTS

<b>PART 1: GENERAL</b> .....	<b>1</b>
1. Title .....	1
2. Legislative authority.....	1
3. Application of the Law.....	1
4. Date of Enactment.....	1
5. Commencement.....	1
6. Interpretation .....	1
7. Application of other Laws.....	1
8. Administration of this Law.....	1
9. The power of the DFSA to make Rules .....	1
10. Consultation .....	2
11. Waivers and Modifications of the Rules .....	2
<b>PART 2: CREATION, ALTERATION AND TERMINATION OF AN INVESTMENT TRUST</b> .....	<b>3</b>
12. General prohibition .....	3
13. Creation of an Investment Trust.....	3
14. Effect and validity of the Trust Deed .....	3
15. Alteration to a Trust Deed.....	4
16. Termination of an Investment Trust.....	4
<b>PART 3: EFFECT OF AN INVESTMENT TRUST</b> .....	<b>5</b>
17. Unitholder liability .....	5
<b>PART 4: TRUSTEE REQUIREMENTS</b> .....	<b>6</b>
18. Trustee requirements .....	6
19. Independence of the Trustee.....	6
<b>PART 5: DUTIES AND POWERS OF THE TRUSTEE</b> .....	<b>7</b>
20. General duties of the Trustee and its officers, employees and agents.....	7
21. Holding of Trust assets.....	8
22. Trustee’s obligations relating to oversight functions .....	8
23. Trustee’s reporting and disclosure obligations.....	8
24. Trustee’s power to outsource .....	9
25. Trustee’s obligation to maintain the Unitholder register.....	10
<b>PART 6: REMOVAL AND RETIREMENT OF THE TRUSTEE</b> .....	<b>11</b>
26. Removal and retirement of the Trustee .....	11
27. Position of the outgoing Trustee .....	11
<b>PART 7: DFSA POWERS IN RELATION TO AN INVESTMENT TRUST</b> .....	<b>12</b>
28. Powers in relation to Trustee and Investment Trust.....	12
<b>PART 8: THE FINANCIAL MARKETS TRIBUNAL</b> .....	<b>13</b>

29.	Jurisdiction of the Financial Markets Tribunal .....	13
<b>PART 9: MISCELLANEOUS.....</b>		<b>14</b>
30.	Fees .....	14
<b>SCHEDULE.....</b>		<b>15</b>

## **LIST OF AMENDMENTS MADE TO THIS LAW SINCE ENACTMENT**

(This list does not form part of the Law)

**This Law was enacted and came into force on 1 August 2006 and was subsequently amended by :**

- (a) DIFC Laws Amendment Law, DIFC Law No.2 of 2007 on 15 February 2007;
- (b) DIFC Laws Amendment Law DIFC Law No.1 of 2010 on 2 May 2010; and
- (c) DIFC Laws Amendment Law DIFC Law No. 3 of 2010 on 11 July 2010.

## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the “Investment Trust Law 2006”.

### **2. Legislative authority**

This Law is made by the Ruler of Dubai.

### **3. Application of the Law**

This Law applies in the jurisdiction of the Dubai International Financial Centre.

### **4. Date of Enactment**

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

### **5. Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

### **6. Interpretation**

The Schedule contains interpretative provisions and a list of defined terms used in this Law.

### **7. Application of other Laws**

- (1) Subject to (2), if any provisions of this Law conflict with the provisions of any other law, the provisions of this Law prevail, unless otherwise provided.
- (2) The provisions of the Collective Investment Law 2010 prevail over the provisions of this Law, unless otherwise provided either in this Law or in the Collective Investment Law 2010.
- (3) The Trust Law 2005 does not apply to a person in respect of an express trust created under this Law.

### **8. Administration of this Law**

This Law and any legislation made for the purposes of this Law is administered by the DFSA.

### **9. The power of the DFSA to make Rules**

- (1) The DFSA Board of Directors may make Rules for the purposes of this Law pursuant to the power conferred upon it under Article 23 of the Regulatory Law 2004.
- (2) Where any legislation made under this Law purports to be made in the exercise of a particular power or powers, it shall be taken also to be made in the exercise of all powers under which it may be made.

10. **Consultation**

The DFSA shall publish draft Rules in the manner prescribed under Article 24 of the Regulatory Law 2004.

