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# The DFSA Rulebook

## Collective Investment Rules

### (CIR)

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## **PART 1: INTRODUCTION**

### **1. Application and Interpretation**

#### **1.1 Application**

##### **1.1.1** The Rules in this module (CIR):

- (a) are made for the purposes of the Collective Investment Law 2010 and the Investment Trust Law 2006; and
- (b) apply to every Person to whom the legislation in (a) applies except as otherwise provided.

##### **Guidance**

##### 1. Article 1 of the Collective Investment Law 2010 provides as follows:

- “(a) This Collective Investment Law 2010 repeals and replaces the Collective Investment Law 2006 (“the Previous Law”) and may be cited as the “Collective Investment Law of 2010” (“this Law”).
- (b) Except where otherwise provided in the Rules, anything done or omitted to be done pursuant to or for the purposes of the Previous Law is deemed to be done or omitted to be done pursuant to or for the purposes this Law.
- (c) Without limiting the generality of Article 1(b), such repeal shall not affect:
  - (i) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or
  - (ii) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,  
  
under the Previous Law and, any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this Law.
- (d) The DFSA may, by Rules, prescribe any transitional or saving provisions as are or are deemed necessary to give effect to, or to facilitate, the transition from the Collective Investment Law 2006 to this Law.”

##### **1.1.2** CIR applies to every Person who carries on, or intends to carry on, in or from the DIFC the Financial Services of:

- (a) Managing a Collective Investment Fund;
- (b) Providing Fund Administration to a Fund;
- (c) Providing Custody to a Fund; or
- (d) Acting as the Trustee of a Fund.

**1.1.3** CIR applies to every Person who is, or intends to be:

- (a) a Fund Manager;
- (b) an External Fund Manager;
- (c) a member of the Governing Body;
- (d) an Eligible Custodian;
- (e) a Trustee; and
- (f) an oversight provider.

**1.1.4** (1) CIR also applies to an Authorised Firm other than a Representative Office that:

- (a) provides a Financial Service; or
- (b) undertakes a Transaction in or from the DIFC;

in relation to a Domestic Fund or Foreign Fund.

(2) In the case of a Representative Office, only the Rules in chapter 15 apply.

**Guidance**

In regard to Rule 1.1.4(2), a Representative Office is authorised under its Licence to market, among other financial products, the Units of Foreign Funds, however, the scope of such marketing is limited to marketing the Units of the Foreign Funds that fulfil the criteria set out under REP section 4.7 as appropriate.

**1.1.5** (1) CIR also applies to a Fund whether or not it has a separate legal personality.

(2) Where a Rule imposes an obligation on a Fund, each Director, Partner or other Person charged with the management of that Fund must take reasonable steps to ensure compliance with the requirement by the Fund.

**Guidance**

1. The Rules in this module (CIR) establish a regime to regulate Domestic Funds, which may be Public Funds, Exempt Funds or Qualified Investor Funds. Domestic Funds include External Funds as defined in Article 14(1) of the Law. In addition, this module also regulates Fund Managers, which include External Fund Managers as defined in Article 20(5) of the Law.
2. CIR also applies to marketing and selling of Units of Foreign Funds in or from the DIFC and to the provision of a Financial Service to a Foreign Fund where any such activity is undertaken by an Authorised Firm. In that regard, the COB Rules also apply to the provision of Financial Services by an Authorised Firm.
3. If a Domestic Fund or Foreign Fund intends to list its Units on an Authorised Market Institution (AMI), it will need to comply with the relevant Rules in the MKT module and the AMI's listing Rules in respect of Domestic Funds. Exempt Funds and Qualified Investor Funds cannot be listed.

4. A Public Property Fund is required to be a closed-ended and Listed Fund and to be structured as an Investment Company or an Investment Trust.

## 1.2 Interpretation

- 1.2.1 Any references to “the Law” or to “Articles” are to be construed as references to the Collective Investment Law 2010 and to Articles in that law.

## 1.3 Client Classification

- 1.3.1 For the purposes of Article 16(7)(a) of the Law:

- (a) the criteria to be classified as a Professional Client are specified in COB Rule 2.3.3, and
- (b) the criteria to be classified as a Retail Client are specified in COB Rule 2.3.2.

## 1.4 The different types of Domestic Funds

### Guidance

Article 13 of the Law defines Funds as either Domestic Funds or Foreign Funds. Article 15 of the Law then further divides Domestic Funds into three categories which are listed below in terms of the level of regulation (from most intensively regulated to least intensively regulated):

- (a) Public Funds;
- (b) Exempt Funds; and
- (c) Qualified Investor Funds.

This table illustrates the different Rules applicable to the three categories of Domestic Fund.

CIR chapters	Public Fund	Exempt Fund	QIF
Chapter 1: Application & Interpretation	✓	✓	✓
Chapter 2: Arrangements not constituting a CIF	✓	✓	✓
Chapter 3: Specialist Classes of Fund	✓	✓	✓
Chapter 4: Excluded Offers	✓	✓	✓
Chapter 5: Fund Administrator	✓	✓	✓ Rule 5.1.4 does not apply
Chapter 6: External Fund Managers and External Funds	✓	✓	✓
Chapter 7: Constitution	✓	✓	Only Rules 7.1.1; 7.1.2(1)(b); 7.1.2(2) & 7.1.4 apply

Chapter 8: Management and Operation of a Fund	✓	✓	Only Rules 8.1.1, 8.4.1(1)(a) and 8.10.1 apply
Chapter 9: Accounting, Audit & Periodic Reporting of a Fund	✓	✓ A comparative table for the annual report is not required	✓ Rules on interim reports do not apply unless there has been a material change during the interim accounting period. A comparative table for the annual report is not required
Chapter 10: Requirements specific to Public Funds	✓	X	X
Chapter 12: Requirements specific to Exempt Funds	X	✓	X
Chapter 12A: Requirements specific to Qualified Investor Funds	X	X	✓
Chapter 13: Additional Requirements for Specialist Funds	✓	✓	Only Rules 13.1.1, 13.6.3 and 13.7 apply
Chapter 14: Marketing of Domestic Funds and Prospectus Disclosure	✓	✓	Only Rules 14.1.1, 14.2.1, 14.2.4-14.2.7, 14.4.6, 14.5.1, 14.5.2 & section 14.6 apply
Chapter 15: Marketing of Foreign Funds	X	X	X
Chapter 16: Transfer Schemes relating to Domestic Funds	✓	✓	✓
Chapter 17: Winding up of Domestic Funds	✓	✓	✓
APP 1: Delegation & Outsourcing	✓	✓	X
APP 2: Meeting Procedures	✓	X	X
APP 3: Approvals and Notifications	✓	X	X
APP 4: Guidance of Asset Valuation and Pricing	✓	✓	X
APP 5: Constitution of a Domestic Fund	✓	✓	X
APP 6: Guidance of Fitness and Propriety for Oversight Functions	✓	X	X
APP 7: Public Fund Prospectus Disclosure	✓	X	X
APP 8: Guidance for Hedge Fund Managers	✓	✓	✓



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## PART 2: DEFINITIONAL PROVISIONS

### Guidance

A Collective Investment Fund is defined in Article 11 of the Law. The definition under Article 11 is very wide, however, Article 12 enables the DFSA to make Rules excluding certain arrangements or types of arrangements from constituting a Fund. These excluded arrangements are set out below in section 2.1.

## 2 ARRANGEMENTS NOT CONSTITUTING A COLLECTIVE INVESTMENT FUND

### 2.1 Exclusions

**2.1.1** Pursuant to Article 12 of the Law, the DFSA prescribes that an arrangement which otherwise amounts to a Collective Investment Fund as defined in Article 11 of the Law does not constitute a Collective Investment Fund if it falls within one or more of the exclusions specified in this chapter.

#### Deposits

**2.1.2** An arrangement does not constitute a Collective Investment Fund if the whole amount of each participant's contribution is a Deposit which is accepted by an Authorised Firm authorised under its Licence to carry on the Financial Service of Accepting Deposits.

#### Common accounts

**2.1.3** An arrangement does not constitute a Collective Investment Fund if:

- (a) the rights or interests of each participant in the arrangement are rights or interests in money held in a common account; and
- (b) the money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied in making payments to him or in satisfaction of sums owed by him or in the acquisition of property for him or the provision of services to him.

#### Commercial activities unrelated to Financial Services

**2.1.4** An arrangement does not constitute a Collective Investment Fund if each of the participants in the arrangement:

- (a) carries on a business which does not involve the carrying on of any of the activities specified under GEN Rule 2.2.2(d) to (k) or (n) to (q) or an activity which would be such an activity were it not for any applicable exclusion; and
- (b) enters into the arrangement for commercial purposes related to that business where that participant carries on that business by virtue of being a participant in the arrangement.

**Group arrangements**

- 2.1.5** An arrangement does not constitute a Collective Investment Fund if each of the participants is a Body Corporate in the same Group as the Person undertaking the fund management function in relation to the arrangement.

**Franchise arrangements**

- 2.1.6** An arrangement does not constitute a Collective Investment Fund if the arrangement is a franchise arrangement.

**Clearing services**

- 2.1.7** An arrangement does not constitute a Collective Investment Fund if the purpose of the arrangement is the provision of clearing services and the services are operated by an Authorised Market Institution.

**Certificates or Options**

- 2.1.8** An arrangement does not constitute a Collective Investment Fund if the rights or interests of the participants in the arrangement are Investments of the kind specified under GEN Rule A2.2.1(d) or A2.3.1(a).

**Time-share and other 'property-enjoyment' related arrangements**

- 2.1.9** An arrangement does not constitute a Collective Investment Fund:
- (a) if the rights or interests of each of the participants in the arrangement are time share rights; or
  - (b) if:
    - (i) the predominant purpose of the arrangement is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and
    - (ii) the property to which the arrangement relates does not consist of or include the currency of any country or territory or Investments, as defined in GEN Rule A2.1 or, which would be such Investments if not for any applicable exclusion.

**Bodies corporate not undertaking investment management**

- 2.1.10** An arrangement does not constitute a Collective Investment Fund if the arrangement comprises a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such an arrangement appears to be the investment management, in the exercise of discretion for a collective purpose, of Investments or Real Estate assets for the benefit of the shareholders or partners.

**Debentures and Warrants of a single issuer**

- 2.1.11** (a) An arrangement does not constitute a Collective Investment Fund if the rights or interests of the participants in the arrangement are represented by a Debenture or Warrant:
- (i) where the issuer of the Debenture or Warrant is a single issuer, and if that issuer is:
    - (A) a Body Corporate, it is neither an open-ended investment company nor a closed-ended company the intent or purpose of which is investment management as specified in Rule 2.1.10; or
    - (B) not a Body Corporate, the rights and interests of the Debenture or Warrant holder are guaranteed by the government of any country or territory; and
  - (ii) which, if it is a convertible Security, the underlying Securities to which the Debenture or Warrant holder is entitled are Shares or Debentures issued, or to be issued, by the same issuer as the issuer of the Debenture or Warrant or single other issuer.
- (b) An arrangement that does not constitute a Collective Investment Fund by virtue of Rule 2.1.11(a) does not become a Fund merely because one of the participants in the arrangement is a person:
- (i) whose ordinary business involves him engaging in an activity that is a Financial Services activity as defined in GEN chapter 2 or that would fall within an applicable exclusion from a Financial Services activity; and
  - (ii) whose rights or interests in the arrangement are, or include, rights or interests in a swap arrangement under which he facilitates the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things in settlement of the rights and interests of the other participants in the arrangement.

**Insurance**

- 2.1.12** An arrangement does not constitute a Collective Investment Fund if it is a Contract of Insurance.

**Profit Sharing Investment Accounts**

- 2.1.13** An arrangement does not constitute a Collective Investment Fund if it is an account or portfolio which is a Profit Sharing Investment Account.

**Discretionary Portfolio Accounts**

- 2.1.14** An arrangement does not constitute a Collective Investment Fund if it is a portfolio or account managed under a Discretionary Portfolio Management Agreement.

**Close Relative accounts**

- 2.1.15** An arrangement does not constitute a Collective Investment Fund if every participant in the arrangement is a Close Relative. For the purposes of this Rule, the defined term “Close Relative” includes grandchildren.

**Sukuks**

- 2.1.16** An arrangement does not constitute a Collective Investment Fund if the rights or interests of the participants are evidenced by sukuk certificates where the holders of the certificates are entitled to rely on the credit worthiness of:

- (a) the issuer of the sukuk certificates; or
- (b) any other Person who has assumed obligations under the sukuk certificates,

for obtaining their rights and benefits arising under the certificates.

**Employee reward schemes**

- 2.1.17** An arrangement does not constitute a Collective Investment Fund if the arrangement is for the purposes of enabling or facilitating the operation of an employee compensation or reward scheme where the arrangement:

- (a) makes Securities available only to:
  - (i) an Employee or former Employee of the Issuer or of another member of the same Group as the Issuer; or
  - (ii) a Close Relative of any such Employee; and
- (b) is operated by the Issuer or by a member of the same Group as the Issuer or by a trustee who, in pursuance of the arrangements, holds the Securities issued by the Issuer for the benefit of any eligible Persons referred to in Rule 2.1.17(a)(i) or (ii).

### **3 SPECIALIST CLASSES OF FUNDS**

#### **3.1 Specialist Funds**

- 3.1.1** (1) Pursuant to Article 17 of the Law, a Domestic Fund that falls within one or more of the criteria specified in Rules 3.1.2 to 3.1.10 is hereby prescribed to be a Domestic Fund of that specialist class or classes.
- (2) Pursuant to Article 18(1)(c) of the Law, a Foreign Fund that falls within one or more of the criteria specified in Rules 3.1.2 – 3.1.10 is hereby prescribed to be a Foreign Fund of that specialist class or classes for the purposes of:
- (a) marketing of the Units of that Fund in or from the DIFC; or
  - (b) determining whether a Domestic Fund investing in such a Fund continues to meet any criteria or other requirements applicable to that Domestic Fund.

#### **Guidance**

1. A Domestic Fund may attract more than one definition of a specialist class of Funds. For example, a Domestic Fund may be an Islamic Hedge Fund, Islamic Private Equity Fund or an Islamic REIT.
2. Article 50(1) of the Law contains the prohibition against the Offer of Units of Foreign Funds (i.e. marketing of Units of Foreign Funds) in or from the DIFC. Article 54(1) of the Law provides the limited circumstances in which an Authorised Firm may market Units of a Foreign Fund. Such marketing activities are also subject to additional requirements that are prescribed in this module – see chapter 15. An Authorised Firm marketing Units of a Foreign Fund should take reasonable steps to ensure that the Fund meets the applicable requirements including the relevant criteria for being a specialist class of Fund.

#### **Islamic Fund**

- 3.1.2** A Fund is an Islamic Fund if its entire operations are conducted, or held out as being conducted, in accordance with Shari'a.

#### **Guidance**

IFR module contains the additional requirements that apply to a Domestic Fund by virtue of it being an Islamic Fund.

#### **Fund of Funds**

- 3.1.3** A Fund is a Fund of Funds if it restricts its investment activities to investing in Units or Debentures of only two or more other Funds.

**Guidance**

A Fund of Funds does not cease to be a Fund of Funds merely because it holds some investments in cash or transferable securities to meet its on-going obligations such as for redemption purposes.

**Feeder Fund**

**3.1.4** A Fund is a Feeder Fund if it is dedicated to investing in the Units or Debentures of a single other Fund (Master Fund).

**Guidance**

1. A Domestic Feeder Fund may have as its Master Fund a Foreign Fund.
2. A Sub-Fund of an Umbrella Fund is not a Feeder Fund.

**Master Fund**

**3.1.5** A Fund is a Master Fund if it issues its Units or Debentures only to other Funds which are dedicated to investing in that Master Fund.

**Guidance**

A Domestic Master Fund may have Foreign Funds as its Feeder Funds.

**Private Equity Fund**

**3.1.6** A Fund is a Private Equity Fund if it;

- (a) invests in unlisted companies, by means of Shares, convertible debt or other instruments carrying equity participation rights or reward; or
- (b) participates in management buy-outs or buy-ins.

**Property Fund**

**3.1.7** A Fund is a Property Fund if it is dedicated to investment in Real Property and in Securities issued by Bodies Corporate whose main activities are investing in, dealing in, developing or redeveloping Real Property.

**Real Estate Investment Trust (REIT)**

**3.1.8** A Fund is a Real Estate Investment Trust (REIT) only if it meets the criteria in Rule 13.5.1(2).

**Hedge Fund**

**3.1.9** (1) A Fund is a Hedge Fund if it is a Fund which has some or all of the following characteristics:

- (a) it has a broad mandate giving its Fund Manager flexibility to shift strategy;
- (b) it is aimed at achieving absolute returns rather than returns relative to the market;

- (c) it employs some or all of the following techniques:
  - (i) the pursuit of absolute returns or “alpha” rather than measuring their investment performance relative to the market;
  - (ii) the use of short selling;
  - (iii) the use of Derivatives for investment purposes;
  - (iv) the use of economic or debt leverage as well as leverage embedded in financial instruments such as Derivatives;
  - (v) the acquisition of distressed debt with a view to its realisation at a profit; or
  - (vi) the acquisition of “high yield” debt Securities.
- (2) A Fund is a Fund of Hedge Funds if it is dedicated to investing in a number of Hedge Funds or Sub-Funds of one or more Hedge Funds that meet the criteria in (1).

### **Umbrella Fund**

**3.1.10** A Fund is an Umbrella Fund if the contributions of the Unitholders in the Fund and the profits or income out of which payments are to be made to them are pooled separately in a number of Sub-Funds constituting separate parts of the Fund Property.

#### **Guidance**

1. An Umbrella Fund may be constituted as a Protected Cell Company.
2. Unitholders of an Umbrella Fund are entitled to exchange rights they have in one Sub-Fund for rights in another Sub-Fund of the same Umbrella Fund – see Article 11(2) of the Law.
3. A Sub-Fund of an Umbrella Fund is not a Feeder Fund or any other form of a discrete Fund.

## **4. EXCLUDED OFFERS**

### **4.1 Excluded transactions and offers**

**4.1.1** Pursuant to Article 50(2) of the Law, the activities specified in Rules 4.1.2, 4.1.3 and 4.1.4 are hereby prescribed as not constituting an Offer for the purposes of the Law and the Rules.

**4.1.2** A Person does not make an Offer of a Unit by offering to sell or transfer a Unit that is owned by that Person if the offer to sell or transfer:

- (a) is capable of acceptance only by the Person to whom that offer is made; and
- (b) is not made by way of a financial promotion as defined in Article 19(3) of the Law.

#### **Guidance**

While a Person who makes personal offers of the kind referred to in Rule 4.1.2 does not attract the Prospectus disclosure obligations in Part 7 of the CIR module, if that Person frequently sells Units held by him, he would be likely to be 'Dealing in Investments as Principal'. As a result, such a Person would need to be licensed. Similarly, a Person who obtains Units for the purposes of secondary sales would be likely to be regarded as making those sales "by way of business" and would thus trigger the need to be licensed.

**4.1.3** (1) A Person does not make an Offer of a Unit if that Person is an Authorised Firm and it undertakes a Transaction in relation to a Unit of a Fund if the Transaction is:

- (a) an Execution-Only Transaction undertaken for or on behalf of a Client;
- (b) a trade executed for or on behalf of a Client in accordance with a Discretionary Portfolio Management Agreement entered into with that Client; or
- (c) effected with the Fund Manager of a Fund for the purposes of redeeming a Unit of that Fund for or on behalf of a Client.

**4.1.4** A Person does not make an Offer of a Unit if that Person is an Authorised Firm and the Offer is made only to, or directed only at, a Market Counterparty.



## **PART 3: FUND FUNCTIONARIES**

### **5 FUND ADMINISTRATORS**

#### **5.1 General**

##### **Application**

- 5.1.1** (1) Subject to (2), this chapter applies to an Authorised Firm which is appointed as a Fund Administrator to either a Domestic or a Foreign Fund.
- (2) This chapter does not apply to a Fund Manager or Trustee to the extent that it carries on an activity of Providing Fund Administration within the Financial Services of Managing a Fund or of Acting as the Trustee of a Fund.

##### **Compliance with the AML Rules**

- 5.1.2** The AML module applies to the activities of a Fund Administrator in Providing Fund Administration for a Domestic Fund or Foreign Fund as if each reference in AML to a “customer” is a reference to a “Unitholder” or “prospective Unitholder” as appropriate to the context.

##### **Client Money and Assets**

- 5.1.3** A Fund Administrator, in Providing Fund Administration for a Domestic Fund or Foreign Fund, must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:
- (a) holding cheques to the order of a Fund’s bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund’s bank account or returned to the drawer of the cheque; or
- (b) where a mandate over a Fund’s or other third party’s bank account is granted to a Fund Administrator and the mandate has been agreed in writing with the bank concerned, and transfers out of the relevant bank account may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely in accordance with the payment of invoiced fees and expenses, made in accordance with the relevant Fund’s Constitution and Prospectus and are not remitted to the account of the Fund Administrator except by express instructions of the Fund Manager.

### Delegation and service level agreements

- 5.1.4**
- (1) A Fund Administrator of a Domestic Fund for which it is Providing Fund Administration must have a Delegation Agreement that meets the requirements in App1 with the Fund Manager or Trustee of the Fund.
  - (2) Paragraph (1) does not apply to a Fund Administrator of a Qualified Investor Fund.

#### Guidance

Section 8.12 of this module governs the delegation of activities by a Fund Manager or where appointed the Trustee.

- 5.1.5**
- (1) A Fund Administrator of a Foreign Fund for which it is Providing Fund Administration must have a service level agreement with the fund manager of that Foreign Fund setting out the functions and service standards that will be applied to the provision of such administration.
  - (2) The agreement in (1) must ensure that the Fund Administrator cannot in turn delegate the activities and functions delegated to it by the fund manager of the Foreign Fund unless the sub-delegate has been approved by that fund manager.
  - (3) The agreement in (1) must also require the Fund Administrator to retain any relevant work or records relating to the delegated activities and functions where the contract is terminated either by the fund manager or the Fund Administrator.

#### Guidance

The DFSA would expect any agreement required under Rule 5.1.5 to include as a minimum the following provisions:

- a. unambiguous descriptions and definitions of the activities and functions to be provided by the Fund Administrator and the duties to be performed by both parties;
- b. an agreed standard in respect of resources and services supported as necessary by performance measures in accordance with the applicable legislation;
- c. the requirement for regular detailed reporting to a specified frequency from the Fund Administrator in respect of its duties and activities;
- d. provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Fund Administrator to fulfil its duties;
- e. the requirement for an annual review (at a minimum) of the performance of the functions by the Fund Administrator; and
- f. provisions relating to records and adequate access by the fund manager, the Fund's auditor or any other Persons providing control or risk management functions for the Fund, as required by the fund manager or applicable laws to that Fund.

**Record keeping**

- 5.1.6** A Fund Administrator must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each Fund, in respect of Unitholders or potential Unitholders of the Fund as appropriate.
- 5.1.7** The records required under Rule 5.1.6 must be:
- (a) capable of demonstrating to the Governing Body of the relevant Fund that any accounts prepared comply with the applicable requirements in this module or any other applicable legislation;
  - (b) retained by the Fund Administrator for at least 6 years from the date to which they relate;
  - (c) at all reasonable times, open to inspection by the DFSA, the Fund's Auditor and any Person providing oversight functions for the relevant Fund; and
  - (d) if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

## **6 External fund managers AND External Funds**

### **Guidance**

This chapter sets out the detailed requirements that apply to External Fund Managers and External Funds. Article 20(5) of the Law contains the criteria to be classified as an External Fund Manager and Article 14(1) of the Law contains the criteria for an External Fund.

### **6.1 Requirements for External Fund Managers**

#### **Application**

**6.1.1** This section applies to an External Fund Manager.

#### **Subjecting to the DIFC jurisdiction**

**6.1.2** An External Fund Manager must:

- (a) be subject to regulation by a Financial Services Regulator in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA with respect to its activity of managing Fund; and
- (b) subject itself to the DIFC laws and the jurisdiction of the DIFC Courts so far as they apply to its activities relating to the Domestic Fund, and, for that purpose, sign the appropriate declaration contained in AFN.

#### **Appointment of Fund Administrator/Trustee**

**6.1.3** (1) An External Fund Manager must:

- (a) appoint to the Fund a Fund Administrator or a Trustee licensed by the DFSA (hereafter referred to as the “Appointed Fund Administrator” or “Appointed Trustee”) before any Units in that Fund are Offered to any Person;
- (b) nominate, and require, the Appointed Fund Administrator or Appointed Trustee, as the case may be, to be its agent in relation to its dealings with the DFSA and Unitholders and prospective Unitholders of the Fund; and
- (c) require the Appointed Fund Administrator or Appointed Trustee to, and for this purpose grant to that Person such powers as are necessary to, facilitate:
  - (i) if it is an open-ended Fund, the issue, resale and redemption of the Units of the Fund and the publication of the price at which such issue, resale or redemption will occur as provided under the Law and the Rules;
  - (ii) the sending to Unitholders of the Fund all the reports required under the Law and the Rules;

- (iii) access to the Constitution and most recent Prospectus of the Fund to Unitholders and prospective Unitholders;
- (iv) access to the Unitholder register; and
- (v) access to the books and records relating to the Fund as required by the DFSA and any person providing the oversight functions of the Fund,

in or from a place of business in the DIFC.

- (2) If the Fund is structured as an Investment Trust, the Fund Manager may appoint the Trustee as its Appointed Trustee for the purposes of (1).
- (3) An External Fund Manager must continue to meet the criteria in Article 20(5) of the Law.

**Guidance**

In addition to the requirements in this chapter which apply to the Appointed Fund Administrator or Appointed Trustee, Persons who are appointed to Funds as Fund Administrators or Trustees have other obligations (see for example chapter 5.1).

## **6.2 Requirements for External Funds**

**Guidance**

Article 14(1) of the Law provides that a Fund is an External Fund if that Fund:

- a. is established in a jurisdiction other than the DIFC; and
- b. is managed by a Fund Manager which is an Authorised Firm.

**Application**

**6.2.1** This section applies to the Fund Manager of an External Fund.

**6.2.2** The Fund Manager of an External Fund must:

- (a) have systems and controls which are adequate to ensure compliance with the requirements that apply to the External Fund in the jurisdiction in which it is established or domiciled; and
- (b) inform the DFSA of the jurisdiction in which the Fund is or is to be established or domiciled and the nature of regulatory requirements applicable to the Fund in the host jurisdiction.

**Guidance**

- 1. A Fund Manager of an External Fund is generally not subject to the requirements that otherwise apply to other Domestic Funds (see Article 14(2) of the Law). However, some limited requirements apply to External Funds. See for example the disclosure required

under Rules 14.2.4 – 14.2.7. Should such a requirement conflict with any requirements that apply to an External Fund in the jurisdiction in which the Fund is domiciled, the Fund Manager may apply to the DFSA for appropriate waivers or modifications of the DFSA requirements.

2. The DFSA may, upon receipt of the information referred to in Rule 6.2.2(b), assess the desirability of establishing an External Fund in the particular jurisdiction chosen by the Fund Manager. Relevant considerations include:
  - a. the Fund Manager's need to establish the Fund in the particular jurisdiction for reasons such as the physical location of the Fund assets or investor preference;
  - b. any regulatory risks arising from establishing the External Fund in the relevant jurisdiction, particularly if the Fund is to be open to retail investors; and
  - c. whether the relevant jurisdiction complies with the FATF or other relevant international standards or requirements.

## PART 4: CORE RULES RELATING TO ESTABLISHMENT AND MANAGEMENT OF DOMESTIC FUNDS

### 7 CONSTITUTION

#### 7.1 Application

- 7.1.1** (1) This chapter applies to a Fund Manager, and where appointed a Trustee, of a Domestic Fund.
- (2) Only this Rule and Rules 7.1.2(1)(b), 7.1.2(2) and 7.1.4 apply to a Fund Manager and, where appointed, a Trustee, of a Qualified Investor Fund.