11. **Waivers and Modifications of the Rules**

The DFSA may by written notice provide that one or more provisions of the Rules either:

- (a) shall not apply in relation to a person; or
- (b) shall apply to a person with such modifications as set out in the written notice, as provided for in Article 25 of the Regulatory Law 2004.

## **PART 2: CREATION, ALTERATION AND TERMINATION OF AN INVESTMENT TRUST**

### **12. General prohibition**

- (1) A person shall not enter into an agreement to create a trust for collective investment purposes unless it is an agreement of the kind referred to in Article 13.
- (2) A person proposing to act as the Trustee does not breach the prohibition in (1) merely by entering into a Trust Deed for the creation of an Investment Trust prior to obtaining a Licence with the appropriate authorisations referred to in Article 18. However, that person must not carry out any functions under the Trust Deed prior to obtaining that Licence.

### **13. Creation of an Investment Trust**

- (1) An Investment Trust shall be created by a Trust Deed entered into between:
  - (a) a person who meets the requirements to be a Fund Manager under Article 20(1) (a) or (b) of the Collective Investment Law 2010 and the rules made for the purposes of that law; and
  - (b) a person who meets the requirements to be a Trustee under Article 18 of this Law.
- (2) An Investment Trust shall be formed solely for collective investment purposes as defined in Article 11 of the Collective Investment Law 2010. Consequently, an Investment Trust created for the purposes of this Law is a Collective Investment Fund for the purposes of the Collective Investment Law 2010.
- (3) The Trust Deed shall:
  - (a) meet all the requirements that apply in respect of the Constitution of a Fund under the Collective Investment Law 2010 and the rules made for the purposes of that law;
  - (b) set out clearly whether the Trustee is to provide the oversight function relating to the Investment Trust;
  - (c) confer on the Trustee all the powers that are necessary for the Trustee to discharge all its duties and perform all its functions under this Law and the Collective Investment Law 2010 and the rules made for the purposes of those laws; and
  - (d) not contain any provision which conflicts with the requirements in the Collective Investment Law 2010 and rules made for the purposes of that law.

### **14. Effect and validity of the Trust Deed**

- (1) The provisions of the Trust Deed are binding on the persons who become Unitholders of the Investment Trust, as if they were a party to the Trust Deed.
- (2) Any provision of a Trust Deed, which is inconsistent with this Law, the Collective Investment Law 2010 or rules made for the purposes of these laws, shall be void.

15. **Alteration to a Trust Deed**

The terms of Trust Deed may be altered in accordance with the requirements in Article 35 of the Collective Investment Law 2010 and the rules made for the purposes of that Part.

16. **Termination of an Investment Trust**

An Investment Trust may be terminated in accordance with the requirements in Part 8 of the Collective Investment Law 2010 and the rules made for the purposes of that Part.



### **PART 3: EFFECT OF AN INVESTMENT TRUST**

#### **17. Unitholder liability**

- (1) The Unitholders of an Investment Trust created under this Law are not liable for any debts or other liabilities incurred by or in respect of the Investment Trust except to the extent of any amount outstanding for the payment of the Units or interests in the Units at the price at which the Unitholder agreed to acquire the Units or interest in the Units.
- (2) No action shall be brought by any person against a Unitholder for any debts or other liabilities of, or in respect of, an Investment Trust or any actions or omissions of the Trustee or Fund Manager except to the extent provided above.

## **PART 4: TRUSTEE REQUIREMENTS**

### **18. Trustee requirements**

A person meets the requirements to be a Trustee only if that person is:

- (a) a person specified in Article 21(1) of the Collective Investment Law 2010; and;
- (b) independent of the Fund Manager as provided in Article 19.

### **19. Independence of the Trustee**

The Trustee is not independent of the Fund Manager for the purposes of Article 18(b) if:

- (a) the Fund Manager or the Trustee holds, or exercises voting rights in respect of, any shares of the other;
- (b) the Fund Manager and the Trustee have a common holding company or a common ultimate holding company;
- (c) the Fund Manager or the Trustee have directors on its Governing Body, who are also directors of the other;
- (d) the Fund Manager or the Trustee has individuals performing Licensed Functions who are also individuals performing Licensed Functions for the other; or
- (e) the Fund Manager and the Trustee have been involved in the previous 2 years in any professional or material business dealings, other than acting as Fund Manager or Trustee respectively of any other Fund.

## **PART 5: DUTIES AND POWERS OF THE TRUSTEE**

### **20. General duties of the Trustee and its officers, employees and agents**

- (1) A Trustee shall, when exercising its powers and carrying out its duties:
  - (a) act honestly;
  - (b) exercise the degree of care and diligence that a reasonable person would exercise in the position of a Trustee;
  - (c) act in the best interests of the Unitholders and, if there is a conflict between the Unitholders' interests and its own interests, give priority to the Unitholders' interests;
  - (d) not improperly make use of information acquired through being the Trustee in order to:
    - (i) gain an advantage for itself or another person; or
    - (ii) cause detriment to the Unitholders in the Fund; and
  - (e) carry out or comply with any other duty, not inconsistent with DIFC Law, that is conferred on the Trustee by the Trust Deed.
- (2) The Trustee shall ensure that its officers, employees and agents:
  - (a) do not make improper use of information acquired through being such an officer, employee or agent of the Trustee in order to:
    - (i) gain an advantage for himself or another person; or
    - (ii) cause detriment to Unitholders in the Fund;
  - (b) do not make improper use of their position as such officers, employees or agents to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Unitholders in the Fund; and
  - (c) comply with any other duty or obligation as may be prescribed under this Law, the Collective Investment Law 2010 or any other legislation administered by the DFSA.
- (3) Where the Fund Manager is required to obtain the prior consent or approval of the Trustee before it is able to carry out any of its functions under the Collective Investment Law 2010 or rules made for the purposes of that law, the Trustee shall provide such consent or approval to the Fund Manager without any unnecessary delay. If the Trustee decides to withhold such consent or approval, it shall also notify the Fund Manager of that decision and the reasons without any unnecessary delay.

21. **Holding of Trust assets**

- (1) Subject to any specific requirements in the Collective Investment Law 2010, the Trustee shall take into its custody all property that forms part of the Investment Trust and hold such assets on trust for the Unitholders of the Trust.
- (2) The Trustee shall ensure that property of the Investment Trust is:
  - (a) clearly identified as the property of that Trust; and
  - (b) held separately from any other property held by or entrusted to the Trustee.

22. **Trustee's obligations relating to oversight functions**

- (1) If the Trust Deed confers on the Trustee the oversight function of the Investment Trust, the Trustee shall carry out the oversight function in accordance with the requirements in chapter 2 of Part 5 of the Collective Investment Law 2010 and the rules made for the purposes of that Part.
- (2) If the oversight function in relation to an Investment Trust is carried out by persons other than the Trustee, the Trustee shall provide to those persons any assistance that is reasonably required by them to carry out the oversight function.

23. **Trustee's reporting and disclosure obligations**

- (1) The Trustee shall, as soon as practicable after becoming aware that there is a breach of the Trust Deed, this Law, the Collective Investment Law 2010 or any rules made for the purposes of those laws, or of any other relevant obligations imposed under a Licence condition of the Fund Manager or any other person performing any function in respect of or providing any services to the Investment Trust, report that breach to the DFSA.
- (2) The Trustee is required to report a breach under (1) only where it is of the opinion on reasonable grounds that the breach has had, or is likely to have, a materially adverse effect on the interests of the Unitholders. The Trustee must report such a breach to the DFSA whether or not the Fund Manager has already taken any steps to remedy that breach.
- (3) The Trustee shall provide to the Fund Manager or any other person providing oversight function any information that the Fund Manager, or the person providing the oversight function, may reasonably require relating to the Investment Trust as soon as possible after a request has been made for such information.
- (4) The Trustee shall disclose to the auditor of the Investment Trust all such information that is required by the auditor to carry out its audit functions relating to the Trust.