#### Instrument constituting the Fund

- 7.1.2** (1) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee of a Fund, must ensure that the written Constitution which every Fund is required to have pursuant to Article 27(1) of the Law:
- (a) contains the statements and disclosures prescribed in the table in App5 as are applicable to the Fund; and
  - (b) does not contain any provision that is prejudicial to the interests of the Unitholders generally or to the Unitholders of any class of Units.
- (2) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee, are responsible for maintaining the Constitution and for making necessary alterations to it in accordance with the applicable legislation.
- 7.1.3** (1) A Fund Manager may issue and in the case of an Investment Trust, may instruct the Trustee to issue such classes of Units as are set out in the Constitution, provided the rights of any class are not unfairly prejudicial to the interests of the Unitholders of any other class of Units in that Fund.
- (2) Units whose issue may be limited can be issued by a Fund Manager if permitted by the Constitution and if in accordance with the conditions set out in the Prospectus, provided that such issue will not materially prejudice any existing Unitholders in the Fund.
- (3) In the case of an Investment Trust, the Trustee must take reasonable measures to ensure, before carrying out the Fund Manager's instructions, that those instructions comply with the requirements in (1) and (2).

#### Name of the Fund

- 7.1.4** The Fund Manager, and if appointed the Trustee, of a Fund must ensure that the name of the Fund or any Sub-Fund or class of Units in the Fund or Sub-Fund, is not undesirable, misleading or in conflict with the name of another Fund or another Sub-Fund or class of Units in the Fund or Sub-Fund.

**Guidance**

1. Article 27(4) of the Law and this Rule give the DFSA the power to make a direction if a name of a Fund, Sub-Fund or class of Units in a Fund is undesirable, misleading or conflicts with a name used by another Fund, Sub-Fund or class of Units of a Fund.
2. In determining whether to make a direction under these powers, the matters that the DFSA may take into account include whether the name of the Fund, Sub-Fund or class of Units as the case may be:
  - a. implies that the Fund, Sub-Fund or class of Units has merits which are not, or might not be, justified;
  - b. is inconsistent with the Fund's investment objectives or policy;
  - c. might mislead Unitholders or prospective Unitholders into thinking that a Person other than the Fund Manager is responsible for the Fund, Sub-Fund or class of Units of the Fund;
  - d. is substantially similar to the name of another Collective Investment Fund in the DIFC or elsewhere;
  - e. implies that it is a REIT or an Islamic Fund, or Units of such a specialist class of Fund or Sub-Fund, where the relevant requirements relating to that class of specialist Fund are not met; or
  - e. is in the opinion of the DFSA likely to offend the public.

**7.1.4** Before using as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund the words "guaranteed", "protected" or any other words with a similar meaning implying a degree of security in relation to the capital or income, the Fund Manager must demonstrate to the satisfaction of the DFSA that:

- (a) the guarantor has the authority and resources to honour the terms of the guarantee; and
- (b) all the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the Prospectus and that any exclusions such as force majeure are highlighted.

**Guidance**

In considering whether to permit a Fund Manager to use the words "guaranteed" or "protected" as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund, the DFSA will also take into account whether the degree of security implied by the name fairly reflects the nature of the arrangements for providing that security.

**Alterations to the Constitution of a Fund**
**Guidance**

Articles 35 and 36 of the Law govern the process of making alterations to a Constitution.



## **8 MANAGEMENT AND OPERATION OF a FUND**

### **Guidance**

While most of the provisions in this chapter are of general application to all Domestic Funds, in a few instances, some provisions which are specific to a certain type of Domestic Fund, for example a Public Fund, are retained in this Part. We have, instead of removing such provisions to Part 5 which contains provisions applicable to specific types of Domestic Funds, retained them in this Part because those requirements are integral to the main provisions applying to all Domestic Funds and therefore need to be read together.

### **8.1 General management Duties**

#### **Application**

- 8.1.1** (1) This chapter applies to a Fund Manager, and if appointed the Trustee, of a Domestic Fund, except as provided in (3) or where otherwise provided in this chapter.
- (2) This chapter also applies, where expressly provided, to a Fund Administrator or Eligible Custodian of a Domestic Fund.
- (3) Only this Rule and Rules 8.4.1(1)(a) and 8.10.1 in this chapter apply to, or in relation to, a Qualified Investor Fund.

#### **Guidance**

1. Article 22 of the Law requires the Fund Manager of a Domestic Fund to manage the Fund in accordance with the Fund's Constitution and its most recent Prospectus and to perform the functions conferred on it by the Constitution and the Law. In doing so, the Fund Manager is required under that Article to comply with any conditions or restrictions on its Licence as well as any limitations or requirements imposed by or under the Law or Rules.
2. Article 38 of the Law requires the Fund Manager to establish and maintain systems and controls including but not limited to financial and risk controls to ensure sound management of the Fund in accordance with the Fund's Constitution and its most recent Prospectus, taking due account of the nature, scale and complexity of the Fund's investments and operations.
3. The requirements in this chapter apply to External Fund Managers in the same manner as they apply to Fund Managers of Domestic Funds, unless otherwise provided. External Fund Managers and External Funds attract additional requirements, which are set out in chapter 6.
4. This chapter sets out more detailed obligations of the Fund Manager, and where appointed the Trustee, of a Domestic Fund with regard to:
  - a. Duties relating to Fund Property;
  - b. Conflicts of interests;
  - c. Valuation of Fund;
  - d. Determination of single price;

- e. Issue and redemption of Units;
- f. Unitholder register;
- g. Meetings of Governing Body and Unitholders;
- h. Approvals and notifications;
- i. Maintenance of records;
- j. Capital;
- k. Delegations and outsourcing; and
- l. Charges and expenses.

## **8.2 Duties in relation to Fund Property**

### **Fund Manager**

- 8.2.1** (1) A Fund Manager must make decisions as to the constituents of the Fund Property that are in accordance with the Constitution of the Fund and investment objectives and policy stated in the Prospectus.
- (2) A Fund Manager must take all steps and execute all documents to ensure that transactions relating to the Fund Property are properly entered into for the account of the relevant Fund or Sub-Fund.
- (3) A Fund Manager of an Investment Trust must ensure that instructions it gives to the Trustee in relation to the Fund Property are in accordance with the agreement creating the Investment Trust, the Fund's Constitution, and the Prospectus.
- 8.2.2** (1) In the case of an Investment Company or an Investment Partnership, the Fund Manager is responsible to the Unitholders for the safekeeping of the Fund Property.
- (2) Without removing the generality of the obligation under (1) and subject to (3), a Fund Manager must, in the case of a Fund which is an Investment Company or Investment Partnership:
- (a) delegate the activity of Providing Custody in relation to the Fund Property to a Service Provider who is an Eligible Custodian; and
  - (b) comply with the delegation procedures set out in section 8.12 in relation to such a delegation.
- (3) The requirement in (3) does not apply to:
- (a) a Property Fund investing in Real Property where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.4.2; or

- (b) a Private Equity Fund where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.3.1.

**Guidance**

Section 8.12 of this module governs the power of a Fund Manager to delegate certain of its Financial Service activities, and to outsource its functions.

**Trustee**

**8.2.3** In the case of an Investment Trust:

- (a) the Trustee of the Fund must hold the Fund Property in trust for the Unitholders and accordingly is responsible to the Unitholders for the safekeeping of the Fund Property;
- (b) the legal title of the Fund Property must be registered with the Trustee except in the case of a Property Fund investing in Real Property where the Trustee has made adequate alternative arrangements that are in accordance with Rule 13.4.2; and
- (c) the Trustee must not act on instructions of the Fund Manager in relation to the Fund Property if such instructions are not in accordance with the agreement creating the Investment Trust, the Fund's Constitution, and the Prospectus.

**Guidance**

Section 8.12 of this module governs the power of a Trustee to delegate certain of its Financial Service activities, and to outsource its functions.

**Eligible Custodian**

**8.2.4** For the purposes of the Rules in this module, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria:

- (a) an Authorised Firm whose Licence authorises it to Provide Custody Services;
- (b) an Authorised Firm that is a Bank;
- (c) an Authorised Market Institution;
- (d) a legal entity that is authorised and supervised by a Financial Services Regulator in a Recognised Jurisdiction for providing custody services in respect of a Fund and is subject to a minimum capital requirement of \$4 million or its equivalent in any other currency at the relevant time and has had surplus revenue over expenditure for the last two financial years;
- (e) a legal entity where it, or its holding company, is:
  - (i) in respect of its financial strength, rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the DFSA; and

- (ii) authorised and supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country; or
- (f) a legal entity that is authorised or recognised by a Financial Services Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction; or
- (g) a legal entity that is and remains:
  - (i) controlled and wholly owned by one or more of the national governments of the six member states of the Gulf Cooperation Council;
  - (ii) authorised and supervised by a Financial Services Regulator or Central Bank of at least one of the said national governments; and
  - (iii) rated or graded as at least “investment grade” by Moody’s, Fitch or Standard & Poor’s or such other international rating agency as may be recognised by the DFSA.

### **8.3 Conflicts of interest**

- 8.3.1**
- (1) The Fund Manager and, if it is a Fund structured as an Investment Trust, the Trustee, must take reasonable steps to ensure that in any dealing in relation to the Fund Property such dealings do not give rise to a conflict of interest.
  - (2) Where a conflict of interest arises, whether in dealings with Affected Persons or otherwise, the Fund Manager and, if appointed, the Trustee, must disclose to the Unitholders the nature of the conflict and how the conflict will be managed.

#### **Affected Person transactions**

- 8.3.2**
- (1) A Fund Manager must not enter into a Transaction in respect of the Fund Property with an Affected Person unless it is in accordance with the requirements in this Rule.
  - (2) A Fund Manager must ensure that any transaction in respect of the Fund Property undertaken with an Affected Person is on terms at least as favourable to the Fund as any comparable arrangement on normal commercial terms negotiated at arm’s length with an independent third party.
  - (3) The Fund Manager must, before entering into a transaction with an Affected Person:
    - (a) obtain Unitholders’ prior approval by Special Resolution in respect of the proposed transaction if the total consideration or value of the transaction is 5% or more of the most recent net asset value of the Fund as disclosed in the latest published audited accounts of the Fund; and

- (b) issue to the Unitholders a circular containing the details of the transaction.
- (4) The Fund Manager must:
  - (a) if prior Unitholder approval is required pursuant to (3)(a), issue a notice to Unitholders providing details of the results of the Unitholders' voting at the general meeting as soon as practicable after the meeting;
  - (b) include a brief summary of the Affected Person transactions in the Fund's next published interim or annual report; and
  - (c) include, in the annual report of the Fund, the total value of any Affected Person transactions, their nature and the identities of the Affected Persons with whom such transactions were made. Where there is no such transaction conducted during the financial year covered by the annual report, an appropriate negative statement to that effect must be made in the annual report.

### **Best execution and fair allocation**

#### **8.3.3**

Without limiting the generality of the obligations of the Fund Manager including those in Rules 8.3.1 and 8.3.2, the Fund Manager's systems and controls must include policies and procedures which are designed to ensure that:

- (a) when executing or procuring execution of trades for or on behalf of the Fund, the transactions are executed:
  - (i) as soon as reasonably practicable after a decision to effect a transaction has been made; and
  - (ii) on the best terms available at the time of dealing;
- (b) where the Fund Manager undertakes investment transactions for or on behalf of a Fund which it operates and one or more other Funds or Clients, there is timely and fair allocation of trades to each Fund and Client;
- (c) trading of the investment portfolio forming part of the Fund Property is not excessive in light of the Fund's investment objective as stated in its Constitution and the most recently issued Prospectus; and
- (d) any underwriting arrangements it undertakes are carried out in the best interest of the Fund.

### **Guidance**

1. For the purposes of (a), a Fund Manager's procedures should take into account matters such as the market in which the trade is to be executed, the kind and size of the transaction concerned and type of services provided by the executing broker that has been selected. A Fund Manager's procedures should be adequate to demonstrate that when the transaction was executed, it was done at the best price available. For this purpose, a Fund Manager may require a print out of a computer screen containing information about the price available at the time of the execution to be maintained.

2. For the purposes of (b), a Fund Manager should have a policy in place which demonstrates how it achieves timely and fair allocation of trades. For example, where a Fund Manager places an order on behalf of a number of Funds it operates, its policy should state the basis of allocation of trades to each Fund and, where any deviation from that policy occurs, record the reasons for such deviations.
3. For the purposes of (c), a Fund Manager's policies and procedures should encompass requirements such as maintenance of sufficient records to demonstrate that any brokerage, commissions or other benefits directly or indirectly derived from any transactions it has undertaken on behalf of the Fund are not unusual, when considered in light of industry practice. However, where there are other requirements relating to disclosure of benefits, a Fund Manager should comply with those requirements separately, as maintenance of records for the purposes of this Rule may not be sufficient to discharge those obligations.
4. For the purposes of (d), where a Fund Manager seeks to underwrite or participate in an initial public offering, its policies should ensure that it does not do so in a manner that is in any way detrimental to the Fund. The Fund Manager will also need to ensure that the best execution obligations under (a) are met.

## **8.4 Valuation of Fund Property**

- 8.4.1**
- (1) A Fund Manager must:
    - (a) ensure that the Fund Property is valued at regular intervals as appropriate to the nature of the Fund, except where such valuation is suspended in any circumstances that are set out in the Fund's Constitution or Prospectus;
    - (b) prepare a valuation in accordance with (3) for each relevant type of Unit at each relevant valuation point; and
    - (c) as soon as practicable after each valuation point, both publish and make available to the Unitholders and prospective Unitholders of the Fund, the price of the Units of the Fund.
  - (2) The value of the Fund Property is the net value of the Fund Property after deducting any expenses and outstanding borrowings, including any capital outstanding on a mortgage of any Real Property.
  - (3) The value of the Fund Property must, except as otherwise provided in this section, be determined in accordance with the provisions of the Constitution and the Prospectus, as appropriate.
  - (4) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
  - (5) A Fund Manager must not make a dilution levy or dilution adjustment unless stated as permitted in the Fund's Prospectus. Such a measure must be applied in a fair manner to reduce dilution and solely for that purpose.

**Guidance**

1. A dilution levy or adjustment means a charge of such amount or such rate as is determined by a Fund Manager of a Fund to be made for the purpose of reducing the effect of dilution, i.e., the amount of dealing costs incurred, or expected to be incurred, by a Fund Manager, to the extent that these costs may reasonably be expected to result, or to have resulted, from the acquisition or disposal of Investments by the Fund Manager as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the Fund resulting from the issue or cancellation of Units over a period.
2. Dealing costs referred to in Guidance 1 include both the costs of dealing in an Investment, professional fees incurred, or expected to be incurred, in relation to the acquisition or disposal of Real Property and, where there is a spread between the buying and selling prices of the Investment, the indirect cost resulting from the differences between those prices.

**8.4.2**

- (1) A Fund Manager must:
  - (a) ensure that at each valuation point there are at least as many Units in issue of any class as there are Units registered to Unitholders of that class; and
  - (b) not do, or omit to do, anything that is or is reasonably likely to confer on itself a benefit or advantage at the expense of a Unitholder or prospective Unitholder.
- (2) Where a Fund Manager has not complied with (1) or there is any other valuation error, it must correct the error as soon as possible and must reimburse the Fund any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the Prospectus.
- (3) If the Fund is structured as an Investment Trust:
  - (a) the Fund Manager must notify the Trustee of the matters specified in (2);
  - (b) the Trustee must also:
    - (i) take reasonable steps to ensure that the Fund Manager complies with the matters specified in (1) and (2); and
    - (ii) provide any other notification required under these Rules.

**Guidance**

Appendix 4 (App4) contains guidance on asset valuation and pricing.

**8.5 Determination of single price**

- 8.5.1 (1) A Fund Manager must take all reasonable steps and exercise due diligence to ensure that the Units in the Fund are correctly priced in accordance with the applicable accounting procedures to ascertain an accurate single price for a Unit.

- (2) The price of a Unit must be calculated on the basis of the valuation in Rule 8.4.1 in a manner that is fair and reasonable as between Unitholders.

- 8.5.2**
- (1) A Fund Manager must take immediate action to rectify any breach of Rule 8.4.1 where such breach relates to the incorrect pricing of Units.
  - (2) In (1), unless the incorrect pricing in respect of an issue is of minimal significance, the Fund Manager must inform the DFSA, and if appointed, the Trustee or Eligible Custodian or other Persons providing oversight functions in relation to the Fund, of such a rectification.

## **8.6 Issue and redemption of Public Fund Units**

- 8.6.1**
- (1) A Fund Manager of an open-ended Public Fund must, within any conditions in its Constitution and Prospectus:
    - (a) at all times during the dealing day, be willing to issue or sell Units in the Fund to any eligible Client; and
    - (b) do so in a manner that is fair and reasonable as between all Unitholders and prospective Unitholders for whom the Fund Manager does not have reasonable grounds to refuse such issue or sale.
  - (2) A Fund Manager of an open-ended Public Fund must, within any conditions in its Constitution and Prospectus:
    - (a) at all times during the dealing day, be willing to effect a redemption of the Units on the request of any Unitholder; and
    - (b) do so in a manner fair and reasonable as between redeeming Unitholders and continuing Unitholders.
  - (3) On agreeing to a redemption of Units within (2), the Fund Manager must pay the full proceeds of the redemption to the Unitholder within any reasonable period specified in the Constitution or the Prospectus, unless it has reasonable grounds for withholding payment.

### **Guidance**

1. Where not specified in the Prospectus, the maximum period between dealing days for a Public Fund will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the Fund.
2. Capital reductions or share buy-backs that occur in a closed-ended Fund are not treated as redemptions and resales of Units of Funds based on NAV in the same manner as occurs in the case of an open-ended Fund as provided in these Rules.
3. The circumstances in which a Fund Manager may withhold redemption proceeds under (3) include where there are any dues from the redeeming Unitholder, such as under any margin lending arrangements.



4. See Article 37 of the Law for provisions dealing with suspension of dealings of open-ended Funds.
5. Although no redemption provisions are prescribed for Exempt Funds, it does not mean that an Exempt Fund cannot be structured as an open-ended Fund. If structured as an open-ended Exempt Fund, the applicable redemption procedures (such as the manner and frequency of redemptions) would generally be set out in the Fund's offer document (i.e. the Information Memorandum). The Fund Manager would need to comply with such redemption procedures.

## **8.7 Unitholder register**

- 8.7.1**
- (1) Subject to (5), a Fund Manager must maintain a register of Unitholders.
  - (2) The register must contain:
    - (a) the name and address of each Unitholder;
    - (b) the number of Units including fractions of a Unit of each class held by each Unitholder; and
    - (c) the date on which the Unitholder was registered in the register for the Units standing in his name.
  - (3) A Fund Manager must take all reasonable steps and exercise all due diligence to ensure that the register is kept complete and up to date.
  - (4) A Fund Manager or, if applicable the Appointed Fund Administrator or Appointed Custody Provider, must, subject to (5), make the Unitholder register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Fund Manager's or Appointed Fund Administrator's place of business in the DIFC or otherwise in a designated location in the DIFC.
  - (5) Where a Fund is structured as an Investment Trust, the Trustee must maintain the register of Unitholders in accordance with the requirements in the Investment Trust Law 2006 and make the register in electronic or hard copy form available for inspection by Unitholders during normal business hours at the Trustee's place of business in the DIFC or otherwise in a designated location in the DIFC.

## **8.8 Meetings of Unitholders**

- 8.8.1** In the case of a Public Fund, the Fund Manager must hold at least two meetings of the Governing Body of every Public Fund which has such a Body every 12 month period from the date of registration of that Fund with the DFSA.
- 8.8.2** The Fund Manager of a Fund other than an Exempt Fund must hold at least one general meeting of the Unitholders of the Fund in every 12 month period (i.e. an annual general meeting). The annual general meeting must be held in the case of a Public Fund within 12 months from the date of registration of the Fund. The

annual report required under Rule 9.4.2(1)(a) must be presented at that annual general meeting.

- 8.8.3** (1) The Fund Manager and if appointed the Trustee of a Fund other than an Exempt Fund:
- (a) may convene a general meeting of Unitholders at any time; and
  - (b) must convene a general meeting of Unitholders of the Fund immediately upon a request being made by Unitholders in accordance with (2).
- (2) The Unitholders of the Fund may request the Fund Manager, or if appointed the Trustee, to convene a general meeting of Unitholders at any time. Such a request must:
- (a) state the purpose of the meeting;
  - (b) be dated;
  - (c) be signed by a number of registered Unitholders representing at least one-tenth in value of all of the Units then in issue; and
  - (d) be deposited at the place of business of the Fund Manager, or if applicable, the Trustee or Appointed Fund Administrator of the Fund.
- (3) If the Fund is an Investment Trust, the primary responsibility to convene meetings in accordance with this Rule rests with the Fund Manager, failing which, with the Trustee.
- (4) A meeting of Unitholders of a Fund duly convened and held in accordance with the Law and Rules is competent by Special Resolution to require, authorise or approve any act, matter or document in respect of which any such resolution is required. Such a resolution has no other powers or effect.
- (5) Where no Special Resolution is specifically required or permitted by the Law or Rules, any resolution of Unitholders required under the Rules is passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of Unitholders.

**8.8.4** The Fund Manager of an Exempt Fund must hold meetings of Unitholders in accordance with the requirements included in the Fund's Constitution and its most recent Prospectus.

**Guidance**

Exempt Funds are required to have an Information Memorandum under which its Units are marketed to prospective Unitholders by way of private placement. Under Article 50(3) of the Law, such a document is a Prospectus.

**Unitholder meetings procedures**

**8.8.5** (1) A Fund Manager must set out, if it is a Public Fund, in its procedures manual the procedures for holding Unitholder meetings and the conduct of such meetings including but not limited to, the following matters:

- (a) voting rights;
  - (b) right to demand a poll;
  - (c) proxies;
  - (d) minutes; and
  - (e) variation of class rights and class meetings.
- (2) The meeting procedures under (1) must comply with the provisions in App2. Any provisions in such procedures that are inconsistent with the procedures in App2 are void.
- (3) In the case of a Public Fund, the Fund Manager must distribute the meetings procedures manual to all Unitholders.
- (4) If the Fund is structured as an Investment Trust, the Fund Manager must obtain the prior approval of the Trustee in respect of its meetings procedures.

## **8.9 Approvals and notifications**

**8.9.1** A Fund Manager of a Public Fund must comply with the provisions in App3 in regard to:

- (a) fundamental changes requiring prior approval of the Unitholders;
- (b) significant changes requiring pre-event notification to the Unitholders; and
- (c) notifiable changes, that is, a change other than one in (a) or (b) which requires post notification to the Unitholders.

## **8.10 Maintenance of records**

- 8.10.1** (1) A Fund Manager must make and retain accounting and other records that are necessary:
- (a) to enable it to comply with Rules in this module; and
  - (b) to demonstrate at any time that such compliance has been achieved.
- (2) A Fund Manager must make and retain for a period of six years a record of the Units held, acquired or disposed of, by it, including the classes of such Units, and the balance of any acquisitions and disposals.
- (3) A Fund Manager must make the record available for inspection by the DFSA in the DIFC and, if applicable, the Trustee or appointed Eligible

Custodian, free of charge at all times during ordinary office hours and must supply a copy of the record or any part of it.

- (4) Where a Fund Manager makes a dilution levy or dilution adjustment in accordance with Rule 8.4.1(5), it must make and retain for a period of six years from the date such action is taken a record of:
  - (a) how it calculates and estimates dilution; and
  - (b) its policy and method for determining the amount of any dilution levy or dilution adjustment.

## **8.11 Capital**

- 8.11.1** (1) In the case of a Public Fund, if at any time after the size of the Fund's capital has reached the minimum size provided in its Constitution the size of that capital falls below that minimum size, the Fund Manager must immediately notify the DFSA of that fact.
- (2) The notification under (1) must also:
  - (a) state the Fund Manager's grounds for believing that the Fund is still commercially viable and the purpose of the Fund can still be accomplished; and
  - (b) be accompanied by the relevant Unitholders' resolution supporting the Fund Manager's views in (1); or
  - (c) state what steps the Fund Manager has taken or will take to wind up the Fund.

## **8.12 Delegation and outsourcing**

### **Guidance**

1. This section sets out the general requirements that apply to a Fund Manager, or where appointed the Trustee, of a Domestic Fund where it delegates or outsources any Financial Service activity or function to another Person. Such a Person is defined as a "Service Provider" for the purposes of this module.
2. Under Article 24 of the Law and Article 24 of the Investment Trust Law 2006, a Fund Manager or where appointed the Trustee of a Fund respectively may, subject to any restriction in the Constitution of the Domestic Fund and any provisions of the Rules, delegate any of its Financial Service activities or outsource any of its functions to a Service Provider, which may be located in or outside the DIFC.
3. Fund Managers of Domestic Funds structured as an Investment Company or Investment Partnership are required under Rule 8.2.2(2) to delegate the activity of Providing Custody to an Eligible Custodian. This obligation does not apply where there are adequate alternative arrangements. This chapter sets out the circumstances in which the obligation under Rule 8.2.2(2) does not apply.

4. A Fund Manager or Trustee ‘outsources’ a function relating to the operation of the Fund where the function, whether or not relating to a Financial Service activity, is contracted to be performed by a Service Provider. Where the extent of any such function or functions is such that they effectively constitute the carrying on of a Financial Service activity, the DFSA will consider this to comprise a ‘delegation’ of the Financial Service.
5. If the Fund Manager or the Trustee delegates any activities or outsources any functions, the Fund Manager or the Trustee remains liable to the Unitholders for any acts or omissions of the Service Provider as if they were the acts or omissions of the Fund Manager or Trustee.
6. The Rules permitting the use of a Service Provider do not relieve the Fund Manager or the Trustee from their obligations, including any restrictions on delegation or outsourcing arising from the Fund’s Constitution or Prospectus.
7. GEN Rules 5.3.21 and 5.3.22 also govern outsourcing of functions and activities by an Authorised Firm. Those Rules are not disapplied by this section.

### **Fund Manager**

**8.12.1** In accordance with the Delegation Agreement, the Fund Manager:

- (a) must register the legal title of the Fund Property with the Eligible Custodian; and
- (b) may give instructions to the Eligible Custodian to deal with the Fund Property.

#### **Guidance**

See Rule 8.2.4 for the definition of an Eligible Custodian

- 8.12.2**
- (1) Subject to the requirements in Rule 8.12.4, a Fund Manager may delegate one or both of the Financial Service activities of Providing Fund Administration and Managing Assets to a Service Provider.
  - (2) For the purposes of (1), and in relation to Providing Fund Administration for a Public Fund, the Service Provider must be:
    - (a) a Person authorised by the DFSA to carry on the activity of Providing Fund Administration; or
    - (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:
      - (i) asset pricing and Fund valuation;
      - (ii) issuing and redemption of Units; and
      - (iii) record keeping and maintaining the Unitholders register.
  - (3) For the purposes of (1), and in relation to Managing Assets, the Service Provider must be:
    - (a) a Person authorised by the DFSA to carry on the activity of Managing Assets; or

- (b) a Person who is authorised by a Financial Services Regulator in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on an equivalent activity in that jurisdiction.

**Guidance**

As Rule 8.12.2 (2) only applies in relation to a Public Fund, a Fund Manager of a Private or Exempt Fund may make other appropriate arrangements in respect of the provision of Fund Administration.