24. **Trustee's power to outsource**

- (1) The Trustee may, subject to any restrictions and requirements in the Trust Deed, this Law, the Collective Investment Law 2010 or any rules made for the purposes of those laws, delegate any of its activities or outsource any of its functions to a person ("service provider") other than the Fund Manager.
- (2) When outsourcing any of its functions, the Trustee must ensure that the service provider is independent of the Fund Manager as provided in (4).
- (3) The DFSA may by rule prescribe for the purposes of this Article:
  - (a) activities that can or cannot be delegated by a Trustee;
  - (b) functions that can or cannot be outsourced by a Trustee;
  - (c) the eligibility criteria for service providers;
  - (d) the activities or functions that must be performed in the DIFC;
  - (e) any notification procedures and DFSA approval requirements that apply to appointment of service providers; or
  - (f) any other matter incidental or relating to delegations and outsourcing by a Trustee for the purposes of this Article.
- (4) A service provider is not independent of the Fund Manager for the purposes of (2) if it:
  - (a) is, or has been in the previous 2 years, an employee of the Fund Manager or a body corporate in the same group (a "related body corporate");
  - (b) is, or has been in the previous 2 years, an executive officer of a related body corporate;
  - (c) is, and has been in the previous 2 years, involved in material business dealings, or in a professional capacity, with the Fund Manager or a related body corporate;
  - (d) is a member of a partnership or a trustee of a trust that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the Fund Manager or in a related body corporate;
  - (e) has a material interest in the Fund Manager or a related body corporate; or
  - (f) is a relative or de facto spouse of a person who has a material interest in the Fund Manager or a related body corporate of a kind described in (a) to (e) of this Article.
- (5) Where the Trustee engages a service provider, the Trustee remains liable to the Unitholders for any acts or omissions of the service provider even if such service provider was acting fraudulently or outside the scope of its authority or engagement.

25. **Trustee's obligation to maintain the Unitholder register**

- (1) The Trustee shall ensure that a register of Unitholders of the Investment Trust is maintained in the DIFC containing the information set out in this Article and it is kept up to date and complete.
- (2) The register must contain:
  - (a) the name and address of each Unitholder, and if there are different classes of units, the class of the Unit;
  - (b) the number of Units including fractions of a Unit held by each Unitholder; and
  - (c) the date on which the Unitholder was registered in the register for Units standing in his name.
- (3) The Trustee shall ensure that the register is available for inspection by Unitholders during normal business hours.
- (4) The Trustee shall make the register available to the Fund Manager during office hours and allow the Fund Manager to make copies of the register for its purposes.

## **PART 6: REMOVAL AND RETIREMENT OF THE TRUSTEE**

### **26. Removal and retirement of the Trustee**

- (1) A Trustee may not retire, or be removed, except as provided in this Article.
- (2) A Fund Manager of a Fund may at the request of the Trustee or otherwise, and if it is of the view that the Trustee is unable to discharge its functions shall, with the prior written approval of the DFSA, replace the existing Trustee.
- (3) The DFSA may grant approval for the replacement of a Trustee only where it has received:
  - (a) a written notice from the Fund Manager of its intention to remove the Trustee and either:
    - (i) a legal certification that the removal of the Trustee will not adversely affect the interests of the Unitholders and the Fund Manager's ability to comply with its obligations under the Trust Deed, Prospectus and the Collective Investment Law 2010; or
    - (ii) a Special Resolution of Unitholders approving the Fund Manager's proposal to remove the Trustee and its replacement with another Trustee; and
  - (b) the written consent of the person who agrees to be the replacement Trustee, and that person meets the requirements for a Trustee in Article 18 to be able to act as the replacement Trustee.
- (4) The Unitholders of the Investment Trust may replace the Trustee by Special Resolution as provided under Article 35 of the Collective Investment Law 2010 or any rules made for the purpose of that Article.
- (5) The DFSA or the Fund Manager may apply to the Court for an order for the removal of the Trustee and any other appropriate orders including, but not limited to, the appointment of a replacement Trustee where the Trustee is, or is believed to be, in breach of its obligations under the Trust Deed, its Licence, this Law or any other DIFC law or rules made under those laws.
- (6) The DFSA may make Rules prescribing other circumstances in which a Trustee may be replaced.
- (7) Subject to the terms of the Trust Deed, this Law and the Collective Investment Law 2010 and the rules made for the purposes of those laws, a Trustee appointed as a replacement Trustee shall have the same powers, discretions and duties as the previous Trustee.

### **27. Position of the outgoing Trustee**

Where a Trustee is removed or retires under Article 26, it shall, without any delay, transfer the assets of the Investment Trust held by it as directed by the Fund Manager or, as required by any Court order. Until the assets of the Investment Trust are so transferred, the Trustee remains accountable to the Unitholders for the safety of those assets.