**Trustee**

- 8.12.3**
- (1) Subject to Rules 8.12.4, a Trustee may, with the prior written consent of the Fund Manager, delegate one or both of the Financial Service activities of Providing Fund Administration and Providing Custody to a Service Provider.
  - (2) For the purposes of (1), and in relation to Providing Fund Administration for a Public Fund, the Service Provider must be:
    - (a) a Person authorised by the DFSA to carry on the activity of Providing Fund Administration; or
    - (b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:
      - (i) asset pricing and Fund valuation;
      - (ii) issuing and redemption of Units; and
      - (iii) record keeping and maintaining the Unitholders register.
  - (3) For the purposes of (1), and in relation to Providing Custody, the Service Provider must be an Eligible Custodian.

**Delegation and outsourcing process and requirements**

- 8.12.4**
- (1) When delegating, a Fund Manager or Trustee must:
    - (a) carry out due diligence on a proposed Service Provider to ensure eligibility prior to effecting a delegation of a Financial Services activity; and
    - (b) comply with the requirements in chapter 5 of GEN and App1 and ensure that any delegation is made in a written Delegation Agreement as prescribed in App1.
  - (2) Delegation to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of a delegated activity.
  - (3) The DFSA may, as a condition on a Fund Manager's or Trustee's Licence, require the delegation of one or more specified Financial Service activities to a Service Provider.

**Guidance**

The DFSA may impose a condition under Rule 8.12.4(3) when, for example, it considers that a Fund Manager is unable to conduct the activity under its own Licence.

- 8.12.5** (1) When a Fund Manager or Trustee outsources any function to a Service Provider, it must:
- (a) comply with any relevant requirements in chapter 5 of GEN;
  - (b) enter into an Outsourcing Agreement which complies with the requirements in App1; and
  - (c) before entering into such agreement, carry out due diligence on the proposed Service Provider to conclude on reasonable grounds that the Person is suitable to perform the relevant functions.
- (2) Outsourcing to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of the outsourced activity.

**Systems and controls**

- 8.12.6** If a Fund Manager or Trustee delegates any activity or outsources any function under this section, it must take reasonable steps to ensure that it implements and maintains systems and controls to monitor the Service Provider.

**Guidance**

This Rule supplements the requirements under GEN section 5.3.

**Review**

- 8.12.7** (1) A Fund Manager or the Trustee of a Public Fund, which has delegated any Financial Service activities or outsourced any functions, must conduct a review of the carrying out of the relevant activities or functions by the Service Provider and present the findings of the review to either:
- (a) the Fund's Governing Body every 6 months at the Fund's board meeting; or
  - (b) in the case of a Fund structured as an Investment Trust, to the Trustee.
- (2) Notwithstanding the requirement in (1), if a Fund Manager or the Trustee discovers non-compliance in regard to a term of the Delegation Agreement or Outsourcing Agreement, the Fund Manager or the Trustee, as the case may be, must take immediate action to remedy the matter and also notify the DFSA and, as applicable, its Governing Body or the Trustee forthwith.
- (3) For the purposes of (2), the Fund Manager or the Trustee must notify the DFSA only where the non-compliance is material.

## **8.13 Fees, charges and other levies**

### **Permissible fees, charges, levies and expenses**

- 8.13.1**
- (1) A Fund Manager must not make any charge or levy in connection with the issue or sale of Units except in accordance with the Constitution and Prospectus.
  - (2) A preliminary or redemption charge must not be made by the Fund Manager unless:
    - (a) it is permitted by the Constitution; and
    - (b) it is expressed either as a fixed amount or calculated as a percentage of the price of a Unit.
  - (3) The preliminary charge must not exceed the amount or rate stated in the current Prospectus in respect of any class of Units.

- 8.13.2**
- (1) No payment may be made, or benefit given, to the Fund Manager out of the Fund Property, whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless it is permitted by the Constitution and the Prospectus specifies how it will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.
  - (2) The Fund Manager must give not less than 90 days written notice of any increase proposed within the parameters of the Constitution and Prospectus.

- 8.13.3**
- A Fund Manager must not introduce a new category of remuneration for its services or make any increase in the current rate or amount of its remuneration payable out of the Fund Property unless it has given not less than 90 days written notice of that introduction or increase and of the date of its commencement to the Unitholders and the Unitholders approve such new category by Special Resolution.

### **Reimbursement of remuneration and expenses**

- 8.13.4**
- (1) A Fund Manager must take reasonable steps to ensure that no payment is made to a Trustee, an Eligible Custodian or Persons providing oversight function out of the Fund Property, whether by way of reimbursement of expenses or otherwise, except:
    - (a) remuneration in respect of services provided and in respect of which the following have been stated in the Prospectus:
      - (i) the actual amount or rate of the remuneration together with the current maximum or how these are determined;
      - (ii) the periods in respect of which the remuneration is to be paid;



- (iii) how the remuneration is to accrue; and
- (iv) when the remuneration is to be paid; and
- (b) reimbursement of expenses properly incurred by the Trustee, Eligible Custodian or Persons providing oversight functions for performing such functions conferred on the Trustee, Eligible Custodian or other Persons by the Rules.
- (2) Payment under (1)(a) must not be made unless permitted by the Constitution.

**Promotional payments, performance fees and set up costs**

**8.13.5** No promotional payment, performance fee or benefit may be made out of or given at the expense of the Fund Property to the Fund Manager unless it is permitted by the Constitution and specified in the Prospectus.

**8.13.6** Costs of the registration, exemption and incorporation of a Fund and of its initial Offer or issue of Units, including Units in respect of a Sub-Fund, may be amortised over a period not exceeding five years.

**Allocation of payments to capital or income**

- 8.13.7**
- (1) The Fund Manager and the Trustee or the Persons providing the oversight function may agree that all or any part of any permitted payments, charges and expenses of the Fund may be treated as a capital expense or income expense and allocated to the capital account or income account respectively.
  - (2) The Fund Manager must ensure that any agreement in (1) is permitted by the Constitution and specified in the Prospectus in sufficient detail for a Unitholder or a prospective Unitholder to make an informed decision in relation to the allocation of such charges and expenses to be paid from the capital property or the income property as the case may be.

**Payments of liabilities on transfer of assets**

**8.13.7** Where the property of a Body Corporate or of another Fund is transferred to a Fund or to the Fund Manager for the account of the Fund or to the Trustee to hold on trust for the Unitholders in consideration of the issue of Units in the Fund to Unitholders in that Body Corporate or in that other Fund, Rule 8.13.8 applies.

**8.13.8** The Fund Manager or in the case of an Investment Trust, the Trustee, as the successor in title to the property transferred, may pay out of the Fund Property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

- (a) there is nothing in the Constitution of the Fund expressly forbidding the payment; and
- (b) the Fund Manager or the Trustee, as the case may be, is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

## **9 ACCOUNTING, AUDIT AND PERIODIC REPORTING OF A FUND**

### **9.1 Application**

- 9.1.1**
- (1) This chapter applies to a Fund Manager and a Trustee of a Domestic Fund.
  - (2) In this Chapter, references to a “Fund” mean a “Domestic Fund”.

#### **Guidance**

The IFR module contains specific requirements relating to reporting that apply to a Fund and its Fund Manager where that Fund is an Islamic Fund.

### **9.2 Preparation of Fund financial statements**

#### **Financial statements and financial reporting standards**

- 9.2.1**
- (1) A Fund Manager of a Fund must prepare financial statements for each financial year of the Fund.
  - (2) A Fund Manager must, in respect of a Fund, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS) or USGAAP as supplemented by the Statement of Recommended Practice (SORP).

#### **Accounting Records**

- 9.2.2** A Fund Manager must keep Accounting Records that are sufficient to show and explain transactions and are as such, to:
- (a) be capable of disclosing the financial position of the Fund on an ongoing basis; and
  - (b) record the financial position of the Fund as at its financial year end.
- 9.2.3** Accounting Records must be maintained by a Fund Manager such as to enable the Governing Body and, if appointed, the Trustee or any Persons providing the oversight function of the Fund to ensure that any financial statements prepared by the Fund Manager in relation to the Fund comply with the legislation applicable in the DIFC.
- 9.2.4** The Accounting Records must be:
- (a) retained by the Fund Manager or Fund for at least six years from the date to which they relate;
  - (b) at all reasonable times, open to inspection by the DFSA or the Registered Auditor of the Fund; and

- (c) capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.

## **9.3 Auditors of a Fund**

### **Guidance**

1. Article 27(1)(c) of the Law requires every Domestic Fund to have a Registered Auditor appointed to it in accordance with Part 8 of the Regulatory Law and any Rules made for the purposes of that Part.
2. Part 8 of the Regulatory Law sets out how an Auditor must be appointed to each Domestic Fund and the main duties and functions of the Auditor. This section sets out additional requirements that apply in relation to Registered Auditors of a Fund.
3. Under Article 97C(1) of the Regulatory Law a Person is prohibited from providing any Audit Service to a Domestic Fund unless that Person is a Registered Auditor.

### **Appointment and termination of auditors**

#### **9.3.1 A Fund Manager must:**

- (a) notify the DFSA of the appointment of a Registered Auditor to the Fund by completing and submitting the appropriate form in AFN;
- (b) prior to the appointment of the Registered Auditor, take reasonable steps to ensure that the Registered Auditor has the required skills, resources and experience to audit the type of Fund for which the Registered Auditor has been appointed; and
- (c) ensure that the Registered Auditor, at the time of appointment and for the duration of the engagement is registered with the DFSA as a Registered Auditor.

**9.3.2** A Fund Manager must notify the DFSA immediately if the appointment of the Registered Auditor is or is about to be terminated, or on the resignation of the Fund's Registered Auditor, by completing and submitting the appropriate form in AFN.

**9.3.3** A Fund Manager must appoint a Registered Auditor to fill any vacancy in the office of Registered Auditor and ensure that the replacement Registered Auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

**9.3.4** (1) A Fund Manager must take reasonable steps to ensure that the Registered Auditor and the relevant audit staff of the Registered Auditor are independent of, and not subject to, any conflict of interest with respect to the Fund Manager, the Trustee or the Fund.

- (2) A Fund Manager or Trustee must notify the DFSA if it becomes aware, or has reason to believe, that the Registered Auditor or the relevant audit staff of the Registered Auditor are no longer independent of the Fund

Manager, the Trustee or the Fund, or have a conflict of interest which may affect their judgement in respect of the Fund.

**Guidance**

1. A Fund Manager should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Registered Auditor or any of the relevant Employees of the Registered Auditor that may affect the judgement of the Registered Auditor when conducting an audit of the Fund or complying with all its legal obligations, including the Regulatory Law, AUD, AML and other relevant modules of the DFSA Rulebook.
2. A Fund Manager should consider rotating the appointed relevant staff of the Registered Auditor on a regular basis to ensure that the relevant staff of the Registered Auditor remain independent.

**Co-operation with auditors**

**9.3.5** A Fund Manager must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Registered Auditor that its Registered Auditor reasonably requires, or is entitled to receive as Registered Auditor;
- (b) give the Registered Auditor right of access at all reasonable times to relevant records and information within its possession;
- (c) allow the Registered Auditor to make copies of any records or information referred to in (b);
- (d) do not interfere with the Registered Auditor's ability to discharge its duties;
- (e) report to the Registered Auditor any matter which may significantly affect the financial position of the Fund; and
- (f) provide such other assistance as the Registered Auditor may reasonably request it to provide.

**9.3.6** A Trustee must take reasonable steps to ensure that it and its Employees act in compliance with Rule 9.3.5(a)-(f).

**9.3.7** A Fund Manager must, in writing, require any Person to whom the Fund Manager has delegated or outsourced any functions to co-operate with the Fund's Registered Auditor in accordance with the provisions specified in Rule 9.3.5.

**Function of the Registered Auditor**

**9.3.8** A Fund Manager must, in writing, require its Registered Auditor to:

- (a) conduct an audit of the Fund's financial statements in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB); and

- (b) produce a Fund Auditor's Report on the audited financial statements in accordance with AUD App5.

## **9.4 Periodic Reports**

### **Annual and interim reports**

- 9.4.1**
- (1) In order to provide the Unitholders with relevant and up-to-date information about the performance and management of a Fund, a Fund Manager must, subject to (2), produce one interim report and one annual report in respect of each Fund it operates in accordance with the Rules in this section.
  - (2) The Fund Manager of a Qualified Investor Fund is not required to comply with the requirements in (1) relating to the production of an interim report for that Fund unless there has been a material change relating to the Fund during the relevant period.
  - (3) For the purposes of (2), the relevant period in relation to a Qualified Investor Fund is the 6 month period referred to in Rule 9.4.2(4).
- 9.4.2**
- (1) A Fund Manager must produce the required annual report and interim report as follows:
    - (a) an annual report within four months after the end of each annual accounting period; and
    - (b) an interim report within two months after the end of each interim accounting period.
  - (2) For the purposes of (1), the first annual accounting period of a Fund begins:
    - (a) in the case of a Public Fund, on the date of registration by the DFSA; or
    - (b) in the case of an Exempt Fund or a Qualified Investor Fund, on the date of notification to the DFSA; and

ends 12 months later. Thereafter, annual accounting periods cover the period between each subsequent financial year end.
  - (3) Notwithstanding the requirement in (2), a Fund Manager may, subject to the prior approval of the DFSA, produce the Fund's reports and financial statements in accordance with the Fund Manager's reporting periods.
  - (4) For the purposes of (1), an interim accounting period is the period covering:
    - (a) 6 months after the date of registration of the Fund with the DFSA in the case of a Public Fund, or the date of notification to the DFSA in the case of an Exempt Fund or Qualified Investor Fund; and

- (b) 6 months after the anniversary of each annual accounting period.
- (5) If a Fund intends to change its annual or interim accounting period, the Fund Manager must:
  - (a) obtain written confirmation from its Registered Auditor that the change of its annual accounting period would not result in any significant distortion of the financial position of the Fund; and
  - (b) obtain the DFSA's prior consent before implementing the change.
- (6) For a Fund which is an Umbrella Fund, the Fund Manager must prepare an interim report for each Sub-Fund, but this is not necessary for the Umbrella Fund as a whole.
- (7) The Fund Manager must prepare the annual and interim reports of the Fund in accordance with Rule 9.2.1.
- (8) The reports must:
  - (a) be supplied free of charge to Unitholders;
  - (b) be available in English,
  - (c) be sent to the DFSA; and
  - (d) if the Fund is a Public Fund, be available for inspection free of charge during ordinary office hours at a place specified.

**9.4.3** The Fund Manager must take reasonable steps to ensure that the interim and annual reports for a Fund or the Sub-Funds of an Umbrella Fund are clear, complete and true and contain information for the relevant period and:

- (a) the name of the Fund or Sub-Fund, its stated investment objectives, the policy of achieving those objectives and a brief assessment of its risk profile;
- (b) a review of the Fund's or Sub-Fund's investment activities and investment performance during the period;
- (c) sufficient information to enable Unitholders to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period; and
- (d) any other significant information which would reasonably enable Unitholders to make an informed judgment on the activities of the Fund or Sub-Fund during the period and the results of those activities at the end of the reporting period.

#### **Contents of the interim report**

**9.4.4** The Fund Manager must produce an interim report which contains:

- (a) the total expense ratio at the end of the period;

- (b) particulars of any material issues raised by the Eligible Custodian and, if applicable, the Trustee, the investment committee or any Person providing oversight in relation to the Fund; and
- (c) matters required to be included in the Fund Manager's report under Rule 9.4.9.

**Contents of the annual report**

**9.4.5** An annual report of a Fund, other than a Fund which is an Umbrella Fund, must contain:

- (a) the full audited financial statements for the annual accounting period;
- (b) the report produced by the Registered Auditor in accordance with Rule 9.3.8(b);
- (c) the report of the Fund Manager in accordance with Rule 9.4.9;
- (d) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.4.10; and
- (e) if the Fund is a Public Fund, the Oversight report in accordance with Rule 10.3.13.

**9.4.6** An annual report on a Fund which is an Umbrella Fund must contain:

- (a) for each Sub-Fund:
  - (i) the full audited financial statements for the annual accounting period;
  - (ii) the report of the Fund Manager in accordance with Rule 9.4.9; and
  - (iii) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.4.10;
- (b) an aggregation of the financial statements required by (a)(i) for each Sub-Fund;
- (c) the report produced by the Registered Auditor in accordance with Rules 9.3.8(b); and
- (d) if the Fund is a Public Fund, the Oversight Report in accordance with Rule 10.3.13.

**9.4.7**

- (1) Where a Fund is required to appoint an investment committee pursuant to Rule 9.4.7(1) or 13.3.1, the annual report must also include a report by that committee.
- (2) Where a Fund is a Hedge Fund, the annual report must also include a report of its Eligible Custodian.

**9.4.8** The Fund Manager must ensure that the financial statements give a true and fair view of the net income and the net gains and the losses on the Fund Property of the Fund, or, the Sub-Fund, for the annual accounting period in question and the financial position of the Fund or Sub-Fund as at the end of that period.

### **Fund Manager's report**

**9.4.9** The matters set out in (a) to (h) must be included in any Fund Manager's report:

- (a) a restatement of the investment objectives of the Fund;
- (b) a restatement of the policy for achieving those objectives;
- (c) a review of the investment activities, including in relation to (a) and (b), during the period to which the report relates;
- (d) particulars of any fundamental change requiring prior approval by Unitholder meeting made since the date of the last report;
- (e) particulars of any significant change requiring pre-event notification since the date of the last report;
- (f) any other information which would enable Unitholders to make an informed judgement on the development of the activities of the Fund during this period and the results of those activities as at the end of that period;
- (g) for a report on an Umbrella Fund, the information required in (a) to (h) must be given for each Sub-Fund if it would vary from that given in respect of the Umbrella Fund as a whole; and
- (h) for a Fund which invests a substantial proportion of its assets in other Funds, a statement as to the maximum proportion of management fees charged to the Fund itself and to other Funds in which that Fund invests.

### **Comparative table**

#### **Guidance**

In presenting past performance information, the DFSA recommends that Fund Managers follow the Global Investment Performance Standards (GIPS) issued by Institute of Chartered Financial Analysts of the USA.

**9.4.10** The comparative table for the annual report for a Public Fund must set out:

- (a) the performance record over the last five calendar years, or if the Fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
  - (i) the highest and the lowest price of a Unit of each class in issue during each of those years; and
  - (ii) the net income distributed or, for accumulation Units, allocated for a Unit of each class in issue during each of those years, taking



account of any sub-division or consolidation of Units that occurred during that period;

- (b) as at the end of each of the last three annual accounting periods or all of the Fund's annual accounting periods, if less than three:
  - (i) the total net asset value of the Fund Property at the end of each of those years;
  - (ii) the net asset value per Unit of each class; and
  - (iii) for a report of the directors of an Investment Company, the number of Units of each class in issue; or
  - (iv) for a report of the Fund Manager of any other Fund, the number of Units of each class in existence or treated as in existence; and
- (c) if, in the period covered by the table:
  - (i) the Fund Manager has been the subject of any event such as a transfer scheme having a material effect on the size of the Fund, but excluding any issue or cancellation of Units for cash; or
  - (ii) there have been changes in the investment objectives of the Fund;

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

## 9.5 Table illustrating content of the annual report

### Guidance

Type of Report	CIR Ref	Public Funds	Exempt Funds	QIF
Annual and interim reports	9.4.2	✓	✓	Annual Report only. An interim report is required only if there has been a material change during the interim accounting period
Fund Manager's Report	9.4.9	✓	✓	✓
Fund Auditor's Report	9.3.8(b)	✓	✓	✓
Oversight Report	10.3.13	✓	Not applicable	Not applicable
Comparative Table	9.4.10	✓	Not applicable	Not applicable
Eligible Custodian Report	9.4.7(2)	Hedge Funds only	Hedge Funds only	Hedge Funds only
Investment Committee	13.3.1 & 13.4.3	Private Equity Funds and Property Funds	Private Equity Funds and Property Funds	Not applicable

This table illustrates the different content requirements for reports of a Domestic Fund.

## **PART 5: RULES SPECIFIC TO DIFFERENT TYPES OF DOMESTIC FUNDS**

### **Guidance**

Article 13 of the Law defines Funds as either Domestic Funds or Foreign Funds. Article 15 of the Law further defines Domestic Funds as falling into three categories, i.e. Public Funds, Exempt Funds and Qualified Investor Funds. While the core requirements in Part 4 of this module are of common application to most types of Domestic Funds, the requirements in this Part apply only to certain types of Domestic Funds, depending on whether they are Public Funds, Exempt Funds or Qualified Investor Funds. Where a certain type of Fund is also a specialist class of Funds, there are additional requirements that are prescribed in Part 6.

## **10 REQUIREMENTS SPECIFIC TO PUBLIC FUNDS**

### **10.1 Application**

- 10.1.1**
- (1) This chapter applies to a Fund Manager and Trustee of a Domestic Fund which is a Public Fund, and also to Persons providing the oversight function for such a Fund.
  - (2) A Fund Manager and Trustee of a Public Fund are not subject to the oversight requirement in (1) if the Fund's investments are limited to those that require passive management and the Fund's systems and controls contain adequate measures to address any risks arising in that context.

### **Guidance**

Funds are passively managed if they are investing in products such as index tracking products.

**10.1.2** A reference in this chapter to:

- (a) a "Fund Manager" or "Trustee" includes a reference to a Person proposing to be the Fund Manager or Trustee of a Domestic Fund;
- (b) a "Fund" includes a reference to a Fund registered or seeking to be registered as a Public Fund; and
- (c) a reference to a "Person providing the oversight function" includes a reference to an individual or a body corporate appointed or to be appointed as a Person providing oversight function for a Fund.

## **10.2 Registration of Public Funds**

### **The application for registration**

- 10.2.1**
- (1) An application pursuant to Article 28 of the Law for the registration of a Public Fund must be made to the DFSA by the Body Corporate which is to be the Fund Manager of a Domestic Fund. If the Fund is an Investment Trust, then the Trustee and Fund Manager must jointly apply.
  - (2) The Fund Manager and, if applicable, the Trustee must complete and submit the appropriate form or forms in AFN.
  - (3) In addition to the requirements of Article 28(4) of the Law, the application must be accompanied by certification by the Fund's legal advisers to the effect that:
    - (a) the Constitution of the Fund complies with the requirements prescribed under the Law and under these Rules;
    - (b) the Prospectus complies with the requirements prescribed under the Law and under these Rules; and
    - (c) if the Fund is managed by an External Fund Manager, the requirements in section 6.1 are met.

**10.2.2** In assessing an application for registration, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the Fund Manager and Trustee; or
- (b) require the Fund Manager or Trustee to provide further information.

### **Requirements for registration**

**10.2.3** Subject to the provisions of these Rules, a Fund will only be registered by the DFSA if it satisfies the following conditions:

- (a) the Fund has one of the permitted forms for Domestic Funds under Article 26(1) of the Law;
- (b) the registration or other legal formalities relating to the formation of the Fund as referred to in (a) are completed;
- (c) the Fund has appointed to it a Fund Manager which is:
  - (i) authorised by the DFSA under its Licence to carry on the Financial Service of Managing a Collective Investment Fund; or
  - (ii) an External Fund Manager as defined in Article 20(5) of the Law;
- (d) the Fund, if it is an Investment Trust, has a Trustee which meets the requirements in the Investment Trust Law 2006;

- (e) the Fund Manager has made satisfactory arrangements in relation to the oversight function of the Fund and the delegation of the activity of Providing Custody as required under the Law and this module;
- (f) the Fund Manager has appointed an Auditor of the Fund who complies with the requirements in section 9.3; and
- (f) the name of the Fund is not undesirable or misleading and its purpose is reasonably capable of being successfully carried into effect.

**Guidance**

1. Article 26(1) of the Law requires every Domestic Fund to have the form of an Investment Company, Investment Partnership or Investment Trust. An Investment Company can also take the form of a Protected Cell Company (PCC).
2. In the case of an Investment Company (including a PCC) or Investment Partnership, the legal formalities relating to formation of the Fund involves registration by the Company Registrar of the Investment Company or Investment Partnership which is to be the Fund vehicle. In the case of an Investment Trust, the legal formalities relating to the formation of the trust involve the execution by the Fund Manager and the Trustee of the relevant trust deed pursuant to the requirements in the Investment Trust Law of 2006.
3. Under Rule 8.2.2(2), the Fund Manager of an Investment Company or Investment Partnership must delegate the function of holding safe custody of Fund Property (i.e. the Financial Service of Providing Custody in relation to Fund Property) to an Eligible Custodian. In the case of an Investment Trust, the Trustee of the Fund provides the safe custody function relating to Fund Property. However, this obligation does not apply in the case of certain types of specialist Funds where alternative safe custody arrangements are permitted (see the custody requirements for Private Equity Funds and certain types of Property Funds in Rules 13.4.2 and 13.3.1).

**Rejection of an application**
**Guidance**

Under Article 30(1) of the Law, the DFSA may, refuse to grant an application for the registration of a Fund if it is not satisfied that the requirements referred to in Article 28 of the Law have been met.

**Granting registration**
**Guidance**

1. Under Article 31 of the Law, once the DFSA grants registration to a Fund, it will without undue delay inform the relevant applicant in writing of:
  - a. such decision; and
  - b. the date on which the registration shall be deemed to take effect.
2. The DFSA maintains a list of Public Funds which have been registered on its Public Register.

## **Withdrawal of registration**

### **Guidance**

Under Article 32 of the Law, the DFSA may withdraw the registration of a Fund in specified circumstances.

## **Reinstatement**

### **Guidance**

The DFSA may reinstate the registration of a Fund pursuant to Article 33 of the Law if it is satisfied that the Fund should not have been deregistered or if the defect that led to registration being withdrawn has been remedied.

## **10.3 Oversight arrangements for Public Funds**

### **Guidance**

Chapter 2 of the Law (see Articles 39 – 42) sets out the general requirements relating to the oversight arrangements which a Public Fund must have, including the powers and duties of the Persons appointed to a Public Fund to provide the oversight function. The Rules in this section provide further detailed requirements relating to that function.

### **Permitted oversight arrangements**

**10.3.1** The following oversight arrangements are hereby prescribed by the DFSA for the purposes of Article 39(1)(a) of the Law:

- (a) an Oversight Committee comprising at least three individuals each of whom meets the suitability criteria prescribed in Rule 10.3.2; or
- (b) the Eligible Custodian or Trustee of the Fund, where the individuals undertaking the primary responsibility for the oversight function meet the suitability criteria prescribed in Rule 10.3.2.

### **Guidance**

1. Article 39(1)(a) of the Law requires the Fund Manager of a Domestic Fund which is a Public Fund to establish and maintain one of the permitted oversight arrangements prescribed by the DFSA. Accordingly, such a Fund Manager must appoint one of the oversight arrangements specified in Rule 10.3.1 to every Public Fund which it manages.
2. The membership of the Oversight Committee may comprise individuals including but not limited to members of the board of directors of the Fund Manager or that of the Fund, or the members of the General Partner of an Investment Partnership, or external experts, provided such individuals can meet the suitability criteria prescribed in Rule 10.3.2(1). The criteria include a test of independence.
3. For example, for an individual such as a member of the board of directors of the Fund Manager to be able to meet the independence test, the starting point is that such an individual would need to be a non-executive member of the Fund Manager's board. But that alone may not be sufficient, as the independence requirement has a range of other elements against which such an individual's ability to be independent of the Fund Manager is assessed. See Article 42 of the Law and Rule 10.3.2. The other elements of

the suitability test encompass a fit and proper test and relevant expertise. These too need to be satisfied by such individuals.

### **Suitability criteria for persons providing oversight function**

- 10.3.2**
- (1) For the purposes of Rule 10.3.1, a Person undertaking the oversight function meets the relevant criteria if that Person:
    - (a) is suitably qualified;
    - (b) is fit and proper; and
    - (c) meets the independence criteria in Article 42 of the Law.
  - (2) A Fund Manager must, in the case of each individual to be appointed as a member of an Oversight Committee referred to in Rule 10.3.1(a), undertake appropriate due diligence to ascertain whether the individual meets the suitability criteria in (1).
  - (3) A Fund Manager must, where an Eligible Custodian or Trustee is to be appointed as the oversight provider of the Fund, undertake appropriate due diligence to ascertain whether the individual meets the suitability criteria in (1) in respect of those individuals within the organisation of the Eligible Custodian or Trustee who will be undertaking the primary responsibility for performing the oversight function for the Fund.
  - (4) A Fund Manager must ensure that there is a written agreement:
    - (a) by which an individual is appointed to an Oversight Committee or the Trustee or Eligible Custodian is appointed to the oversight function of the Fund, as is relevant; and
    - (b) which contains express provisions that the appointee agrees to discharge the oversight function in accordance with the requirements in the Law and this module.
  - (5) If requested by the DFSA, a Fund Manager must provide to the DFSA any information relating to the appointment or intended appointment of a Person to provide the oversight function for the Fund.

#### **Guidance**

1. The Guidance under Appendix 6 (App6) sets out matters which a Fund Manager should take into account when assessing the fitness and propriety of an individual who is to be appointed to carry out the Fund's oversight function.
2. In the case of a Trustee or Eligible Custodian appointed to provide the oversight function, a Fund Manager should, before making such an appointment, identify the most senior individuals within the organisation who will carry the primary responsibility for the oversight function. The suitability assessment should then be applied to each such individual.
3. Trustees are required to be independent of the Fund Manager (see Article 19 of the Investment Trust law 2006, which is incorporated in the independence requirement for oversight providers under Article 42(1)(f) of the Law). However, if the primary

responsibility for providing oversight function within a Trustee rests on individuals other than its board members, the Fund Manager should assess whether such individuals possess the required degree of independence from the Fund Manager in assessing their fitness and propriety to carry out the oversight function effectively. A Fund Manager should, when making that assessment, focus particularly on whether the Persons providing the oversight function have access to sufficient resources to perform their duties objectively and independently of the Fund Manager.

4. In assessing the competence of a prospective appointee, a Fund Manager should:
  - a. obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
  - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
  - c. determine whether the individual holds any relevant qualifications with respect to the functions to be performed; and
  - d. determine the individual's relevant experience.

- 10.3.3**
- (1) The systems and controls which a Fund Manager is required to have in place must include adequate measures to monitor whether the Persons appointed to provide the oversight function for the Fund meet the suitability criteria specified in Rule 10.3.2(1) on a continuing basis.
  - (2) If a Person appointed to provide the oversight function for the Fund is either unable to fulfil his duties or no longer meets the suitability criteria in Rule 10.3.2(1), the Fund Manager must, within 21 days of the event causing such inability, dismiss and replace that Person, subject to the requirement in (4).
  - (3) If a Person appointed to provide the oversight function for the Fund resigns from or otherwise vacates that position, the Fund Manager must, within 60 days of the event causing the vacancy, appoint a replacement, subject to the requirement in (4).
  - (4) An appointment made under (2) or (3) must meet the relevant requirements relating to the oversight arrangement of the Fund as specified in Rule 10.3.1 as is relevant to that particular Fund.
  - (5) The Fund Manager must notify the DFSA and, in the case of an Investment Trust where the Trustee is not the appointed oversight provider for the Fund, the Trustee, of the matters referred to in this Rule, giving reasons for the relevant cessation and replacement of the oversight provider.

### **General oversight duties**

- 10.3.4** The Persons providing the oversight function must:

- (a) monitor whether the Fund Manager:
  - (i) is managing the Fund in accordance with the Constitution and the most recent Prospectus of the Fund, including in particular, any investment and borrowing limitations, requirements relating to the



- valuation of Fund Property and any other requirements or restrictions imposed on the Fund under the Law or any Rules in this module;
- (ii) is complying with any terms and conditions on the Fund Manager's Licence, particularly with respect to the management of the Fund; and
  - (iii) if it is an External Fund Manager, is complying with the specific requirements that apply to such a Person by virtue of being an External Fund Manager;
- (b) assess whether the Fund Manager's systems and controls, particularly those relating to risk management and compliance, operate as intended and remain adequate;
  - (c) report to the Fund Manager on its findings, including any actual or potential breaches or inadequacies in relation to the matters specified in (a) and (b), as soon as such breaches or inadequacies are identified or suspected; and
  - (d) report to the DFSA if:
    - (i) the Fund Manager has failed, or is reasonably likely to fail, to take appropriate action to rectify or remedy a matter reported to it within 30 days of that matter being so reported; and
    - (ii) that Person believes on reasonable grounds that the matter has had, or is likely to have, a materially adverse impact on the interests of the Unitholders of the Fund.

#### **Guidance**

External Fund Managers are subject to specific requirements, for example in CIR section 6.1.

#### **Proceedings of the oversight provider**

- 10.3.5** The Persons providing the oversight function for a Fund must conduct and regulate their proceedings in such a manner so as to be able to discharge the duties and responsibilities relating to the oversight function efficiently and effectively in accordance with the requirements of the Law and this module, and in the case of a Trustee, the requirements in the Investment Trust Law 2006.

#### **Guidance**

1. The Persons providing the oversight function should hold in the DIFC such number of meetings during every annual accounting period as are considered appropriate for the nature and scale of the activities of the Fund.
2. The Persons providing the oversight function should keep minutes of their meetings and records of their reports and recommendations for a minimum of six years.

### Principles and disclosure of interests

**10.3.6** Each individual appointed to carry out the oversight function for a Fund, in carrying out his oversight functions, must abide by the four principles set out in Rules 10.3.7 to 10.3.10. These principles apply:

- (a) in the case of an Oversight Committee referred to in Rule 10.3.1(a), to each member of that Committee; and
- (b) where a Trustee or Eligible Custodian is appointed for providing the oversight function for a Fund, to each individual responsible for carrying out the oversight function for the Fund. .

#### Guidance

1. The principles do not apply to an individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.
2. Breaching a principle makes an individual liable to disciplinary action and may indicate that he is no longer fit and proper to perform an oversight function and the DFSA may consider exercising its power under Article 39(2) of the Law to object to the appointment and require the Fund Manager to appoint a replacement.
3. The onus will be on the DFSA to show that he is culpable, taking into account the standard of conduct required under the principle in question. In determining whether or not the particular conduct of an individual complies with the principles, the DFSA will take into account whether that conduct is consistent with the requirements and standards relevant to an individual's role and the information available to him.

### Principle 1 - Integrity

**10.3.7** An individual must observe high standards of integrity and fair dealing in carrying out every oversight function and disclose to the Oversight Committee or the senior persons responsible within the Trustee or Eligible Custodian for the discharge of the oversight function any direct or indirect financial interest that he has or is likely to have in a matter that is being considered, or about to be considered by that committee or those persons if his interest could conflict with the proper performance of his duties in relation to the consideration of the matter.

### Principle 2 – Due skill, care and diligence

**10.3.8** An individual must act with due skill, care and diligence in carrying out every oversight function.

### Principle 3 – Market conduct

**10.3.9** An individual must observe proper standards of conduct in financial markets in carrying out every oversight function.

### Principle 4 – Relations with the DFSA

**10.3.10** An individual must deal with the DFSA in an open and co-operative manner and must disclose appropriately any information of which the DFSA would reasonable be expected to be notified.

### Systems and controls relating to oversight

- 10.3.11** (1) Without limiting the generality of the obligation under Article 38(1) of the Law and any requirements relating to systems and controls set out in the Rules, the systems and controls established and maintained by the Fund Manager must be adequate to ensure that the Persons providing the oversight function:
- (a) have adequate resources and access to accurate, timely and comprehensive information relating to the management of the Fund to be able to effectively monitor and assess the matters specified in Rule 10.3.4(a) and (b); and
  - (b) can report any actual or suspected compliance breaches or inadequacies that are identified by such Persons to the Fund Manager as required under Rule 10.3.4(c) and, for this purpose, have recourse to the Fund Manager's Governing Body or any other relevant committee established by that Governing Body where relevant.
- (2) The Fund Manager must also ensure that its systems and controls make provision to enable:
- (a) the Compliance Officer to have unrestricted access to the Persons providing the oversight function and, to their reports and recommendations;
  - (b) the Fund Manager to promptly act upon and remedy, to the satisfaction of the Persons providing the oversight function, any matter identified and reported to it by such Persons; and
  - (c) the Persons providing the oversight function to report to the DFSA of any compliance breaches or inadequacies that are reported to the Fund Manager which are not remedied within the period specified in Rule 10.3.4(d).
- (3) The monitoring and reporting processes and procedures in (1) and (2) must be approved by the Persons providing the oversight function before implementation.

#### Guidance

The nature and extent of the systems and controls will depend upon a variety of factors including the nature, size and complexity of the Fund's operations. While all Fund Managers and appointees, irrespective of size, legal structure or organisation need to comply with this section, the DFSA will take into account these factors and the differences that exist between Funds when assessing the adequacy of a Fund Manager's systems and controls. Nevertheless, neither these factors nor the differences relieve a Fund Manager or appointees from compliance with their regulatory obligations.

- 10.3.12** (1) The Persons appointed to perform the oversight function must report to the Fund Manager as to whether the Fund Manager's systems and controls relating to the oversight function are operating as intended and remain adequate at least quarterly at a board meeting of the Fund Manager.

- (2) Where an Eligible Custodian or Trustee has been appointed as the Person providing the oversight function, the Fund Manager must provide to that Person, and to the Fund's Governing Body, a copy of the Fund's most recent internal audit report and any compliance report as soon as such report is available to the Fund Manager.

### **Oversight report**

- 10.3.13** (1) The Person providing the oversight function of a Public Fund must make a report to Unitholders of the Fund which must be included in the Fund's annual report referred to in Rule 9.4.2.
- (2) The oversight report must contain:
- (a) a description, which may be in summary form, of the duties of the Person carrying out the oversight functions and in respect of the safekeeping of the Fund Property; and
  - (b) a statement whether, in any material respect:
    - (i) the issue, sale, redemption and cancellation, and calculation of the price of the Units and the application of the Fund's income, have not been carried out in accordance with the Rules and, the Constitution; and
    - (ii) the investment and borrowing powers and restrictions applicable to the Fund including those specified in section 10.5, if those have been exceeded.

### **Co-operation with oversight providers**

- 10.3.14** A Fund Manager must take reasonable steps to ensure that it and its Employees and those of the Fund:
- (a) provide such assistance as the Persons providing the oversight function reasonably require to discharge their duties;
  - (b) give the Persons providing the oversight function right of access at all reasonable times to relevant records and information relating to the Fund;
  - (c) do not interfere with the ability of the Persons providing the oversight function to discharge their duties;
  - (d) do not provide false or misleading information to the Persons providing the oversight function; and
  - (e) report to the Persons providing the oversight function any matter which may significantly affect the financial position of the Fund or which is a breach of the Law or the Rules in this module.

### Record keeping

- 10.3.15** (1) A Fund Manager must keep records of:
- (a) the due diligence process it has undertaken to assess whether the Persons appointed for the oversight function meet the suitability criteria in Rule 10.3.2(1); and
  - (b) the matters identified and reported to it by the Persons providing the oversight function under Rule 10.3.4(c) and any remedial measures adopted by it to address such matters.

## 10.4 Prospectus requirement for Public Funds

### Guidance

The disclosure requirements relating to a Prospectus that apply to a Public Fund are somewhat more extensive than the Prospectus disclosure that apply to other types of Funds, in particular, Exempt Funds and Qualified Investor Funds. However, as Prospectus disclosure is a matter closely linked to the marketing of Funds, Prospectus requirements relating to the relevant types of Funds are set out in Part 7 of this module, which deals with the Offer of Units of Funds.

## 10.5 Investment and borrowing requirements for Public Funds

### Application

- 10.5.1** This section applies to the Fund Manager of a Domestic Fund which is a Public Fund, an Eligible Custodian and, where appropriate, a Trustee, and, to Persons appointed to perform the oversight function for such a Fund, to the extent specified in Rule 10.3.4.

### Spread of risk and protection of Fund Property

- 10.5.2** A Fund Manager must take reasonable steps to ensure that the Fund Property of a Public Fund provides a spread of risk that is consistent with the investment objectives and policy of the Fund as stated in its most recently published Prospectus, and in particular, any investment objectives as regards return to the Unitholders whether through capital appreciation or income or both.
- 10.5.3** (1) A Fund Manager must avoid the Fund Property being used or invested contrary to any provision in this section.
- (2) On becoming aware of any breach of a Rule in this section, a Fund Manager must take action, at its own expense, to rectify that breach.
- (3) A Fund Manager must take the action in (2) immediately, except in circumstances where it decides doing so would not be in the best interests of Unitholders, in which case the action must be taken as soon as such circumstances cease to apply.

- (4) A Fund Manager must not postpone taking action in accordance with (2) unless the Persons providing oversight functions have given their consent.

#### **Investment in other Funds**

**10.5.4** A Fund may invest in Units of another Fund, except where otherwise provided in the Rules in this module, only where the Fund Manager has taken reasonable care to determine, before investing in that other Fund, it:

- (a) is the subject of an independent annual audit conducted in accordance with IFRS or US GAAP;
- (b) has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time if it is an open-ended Fund;
- (c) is prohibited from having more than 20% of its value in the Units of other Funds; and
- (d) has a proper and disclosed basis for asset valuation and the pricing of Units in that Fund.

#### **Transactions in derivatives**

- 10.5.5**
- (1) The total exposure of a Public Fund to Derivatives may not exceed the net asset value of the Fund Property.
  - (2) The Fund Manager's systems and controls must include adequate risk management processes which enable it to monitor and measure as frequently as appropriate the risk of a Fund's Derivative positions and their contribution to the overall risk profile of the Fund.

#### **Stock lending and borrowing**

- 10.5.6**
- (1) Subject to the Fund's Constitution and its most recent Prospectus, the Fund Manager, or the Eligible Custodian or Trustee at the request of the Fund Manager, may enter into:
    - (a) stock lending arrangements in respect of any Securities forming the Fund Property; and
    - (b) stock borrowing arrangements.
  - (2) The Fund Manager must ensure that the value of any collateral for the stock lending arrangement is at all times at least equal to the value of the Securities transferred.

#### **Borrowing**

- 10.5.7**
- (1) Subject to the Fund's Constitution and its most recent Prospectus, the Fund Manager, or the Eligible Custodian or Trustee on the instructions of the Fund Manager, may borrow money for the use of the Fund on terms that the borrowing is to be repayable out of the Fund Property.

- (2) The Fund Manager must ensure, except in the case of a Property Fund, that the Fund's borrowing does not on any day exceed 20% of the net asset value of the Fund Property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be repaid to ensure such compliance.
- (3) Where the limit in (2) is breached, the Fund Manager must take immediate action to deal with that breach.
- (4) In this Rule, "borrowing" also includes any arrangement including a combination of Derivatives to achieve a temporary injection of money into the Fund Property in the expectation that the sum will be repaid.

### **Investment in Real Property**

**10.5.8** A Fund Manager of a Fund other than a Property Fund must before investing in Real Property, appoint, with the approval of the Person providing the oversight function for the Fund, a Valuer with relevant expertise who meets the requirements in Rule 13.4.19 and likewise upon any vacancy to ensure that any property in the Fund Property is expertly valued.

- 10.5.9**
- (1) The Fund Manager must ensure that the Valuer appointed under Rule 10.5.8 procures the proper valuation of all the property held within the Fund Property, on the basis of a full valuation with physical inspection including, where the property is or includes a building, an internal inspection at least once a year.
  - (2) For the purposes of (1), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property.
  - (3) The Fund Manager must, subject to (4), ensure that the Valuer values the property, on the basis of a review of the last full valuation, at least every 6 months.
  - (4) If any event occurs which may on reasonable grounds have a material effect on the valuation of the relevant property the Fund Manager must consult with the Valuer with a view to arranging a fresh valuation before any Units in the Fund are issued or redeemed after the date of the event.
  - (5) The Fund Manager must require that any valuation by the Independent Valuer is on the basis of an 'open market value' as defined in the Constitution and Prospectus.

### **Guidance**

The DFSA would expect the Fund Manager to define 'open market value' to be based on an authoritative text such as the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards (fifth edition) ("Red Book") or similar practitioners text used by surveyors for the valuation to be a proper valuation under Rule 10.5.9(5).

**11 NOT IN USE**



## 12 REQUIREMENTS SPECIFIC TO EXEMPT FUNDS

### 12.1 Meeting the conditions to be classified as an Exempt Fund

#### Guidance

1. Article 16(2) of the Law provides that a Domestic Fund may be constituted as an Exempt Fund only if it satisfies all of the conditions in Article 16(4). Article 16(4) provides that an Exempt Fund must:
  - a. have 100 or fewer Unitholders;
  - b. have its Units offered to persons only by way of a Private Placement;
  - c. have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
  - d. have a minimum subscription of at least US\$50,000 for a person to become a Unitholder in the Fund,

and not satisfy the conditions in Article 16(5) to be a Qualified Investor Fund.
2. Under Article 26(1) of the Law, an Exempt Fund is required to have one of the permitted forms, i.e. an Investment Company, Investment Partnership or an Investment Trust. However, certain types of Exempt Funds which belong to a specialist class of Funds may be permitted to use only some and not all the permitted forms. See Part 6 for those variations.
3. If an Exempt Fund can no longer meet the relevant conditions to be classified as an Exempt Fund, the Fund Manager of that Fund is required, under Article 34(3), to apply for the winding up of that Fund. Alternatively, the Fund Manager may have that Fund moved to the classification of a Public Fund, which requires the satisfaction of the requirements and formalities specific to that type of Fund. An Exempt Fund may also, if it wishes to, convert to a Qualified Investor Fund provided it meets the conditions applicable to a Qualified Investor Fund in Article 16(5) of the Law.
4. In addition to the requirements specific to Exempt Funds, such a Fund must also meet, except where otherwise provided, the other requirements that are common to all Domestic Funds, which are set out in Part 4 of this module.
5. Units of Exempt Funds can only be Offered by way of Private Placement and to Professional Clients, but must meet the additional criterion of a minimum subscription test of US\$50,000. The definition of Professional Client is set out in Rule 1.3.1.
6. Generally a firm will not be able to undertake mass marketing activities relating to Units of Exempt Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.

- 12.1.1** (1) A Fund may be classified as an Exempt Fund only if it fulfils the criteria in Article 16(4) of the Law at the inception of the Fund and on an on-going basis.
- (2) A Fund Manager must ensure that a Fund which is or is intended to be established and operated as an Exempt Fund meets the criteria in Article 16(4) both at the inception of the Fund and on an on-going basis.

- (3) For the purposes of (2), where a Fund Manager makes arrangements with other Authorised Firms or Persons in other jurisdictions to Offer to issue or sell the Units of an Exempt Fund, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not Offer to issue or sell the Units in a manner that would result in a breach of the criteria in Article 16(4).
- (4) As soon as a Fund Manager becomes aware that an Exempt Fund it manages no longer meets or is likely to not meet the criteria in Article 16(4) of the Law, it must immediately:
  - (a) commence proceedings relating to the winding up of the Fund, or alternatively, take necessary steps to have the Fund registered as a Public Fund; and
  - (b) notify the DFSA of that fact and the measures it has taken and proposes to take under (a).
- (5) A Fund Manager of an Exempt Fund which is subject to the valuation requirement in CIR Rule 8.4.1(a)(ii) must appoint a Fund Administrator or a Person regulated by a Financial Services Regulator as the Person undertaking the valuation of that Fund.

**12.1.2** A Fund Manager of an Exempt Fund, when notifying the DFSA pursuant to Article 34 of the Law, must also include:

- (a) a general description of the Fund including the nature of its investments and the intended size of the Fund in monetary terms;
- (b) if it is a Hedge Fund which has appointed a prime broker pursuant to Rule 13.6.3:
  - (i) the details relating to the identity of the prime broker and its Regulator; and
  - (ii) a legal certification that all the requirements in Rule 13.6.3 relating to the use of prime brokers have been fully complied with by the Fund Manager;
- (c) if it is an External Fund, the name of the jurisdiction in which the Fund is established or domiciled; and
- (d) if it is an External Fund Manager, the name of the jurisdiction in which that Fund Manager is domiciled, and the details of the Appointed Fund Administrator or Trustee to that Fund for the purposes of Rule 6.1.3.

## **12.2 Exempt Fund Prospectus**

### **Guidance**

The disclosure requirements relating to a Prospectus that apply to an Exempt Fund are different from the Prospectus disclosure required for Public Funds. As Prospectus disclosure is a matter closely linked to the marketing of Units of Funds, Prospectus requirements relating to the relevant types of Funds are set out in chapter 14.

## 12A REQUIREMENTS SPECIFIC TO QUALIFIED INVESTOR FUNDS

### 12A.1 Meeting the conditions to be classified as a Qualified Investor Fund

#### Guidance

1. Article 16(2) of the Law provides that a Domestic Fund may be constituted as a Qualified Investor Fund only if it satisfies all of the conditions in Article 16(5). Article 16(5) provides that a Qualified Investor Fund must:
  - (a) have 50 or fewer Unitholders;
  - (b) have its Units offered to persons only by way of Private Placement;
  - (c) have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
  - (d) have an initial subscription to be paid by a person to become a Unitholder in the Fund of at least US\$500,000.
2. The definition of “Professional Client” is set out in Rule 1.3.1.
3. Generally a firm will not be able to undertake mass marketing activities relating to Units of Qualified Investor Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.

- 12A.1.1**
- (1) A Fund may be classified as a Qualified Investor Fund only if it fulfils the conditions in Article 16(5) of the Law at the inception of the Fund and on an on-going basis.
  - (2) A Fund Manager must ensure that a Fund which is or is intended to be established and operated as a Qualified Investor Fund meets the conditions in Article 16(5) of the Law both at the inception of the Fund and on an on-going basis.
  - (3) For the purposes of (2), where a Fund Manager makes arrangements with other Authorised Firms or Persons in other jurisdictions to Offer to issue or sell the Units of a Qualified Investor Fund, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not Offer to issue or sell the Units in a manner that would result in a breach of the conditions in Article 16(5) of the Law.
  - (4) As soon as a Fund Manager becomes aware that a Qualified Investor Fund it manages no longer meets or is likely not to meet the conditions in Article 16(5) of the Law, it must immediately:
    - (a) commence proceedings relating to the winding up of the Fund, or alternatively, take necessary steps to have the Fund reconstituted as an Exempt Fund or registered as a Public Fund; and
    - (b) notify the DFSA of that fact and the measures it has taken and proposes to take under (a).

## **12A.2 Responsibilities of a Fund Manager of a Qualified Investor Fund**

### **Guidance**

1. While a Fund Manager of a Qualified Investor Fund is exempt from many of the detailed requirements applicable to Public Funds and Exempt Funds, it will continue to be subject to most of the main obligations of Fund Managers. Therefore, such a Fund Manager should be mindful that when managing a Qualified Investor Fund, it is subject to some of the overarching obligations applicable to Fund Managers, particularly:
  - (a) Article 22 of the Law (Fund Manager's general duties and functions);
  - (b) Article 38 of the Law and GEN chapter 5 (Systems and controls requirements); and
  - (c) GEN section 4.2 (The Principles for Authorised Firms).
2. For example, a Fund Manager of a Qualified Investor Fund needs to observe high standards of integrity and fair dealing, and apply due skill, care and diligence, in managing the Fund. Similarly, it must have adequate systems and controls to ensure that the affairs of the Fund are effectively managed, taking into account the nature, scale and complexity of the Fund's operations and the investment objectives and needs of its investors.

## **12A.3 Custody of Fund Property**

- 12A.3.1**
- (1) For the purposes of Article 27(1)(e) of the Law, the Fund Manager of a Qualified Investor Fund that is not an Investment Trust must ensure that the legal title to Fund Property is registered with an Eligible Custodian.
  - (2) The requirement in Article 27(1)(e) of the Law does not apply in relation to Fund Property of a Qualified Investor Fund that is:
    - (a) a Property Fund; or
    - (b) a Private Equity Fund.
  - (3) If the Fund Manager of a Qualified Investor Fund itself holds Fund Property of a kind referred to in (2), it must have in place effective arrangements which ensure that the Fund Property is not available to creditors in the event of the insolvency of the Fund Manager.

### **Guidance**

Article 27(1)(e) of the Law requires a Domestic Fund that is not an Investment Trust to have legal title to the Fund Property registered with an eligible person (unless the Rules provide otherwise). Rule 12A.3.1(1) specifies that the person must be an Eligible Custodian. Rule 12A.3.1(2) disapplies the requirement in relation to Fund Property of certain kinds of Qualified Investor Funds. Regardless of who holds title to Fund Property, the Fund Manager must always ensure that, in accordance with Article 22(2)(f) of the Law, Fund Property is clearly identified as such and held separately from property of the Fund Manager and any other Funds.

## **PART 6: RULES SPECIFIC TO SPECIALIST CLASSES OF DOMESTIC FUNDS**

### **Guidance**

1. Article 17 of the Law confers on the DFSA the power to prescribe any type of Domestic Fund (i.e. a Public Fund, an Exempt Fund, or a Qualified Investor Fund) as a “specialist class” of a Domestic Fund and in so doing apply any requirements as are suitable for that specialist class of Funds. This Part sets out the requirements that apply to such a Fund by virtue of being a specialist class of Fund.
2. Most of the requirements that are set out in this part as applying to specialist classes of Domestic Funds are generally in addition to the core requirements that apply to every Domestic Fund (see Part 4). Further, depending on whether it is a Public Fund, an Exempt Fund or a Qualified Investor Fund, the additional requirements in Part 5 of this module would also apply to a specialist class of Fund.
3. A Qualified Investor Fund may be constituted as a specialist class of a Domestic Fund without being subject to most of the detailed requirements that would normally apply to such specialist classes of Funds. However, there are some requirements which need to be met as the obligation to do so arises under the general provisions applicable to certain specialist classes of Funds, regardless of whether such Funds are Public Funds, Exempt Funds or Qualified Investor Funds. An example is a Fund constituted as an Islamic Fund. While some of the detailed requirements such as the appointment of a Shari’a Supervisory Board do not apply to the Fund Manager of an Islamic Qualified Investor Fund (see IFR 6.2.1), the other general requirements such as ensuring compliance with Shari’a requirements continue to apply to such Funds and the Fund Manager.
4. The only specialist class requirements in this chapter that apply to a Qualified Investor Fund are those in Rule 13.6.3 and section 13.7 (Umbrella Funds).

## **13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS**

### **13.1 Application to Qualified Investor Funds**

- 13.1.1** Only Rule 13.6.3 and section 13.7 of this chapter apply to, or in relation to, a Qualified Investor Fund.

#### **13.1A Fund of Funds**

##### **Guidance**

See Rule 3.1.3 for the definition of a Fund of Funds.

- 13.1.1A** (1) A Fund manager of a Fund of Funds may not invest in:
- (a) another Fund of Funds;
  - (b) a Feeder Fund;

- (c) any Fund which is dedicated to investment in a number of Funds;
  - (d) any Fund which is dedicated to investment in a single Fund or in a single investment trust; and
  - (e) any Sub-Fund of an Umbrella Fund or Sub-Fund of any other Fund which is equivalent to a Fund within (a) to (d).
- (2) Not more than 25% in value of the Fund Property is to consist of Units in any one Fund.
- (3) For the purpose of (1) and (2), each Sub-Fund of an Umbrella Fund and of an equivalent Fund is to be treated as if it were a separate Fund.

## **13.2 Feeder Funds**

### **Guidance**

See Rule 3.1.4 for the definition of a Feeder Fund.