## **PART 7: DFSA POWERS IN RELATION TO AN INVESTMENT TRUST**

### **28. Powers in relation to Trustee and Investment Trust.**

Without in any way limiting the generality of other provisions conferring powers on the DFSA, the DFSA may exercise any of the powers specified in Part 11 of the Collective Investment Law 2010, in respect of an Investment Trust and in relation to the Trustee of an Investment Trust.



## **PART 8: THE FINANCIAL MARKETS TRIBUNAL**

### **29. Jurisdiction of the Financial Markets Tribunal**

- (1) Without in any way limiting the jurisdiction of the Financial Markets Tribunal conferred upon it by or under the Regulatory Law 2004 or any other Law administered by the DFSA, the Financial Markets Tribunal has additional jurisdiction as set out in Article 29(2).
- (2) The Financial Markets Tribunal has jurisdiction to hear and determine a proceeding in relation to an issue arising out of an offer of Units of an Investment Trust or out of the operation of an Investment Trust.

## **PART 9: MISCELLANEOUS**

### **30. Fees**

The DFSA may make Rules providing for the payment of fees to the DFSA as provided for in Article 16 of the Regulatory Law 2004.

## **SCHEDULE INTERPRETATION**

### **1. Rules of interpretation**

- (1) In this Law, unless the contrary intention appears, a reference to:
  - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
  - (b) a person includes any natural person, body corporate or body unincorporated, including a company, partnership, unincorporated association, government or state;
  - (c) unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official state holiday in the DIFC, the obligation shall take place on the next calendar day which is a business day;
  - (d) a calendar year shall mean a year of the Gregorian calendar; and
  - (e) the masculine gender includes the feminine.
- (2) The headings in the Law shall not affect its interpretation.

### **2. Legislation in the DIFC**

References to legislation and Guidance in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Rules are legislation made by the DFSA for the purpose of this Law and are binding in nature;
- (e) Guidance in the Rules is indicative and non-binding and may comprise (i) guidance made and issued by the Chief Executive as notations to the Rules; and (ii) any standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules; and
- (f) references to “legislation administered by the DFSA” are references to DIFC Law and rules conferring functions and powers on the DFSA.

### 3. **Defined Terms**

In this Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

<b>Terms</b>	<b>Definitions</b>
Authorised Firm	a person who holds a Licence to carry on one or more Financial Services prescribed pursuant to Article 42(1) of the Regulatory Law 2004, as an Authorised Firm.
Collective Investment Fund	has the meaning given in the Collective Investment Law 2010.
Constitution	has the meaning given in the Collective Investment Law 2010
Court	the DIFC Court as established under Dubai Law.
DFSA	the Dubai Financial Services Authority.
DFSA Board of Directors	the governing body of the DFSA established under Chapter 2 of Part 2 of the Regulatory Law 2004.
DIFC	the Dubai International Financial Centre.
Financial Service	is a financial activity prescribed in GEN section 2.2 of the DFSA Rulebook.
Fund	a Collective Investment Fund.
Governing Body	a person who is, or a body of persons who together form the directing mind of a Fund including but not limited to: <ul style="list-style-type: none"> <li>a) its Fund Manager, a member of its main or supervisory board, a General Partner; or</li> <li>b) any other person or body of persons exercising equivalent powers and functions in relation to directing the operation of a Fund.</li> </ul>
Investment Trust	an express trust created solely for collective investment purposes as provided under Article 12 of this Law.
Law	the Investment Trust Law 2006.
Licence	a licence granted by the DFSA under Chapter 2 of Part 3 of the Regulatory Law 2004.
Fund Manager	the person, described under Article 20(4) of the Collective Investment Law 2010.
Prospectus	a document containing such information as prescribed under the Collective Investment Law 2010 and rules made for the purposes of that law.
Ruler	the ruler of the Emirate of Dubai.
Special Resolution	has the meaning given in the Collective Investment Law 2010.
Trustee	a person who is appointed as Trustee under the Trust Deed that constitutes an Investment Trust.
Trust Deed	a deed that meets the requirements in Article 12 of this Law.
Unit	is an interest representing rights or interests of a participant in an Investment Trust.
Unitholder	is a person who holds a Unit or interest in a Unit of an Investment Trust.