- 13.2.1** (1) A Fund Manager of a Feeder Fund must ensure that the Fund Property of a Feeder Fund, except where otherwise provided in the Rules in this chapter, only consists of:
- (a) Units or Debentures of a single Master Fund; or
  - (b) in the case of a Feeder Fund which is a Public Fund, Units or Debentures of an eligible Master Fund.
- (2) A Master Fund is eligible for the purposes of (1)(b) only if:
- (a) the borrowing of the Master Fund does not exceed 200% of the net asset value of the Master Fund or the market value of the Units of the Master Fund at the mid-value share price;
  - (b) the Units in or Debentures of the Master Fund are regularly Offered for purchase and sale by at least three market makers who are recognised or registered as members of an Exchange or an exchange regulated by a Financial Services Regulator;
  - (c) the Feeder Fund owns not more than 20% of the Units (or of any class of Units in or of the Debentures or of any class of Debentures) of the Master Fund; and
  - (d) the Master Fund has no limit on its duration.
- 13.2.2** A Fund Manager of a Feeder Fund must also ensure that the Feeder Fund invests in a Master Fund only if:
- (a) the Fund Manager of the Master Fund is regulated by a Financial Services Regulator;

- (b) the Master Fund is itself registered or authorised by a Financial Services Regulator and is itself subject to independent oversight;
- (c) the investment objectives of the Master Fund have been disclosed in detail in the Prospectus of the Feeder Fund;
- (d) it has made available to prospective Unitholders in the Feeder Fund copies of the Prospectus and the last audited annual reports and accounts of the Master Fund; and
- (e) the Fund Manager of the Master Fund has waived any initial charges which it is otherwise entitled to make in relation to the acquisition of Units in its Fund.

**13.2.3** Where the Feeder Fund invests in a Master Fund managed by the same Fund Manager or by an associated or related company, the Fund Manager of the of the Feeder Fund must ensure that the Master Fund in which the investment is being made does not charge subscription or redemption fees on account of the investment; and commission or rebates received by the Fund Manager of the Feeder Fund, by virtue of the investment into the Master Fund, must be paid into the property of the Feeder Fund.

### **13.3 Private Equity Funds**

#### **Guidance**

See Rule 3.1.6 for the definition of a Private Equity Fund.

#### **Investment committee**

- 13.3.1**
- (1) A Fund Manager of a Private Equity Fund is not required to appoint an Eligible Custodian for the Fund pursuant to Rule 8.2.2 where it meets the requirements in (2) and (3).
  - (2) A Fund Manager of a Private Equity Fund must call a meeting of Unitholders to vote on the election of at least three experts who are independent of the Fund Manager to sit on an investment committee of the Fund.
  - (3) The committee members in (2) must not involve themselves in the day to day management of the Fund but are appointed to review investment opportunities.

#### **Guidance**

1. The DFSA expects Fund Managers of Private Equity Funds to have proper regard to best practice standards or guidance issued by the DFSA as well as leading international trade bodies in relation to such Funds.
2. Experts are persons whose profession, expertise or reputation gives authority to a statement or opinion made by that person in relation to the subject matter of the statement or opinion.

3. Where a Private Equity Fund appoints an investment committee pursuant to Rule 13.3.2(1), the annual report of that Fund must also include a report by that committee (see Rule 9.4.7(1)).

**13.3.2** A Fund Manager of a Private Equity Fund must ensure that:

- (a) unless the purpose of the Fund is to invest in a single venture or undertaking, it does not invest more than 25% of the Fund in one such venture or undertaking; and
- (b) it does not invest in companies which are Affected Persons in relation to the Fund or the Fund Manager, except where it does so in compliance with the requirements in Rule 8.3.2.

**13.3.3** Where the Fund Manager of a Private Equity Fund intends to invest in any venture, the Fund Manager must ensure that it makes adequate arrangements for the undertaking of due diligence in respect of that venture including investigating its corporate governance standards.

**13.3.4** If a Fund Manager of a Private Equity Fund has placed a Person on the board of the Undertaking in which it is investing, it must take reasonable steps to ensure that it manages conflicts and follows good corporate governance.

## **13.4 Property Funds**

### **Guidance**

See Rule 3.1.7 for the definition of a Property Fund.

### **Permitted form and listing**

- 13.4.1**
- (1) A Fund Manager of a Domestic Fund which is a Property Fund must use only a closed-ended legal structure for the investment vehicle.
  - (2) In the case of a Property Fund which is or intends to be a Public Fund, the Fund Manager:
    - (a) may only use either an Investment Company or Investment Trust as the investment vehicle of the Fund;
    - (b) must ensure that it is listed and traded on an Authorised Market Institution or is listed and traded on an exchange in a Recognised Jurisdiction within 6 months from the date on which the Units of the Fund are first Offered to the public or any other shorter period as specified in the Fund's Prospectus; and
    - (c) must ensure that the Constitution of the Fund includes provisions that deal with:
      - (i) the manner in which the issue and redemption of Units of the Fund will be made to ensure that the Fund is closed ended; and



- (ii) if applicable, the circumstances in which any Private Placements may be made.

**Guidance**

A closed ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund. Therefore, Unitholders of such Funds do not have a redemption right. Instead, if the Fund is listed and traded, Unitholders are able to sell their Units or buy Units on exchange, however, a Fund using a closed-ended structure can issue new Units to new Unitholders (or effect a buyback) subject to the applicable laws and where permitted under its own Constitution.

**Alternative Custody arrangements**

- 13.4.2**
- (1) A Fund Manager of a Property Fund is not required to appoint an Eligible Custodian for the Fund pursuant to Rule 8.2.2 where it meets the requirements in (2) and (3).
  - (2) The Fund Manager or, in the case of an Investment Trust, the Trustee, for the purpose of meeting the legal or regulatory requirements in relation to the ownership of Real Property applicable in the jurisdiction in which the Real Property is situated, may implement alternative arrangements for safekeeping where the arrangements:
    - (a) in the case of an Investment Trust, enable the Trustee to continue to control the Fund Property; and
    - (b) in all cases:
      - (i) do not enable the Fund Manager to have unfettered control of the Fund Property; and
      - (ii) are in accordance, where applicable, with the requirements in Rules 13.4.6 to 13.4.11.
  - (3) If the Fund Manager or, in the case of an Investment Trust, the Trustee, implements arrangements in accordance with (2), it must satisfy the DFSA that the arrangements have the effect specified in (2) and are legally effective in the DIFC and in the jurisdiction where the Real Property is situated.

**Guidance**

1. Rule 13.4.2 enables Fund Managers and Trustees to find suitable alternative arrangements to those mandated under Rule 8.2.2(2) and 8.3.3(b) for the safekeeping of Real Property in circumstances where, for example, the Trustee of an Investment Trust cannot by reason of the applicable Law hold the legal title to Real Property in a GCC country. In such situations appropriate use of declarations of trust, indemnities and resolutions may produce an acceptable alternative. The DFSA has previously permitted such alternative arrangements by way of waiver and modification to earlier provisions preceding the enactment of Rule 8.2.2(2) and 8.3.3(b).
2. Note that in relation to an Investment Company or Investment Partnership, Rule 8.2.2 requires a Fund Manager to delegate the activity of Providing Custody to an Eligible Custodian. In relation to an Investment Trust, Rule 8.3.3(b) also permits a Trustee to delegate the activity of Providing Custody to an Eligible Custodian.

**Investment Committee**

- 13.4.3**
- (1) A Fund Manager of a Property Fund must, subject to (2), call a meeting of Unitholders to vote on the election of at least three experts who are independent of the Fund Manager to sit on an investment committee of the Fund.
  - (2) A Fund Manager of a Fund which is constituted as an Investment Trust need not appoint an investment committee.
  - (3) The committee members in (1) are appointed to review investment opportunities and must not involve themselves in the day to day management of the Fund.

**Investments**

- 13.4.4**
- (1) A Fund Manager must, subject to (2), ensure that the assets of a Property Fund, except where otherwise provided in the Rules in this section, consist only of any or all of:
    - (a) Real Property;
    - (b) Property Related Assets; or
    - (c) Units in another Property Fund; and
    - (d) up to a maximum of 40% of cash, government and public Securities.
  - (2) The requirements in (1) do not apply to a Fund Manager during the initial 6 month period of the Fund's operation and in any case, will be subject to any other time period set out in the Prospectus or as approved by a Special Resolution of the Unitholders.
  - (3) A Fund Manager must ensure that:
    - (a) Property Related Assets of a Property Fund are listed and traded on an Exchange which is provided for in the Prospectus of the Fund; and
    - (b) the Property Fund does not grant any Person an option to acquire any property included in the Fund.
  - (4) The Fund Manager or, where appointed, the Trustee, must, subject to (5), ensure that the Fund holds good marketable legal and beneficial title in all its Real Property, whether directly or via Special Purpose Vehicles controlled by the Fund. The Fund may hold such title as joint tenants or tenants-in-common with one or more third parties provided that the Fund must hold the majority interest and control and have the freedom to dispose of its interest.
  - (5) Any special arrangement entered into in respect of Fund Property for the purposes of Islamic finance arrangements where the legal title to the property is held by a financial institution will be acceptable for the

purposes of (4) provided information relating to such arrangements either disclosed in the Prospectus of the Fund or approved by Special Resolution of Unitholders.

- (6) The Fund Manager and, if appointed, the Trustee, must take all reasonable care to ensure that the Fund Manager arranges adequate property insurance and public liability insurance coverage in relation to the Real Property of a Fund.

#### **Guidance**

1. Rule 13.4.4(5) enables Fund Managers and Trustees to use certain Islamic structures such as ijara for property financing which require the legal ownership of the real property to be held by the financial institution providing the financing.
2. Rule 13.4.4(5) does not require individual transactions to be specified in the Prospectus or approved by Special Resolution of Unitholders. Instead, it would be sufficient for general information relating to such arrangements, such as their legal effect, to be included in the Prospectus, failing which Unitholder approval by Special Resolution will be required. Similarly, Unitholders can by Special Resolution grant general approval for use of such Islamic financing arrangements, obviating the need for each specific transaction to be separately approved.

#### **Borrowing**

- 13.4.5** (1) The Fund Manager of a Public Property Fund may borrow either directly or through its Special Purpose Vehicle for financing investment or operating purposes but aggregate borrowings must not at any time exceed 80% of the total net asset value of the Fund.
- (2) The Fund Manager of a Fund may pledge the Fund's assets to secure borrowings under (1).
- (3) In the event that the borrowing limit under (1) is exceeded, the Fund Manager must inform the Trustee (if appointed), the Unitholders and the DFSA of the magnitude of the breach, the cause of the breach, and the proposed method of rectification. The Fund Manager must use its best endeavours to reduce as soon as reasonably possible the excess borrowings.
- (4) All borrowings by the Fund must be conducted at arm's length.
- (5) Borrowings by any Special Purpose Vehicles held by the Fund must be aggregated for the purpose of calculating borrowings of the Fund for the purposes of this Rule.

#### **Joint Ownership Arrangement**

- 13.4.6** The Fund Manager must ensure that when a joint ownership arrangement is entered into, the Fund has a majority stake or holding in respect of that arrangement, that is, more than 50% ownership and control in each property at all times.

- 13.4.7** (1) In making any joint ownership investment under Rule 13.4.7, the Fund Manager must:

- (a) be able to demonstrate that the arrangement, including the decision to own less than a 100% interest in the property, is in the interests of the Unitholders; and
  - (b) must obtain a legal opinion in accordance with (2).
- (2) The legal opinion referred to in (1)(b) must include:
- (a) a description of the significant terms of the joint ownership arrangement;
  - (b) a statement whether the Fund will have a good and marketable legal and beneficial interest in the property;
  - (c) a description of the equity and profit sharing arrangements of the parties to the agreement;
  - (d) a statement that the relevant contract and joint ownership arrangements are legal, valid, binding and enforceable under applicable law;
  - (e) a statement that all necessary licences and consents required in the location where the subject property is located have been obtained by the Fund or its Special Purpose Vehicle;
  - (f) any restriction on divestment by the Fund of its interest, in whole or in part, in the property; and
  - (e) if applicable, the implication of foreign rules and regulations that may prohibit full ownership of the property by the Fund.

**13.4.8** The Fund Manager must ensure that:

- (a) proper due diligence is conducted in identifying restrictions and constraints that may limit a Fund's direct ownership of a 100% interest in a property; and
- (b) the liability of, or assumed by, the Fund does not exceed the percentage of its interest in the joint ownership arrangement and there is to be no assumption of unlimited liability by the Fund.

**13.4.9** The Fund Manager must disclose to Unitholders;

- (a) the ownership structure of the property interest and the material terms thereof, including restrictions on divestments and the impact or implication of such restrictions on the divestment value of the interest in the property;
- (b) the identity, background and ownership of the remaining legal and beneficial owners in the property, transactional history of these owners with the Fund in relation to the property;
- (c) financial, remuneration, fee-sharing or other material arrangements that have been or will be entered into between the Fund and the other owners of that property or their associates;

- (d) a summary of the contents of the legal opinion in Rule 13.4.7(1)(b) in relation to the property; and
- (e) where appropriate:
  - (i) the nature of restrictions on foreign ownership and the duration of them, and the impact of such restrictions on the operations and financial position of the Fund as a whole;
  - (ii) the Valuer's opinion and evaluation of the impact of such prohibitions on the value of the property; and
  - (iii) any other information which may reasonably be relevant to a Unitholder.

### **Use of Special Purpose Vehicles**

- 13.4.10**
- (1) The Fund Manager of a Property Fund may hold Real Property for the Fund through a Special Purpose Vehicle, subject to (2) and (3), only if the Fund has majority ownership and control of the Special Purpose Vehicle.
  - (2) A Special Purpose Vehicle set up by the Fund Manager of a Fund under (1) may itself hold Real Property through another Special Purpose Vehicle (the second Special Purpose Vehicle) for the sole purpose of directly holding Real Property for the Fund or arranging financing for the Fund but the second Special Purpose Vehicle must not hold Real Property for the Fund through another Special Purpose Vehicle.
  - (3) The Fund Manager of the Fund must ensure that:
    - (a) neither the Constitution of any Special Purpose Vehicle nor the organisation, transactions or activities of such vehicles under any circumstance contravene any requirements of the Rules in this section;
    - (b) the board of directors of each of the Special Purpose Vehicles is appointed by the Fund Manager in agreement with the Trustee or Persons performing oversight functions of the Fund where applicable and, where elected, the investment committee; and
    - (c) both the Fund and the Special Purpose Vehicles must appoint the same Auditor and adopt the same accounting principles and policies.

### **Guidance**

Under 13.4.11, additional Special Purpose Vehicles may be permitted by the DFSA by waiver or modification under limited circumstances, such as where the Fund Manager can demonstrate to the satisfaction of the DFSA that the arrangement is necessary for the purpose of meeting the legal or regulatory requirements of another jurisdiction.

- 13.4.11** If the Fund acquires Real Property through the acquisition of a Special Purpose Vehicle, the following matters must be complied with by the Fund Manager for the purpose of the purchase:

- (a) a report made by the Fund's Auditor must be prepared on:
  - (i) the profit and loss of the Special Purpose Vehicle for each of the three years preceding the transaction or any shorter period as is relevant if the Special Purpose Vehicle was in existence for less than three years; and
  - (ii) the assets and liabilities of the Special Purpose Vehicle as at the last date, which is no more than 6 months old from the date of the report to which the accounts of the Special Purpose Vehicle were prepared;
- (b) the report required under (a) must:
  - (i) indicate how the profits and losses of the Special Purpose Vehicle would, in respect of the Shares to be acquired, have affected the Fund, if the Fund had at all material times held the Shares to be acquired; and
  - (ii) where the Special Purpose Vehicle has subsidiaries, deal with the profits or losses and the assets and liabilities of the Special Purpose Vehicle and its subsidiaries, either as a whole, or separately; and
- (c) a valuation report in respect of the Special Purpose Vehicle's interest in Real Property must be prepared in accordance with the requirements set out in Rules 13.4.18 to 13.4.22.

### **Transactions with Affected Persons**

#### **Guidance**

Fund Managers are required pursuant to Rule 8.3.1 to obtain the agreement of Unitholders by way of a Special Resolution before undertaking an Affected Person transaction where the total consideration or value of the transaction is 5% or more of the net asset value of the Fund. See also App2 and App3.

- 13.4.12** (1) The following information in relation to Affected Person transactions must be disclosed to Unitholders and where appointed the Trustee, by the Fund Manager of the Fund:
  - (a) any beneficial interests of the Affected Person, and any changes thereof, in the Fund; and
  - (b) any potential conflicts of interests involving the Affected Person and the measures implemented to address such conflicts.
- (2) If the Fund Manager operates more than one Fund and a transaction involves two or more of the Funds operated by the Fund Manager, such transactions between the Funds will be Affected Person transactions for each of the Funds involved in the transactions.
- 13.4.13** (1) Where any Affected Person has an interest in an Undertaking which competes or is likely to compete, either directly or indirectly, with the

Fund's activities, the Fund Manager must disclose to Unitholders and where appointed the Trustee, the following:

- (a) a description of the Undertaking of the Affected Person and its management, to enable Unitholders to assess the nature, scope and size of such business, with an explanation as to how such Undertaking may compete with the Fund;
  - (b) where applicable, a statement from the relevant Affected Person that it is capable of performing, and shall perform, its duty in relation to the Fund independently of its related business and in the best interests of the Fund and its holders; and
  - (c) a statement as to whether the Fund may acquire any of the related business or assets of the Affected Person.
- (2) If there is any change in information required under (1) after initial disclosure, the Fund Manager must disclose such changes to the Unitholders and where appointed the Trustee.

**13.4.14** Where an Affected Person has, for the purpose of the establishment of the Fund, agreed to sell Real Property to the Fund, the Fund Manager must disclose the following in the Prospectus:

- (a) a valuation report by an independent valuer of the Real Property that the Affected Person has agreed to sell; and
- (b) the price to be paid by the Fund for the Real Property and other material terms of the transaction.

**13.4.15** (1) The Fund Manager must ensure that if any cash forming part of the Fund's assets is deposited with an Affected Person (being an institution licensed to accept deposits), interest must be paid on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term.

- (2) The Fund Manager must ensure that in the event of borrowing from an Affected Person (being an institution licensed to lend money), interest charged on the borrowing is at a rate not higher than the prevailing commercial rate for a borrowing of that size and term.

**13.4.16** The Fund Manager must ensure that any Affected Person transactions in the nature of services provided relating to the Real Property of the Fund in the ordinary and usual course of estate management, including renovation and maintenance work, are contracted on normal commercial terms and subject to the prior approval of the Trustee or other oversight function.

**13.4.17** The Fund Manager and, if appointed, the Trustee must not engage Affected Persons as property agents for rendering services to the Fund, including advisory or agency services in property transactions.

**Valuation function**

- 13.4.18** (1) The Fund Manager of a Property Fund must, subject to the approval of the Trustee, appoint a Person who is able to provide professional valuation services in accordance with the Rules in this section.
- (2) The Fund Manager must ensure that the Person appointed under (1) values each Real Property prior to its acquisition and disposal.
- (3) The Fund Manager must commission the Person referred to in (1) to produce a valuation report of the Property Fund each year in accordance with Rule 13.4.22. The net asset value of the Fund following this valuation must be reported in the annual report of the Fund.

**13.4.19** For the purpose of Rule 13.4.18, a Fund Manager must appoint a Person:

- (a) who carries on the business of valuing Real Property;
- (b) who is not Related to the Fund Manager; and
- (c) whom the Fund Manager, and if appointed the Trustee, have reasonable grounds to believe would be capable of providing objective valuation of Real Property.

**Guidance**

1. The term “Related” has the meaning given to it in the GLO module.
2. A Fund Manager, and where appointed the Trustee, in forming the opinion required under Rule 13.4.19(c), should be satisfied that the Person to be engaged for providing valuation of Real Property meets if not all, at least most of the following criteria:
  - a. the Person is a, or has key personnel who are, fellow or associate members of a recognised professional body of surveyors or property valuers and who are qualified to perform property valuations;
  - b. the Person has or has access within the organisation to the relevant expertise, that is, knowledge of and experience in the valuation of property of the relevant kind in the relevant area where the property is situated;
  - c. the Person has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;
  - d. the Person has adequate professional insurance to cover its usual risks;
  - e. the Person does not have ownership or other commercial links with any other Persons providing Financial Services to the Fund (such as investment advisers or investment managers appointed to the Fund), which would impair that Person’s ability to provide independent and objective valuation services to the Fund; and
  - f. the Person or any of his associates has not been instrumental in relation to the finding of the Real Property for the Fund.

- 13.4.20** (1) A Fund Manager must ensure that any valuation by the Person appointed to provide valuation services to the Fund is carried out on the basis of an



‘open market value’ as defined in the Constitution and the most recent Prospectus of the Fund.

- (2) The valuation report under (1) must confirm that if the Real Property was acquired for the Property Fund it could be disposed of at that valuation within a reasonable period.

**13.4.21** The Fund Manager must ensure that the property is acquired within a reasonable time from the date of the valuation report and in any event not later than six months from the date of valuation and at a price no more than 5% above the valuation price.

**Guidance**

The DFSA would expect the Fund Manager to define ‘open market value’ to be based on an authoritative text such as the Royal Institute of Chartered Surveyors’ Appraisal and Valuation Standards (fifth edition) (“Red Book”); or similar practitioners text used by surveyors; or International Valuation Standards issued from time to time by the International Valuation Standards Committee

**Valuation Report**

**13.4.22** A Fund Manager must ensure that any valuation report prepared by the Person appointed:

- (a) includes all material details in relation to the basis of valuation and the assumptions used;
- (b) describes and explains the valuation methodologies adopted;
- (c) outlines the overall structure and condition of the relevant market including an analysis of the supply and demand situation, the market trend and investment activities;
- (d) includes a brief description of the property, its location, the nature of the interest the Fund holds in the property, its existing use, any encumbrances concerning or affecting the property, the lease expiry profile if any, the capital value in existing state at the date the valuation was performed, the net monthly income from the property, and any other matters which may affect the property or its value;
- (e) confirms the professional status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and
- (f) explains the rationale for choosing the particular valuation method if more than one method is available.

**13.4.23** A Fund Manager must ensure that whenever a valuation report is prepared for the Fund, the date of the valuation report must be:

- (a) the date the Fund is valued, if such report is prepared for the purpose of calculating the net asset value of the Fund; or
- (b) a date which is not more than three months before the date on which:

- (i) an offering document is issued;
- (ii) a circular is issued, if the circular relates to a transaction that requires Unitholders' approval; or
- (iii) a sale and purchase agreement or other agreement to transfer legal title is signed, if the transaction does not require Unitholder approval.

### **Retirement of valuer**

- 13.4.24**
- (1) A Fund Manager must ensure that where a Person appointed pursuant to Rule 13.4.19 has conducted valuations of the Real Property for the Fund for five consecutive years, that Person is retired.
  - (2) A Person retired under (1) must not be re-appointed by the Fund Manager to perform Fund valuation unless a period of two years has elapsed from the date of the retirement of that Person.
  - (3) The Fund Manager, and if appointed the Trustee on instructions of the Fund Manager, may at any time remove the Person appointed to provide the valuation services by notice in writing in any of the following events:
    - (a) the Person enters into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
    - (b) the Fund Manager, in consultation with the Trustee, determines on reasonable grounds that it is necessary to remove that Person in the interests of the Fund and the Unitholders; or
    - (c) an ordinary resolution is passed by the Unitholders to dismiss that Person.
  - (4) Upon the retirement or dismissal of the Person appointed to provide the valuation services to the Fund, the Fund Manager must appoint another Person to provide valuation services to the Fund where the Fund Manager and where appointed the Trustee are satisfied that the Person meets the requirements specified in Rule 13.4.19.

## **13.5 Real Estate Investment Trusts (REITs)**

### **Guidance**

1. See Rule 3.1.8 for the definition of a Real Estate Investment Trust (REIT).
2. REITs are a subset of Property Funds. The Fund Manager of a Public Property Fund, which is, or is to be held out, as a REIT, is required, in addition to the general Rules applying to Public Property Funds, to also comply with the Rules in this section.

### **Real Estate Investment Trusts (REITs)**

- 13.5.1**
- (1) A Fund Manager, or any Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term "Real Estate

Investment Trust” or “REIT” or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or a REIT, unless it is a Public Property Fund which is constituted in accordance with (2).

- (2) A REIT is a Public Property Fund which:
- (a) is constituted either as an Investment Company or as an Investment Trust;
  - (b) is primarily aimed at investments in income-generating Real Property;
  - (c) distributes to the Unitholders at least 80% of its audited annual net income; and
  - (d) if at any time during the operation of the Fund the requirements are not met, the Fund Manager, and, if appointed the Trustee, must immediately notify the DFSA and the exchange of the failure to meet the requirements in these Rules and what measures have been or will be taken to remedy the breach.

**13.5.2** (1) A Fund Manager of a REIT must ensure that it distributes to the Unitholders as dividends each year an amount not less than 80% of its audited annual net income.

(2) The Persons providing oversight functions in respect of the Fund must determine if any;

- (a) revaluation surplus credited to income, or
- (b) gains on disposal of Real Property,

shall form part of net income for distribution to Unitholders.

**13.5.3** Where a REIT holds any Real Property via one or more Special Purpose Vehicles, the Fund Manager must ensure that each Special Purpose Vehicle distributes to the Fund all of its income as permitted by the laws and regulations of the jurisdiction where the Special Purpose Vehicle is established.

**13.5.4** (1) A Fund Manager of a REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.

(2) The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the REIT.

**Guidance**

For the purposes of Rule 13.5.4, the DFSA would not consider property development activities to include refurbishment, retrofitting and renovation.

**13.5.5** A Fund Manager of a REIT may borrow either directly or through its Special Purpose Vehicle up to 70% of the total net asset value of the Fund.

## 13.6 Hedge Funds

### Guidance

See Rule 3.1.9 for the definition of a Hedge Fund.

### Risk management

- 13.6.1** A Fund Manager of a Hedge Fund must ensure that the risks inherent in the operation of a Hedge Fund are adequately addressed, with due regard to the nature of the strategies and investment process employed by the Fund Manager and the role of Fund Administrators and Custodians and where appointed, prime brokers.

### Guidance

A prime broker is a Person who provides to a Fund a range of services including custody and depository services, trading and execution services, clearing and settlement services and financing to support the Fund's investment activities. Such financing activities generally include stock lending and borrowing. The restrictions in Rules A1.3.1(c) and (f) of Appendix 1 (App 1) prevent a Fund Manager of a Hedge Fund from authorising a prime broker to commingle the assets of the Fund with any other assets held by or available to the prime broker and use those assets as collateral to support the prime broker's cross lending and borrowing activities involving Funds to which it acts as the prime broker. However, the restrictions in A1.3.2(c) and (f) do not apply if a Fund Manager of a Hedge Fund can comply with the requirements relating to the use of prime brokers set out in Rule 13.6.4.

- 13.6.2** (1) The Fund Manager of a Hedge Fund must ensure functional separation and independence between:
- (a) the functions of Fund valuation and asset pricing; and
  - (b) the investment management process.
- (2) Where the Fund manager is unable to demonstrate adequate separation and independence in accordance with (1), the DFSA may require the Fund Manager to appoint an independent, suitably competent and experienced Fund Administrator to perform the functions specified in (1)(a).

### Guidance

To provide segregation of the net asset value determination process of the Fund from the investment management process, generally personnel involved in the former should not be involved in the latter. An effective method of achieving such segregation is to delegate the calculation, determination and production of the net asset value to a suitably competent and experienced third party Fund Administrator.

### Use of prime brokers

- 13.6.3** A Fund Manager of a Hedge Fund may only grant to a prime broker authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities to be undertaken by the prime broker where, and so long as, all the following conditions are met:

- (a) the Fund is an Exempt Fund or Qualified Investor Fund;

- (b) the Prospectus of the Fund contains, in addition to the disclosure required under chapter 14, the following mandatory disclosure and warnings:
  - (i) the identity and profile of the prime broker, including where it is located and how it is regulated;
  - (ii) the services which the prime broker provides to the Fund and the nature and extent to which the prime broker has the power and authority to combine the assets of the Fund with any other assets held by or available to the prime broker as collateral for any financing activities undertaken by the prime broker; and
  - (iii) a prominent health warning in the Prospectus to alert prospective Unitholders to the facts that:
    - (A) the Fund's appointed prime broker has the power and authority to use as collateral the assets of the Fund in conjunction with any other assets held by or available to the prime broker; and
    - (B) where the prime broker uses Fund assets as collateral pursuant to the above power, the Unitholders may lose all the assets of the Fund in the event of the insolvency of the prime broker;
- (c) the Person appointed as the prime broker qualifies as an Eligible Custodian;
- (d) the agreement between the prime broker and the Fund Manager contains mandatory contractual provisions that:
  - (i) prohibit the prime broker from using as collateral the assets of the Fund to an extent exceeding 140% of the Fund's indebtedness to the prime broker at any given time; and
  - (ii) create an irrevocable right in favour of the Fund that enables any indebtedness of the Fund to the prime broker to be set off against any amounts that are owing by the prime broker to the Fund, including in the event of the insolvency of the prime broker; and
- (e) the Fund Manager has in place adequate valuation procedures to mark positions to market daily in order to meet on an ongoing basis the restriction referred to in (d)(i) relating to the limit to which the prime broker may use as collateral the assets of the Fund.

### **Guidance**

1. If the prime broker holds the legal title to the Fund assets, the prime broker must, in any event, qualify as an Eligible Custodian. However, even if a prime broker does not hold the legal title to the Fund assets, Rule 13.6.2(c) requires it to meet the Eligible Custodian requirements in certain circumstances. This is where it has the power to use Fund assets as collateral for its financing activities (e.g. by having a charge over the Fund assets) in conjunction with any other assets held by or available to it.
2. In relation to the matters referred to in Rules 13.6.1 and 13.6.2 and in relation to management of Hedge Fund investments, the DFSA expects Fund Managers of Hedge

Funds to have proper regard to best practice standards and guidance set out in App 7, DFSA's Hedge Fund Code of Practice as well as international developments relating to Hedge Funds.

## 13.7 Umbrella Funds

### Guidance

See Rule 3.1.10 for the definition of an Umbrella Fund.

### Form of an Umbrella Fund

**13.7.1** Subject to any restrictions in the Law and the Rules in this module, an Umbrella Fund:

- (a) may be formed as a Protected Cell Company (PCC); and
- (b) must be an open-ended Fund if formed as a PCC.

### Guidance

1. A Protected Cell Company (PCC) is a form of Investment Company which needs to be registered as a PCC under the Companies Regulations. An Umbrella Fund using the PCC structure has the benefit of legal segregation of Fund Property forming part of each individual cell. Accordingly, Fund Property of one cell of a PCC is not available to pay any obligations arising in relation to another cell of that PCC.
2. It is not mandatory for an Umbrella Fund to be constituted as a PCC. Instead, such Funds may be formed as a conventional Investment Company or Investment Trust. However, the legal segregation available to each cell of a PCC is not available to Sub-Funds of Umbrella Funds not formed as a PCC.

### Investments of an Umbrella Fund

**13.7.2** A Fund Manager of an Umbrella Fund must ensure that none of its Sub-Funds invests in another of its Sub-Funds.

### Guidance

Requirements that apply to other Funds apply to Umbrella Funds equally, although there are some Umbrella Fund specific requirements. For convenience of reference, key provisions specific to Umbrella Funds are identified in the following Table.

**13.7.3** Additional requirements specific to Umbrella Funds

Rule	Requirements
Rule 3.1.10	Definition
Rule 13.7.1	Form of an Umbrella Fund
Rules 9.4.2	Annual and interim reports
Rules 9.4.6	Content of the annual report of an Umbrella Fund
Rules 9.4.9	Fund Manager's Report
Rules 13.7.2	Investment restrictions applicable to Fund of Funds when investing in a Sub-Fund
App A7.1.1(2)(h) & 17	Content of a Public Fund Prospectus
Rules 14.3.5	Content of a Short Form Prospectus
Rules 16.1.1, 16.1.3(3) (4) & (5)	Transfer schemes
Rules 17.1.1 & 17.1.6	Winding up

## **PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS**

### **Guidance**

1. Part 7 of the Law sets out the overarching provisions that apply to the Offer (also called marketing) of Units of both Domestic and Foreign Funds; and in the case of the latter, where Units of such Funds are marketed in or from the DIFC.
2. Article 50 of the Law contains the Marketing Prohibition. Under this prohibition, no Person is permitted to Offer a Unit of a Fund to prospective or existing Unitholders unless:
  - a. a Prospectus that complies with the relevant requirements in the Law and the Rules is made available to the person to whom the Offer is made;
  - b. the Person making the Offer of the Unit is either the Fund Manager of the Fund or an Authorised Firm whose licence authorises it to do so; and
  - c. the Offer is made in accordance with the applicable requirements in the Law or the Rules.
3. Article 19 of the Law defines the activities that constitute an Offer. Under this Article, a Person is to be regarded as making an Offer of a Unit if he:
  - a. makes an offer to another Person which, if accepted, would give rise to a contract for the issue or sale of Units by him or by another Person with whom he has made arrangements for the issue or sale of the Units; or
  - b. invites another Person to make an offer which, if accepted by him, would give rise to a contract for the issue or sale of Units by him or by another Person with whom he has made arrangements for the issue or sale of the Units,

whether or not the offer or invitation referred to in Article 19(2)(a) or (b) is made by way of a financial promotion of the Units..
4. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 19 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
5. This Part of the module sets out the detailed requirements that apply to the Offer of Units of Domestic and Foreign Funds, including Prospectus disclosure, under respective chapters. The Rules in this chapter supplement provisions of COB which also govern the carrying on of Financial Service activities by an Authorised Firm, except where otherwise provided.
6. With the exception of Part 2 of the Markets Law 2012, that Law and Rules made for the purpose of that Law govern the listing of the Units of a Fund and continuous disclosure obligations that apply to in relation to Listed Funds.

## **14      MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE**

### **14.1    Prospectus disclosure for Domestic Funds**

#### **Guidance**

1. While a Person is required by virtue of Article 50(1) of the Law when making an Offer of a Unit of a Domestic Fund to another Person to make available to that other Person a Prospectus, the obligation to produce a Prospectus is imposed under Article 51(a) of the Law on the Fund Manager of a Domestic Fund.
2. This chapter sets out the detailed requirements that apply to the Fund Manager who is obliged to produce a Prospectus, and the obligations and liabilities relating to Prospectuses, as well as the obligation relating to making available a Prospectus which applies to the activity of making an Offer of Units.
3. Some requirements relating to Prospectus disclosure are common to all Domestic Funds. However, in other areas, particularly relating to the content of disclosure required in a Prospectus, and the manner of distribution, different requirements apply depending on whether the Fund is a Public Fund, Exempt Fund or Qualified Investor Fund. Further, specialist class of Funds attract additional disclosure requirements that are unique to their activities. This chapter sets out those requirements and where necessary by reference to the types and classes of Domestic Funds.
4. Article 14(2) of the Law provides that the requirements relating to Domestic Funds do not apply to an External Fund (i.e. a Fund established in a jurisdiction other than the DIFC by a DFSA licensed Fund Manager), unless otherwise provided in the Law or Rules. As a result, the general Prospectus requirements set out in the Law and this module do not apply to External Funds, except that:
  - a. any offer document prepared for the purposes of complying with the requirements applicable in the jurisdiction in which the External Fund is established is regarded as a Prospectus for the purposes of the requirements relating to the Offer of Units of such a Fund in or from the DIFC (see Article 50(3)(c) of the Law); and
  - b. the DFSA has the power to prescribe any additional disclosure to be included in such a document (see Article 51(2) of the Law).

Those requirements are specified in Rules 14.2.4 – 14.2.7.

#### **Application**

- 14.1.1**
- (1) This chapter applies, subject to (4), to a Fund Manager of a Domestic Fund, and each Director or partner of the Fund Manager and, if it has a Governing Body, each member of that body.
  - (2) This chapter also applies to an Authorised Firm, and each of its Directors or partners, where such a Firm is not the Fund manager and undertakes the marketing of Units of a Domestic Fund.
  - (3) This chapter also applies to other specified Persons to the extent so specified.



- (4) Only this Rule and the following requirements in this chapter apply to, or in relation to, a Qualified Investor Fund:
- (a) Rule 14.2.1;
  - (b) Rules 14.2.4 to 14.2.7;
  - (c) Rule 14.4.6;
  - (d) Rules 14.5.1 and 14.5.2; and
  - (e) Rules in section 14.6.

**Guidance**

An External Fund Manager must also comply with the requirements in this chapter, because it is managing a Domestic Fund (i.e. a Fund established or domiciled in the DIFC- See Article 13(2)(a) of the Law).

## **14.2 General Requirements relating to Prospectuses**

- 14.2.1**
- (1) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
  - (2) For the purposes of the information that must be included in a Prospectus pursuant to Article 52 of the Law:
    - (a) such information must be material information; and
    - (b) information is material if it is either:
      - (i) within the knowledge of the Directors or partners of the Fund Manager or
      - (ii) which such Directors or partners ought reasonably have obtained by making reasonable enquiries.
  - (3) The Prospectus must be in the English language.
  - (4) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.

**Guidance**

In conducting inquiries relating to the obligations under (2), a Fund Manager must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed decision about the merits of investing and the extent and characteristics of risk.

## Supplementary and Replacement Prospectuses

### Guidance

1. Article 52(4) of the Law requires a Fund manager to issue, if, at any time after the issue of a Prospectus there is a material change affecting any matter contained in the Prospectus or a significant new matter arises, a Supplementary or a Replacement Prospectus in the manner prescribed in the Rules.
2. Under Article 50(3) of the Law, any reference in the Law and the Rules to a Prospectus includes an Information Memorandum of an Exempt Fund and any Supplementary or Replacement Prospectus, unless otherwise provided. Accordingly, all requirements that apply to a Prospectus apply equally to each of those documents except where stated otherwise.

- 14.2.2**
- (1) Where a Fund Manager, for the purpose of Article 52(3) of the Law, issues a Supplementary Prospectus, the Fund Manager must:
    - (a) clearly identify in the Supplementary Prospectus the Prospectus that it supplements, the revisions to that Prospectus, the date of any material change or new matter giving rise to any revision, and the date of the document which must be the date of filing with the DFSA;
    - (b) if it is a Public Fund, file a copy with the DFSA;
    - (c) provide a copy to each Person who applied for Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the revision; and
    - (d) ensure the Supplementary Prospectus is made available in the same media and through the same channels as, and together with, the previous Prospectus.
  - (2) Where a Fund Manager, for the purpose of Article 52(3) of the Law, issues a Replacement Prospectus, the Fund Manager must:
    - (a) clearly state that it is a Replacement Prospectus, and identify the Prospectus that it replaces, the date and nature of any material change or new matter giving rise to the replacement, the expiry date, and the date of the document which must be the date of filing with the DFSA;
    - (b) if it is a Public Fund, file a copy with the DFSA; and
    - (c) provide a copy to each Person who applied for Units under the previous Prospectus after the earliest date of any material change or new matter giving rise to the replacement.
  - (3) The expiry date of a Supplementary Prospectus or Replacement Prospectus under (1) or (2) must be the same as that of the Prospectus it supplements or replaces.

**14.2.3** When a Supplementary Prospectus or Replacement Prospectus of a Public Fund has been filed with the DFSA and made available in accordance with Rule 14.2.4, the Fund Manager must:

- (a) inform any Person who applied for Units on the basis of the previous Prospectus after the earliest date of a material change or new matter giving rise to the issue of the Supplementary Prospectus or Replacement Prospectus of their right to confirm or retract any application made on the basis of that Prospectus and to obtain a refund of monies paid, and the manner in which to do so; and
- (b) allow any such Person a period of at least seven days from the date of receipt of the Supplementary Prospectus or Replacement Prospectus in which to so confirm or retract his application.

### **Prospectus of an External Fund**

**14.2.4** A Fund Manager or other Authorised Firm must not Offer in or from the DIFC a Unit of an External Fund to a Retail Client unless the Units of the External Fund can be offered, under the requirements applying to that Fund in the jurisdiction in which the Fund is established, to retail investors.

**14.2.5** Where a Fund Manager or other Authorised Firm Offers a Unit of an External Fund to a Person, it must make available to that Person at the time of the Offer a copy of a current Prospectus relating to the Fund which contains the additional requirements in Rule 14.2.6.

### **Guidance**

Under Article 50(3)(c) of the Law, a Prospectus includes, in the case of an External Fund the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Fund in the jurisdiction in which the Fund is established or domiciled.

- 14.2.6**
- (1) The Prospectus of an External Fund made available by the Fund Manager or other Authorised Firm making the Offer of the Units of that Fund in or from the DIFC must be in the English language.
  - (2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:
    - (a) describes the jurisdiction in which the Fund is established and the legislation in that jurisdiction that applies to the Fund;
    - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
    - (c) describes the regulatory status accorded to the Fund by that Regulator;
    - (d) includes the following warning:

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

and

- (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).

**14.2.7** A Fund manager or other Authorised Firm which makes an Offer of a Unit of an External Fund in or from the DIFC must maintain at its place of business or other designated location in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours.

**Guidance**

In relation to Rule 14.2.7, copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

**14.3 Prospectus content**

**Public Fund Prospectus**

**14.3.1** Without limiting the generality of the Prospectus disclosure required under Article 52 of the Law, the Fund Manager must, in the case of a Public Fund, include in the Prospectus of the Fund:

- (a) the information in App 5;
- (b) if it is a specialist class of a Public Fund, any information as is relevant to that specialist class of Fund as set out in section 14.4; and
- (c) the mandatory statement required under Rule 14.3.4.

## 14.3.2 Information Memorandum of an Exempt Fund or a Qualified Investor Fund

### Guidance

1. Under Article 50(3)(a) of the Law, an Information Memorandum of an Exempt Fund or a Qualified Investor Fund is a Prospectus for the purposes of the Law and the Rules unless otherwise provided. In limited circumstances, the Rules prescribe additional disclosure to be included in a Prospectus of an Exempt Fund (for example Rule 13.6.3 where an Exempt Fund appoints a prime broker with certain additional powers).
2. There is no detailed prescribed disclosure content for the Information Memorandum of an Exempt Fund or a Qualified Investor Fund. However, as an Information Memorandum is a Prospectus, it is subject to the disclosure obligation in Article 50(2) of the Law. As a result, a Fund Manager of such a Fund must include all the information which Professional Clients to whom it intends to Offer Units of the Fund would reasonably require and expect to find in such a Prospectus. This is to enable such Clients to make an informed decision relating to investing in the Fund.

### Mandatory statement

- 14.3.3** (1) A Fund Manager of a Public Fund must include in the Fund's Prospectus, the following statement displayed prominently on its front page:

"This Prospectus relates to a DIFC Fund in accordance with the Collective Investment Law 2010 and Rules of the Dubai Financial Services Authority ("DFSA").

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Domestic Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser."

- (2) In the case of a Public Fund which is a Listed Fund, the Fund Manager must include, instead of the statement referred to in (1), the statement required under MKT Rule 6.3.1(1)(b)(iii).
- (3) If the Fund is an Exempt Fund, the Fund Manager must include, in addition to the statement referred to in (1), the following statement:

"This Information Memorandum is intended for only Professional Clients who can make a minimum subscription of US\$50,000 and must not, therefore, be delivered to, or relied on by, a Retail Client or a Professional Client not able to make that minimum subscription."

## 14.4 Additional Prospectus disclosure for specialist Funds

### Prospectus of a Feeder Fund

**14.4.1** A Fund Manager of a Feeder Fund must ensure that the Fund's Prospectus discloses:

- (a) a prominent risk warning to alert prospective Unitholders to the fact that they will be subject to higher fees arising from the layered investment structure;
- (b) the fees arising at the level of:
  - (i) the Feeder Fund itself;
  - (ii) if applicable, the Master Fund of the Feeder Fund; and
  - (iii) if applicable, any underlying Funds into which the Master Fund invests, to the extent known.

### Prospectus of a Property Fund

**14.4.2** A Fund Manager of a Property Fund must ensure that the following information is disclosed in the Fund's Prospectus:

- (a) the nature of the commitment which prospective Unitholders will enter into;
- (b) the risks involved in this type of Fund;
- (c) the prominent risk warning which makes reference to circumstances in property markets which can cause difficulties in meeting redemptions;
- (d) details of the Property Fund's appointed Valuer under Rule 13.4.18(1);
- (e) in a prominent position in the Prospectus, the redemption procedures;
- (f) the dividend or income distribution policy;
- (g) the insurance arrangement for the Fund;
- (h) a statement with respect to any material policy regarding real property activities;
- (i) details of transactions or agreements entered into with Affected Persons;
- (j) full particulars of the nature and extent of the interest, if any, of Affected Persons, in the property owned or proposed to be acquired by the Fund;
- (k) details of significant holders and the number of units held and deemed to be held by each of them;

- (l) details of principal taxes levied on the Fund's income and capital, including tax, if any, deducted on distribution to Unitholders;
- (m) a statement to explain the standards according to which the property valuations are conducted; and
- (n) if applicable, the Fund is a REIT and whether the investment vehicle is an Investment Company or an Investment Trust.

**14.4.3** A Fund Manager of a Public Property Fund must also disclose in the Fund's Prospectus, in addition to the standard disclosure requirements, in respect of investment limits, the following information:

- (a) what percentage of the Property Fund's net assets may consist of property related assets which are not traded in or dealt on markets provided for in the Constitution;
- (b) unless the Constitution and the Prospectus state that the Fund invests in a single property, the maximum percentage of the Fund's net assets which may be invested in any single property or, if applicable, the conditions under which the Fund may derogate from this restriction;
- (c) the maximum percentage of the Property Fund's net assets which may be invested in properties which are vacant, in the process of development or requiring development; and
- (d) the maximum percentage of the Property Fund's net assets which may be invested in properties which are subject to a mortgage.

**14.4.4** Without limiting any other disclosure obligations of the Fund Manager under these Rules, a Fund Manager of a Property Fund which is a Public Fund that invests in a single property must prominently disclose in the Prospectus of the Fund:

- (a) that the Fund invests in a single property;
- (b) details relating to the single property such as whether the property comprises individual properties or buildings, whether there are different types of uses of or businesses conducted in the property, and proportions of anticipated income to be derived from the types of uses or occupants of the property; and
- (c) any risks associated with the investment in the single property, including risks arising from or affecting income to be derived from the uses or occupants of the property.

**Guidance**

A Fund may be considered to invest in a single property if the Fund Property (apart from cash or other assets held for management purposes) comprises a single building (or a single building with ancillary or adjacent buildings) managed by or on behalf of the Operator of the Fund as a single enterprise.

### **Prospectus for a Private Equity Fund**

**14.4.5** If a Fund is a Private Equity Fund, the Fund Manager must provide the following in the Fund's Prospectus:

- (a) a description of the arrangements in place for the safekeeping of monies raised from Unitholders but not yet invested in the proposed undertaking or venture; and
- (b) a description of the exit arrangements for Unitholders.

### **Prospectus for a Hedge Fund**

**14.4.6** A Fund Manager of a Hedge Fund must prominently disclose to prospective Unitholders in the Prospectus and any other financial promotions relating to the Fund, the following Mandatory Hedge Fund Disclosure Statement:

"When considering investment in a Hedge Fund you should consider the fact that some Hedge Fund products use leverage and other speculative investment practices that may increase the risk of investment loss, can be illiquid, may involve complex tax structures, often charge high fees, and in many cases the underlying investments are not transparent and are known only to the Hedge Fund Investment Manager.

Returns from Hedge Funds can be volatile and you may lose all or part of your investment. With respect to single manager products the manager has total trading authority and this could mean a lack of diversification and higher risk. The Hedge Fund may be subject to substantial expenses that are generally offset by trading profits and other income. A portion of those fees is paid to the Hedge Fund Manager."

## **14.5 Obligation relating to making a Prospectus available**

- 14.5.1**
- (1) A Fund Manager of a Domestic Fund must make the Fund's most recent Prospectus available free of charge to any Unitholder and to any Person who is eligible to invest in the Fund when making an Offer to issue or sell a Unit of the Fund to such a Person, and, in any case, must not enter into a Transaction relating to the issue or sale of a Unit of the Fund with a Person unless that Transaction results from an Excluded Offer as defined in section 4.1 of this module.
  - (2) A Fund Manager of a Domestic Fund which is an Exempt Fund or a Qualified Investor Fund must not, and must not cause any other Person to, make an Offer of Units of such a Fund in a manner that would result in a breach of the requirements in Article 16(4) or (5) of the Law as is applicable to that Fund.

### **Guidance**

- 1. Section 4.1 of this module contains the definitions of Excluded Offers, such as Execution-only Transactions and Transactions with market Counterparties.



2. A Fund Manager should note the requirements in Article 50(1) of the Law. Accordingly, a Prospectus drawn up pursuant to Rule 14.1.3 should be made available to prospective Unitholders for as long as the Offer is open and once the Offer is closed, the Fund Manager's obligation to make the Prospectus available would cease.
3. Articles 16(4) and (5) of the Law set out the conditions that must be satisfied for Exempt Funds and Qualified Investor Funds. In particular, these articles require that Units in an Exempt Fund or a Qualified Investor Fund may only be Offered for issue or sale by means of a Private Placement with Professional Clients, and in a manner which does not result in the Fund having more than 100 Unitholders or 50 Unitholders, as is applicable.

- 14.5.2**
- (1) Where an Authorised Firm Offers a Unit of a Domestic Fund to a Person it must make available to that Person a copy of the most recent Prospectus at the time of the Offer or before effecting the Transaction in relation to the Units, unless that Transaction results from an Excluded Offer as defined in section 4.1 of this module.
  - (2) An Authorised Firm must not make an Offer of Units of an Exempt Fund or a Qualified Investor Fund in a manner that would result in a breach of the requirements in Articles 16(4) or (5) of the Law as is applicable to that Fund.

- 14.5.3**
- A Fund Manager and an Authorised Firm making an Offer of a Unit of a Fund meet the requirement in Rule 14.5.1(1) or Rule 14.5.2(1) as is relevant by:
- (a) maintaining at its place of business in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours; or
  - (b) being able to advise readily of a location in the DIFC where copies of the Prospectus are available.

**Guidance**

Copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

## **14.6 Responsibility for Prospectus**

### **Prescribed persons**

- 14.6.1**
- (1) For the purposes of Article 58(1) of the Law, the following Persons are prescribed as being responsible for a Prospectus:
    - (a) the Fund Manager;
    - (b) where the Fund is a Body Corporate, each Person who is a Director of that Body Corporate at the time when the Prospectus is filed;
    - (c) where the Fund is an Investment Undertaking, each Person who is authorised to be named, and is named, in the Prospectus as a Director, General Partner or member of the Governing Body or as

- having agreed to become such a Person of that Fund either immediately or at a future time;
- (d) each Person who accepts, and is stated in the Prospectus as accepting, responsibility for, or for any part of, the Prospectus;
  - (e) each Person who is deemed to accept responsibility for any part of a Prospectus under these Rules; and
  - (f) each Person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the Prospectus.
- (2) A Person who has accepted responsibility for, or authorised, only part of the contents of any Prospectus, is responsible only for that part and only if it is included in, or substantially in, the form and context to which he has agreed.
  - (3) Nothing in (1) makes a Person responsible for any part of a Prospectus by reason only of giving advice as to its contents in a professional capacity to a Person specified in (1)(a) to (f).

### **Exceptions from liability**

**14.6.2** The circumstances set out in the Rules in this section are prescribed for the purposes of Article 58(2) of the Law.

- 14.6.3** (1) A Person, with the exception of the Fund Manager, will not incur any liability under Article 58(1) of the Law for any loss in respect of Units caused by any such statement or omission if, at the time when the Prospectus was filed for registration or the notification to the DFSA, pursuant to Articles 28 or 34 as is relevant, was made or given he believed on reasonable grounds, having made any enquiries as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and:
- (a) he continued in that belief until the time when the Units were acquired;
  - (b) they were acquired before it was reasonably practicable to bring a correction to the attention of Persons likely to acquire the Units in question;
  - (c) before the Units were acquired he had taken all such steps as it was reasonable for him to have taken to ensure that a correction was promptly brought to the attention of Persons likely to acquire the Units in question; or
  - (d) the Units were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.
- (2) A Person will not incur any liability under Article 58(1) of the Law for any loss in respect of Units caused by a statement purporting to be made by or on the authority of another Person as an expert which is, and is stated to be, included in the Prospectus with that other Person's consent at the

time when the Prospectus was filed for registration or the notification to the DFSA pursuant to Article 56 was given, if he believed on reasonable grounds that the other Person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and:

- (a) he continued in that belief until the time when the Units were acquired;
  - (b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of Persons likely to acquire the Units in question;
  - (c) before the Units were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was promptly brought to the attention of Persons likely to acquire the Units in question; or
  - (d) the Units were acquired after such a lapse of time that, in the circumstances, he ought reasonably to be excused.
- (3) Without prejudice to (1) and (2), a Person will not incur any liability under Article 58(1) of the Law for any loss in respect of any Units caused by any such statement or omission as is there mentioned if:
- (a) before the Units were acquired a correction or, where the statement was such as is mentioned in (2), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of Persons likely to acquire the Units in question; or
  - (b) he took all such steps as it was reasonable for him to take to secure such publication and believed on reasonable grounds that such publication had taken place before the Units were acquired.
- (4) A Person will not incur any liability under Article 58(1) of the Law for any loss resulting from a statement made by an official Person or contained in a public official document which is included in the Prospectus if the statement is accurately and fairly reproduced.
- (5) A Person will not incur any liability under Article 58(1) of the Law if the Person suffering the loss acquired the Units in question with knowledge:
- (a) that the statement was false or misleading;
  - (b) of the omitted matter or of the change; or
  - (c) of the new matter or inaccuracy.

### **Experts**

- 14.6.4** For the purposes of Article 58 of the Law, an expert is prescribed as a Person accepting responsibility for any statement or report reproduced (in whole or in part) in a Prospectus with that Person's written consent.

**14.6.5** A Fund Manager must:

- (a) keep a record of any consent received under Rule 14.5.4; and
- (b) include a statement in the Prospectus that the expert has consented to the reproduction of his statement or report.

## **15      MARKETING OF FOREIGN FUNDS**

### **15.1    Access to Foreign Funds and availability of Prospectus**

#### **Guidance**

1. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 50 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
2. Article 54(1) of the Law prohibits the Offer of Units of a Foreign Fund unless one of three specified criteria in that Article are met, i.e.
  - a. the Foreign Fund meets either:
    - i. the criteria for a Designated Fund in a Recognised Jurisdiction; or
    - ii. other criteria prescribed in the Rules;
  - b. the Authorised Firm has a reasonable basis for recommending the Unit of the Foreign Fund as suitable for the particular Client to whom the Offer is made; or
  - c. the Foreign Fund, had it been a Domestic Fund, would meet the Exempt Fund criteria in Article 16(4) of this Law and the Offer is made in a manner that does not breach the requirements in that Article.
3. Under Article 54(2) of the Law, the DFSA has the power to prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of a Foreign Fund, including disclosure that must be included in a Prospectus and the legal form and structure of the Fund such as being open-ended or closed ended or listed or not. This section contains additional criteria and requirements prescribed pursuant to Article 54(2) of the Law.

#### **Clients to whom Offers of Units of Foreign Funds can be made**

- 15.1.1** An Authorised Firm must not, in or from the DIFC, Offer a Unit of a Foreign Fund to a Retail Client unless the Units of the Foreign Fund can be offered, under the home jurisdiction regulation applying to that Fund, to retail investors.

#### **Prospectus disclosure relating to Foreign Funds**

- 15.1.2** Where an Authorised Firm Offers a Unit of a Foreign Fund to a Person, it must make available to that Person a copy of a current Prospectus relating to the Fund which complies with the additional requirements in Rule 15.1.3 at the time of the Offer.

**Guidance**

Under Article 50(3)(c) of the Law, a Prospectus includes, in the case of a Foreign Fund the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Foreign Fund.

- 15.1.3**
- (1) The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.
  - (2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:
    - (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
    - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
    - (c) describes the regulatory status accorded to the Fund by that Regulator;
    - (d) includes the following warning:
 

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

and
    - (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).

- 15.1.4** An Authorised Firm which makes an Offer of a Unit of a Foreign Fund must maintain at its place of business or other designated location in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours.

**Guidance**

In relation to Rule 15.1.4, copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

### Designated Foreign Fund criteria

**15.1.5** The criteria prescribed for the purposes of Article 54(1)(a)(i) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

- (a) the Fund is both established and operated in a Recognised Jurisdiction specified in the DFSA's Recognised Jurisdictions Notice and the Fund is a Designated Fund included in that Notice; and
- (b) if it is a Property Fund, the requirements in Rule 15.1.7 are satisfied.

#### Guidance

For the purposes of the Rules including this Rule, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

### Other Foreign Fund criteria

**15.1.6** (1) The criteria prescribed for the purposes of Article 54(1)(a)(ii) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

- (a) the Fund:
  - (i) has both a custodian who meets one of the requirements in (2) and an investment manager who meets one of the requirements in (3); or
  - (ii) has both the custody and investment management activities of the Fund being performed by a Person who meets the requirements in (4); or
  - (iii) the Fund has been rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency acceptable to the DFSA.

and,

- (b) if the Fund is a Property Fund, it meets the requirements in Rule 15.1.7.
- (2) For the purposes of (1)(a)(i), the custodian is the Person who is responsible for providing safe custody of the Fund Property and such Person must be:
- (a) an Eligible Custodian;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;

- (c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or
  - (d) a Person as to whom the Authorised Firm is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
    - (i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;
    - (ii) the extent of segregation of assets;
    - (iii) independence and management of conflicts of interests;
    - (iv) the terms of the safe custody agreement; and
    - (v) periodic reporting requirements.
- (3) For the purposes of (1)(a)(i), the investment manager is a Person who makes investment decisions for or on behalf of the Fund and must be a Person who is:
- (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of its activities in relation to investment management;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.
- (4) For the purposes of (1)(a)(ii), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
- (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised



Jurisdiction and the agreement is in accordance with the requirements of that Regulator.

### **Foreign Property Funds**

**15.1.7** A Foreign Fund meets the Property Fund condition referred to in Rule 15.1.5(b) or 15.1.6(1)(b) as is applicable where:

- (a) 60% or more of the Fund's assets comprise of Real Property, Property Related Assets or Units in another Property Fund;
- (b) the Fund is a closed-ended Fund; and
- (c) the Units of the Fund are either:
  - (i) listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction; or
  - (ii) Offered only by means of a Private Placement.

#### **Guidance**

A closed-ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund.

### **Recommendation-Based Offers of Units of Foreign Funds**

**15.1.8** An Authorised Firm may not make an Offer of a Unit of a Foreign Fund to a particular Client under the criteria in Article 54(1)(b) of the Law unless it has made an assessment of the suitability of the investment for that Client in accordance with COB Rule 3.4.2.

#### **Guidance**

Under Article 54(1)(b) of the Law, an Authorised Firm is permitted to make an Offer of a Unit of a Foreign Fund if it has a reasonable basis for recommending that the investment in the Fund is suitable for the particular Client. To form such an opinion, the firm must undertake the assessment required under COB Rule 3.4.2.

### **Offer of Units of Foreign Funds under Article 54(1)(c) of the Law**

- 15.1.9**
- (1) An Authorised Firm may not make an Offer of a Unit of a Foreign Fund under the criteria in Article 54(1)(c) of the Law unless:
    - (a) it has first satisfied itself on reasonable grounds that the Fund meets the criteria specified in Article 54(1)(c)(i),(iii) and (iv) of the Law; and
    - (b) it makes the Offer in a manner that is in accordance with the criteria in Article 54(1)(c)(ii) of the Law.
  - (2) An Authorised Firm that relies on (1) for Offering Units of a Foreign Fund must be able to demonstrate to the DFSA that it conducted adequate due diligence to ensure compliance with (1)(a).

**Guidance**

Rule 15.1.9 allows an Authorised Person to make an Offer of a Unit in a Foreign Fund where the Fund and the Offer of the Unit satisfy criteria equivalent to those applicable to an Exempt Fund or Qualified Investor Fund.

**Periodic Information to DFSA**

- 15.1.10**
- (1) An Authorised Firm must submit to the DFSA, within four months of the end of the Authorised Firm's financial year, a report regarding any Offer or Transaction in respect of a Unit of any Domestic Fund or Foreign Fund which has been made during the preceding financial year.
  - (2) The report required under (1) must include the details of:
    - (a) the name of the Fund and its Fund Manager; and
    - (b) if the Fund is a Foreign Fund:
      - (i) whether it is a Designated Fund and, if so, in which Recognised Jurisdiction it is authorised or approved; and
      - (ii) if it is not a Designated Fund, the other criteria under which the Authorised Firm has relied when marketing the Units of the relevant Foreign Fund. .

**Record keeping**

- 15.1.11**
- (1) Without limiting any requirements under COB, an Authorised Firm must keep records that are sufficient to demonstrate due compliance with the requirements in the Rules in this chapter.
  - (2) The records in (1) must be maintained for a minimum of six years.

## PART 8 – TRANSFER SCHEMES AND WINDING UP OF DOMESTIC FUNDS

### 16. TRANSFER SCHEMES RELATING TO DOMESTIC FUNDS

#### 16.1 Application of the Regulatory Law

##### Guidance

1. Pursuant to Part 9 of the Regulatory Law 2004, a Fund may be transferred in whole or in part to another body in accordance with that Part.
2. The DFSA may make Rules for the purposes of that Article pursuant to the power conferred under Article 113 of the Regulatory Law 2004.

**16.1.1** This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company, in respect of each cell as if though each cell is a separate Fund.

**16.1.2** Pursuant to Article 113 of the Regulatory Law 2004, the DFSA prescribes, in Rule 16.1.3, the modification to Part 9 of that Law necessary for the purposes of transferring a Fund's property or liability to another Fund.

**16.1.3** (1) Article 108 (4) of the Regulatory Law 2004 is to be read and, to have effect, as if it were subject to the provisions set out in this Rule.

(2) Where, for the purpose of a transfer scheme, it is proposed that the property of a Fund should become the property of another Fund or the property of a Sub-Fund of an Umbrella Fund, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the Fund, unless (3) applies.

(3) Where, for the purposes of a transfer scheme, it is proposed that Fund Property attributable to a Sub-Fund of an Umbrella Fund should become the property of another Fund, the proposal must not be implemented without the sanction of:

(a) a Special Resolution of the Unitholders in the Sub-Fund of that Umbrella Fund; and

(b) in the case of an Umbrella Fund that does not use the form of a Protected Cell Company, unless implementation of the transfer scheme is not likely to result in any material prejudice to the interests of the Unitholders in any other Sub-Fund of that Umbrella Fund, a Special Resolution of the Unitholders of other Sub-Funds of that that Umbrella Fund.

(4) If it is proposed that a Fund or a Sub-Fund of an Umbrella Fund should receive property, other than its first property pursuant to a transfer scheme, or an arrangement equivalent to a scheme of arrangement entered into with some other Fund or Sub-Fund, or a Body Corporate, the

proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the relevant Fund or Sub-Fund and, in the case of an Umbrella Fund which is not in the form of a Protected Cell Company, the class or classes of Units related to the Sub-Fund, unless (5) applies.

- (5) In (4), if the Fund Manager and if appointed the Trustee agree that the receipt of the property concerned for the account of the Fund:
- (a) is not likely to result in any material prejudice to the interest of the Unitholders of the Fund;
  - (b) is consistent with the objectives of the Fund or Sub-Fund of an Umbrella Fund; and
  - (c) could be effected without any breach of the requirements relating to the borrowing and investment restrictions relating to the Fund or Sub-Fund in chapter 10.5;

then the transfer may be effective and the issue of Units in exchange for assets as part of a transfer scheme may be undertaken.

## **17 Winding up of Domestic Funds**

### **Guidance**

Part 8 of the Law sets out all the provisions relating to transfer schemes and the winding up of Funds. Article 61(c) enables the DFSA to prescribe additional circumstances to those contained in the Law in relation to when a Fund may be wound up. This section contains such Rules.

### **17.1 Application**

**17.1.1** This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company, in respect of each cell as though each cell is a separate Fund.

**17.1.2** Pursuant to Article 61(c) of the Law, the DFSA prescribes in this chapter the additional circumstances in which a Domestic Fund may be wound up.

**17.1.3** (1) Upon the happening of any of the events specified in (2) and not otherwise, the Fund Manager and, if appointed the Trustee must cease to issue, sell, cancel or redeem Units in the Fund or to invest or borrow for the Fund and proceed to wind up the Fund in accordance with the Law and this section.

(2) The events referred to in (1) are:

- (a) in response to a request made to the DFSA by the Trustee, Fund Manager or other member of its Governing Body for the removal of a Fund from the list of registered Funds, the DFSA has agreed, albeit subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the Fund, the DFSA will accede to that request;
- (b) the expiration of any period specified in the Constitution as the period at the end of which the Fund is to terminate; or
- (c) the effective date of a duly approved transfer scheme, which is to result in the Fund that is subject to the transfer scheme being left with no property.

### **Guidance**

The grounds for winding up of a Domestic Fund under this Rule are in addition to the grounds specified in the Law. Under Article 64(1)(a) and (b) of the Law, a Fund which is no longer commercially viable or the purpose of which is either already accomplished or cannot be accomplished can be wound up. Similarly, under Article 34(3) of the Law, if a Domestic Fund which is an Exempt Fund or a Qualified Investor Fund can no longer meet the relevant conditions to be classified as a Fund of that type, the Fund Manager of such a Fund must either register it as a Public Fund (or alternatively reconstitute it as an Exempt Fund if it is a Qualified Investor Fund) or it must be wound up.

- 17.1.4**
- (1) In a case falling within Rule 17.1.3(2)(c), the Fund Manager and if appointed the Trustee of the Fund must wind up the Fund in accordance with the approved transfer scheme.
  - (2) In any other case falling within Rule 17.1.4 or specified in Article 64(1) or Part 8 of the Law:
    - (a) the Fund manager or Trustee must, as soon as practicable after the Fund falls to be wound up, realise the Fund Property;
    - (b) after paying therefrom or retaining adequate provision for all liabilities properly so payable and for the costs of the winding up, the Fund Manager must distribute the proceeds of that realisation to the Unitholders (upon production by them of such evidence as the Fund Manager may reasonably require as to their entitlement thereto) proportionately to their respective interests in the Fund as at the date of the relevant event referred to in Rule 17.1.3; and
    - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the Fund Manager or Trustee after the expiration of twelve months from the date on which they became payable must be paid by the Fund Manager or Trustee into court, subject to the Fund Manager or Trustee having a right to retain any expenses incurred by it relating to that payment.
  - (3) Where the Fund Manager or Trustee and one or more Unitholders agree, the requirement of (2) to realise the Fund Property does not apply to that part of the property proportionate to the entitlement of such Unitholders. The Fund Manager or Trustee may distribute that part in the form of property, after making adjustments or retaining provisions as appear to the Fund Manager or Trustee appropriate for ensuring that, that or those Unitholders bear a proportional share of the liabilities and costs.
  - (4) The Fund Manager or Trustee must as soon as practical after the winding up or termination has commenced:
    - (a) if the Unitholders have not initiated the winding up under Article 63 of the Law, inform the Unitholders of the winding up or termination; and
    - (b) publish a notice of the winding up or termination in one English and one Arabic language national newspaper and if the Fund has a website, on the Fund's website.
  - (5) On completion of the winding up in respect of the events referred to in Rule 17.1.3(2)(b) or (c) or Article 64(1) of the Law, the Fund Manager or Trustee must notify the DFSA in writing of that fact and at the same time the Fund Manager or Trustee must require the DFSA to revoke the relevant registration.

#### **Accounting and Reports during winding up**

- 17.1.5**
- (1) Subject to any order of the court, and subject to (2) and (3), while a Fund is being wound up, whether under Rule 17.1.3 or otherwise:

- (a) the annual and half-yearly accounting periods continue to run;
  - (b) the provisions concerning annual and interim allocation of income continue to apply; and
  - (c) annual and half-yearly reports continue to be required.
- (2) Where for any annual or half-yearly accounting period the Fund Manager, after consulting the Auditor and the DFSA, has taken reasonable care to determine that timely production of an annual or half-yearly report is not required in the interests of the Unitholders or the DFSA, the Fund Manager or Trustee may direct that immediate production of the report by the Auditor may be dispensed with.
- (3) The period in question in (2) must be reported on together with the following period in the next report prepared for the purposes of (1) or (4).
- (4) At the conclusion of the winding up, the accounting period then running is regarded as the final annual accounting period.
- (5) Within two calendar months after the end of the final accounting period, the annual reports of the Fund Manager must be published and sent to each Person who was a Unitholder immediately before the end of the final accounting period.

**Funds that are not commercially viable**

- 17.1.6**
- (1) If the Fund Manager of a Fund believes on reasonable grounds that the Fund is not commercially viable or the purpose of the Fund cannot be accomplished, the Fund Manager must notify the DFSA and include the information specified in (2).
  - (2) The information referred to in (1) is:
    - (a) name of the Fund;
    - (b) size and type of Fund;
    - (c) number of Unitholders;
    - (d) whether dealing in the Fund's Units has been suspended;
    - (e) why the request is being made;
    - (f) what consideration has been given to the Fund entering into a transfer scheme with another Fund and the reasons why a transfer scheme is not possible;
    - (g)
      - (i) whether Unitholders have been informed of the intention to seek winding up or revocation; and
      - (ii) if not, when they will be informed;

- (h) details of any proposed preferential switching rights offered or to be offered to Unitholders if it is an Umbrella Fund;
  - (i) details of any proposed rebate of charges to be made to Unitholders who recently purchased Units;
  - (j) where the costs of winding-up will fall;
  - (k) a statement obtained from the Trustee or Eligible Custodian or other Persons providing the oversight function if the Fund is a Public Fund or a statement from the Auditor if the Fund is an Exempt Fund or a Qualified Investor Fund:
    - (i) that the Fund Manager, having taken reasonable care in considering the matter, is certain that a transfer scheme is not practical;
    - (ii) an explanation of what steps have been considered that would result in the Fund not needing to wind up;
    - (iii) confirmation that the Fund Manager has carried out its function and duties in accordance with the Law and Rules; and
    - (iv) whether the Fund's investment and borrowing powers have been exceeded;
  - (l) the preferred date for the commencement of the winding up; and
  - (m) any additional information considered relevant to the DFSA's consideration.
- (3) The DFSA may request further information after receipt of the notification.



## **App 1 DELEGATION AND OUTSOURCING**

### **A1.1 Application**

- A1.1.1** (1) This Appendix (App 1) applies to a Fund Manager and if appointed the Trustee in relation to every:
- (a) Delegation Agreement; and
  - (b) Outsourcing Agreement.
- made or entered into pursuant to these Rules.
- (2) This Appendix does not apply to a Qualified Investor Fund.

### **A1.2 Mandatory provisions**

- A1.2.1** (1) A Fund Manager or Trustee must ensure that any agreement specified in Rule A1.1.1:
- (a) sets out the functions or activities and service standards that will be applied to the carrying out of such functions or activities;
  - (b) provides that the Service Provider cannot in turn, delegate any activities delegated to it, or outsource any functions outsourced to it, without prior approval of the Fund Manager or Trustee as applicable;
  - (c) requires the Service Provider to:
    - (i) maintain records to show and explain transactions in relation to each activity or function performed in relation to the Fund;
    - (ii) maintain such records in a manner to enable the Fund Manager or Trustee to prepare accounts in compliance with these Rules and any other applicable legislation;
    - (iii) retain the records for at least six years from the date to which they relate;
    - (iv) keep the records, at all reasonable times, open to inspection by the DFSA, the Fund's Auditor and any Person providing the oversight function for the Fund; and
    - (v) ensure that the records are, if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

- (2) A Fund Manager or Trustee must ensure that a Delegation Agreement contains an undertaking by the Service Provider to:
  - (a) comply with any DFSA Rules applicable to the activity; and
  - (b) disclose to the DFSA and to the Fund Manager or Trustee, as the case may be, any material information that it would disclose to its Financial Services Regulator, if relevant, in relation to the conduct of the activity.
- (3) A Fund Manager or Trustee must maintain records of all agreements, and any instructions given to a Service Provider under the terms of an agreement, for at least six years.

### **Guidance**

1. Other Rules may also impact on the contents of a Delegation Agreement or Outsourcing Agreement. For instance, consideration should be given to GEN Rule 5.3.21 and accompanying Guidance.
2. Without limiting the application of any Rules, the DFSA expects that any agreement would include as a minimum:
  - a. unambiguous descriptions and definitions of the activities or functions to be provided by the Service Provider and the duties of both parties;
  - b. an agreed standard between the parties or resources and services supported as necessary by performance measures in accordance with the applicable Rules;
  - c. the requirement for regular detailed reporting to a specified frequency from the Service Provider in respect of its duties and activities;
  - d. provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Service Provider to fulfil its duties; and
  - e. the requirement for an annual review (at a minimum) of the performance of the Service Provider.

## **A1.3 Provisions relating to Eligible Custodians**

- A1.3.1** (1) A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Providing Custody will:
- (a) require that the title of any account of the Eligible Custodian to hold Fund Property sufficiently distinguishes that account from any account containing Investments belonging to the Eligible Custodian, and is in the form requested by the Fund Manager or Trustee;
  - (b) require that the Fund's Investments will only be credited and withdrawn in accordance with the instructions of the Fund Manager or Trustee;
  - (c) require, subject to (2), that the Eligible Custodian will hold the Fund's Investments separately from assets belonging to the Eligible Custodian;

- (d) set out the arrangements for recording and registering the Funds, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
  - (e) require the Eligible Custodian to deliver a statement to the Fund Manager or Trustee (including the frequency of such statement), which details the Fund's Investments deposited to the account;
  - (f) require, subject to (2), that all the Investments standing to the credit of the account are held by the Eligible Custodian as the agent of the Fund Manager or the Trustee and the Eligible Custodian is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to the Eligible Custodian on any other account of the Fund Manager, Trustee or any other Person; and
  - (g) detail the extent of liability of the Eligible Custodian in the event of default.
- (2) Neither the Fund Manager nor the Trustee is required to meet the requirements in (1) (c) and (f), where either the Eligible Custodian or any other Person acting as the prime broker of the Fund does so in compliance with the requirements in Rule 13.6.3.

## **A1.4 Provisions relating to fund administration**

**A1.4.1** A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Providing Fund Administration requires that the Service Provider must not hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:

- (a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
- (b) where the Service Provider has control over bank accounts kept for the purposes of the Fund, the accounts must be conducted strictly in accordance with the Fund Manager's instructions and any agreed mandate with the bank.

## **APP 2 MEETING PROCEDURES**

### **A 2.1 Nomination of a chair**

- A2.1.1**
- (1) A Fund Manager of a Public Fund, or in the case of a Fund which is structured as an Investment Trust, the Trustee, must nominate in writing a Person to be the chairman of a meeting of Unitholders and such a Person must be a Unitholder other than the Fund Manager.
  - (2) If no such chairman is nominated or if at any meeting the Person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Unitholders present must choose another chairman.
  - (3) In the case of an equality of votes cast whether on a show of hands or on a poll in respect of a resolution put to a meeting of the Unitholders, any chairman appointed in accordance with the Constitution or under these Rules is entitled to a casting vote in addition to any other vote the chairman may have.

#### **Notice of meetings**

- A2.1.2**
- (1) Unitholders of a Public Fund must be given at least 14 days written notice or any longer period of notice specified for the purpose in the Constitution or these Rules, inclusive of the date on which the notice is first served and the day of the meeting.
  - (2) The notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed.
  - (3) In the case of an Investment Trust, unless the Trustee has convened the meeting, a copy of the notice must be sent to the Trustee no later than the time at which it is sent to the Unitholders.
  - (4) The accidental omission to give notice to, or the non-receipt of notice by, any of the Unitholders does not invalidate the proceedings at any meeting.
  - (5) Notice of any adjourned meeting of Unitholders must be given to Unitholders and, if relevant, to the Trustee.

#### **Quorum**

- A2.1.3**
- (1) In the case of an Investment Trust, the quorum at a meeting of Unitholders is the Unitholders present in person or by proxy or, in the case of a body corporate, by a duly authorised representative, of one-tenth in value or any proportion more than one-tenth in value specified for this purpose in the Trust Deed of all the Units in issue.
  - (2) In the case of an Investment Company, the quorum at a meeting of Unitholders is two Unitholders, present in Person or by proxy or, in the case of a Body Corporate, by a duly authorised representative.

- (3) Business must not be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (4) If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting:
  - (a) if convened on the requisition or request of Unitholders, must be dissolved; and
  - (b) if any other case, must stand adjourned to:
    - (i) a day and time which is seven or more days after the day and time of the meeting; and
    - (ii) a place to be appointed by the chairman if a chairman has been appointed in accordance with the Constitution or otherwise by the Operator.
- (5) If, at an adjourned meeting under (4)(b), a quorum is not present within 15 minutes from the time appointed for the meeting, one person entitled to be counted in a quorum present at the meeting is a quorum.
- (6) Notice of any adjourned meeting of Unitholders must be given to Unitholders. That notice must state that one or more Unitholders present at the adjourned meeting whatever their number and whatever the number of Units held by that Unitholder or Unitholders will form a quorum.

**A2.1.4**

- (1) No Fund Manager, or other member of the Governing Body of the Fund is entitled to be counted in the quorum of, and no Fund Manager or other member of the Governing Body of the Fund nor any associate of such a Person is entitled to vote at, any meeting of the Fund.
- (2) The prohibition in (1) does not apply to the exercise of voting rights attaching to any Units which the Fund Manager or other member of the Governing Body of the Fund or its associate holds on behalf of, or jointly with, another Person who is not subject to the prohibition in (1) and from whom the Fund Manager or other member of the Governing Body of the Fund or its associate, as the case may be, has received voting instructions.
- (3) Therefore, for the purpose of Rule, Units held, or treated as held, by any Fund Manager or other member of the Governing Body of the Fund, must not, except as mentioned in (2), be regarded as being in issue.

## **APP 3 APPROVALS AND NOTIFICATIONS**

### **A 3.1 Alterations to a Fund**

- A 3.1.1** (1) The Fund Manager of a Public Fund must, by way of a Special Resolution, obtain prior approval from the Unitholders for any proposed change to the Domestic Fund which is a fundamental change.
- (2) In addition to the specific fundamental changes in relation to a Fund prescribed under Article 35(1) of the Law and also under Rules 8.3.2, 8.13.3, 13.4.4(2) and 16.1.3(2), a “fundamental change” under (1) is a change or event which:
- (a) changes the purpose or nature of the Fund;
  - (b) may materially prejudice a Unitholder;
  - (c) alters the risk profile of the Fund; or
  - (d) introduces any new type of payment out of Fund Property.
- (3) Notwithstanding (2) above, any change may be fundamental depending on its degree of materiality and effect on the Fund and its Unitholders. Consequently, the Fund Manager must determine whether in each case a particular change is fundamental in nature and, if the Fund is an Investment Trust, obtain the Trustee’s agreement to the outcome of the determination.

#### **Guidance**

For the purpose of this section, a fundamental change to a Fund is likely to include:

- a. any proposal for a scheme of arrangement;
- b. a change in the investment policy to achieve capital growth from investment in one country rather than another;
- c. a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than in equity investments;
- d. a change in the investment policy to allow the Fund to invest in derivatives as an investment strategy which increases its volatility;
- e. a change to the characteristics of a Fund to distribute income annually rather than monthly;
- f. the introduction of limited redemption arrangements; or
- g. a change of the custodian, trustee or other oversight arrangement.

- A 3.1.2** (1) The Fund Manager of a Public Fund must give prior written notice to Unitholders in respect of any proposed change to the operation of a Fund where the change constitutes a significant change.

- (2) A “significant change” in (1) is a change or event which is not a fundamental change under Rule A 3.1.2 but:
- (a) affects a Unitholder's ability to exercise his rights in relation to his investment;
  - (b) would reasonably be expected to cause the Unitholder to reconsider his participation in the Fund;
  - (c) results in any increased payments out of the Fund Property to the Fund Manager, the Trustee or any other director or an associate of either; or
  - (d) materially increases other types of payment out of Fund Property.
- (3) Changes may be significant depending in each case on their degree of materiality and effect on the Fund and its Unitholders. Consequently the Fund Manager will need to determine whether in each case a particular change is significant in nature or not and if the Fund is an Investment Trust obtain the Trustee’s agreement of the outcome of the determination.

**Guidance**

1. The notice period required for a pre-event notification to the Unitholder should be of a reasonable length, which is expected to be at least 30 days.
2. For the purpose of this section, a significant change is likely to include:
  - a. a change in the method of price publication;
  - b. a change in any operational policy such as dilution policy or allocation of payments policy; or
  - c. an increase in the preliminary charge where Units are purchased through a group savings plan.

**A3.1.3**

- (1) A Fund Manager must to inform Unitholders in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or to have affected, the operation of the Fund.
- (2) A notifiable change in (1) is a change or event, other than a fundamental change or a significant change specified in this Appendix, which a Unitholder must be made aware of unless the Fund Manager concludes that the change is insignificant.

**Guidance**

1. The circumstances causing a notifiable change may or may not be within the control of the Fund Manager.
2. For the purpose of this section, a notifiable change might include:
  - a. a change of a named investment manager where the Fund has been marketed on the basis of that investment manager's involvement;
  - b. a significant political event which impacts on the Fund or its operation;

- c. a change to the time of the valuation point;
  - d. the introduction of limited issue arrangements; or
  - e. a change in the name of the Fund.
3. The appropriate manner and timescale of notification in this section would depend on the nature of the change or event. Consequently, the Fund Manager will need to assess each change or event individually.
4. An appropriate manner of notification could include:
  - a. sending an immediate notification to the Unitholder;
  - b. publishing the information on a website; or
  - c. the information being included in the next periodical report of the Fund.



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## **APP 4 GUIDANCE ON ASSET VALUATION AND PRICING**

### **Guidance**

#### **General**

1. This guidance relates to the calculation of a single price and net asset value in accordance with CIR Rules. Under the Rules, the Fund Manager should take all reasonable steps, and exercise due diligence, to ensure that the Property of the Fund is valued in accordance with the Law, the Rules and the Fund's Constitution.
2. This guidance sets out minimum standards of control in relation to the valuation of the Fund Property to which the Fund Manager, the Trustee and the Persons providing the oversight function should have regard in determining whether they have met their obligations under the applicable Rules and the Fund's Constitution.
3. The Fund Manager should take action forthwith to rectify any breach in respect of valuation. Where the breach relates to the incorrect pricing of Units, rectification should extend to the reimbursement or payment of money by the Fund Manager to Unitholders, former Unitholders or to the Investment Undertaking.
4. The Trustee or the Persons providing the oversight function may direct that rectification need not extend to reimbursement where it appears that the incorrect pricing is of minimal significance. This would only be appropriate where the Fund Manager has adequate controls in place.
5. The price of a Unit of any class should be calculated by valuing the Fund Property attributable to Units of that class and dividing that value by the number of Units of the class in issue. All the Fund Property should be valued at each valuation point and any part of the Fund Property which is not an Investment should be valued at fair value. The DFSA expects a Fund Manager to agree on its methodology for valuing the Fund Property with the Trustee or Eligible Custodian, or other Persons providing the oversight function and that the methodology in place is applied consistently.
6. In respect of Securities quoted on an Exchange:
  - a. the Fund's Constitution should set out the valuation policy that will be adopted by the Fund Manager where a single price for buying and selling a Security is quoted; and also where separate buying and selling prices are quoted on an Exchange. Either the official mid-market price or the last trade price should provide an appropriate basis of valuation for the Fund. The Fund Manager should, however, document the choice of methodology and ensure that the procedures are applied consistently and fairly; and
  - b. where there has been no recent trade in the Security concerned, or no reliable price exists, an Investment should be valued at a price which, reflects a fair and reasonable price for that investment. For example, a Fund Manager may obtain a valuation from three experienced brokers and average the value. In such cases, the Fund Manager is required to document the reasons for his decision and should be prepared to justify any assumptions made.
7. Where instances of incorrect pricing occur, the de minimis provisions set out in this guidance should apply only where the Fund Manager and Trustee or the Person providing oversight functions are able to meet the standards set out in this guidance. Evidence of persistent or repetitive errors, or errors consistently in the Fund Manager's favour, are likely to make it more difficult for the Fund Manager to demonstrate that he is able to meet the standards in this guidance.

**Pricing controls by the Fund Manager**

8. Unit prices and currency rates used in Fund valuations should be up to date and from a reputable source. The mere use of a source for prices and rates does not amount to delegation under the Rules. Although it should not be necessary to carry out significant substantive checking, the reliability of the source of prices and rates should be kept under regular review, and the use of doubtful prices or rates should be followed up.
9. The mere use of a source for prices and rates does not amount to delegation under the Rules. However, the use of a third party to carry out the pricing function, whether it is an Associate of the Fund Manager, or the Trustee or any Associate of the directors of the company or Persons providing the oversight function, or any independent third party, amounts to outsourcing. In this case the Fund Manager still retains its operating responsibilities and duties and, remains liable for the acts and omissions of that third party in performing the pricing functions as if they were the acts or omissions of the Fund Manager. The Fund Manager should ensure that the third party contracts to provide the service on a basis which takes account of the Fund Manager's responsibilities which require the Fund to be priced in accordance with the applicable Rules and the Fund's Constitution.
10. Where the pricing function is outsourced, the Fund Manager is required, in accordance with the Rules, to satisfy himself that the pricing agent remains competent to carry out the function, and that he has taken reasonable care to ensure that the pricing agent has carried out his duties in a competent manner.
11. The Fund Manager should seek assurance that the pricing agent's system is robust and will produce accurate results. The Fund Manager should review the outputs from the system at least annually, and on any significant system change. In addition, if the pricing agent is also responsible for calculation of dealing prices of Units, the Fund Manager should ensure that this system is reviewed to his satisfaction at least annually.
12. Unless the valuation and record keeping systems are integrated, the valuation output should be agreed with the Fund Manager's records of a Fund at each valuation point. In addition, the Fund Manager's records, including debtors and creditors, should be agreed with a Custodian's records of stocks and both capital and income cash at least monthly, with reconciling items followed up promptly, with debtors reviewed for recoverability.
13. Systems should be in place whereby all transactions are confirmed in writing or by electronic means to the Fund Manager or to a pricing agent as quickly as possible. It is desirable that all deals to which the Fund is committed, which have been notified, at most, one hour before a valuation, are included in that valuation, at estimated prices if necessary. Unless, however, there is likely to be significant movement in a price of a Unit, it is more important that an accurate cut-off procedure is in place to ensure that omissions or duplications do not take place, than it is to ensure that estimates are included in a valuation.
14. Where prices are obtained otherwise than from the main pricing source (e.g. unquoted, suspended, or illiquid stocks), the Fund Manager should maintain a record of the source and basis for the value placed on the investment. These should be regularly reviewed.
15. A system should be in place to ensure that investment and borrowing powers which are contained in the Rules, where applicable and in the Fund's Constitution and Prospectus are not breached, and that if breaches occur they are identified and rectified.
16. A system should be in place to ensure that dividends are accounted for as soon as stocks are quoted ex-dividend, unless, as with some foreign stocks, it is prudent to account for them only on receipt. Fixed interest dividends and interest should be accrued at each point unless the level of materiality makes a longer interval appropriate. Similar considerations apply to the expenses of the Fund.

17. The Fund Manager should ensure periodically that any charge which is levied on a Unitholder for dilution has been calculated in accordance with the methodology which has been disclosed in the Constitution or Prospectus.
18. The Fund Manager should set a percentage or absolute limit for certain key elements of the valuation, such that any movement outside these limits is investigated. The process for the investigation and a report of its outcome should be in writing and evidenced by an appropriate signature. These key elements could, where relevant, include the movement of the overall price of the Fund against relevant markets, the movement of the prices and values of individual stocks, changes in currency rates, and accrual figures for income, expenses, and tax. In addition, prices which appear not to have changed after a fixed period of time should be investigated, since this may be the result of a price movement having been missed.
19. Cash should be reconciled to the bank account regularly, with outstanding items promptly followed up, and a full reconciliation sent to the trustee or depositary monthly.
20. Controls should be in place to ensure that the correct number of Units in issue is recorded at each valuation point. This should be reconciled with the Unitholder register at least monthly.
21. A copy of the valuation should be sent to the Fund Manager or the Fund's investment manager, if applicable, at least weekly. He should specifically check that the correct securities are recorded.

#### **Pricing and valuation checks by oversight arrangement**

22. The Persons providing oversight functions have a duty under the Rules to ensure that the Fund Manager's pricing methodology and operation is properly controlled. Its main emphasis should be to ensure that the Fund Manager keeps its controls and systems for pricing under review and to obtain evidence from the Fund Manager's systems that Unit prices are calculated correctly. This would also apply where the Fund Manager has outsourced some or all of its pricing functions to a Service Provider. The following paragraphs set out the minimum checks which DFSA expects any Person providing the oversight function to carry out in order to be satisfied with the Fund Manager's pricing methodology and operation, and to ensure that the likelihood of incorrect prices will be minimised.
23. The Persons providing the oversight function should carry out a thorough review of the Fund Manager's overall system for pricing. This should include an analysis of the controls in place to determine the extent to which reliance can be placed on them. This review should be carried out at the start of the appointment of a Person who will provide oversight functions, and also when major changes are made by the Fund Manager to its system. On an ongoing basis, the systems should be kept under review to ensure that a series of minor changes do not, over a period of time, have a significant effect on the integrity of the systems.
24. The Persons providing oversight functions should conduct a review at least annually to confirm that the Fund Manager's systems and controls are satisfactory. This will need to be more frequent where the oversight arrangement knows or suspects that the Fund Manager's systems and controls are weak and unsatisfactory. The Persons providing oversight functions should ensure that any issues which are identified are properly followed up and resolved. Additionally, the Persons providing oversight functions should carry out a review of the valuation of the property of each Fund for which it is responsible, at least annually, which verifies, on a sample basis if necessary, the assets, liabilities, accruals, Units in issue, and any other relevant matters, for example, an accumulation factor or a currency conversion factor.
25. Where the Fund Manager's systems are manual, or have been installed or amended recently and are therefore unproven, the level of checking will need to be increased

accordingly. This will also be necessary where a number of instances of incorrect pricing have previously been identified.

### **Incorrect pricing**

26. The Fund Manager should record each instance where the Unit price is incorrect and, as soon as the error is discovered, report the fact to the Persons providing oversight functions together with details of the action taken, or to be taken, to avoid repetition.
27. The Fund Manager and the Persons providing the oversight function should if they become aware, report material instances of incorrect pricing to the DFSA as provided in the Rules. Materiality should be determined by taking into account a number of factors, including whether the Fund Manager has followed the pricing controls set out in this guidance.
28. The significance of any breakdown in management controls or other checking procedures should also be taken into account. The significance of any failure of systems should be considered. This may include situations where inadequate back-up arrangements exist. The duration of an error should also be taken into account; the longer an error persists, the more likely that it will have a material effect on a price.
29. The level of compensation paid to Unitholders, and the Fund Manager's ability (or otherwise) to meet claims for compensation in full, may also be relevant.
30. The Fund Manager should also report to the DFSA forthwith any instance of incorrect pricing where the error is greater than 0.5% of the price of a Unit, but where the Fund Manager and the Persons providing the oversight function believe that compensation is inappropriate and should not be paid by the Fund Manager.
31. The Trustee or the Persons providing oversight functions, in their reports, should summarise the number of instances of incorrect pricing during a particular period. This should include the number of errors which were greater than 0.5% of the price of a Unit and the number of errors which were less than 0.5% of the price of a Unit where the Trustee or the Persons providing the oversight function did not consider the Fund Manager's controls to be adequate.

### **Action to be taken as regards compensation for incorrect pricing.**

32. Prices found to be incorrect by less than 0.5%
  - a. Where the dealing price of any Unit of a Fund is found to be incorrect by less than 0.5% of the price of a Unit of a Fund, compensation to Unitholders will not normally be required, unless the Custodian decides otherwise.
  - b. Where an issue or cancellation of Units has taken place at a price which is incorrect by less than 0.5% of the price of a Unit of a Fund, compensation to or from the Fund will not normally be required, unless the oversight arrangement decides otherwise.
33. Where the dealing price of any Unit of a Fund is found to be incorrect by 0.5% or more of the price of a Unit of a Fund, compensation to Unitholders will normally be required. If, exceptionally, the Trustee or the Persons providing the oversight function consider that compensation is inappropriate, he will need to report the matter to the DFSA, together with his recommendation and justification.

## App 5 CONSTITUTION OF A DOMESTIC FUND

### A5.1 Contents of Constitution

- A5.1.1**
- (1) The Constitution of a Domestic Fund must contain all the information prescribed in the following table except where it is an Exempt Fund, in which case, it must contain the information specified in A, C, F, G, H, K and M.
  - (2) The requirements in the following table do not apply in respect of the Constitution of a Qualified Investor Fund.

<b>A</b>	<b>General Information</b>
	<p>The following information:</p> <ol style="list-style-type: none"> <li>(1) The name of the Fund.</li> <li>(2) The Fund Manager's and, if the Fund is structured as an Investment Trust, the Trustee's name and the principal place of business in the DIFC as recorded by the Registrar of Companies.</li> <li>(3) That the Fund is a Domestic Fund, the Constitution of which is governed by the laws of the DIFC.</li> <li>(4) That the Fund is a Public Fund, or Exempt Fund, as the case may be.</li> <li>(5) The legal form of the Fund and whether it is open or closed ended.</li> <li>(6) If the Fund is a specialist class of a Fund as defined in chapter 3 of this module, the relevant specialist class, and if applicable, that the Fund is an Islamic Fund and consequently the Fund's entire business operations are conducted in accordance with Shari'a.</li> <li>(7) If the Fund is managed by an External Fund Manager, that fact and the details of the Appointed Fund Administrator or Custody Provider of the Fund.</li> <li>(8) If the Fund is an External Fund, the name of the jurisdiction in which the Fund is domiciled.</li> </ol>
<b>B</b>	<b>General Statements</b>
	<p>The following information:</p> <ol style="list-style-type: none"> <li>(1) The Fund Manager is responsible, pursuant to the Law, for</li> </ol>

	<p>all operations concerning the Fund and may from time to time delegate activities or outsource functions, but not the responsibility for conducting those activities and functions, to another Person in accordance with the CIR Rules.</p> <p>(2) (a) The Fund Property is entrusted to the Fund Manager and the Fund Manager remains responsible for the property even when an Eligible Custodian holds the legal title to the Fund Property; or</p> <p>(b) The Fund Property is held on trust by the Fund's Trustee, as the case may be.</p> <p>(3) Whether the duration of the Fund is limited and, if so, for how long.</p> <p>(4) That fees, charges and other expenses of the Fund may be taken out of Fund Property and the basis for determination of the quantum of such fees, charges and other expenses.</p> <p>(5) The maximum and minimum sizes of the Fund's capital, if any.</p> <p>(6) That the Unitholders are not liable for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, those circumstances.</p> <p>(7) That a Unitholder is not liable to make any further payment after he has paid the price of his Units and that no further liability can be imposed on him in respect of the Units he holds.</p> <p>(8) That payments to the Fund Manager, Trustee, any Eligible Custodian, or the Person providing the oversight function (including a Shari'a Supervisory Board) by way of remuneration are authorised to be paid (in whole or in part) out of the Fund Property.</p>
<b>C</b>	<b>Where the Fund is a Trust</b>
	<p>The following information:</p> <p>(1) The Trust Deed is made under and governed by the Investment Trust Law 2006 and:</p> <p>(a) is binding on each Unitholder as if he had been a party to it and that he is bound by its provisions; and</p> <p>(b) authorises and requires the Fund Manager and the Trustee to do the things required or permitted of them by its terms and the Investment Trust Law 2006 and the Law.</p> <p>(2) Subject to the provisions of these Rules:</p>

	<p>(a) the Fund Property (other than sums held to the credit of the distribution account) is held by the Trustee on trust for the Unitholders according to the number of Units held by each Unitholder or, where relevant, according to the number of individual shares in the Fund Property represented by the Units held by each Unitholder; and</p> <p>(b) the sums standing to the credit of any distribution account are held by the Trustee on trust to distribute or apply in accordance with these Rules relating to income.</p>
<b>D</b>	<b>Investment Objectives</b>
	<p>(1) Information covering the investment objectives of the Fund and in particular:</p> <p>(a) whether the aim of the Fund is to spread investment risks and, if a Property Fund, whether the Fund invests in a single property;</p> <p>(b) the types of Investments or assets in which it and (where applicable) each Sub-Fund may invest; and</p> <p>(c) if the Fund is a specialist class of Fund, the class of Fund.</p> <p>(2) Details of any investment, borrowing or stock lending restrictions or, in the event that there are no such restrictions, a statement to that effect.</p>
<b>E</b>	<b>Units in the Fund</b>
	<p>A statement specifying:</p> <p>(a) the classes of Units which the Fund may issue; and</p> <p>(b) the rights attaching to Units of each class (including any provisions for the expression in two or more denominations of such rights).</p>
<b>F</b>	<b>Limitations</b>
	<p>Details as to:</p> <p>(a) the provisions relating to any restrictions on the right to redeem Units in any class; and</p> <p>(b) the circumstances in which the issue of the Units of any particular class may be limited.</p>
<b>G</b>	<b>Income and distribution</b>
	<p>(1) Details of who is carrying out the calculation, transfer, allocation and distribution of income for any class of Unit issued and outstanding during the accounting period.</p>

	(2) Information regarding the provision for the payment of income, if any, and the date on which such distribution shall be made.
<b>H</b>	<b>Base currency</b>
	A statement specifying the base currency of the Fund.
<b>I</b>	<b>Meetings</b>
	Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights of Unitholders.
<b>J</b>	<b>Oversight arrangements</b>
	Details of the oversight arrangements, and if the Fund is an Islamic Fund, details of its Shari'a Supervisory Board.
<b>K</b>	<b>Termination and suspension</b>
	Details as to: <ul style="list-style-type: none"> <li>(a) the grounds under which the Fund Manager may initiate a suspension of the Fund and any associated procedures; and</li> <li>(b) the methodology for determining the rights of Unitholders to participate in the Fund Property on winding up.</li> </ul>
<b>L</b>	<b>Modification of the Constitution documents</b>
	Details of the manner in which alterations to the Constitution may be made.
<b>M</b>	<b>Responsibility statement</b>
	A statement that nothing in the Constitution has the effect of exempting the Fund Manager and, if the Fund is structured as an Investment Trust, the Trustee, from any liability to Unitholders imposed under DIFC law and the Rules.
<b>N</b>	<b>Other relevant matters</b>
	Details of those matters which enable the Fund, Fund Manager or any Person providing the oversight function of the Fund to obtain any privilege or power conferred by the Rules which is not otherwise provided for in the Constitution.



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## **App 6 GUIDANCE ON FITNESS AND PROPRIETY FOR OVERSIGHT FUNCTIONS**

### **Guidance**

#### **General**

1. The guidance in this Appendix is intended to assist a Fund Manager when making appointments in accordance with Rule 10.3.2 in respect of oversight functions.

#### **Integrity**

2. The Fund Manager may have regard to matters including, but not limited to, the following.
  - a. the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
  - c. whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self regulatory organisation or other professional body;
  - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
  - e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - f. a dismissal or a request to resign from any office or employment;
  - g. whether the individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
  - h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
  - i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an individual in excess of \$10,000 or awards that total more than \$10,000;
  - j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;

- k. whether the individual has been a director, or concerned in the management of, a Body Corporate which has gone into liquidation or administration whilst that individual was connected with that Body Corporate or within one year of such a connection;
- l. whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that individual was connected with that partnership or within a year of such a connection;
- m. whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- n. whether the individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any DFSA, or any officially appointed inquiry, or Financial Services Regulator; or
- o. whether the individual has been candid and truthful in all his dealings with the Fund Manager .

**Financial soundness**

- 3. In determining the financial soundness of the individual, the Fund Manager may have regard to any factors including, but not limited to, the following:
  - a. whether the individual is able to meet his debts as they fall due; or
  - b. whether the individual has been adjudged bankrupt, been the subject of a receiving or administration order, had a bankruptcy petition served on him, had his estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in the U.A.E. or elsewhere.

## App 7 PUBLIC FUND PROSPECTUS DISCLOSURE

### A7.1 Mandatory contents of a Prospectus of a Public Fund

**A7.1.1** The Prospectus for a Public Fund must contain the information prescribed in the following table.

<b>1</b>	<b>Document Status</b>
	A statement that this document is the Prospectus of the Public Fund valid as at a particular date which shall be the date of the Prospectus.
<b>2</b>	<b>Description of the Fund</b>
	<p>Information detailing:</p> <ul style="list-style-type: none"> <li>(a) the name of the Fund and that the Fund is a Public Fund established in the DIFC;</li> <li>(b) the effective date of commencement of the Fund's operations and, if the duration of the Fund is not unlimited, when it will or may terminate;</li> <li>(c) the legal structure of the Fund, and if the Fund is a specialist class of Fund as defined in chapter 3, the relevant specialist class of the Fund it is, and whether it is a Listed Fund or intends to be Listed;</li> <li>(d) the basis upon which Persons are eligible to participate in the Fund and, where applicable, the minimum initial investment;</li> <li>(e) that the Unitholders are not liable for the debts of the Fund, unless the applicable legislation prescribes otherwise and, if so, a statement specifying those circumstances;</li> <li>(f) the base currency of the Fund and where relevant, the maximum and minimum sizes of the Fund's capital;</li> <li>(g) the circumstances in which the Fund may be wound up under the Law and the Rules in this module and a summary of the procedure for, and the rights of Unitholders under, such a winding up;</li> <li>(h) if the Fund is an Umbrella Fund, whether it is constituted as a Protected Cell Company or not; and</li> <li>(i) that no Units will be issued on the basis of the Prospectus after the expiry date specified in the Prospectus.</li> </ul>

<b>3</b>	<b>Investment objectives and policy</b>
	<p>(1) Sufficient information to enable a Unitholder or prospective Unitholder to ascertain:</p> <ul style="list-style-type: none"> <li>(a) the investment objectives of the Fund and its investment policy for achieving those investment objectives, including: <ul style="list-style-type: none"> <li>(i) the general nature of the portfolio and any intended specialisation;</li> <li>(ii) the policy for the spreading of risk in the Fund Property including an explanation of any potential risks identified;</li> <li>(iii) the policy in relation to the exercise of borrowing powers; and</li> <li>(iv) the policy in relation to using Derivatives for speculations or hedging purposes;</li> </ul> </li> <li>(b) a description of any restrictions in the assets in which investment may be made; and</li> <li>(c) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.</li> </ul> <p>(2) For investment in Real Property:</p> <ul style="list-style-type: none"> <li>(a) the countries or territories in which the Fund may invest;</li> <li>(b) the types of Real Property, including the policy in relation to encumbrances and lease period; and</li> <li>(c) the policy of the Fund Manager in relation to insurance of Real Property forming part of the Fund Property.</li> </ul> <p>(3) If intended, whether the Fund Property may consist of Units in Funds which are managed by or operated by the Fund Manager or by one of its associates and a statement specifying:</p> <ul style="list-style-type: none"> <li>(a) the basis of the maximum amount of the charges in respect of transactions in the Fund invested in; and</li> <li>(b) the extent to which any such charges will be reimbursed to the Fund.</li> </ul> <p>(4) In the case of a Hedge Fund, an explanation of the types of strategies to be employed by the Fund Manager and the associated risks.</p>

<b>4</b>	<b>Distribution and accounting period</b>
	<p>Relevant details of the accounting and distribution periods and a description of the procedures:</p> <p>(a) for determining and applying income (including how any distributable income is paid); and</p> <p>(b) relating to unclaimed distributions.</p>
<b>5</b>	<b>The characteristics of Units in the Fund</b>
	<p>Information as to:</p> <p>(a) the names of the classes of Units of the Fund or Sub-Fund in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes of Units in the Fund or the Sub-Fund as applicable;</p> <p>(b) how Unitholders may exercise their voting rights and what they are; and</p> <p>(c) the circumstances where a mandatory redemption, cancellation or conversion of a Unit from one class to another may be required.</p>
<b>6</b>	<b>The Fund Manager</b>
	<p>The following particulars of the Fund Manager:</p> <p>(a) its name, whether the Fund Manager is incorporated in the DIFC or elsewhere and the date of such incorporation, and if the Fund Manager is an External Fund Manager, that fact and the details of the Appointed Fund Administrator or Custody Provider under Rule 6.1.3(a);</p> <p>(b) its address, and if applicable, that of the Appointed Fund Administrator or Trustee, as the case may be, and the registered office in the DIFC;</p> <p>(c) if it is a subsidiary, the name of its ultimate Holding Company and the country or territory in which that holding company is incorporated;</p> <p>(d) the amount of its issued share capital and how much of it is paid up; and</p> <p>(e) a summary of the material provisions of the contract between the Fund and its Fund Manager which may be relevant to Unitholders, including provisions relating to termination, compensation on termination and indemnity.</p>
<b>7</b>	<b>Directors and Partners of an Investment Undertaking</b>
	<p>Other than for the Fund Manager:</p> <p>(a) for an Investment Company, the names and positions in the Investment Company of the Directors;</p> <p>(b) for an Investment Partnership, the names of the other General Partners or any other partners who manage the affairs of the Fund on a day to day basis; and</p> <p>(c) the manner, amount and calculation of the remuneration of the Directors</p>

	or Partners in (1) or (2) as the case may be.
<b>8</b>	<b>Oversight Arrangement</b>
	In relation to a Public Fund, the details of the Persons providing the oversight function for the Fund including their remuneration.
<b>9</b>	<b>Service Providers and Advisers</b>
	If a Fund Manager delegates any activities or outsources any functions to a Service Provider or if an investment adviser is retained in connection with the business of the Fund:
	(a) its name;
	(b) which Financial Services Regulator authorises that Person; and
	(c) details of the arrangements.
<b>10</b>	<b>The Auditor and Custodian and Trustee</b>
	The name of the Auditor and of the Eligible Custodian of the Fund. If applicable the name of the Trustee of the Fund.
<b>11</b>	<b>The Register of Unitholders</b>
	Details of the address in the DIFC where the register of Unitholders is kept and can be inspected by Unitholders of the Fund.
<b>12</b>	<b>Payments out of the Fund Property</b>
	The payments that may be made out of the Fund Property to any Person, whether by way of remuneration for services, or reimbursement of expenses. For each category of remuneration or expense, the following should be specified in a manner which is clear, concise and understandable for Retail Clients where the Fund is to be so offered:
	(a) the current rates or amounts of such remuneration;
	(b) how the remuneration will be calculated and accrue and when it will be paid;
	(c) how notice will be given to Unitholders of the Fund Manager's intention to:
	(i) introduce a new category of remuneration for its services;
	(ii) increase the basis of any current charge;
	(iii) change the basis of the treatment of a payment from the capital property ; and
	(iv) particulars of that introduction or increase and when it will take place;
	(d) the types of any other charges and expenses that may be taken out of the Fund Property; and
	(e) if, in accordance with the relevant provisions of these Rules, all or part of the remuneration or expenses are to be treated as a capital charge:
	(i) that fact; and
	(ii) the basis of the charges which may be so treated.

<b>13</b>	<b>Dealing</b>
	<p>Details of:</p> <ul style="list-style-type: none"> <li>(a) the dealing days and times in the dealing day on which the Fund Manager will receive requests for the sale and redemption of Units;</li> <li>(b) the procedures for effecting: <ul style="list-style-type: none"> <li>(i) the issue, sale and redemption of Units; and</li> <li>(ii) the settlement of transactions;</li> </ul> </li> <li>(c) the steps required to be taken by a Unitholder in redeeming Units before he can receive the proceeds, including any relevant notice periods, and the circumstances and periods in which a deferral of payment may be applied;</li> <li>(d) the circumstances in which the redemption of Units may be suspended;</li> <li>(e) details of the minimum number or value of each type of Unit in the Fund which: <ul style="list-style-type: none"> <li>(i) any one Person may hold; and</li> <li>(ii) may be the subject of any one transaction of issue, sale or redemption by the Fund Manager;</li> </ul> </li> <li>(f) the circumstances in which the Fund Manager may arrange for, and the procedure for, a redemption of Units in specie; and</li> <li>(g) the circumstances in which the further issue of Units in any particular class may be limited and the procedures relating to this.</li> </ul>
<b>14</b>	<b>Valuation of the Fund Property</b>
	<p>Details as to:</p> <ul style="list-style-type: none"> <li>(a) how frequently and at what times of the day the Fund Property will be regularly valued to determine the price at which Units in the Fund may be purchased from or redeemed by the Fund Manager and a description of any circumstance where the Fund Property may be specially valued;</li> <li>(b) in relation to each purpose for which the Fund Property must be valued, the basis on which it will be valued;</li> <li>(c) how the single price of Units of each class will be determined, including whether a forward or historic price basis is to be applied;</li> <li>(d) details as to how the prices of Units will be published following each valuation; and</li> <li>(e) if valuation is to be suspended under certain circumstances, details of such circumstances.</li> </ul>

<b>15</b>	<b>Sale and Redemption Charges</b>
	If the Fund Manager makes any charges on sale or redemption of Units, details of the charging structure and how notice will be provided to Unitholders of any change in the relevant charge.
<b>16</b>	<b>Financial Reports</b>
	<p>Details as to:</p> <p>(a) when annual and interim reports will be published; and</p> <p>(b) the address in the DIFC at which copies of the Constitution, any amending instrument and the most recent annual and interim reports may be inspected and from which copies may be obtained.</p>
<b>17</b>	<b>Information in respect of Umbrella Funds</b>
	<p>In the case of an Umbrella Fund, the following information:</p> <p>(a) that a Unitholder may exchange Units in one Sub-Fund for Units in another Sub-Fund and that such an exchange is treated as a redemption and sale;</p> <p>(b) what charges may be made on exchanging Units in one Sub-Fund for Units in other Sub-Funds;</p> <p>(c) the policy for allocating between Sub-Funds any assets of, or costs, charges and expenses payable out of, the Fund Property which are not attributable to any particular Sub-Fund;</p> <p>(d) in respect of each Sub-Fund, the currency in which the Fund Property allocated to it will be valued and the price of Units calculated and payments made, if this currency is not the base currency of the Umbrella Fund; and</p> <p>(e) in the case of an Umbrella Fund that is not formed as a Protected Cell Company, in the event of such an Umbrella Fund being unable to meet liabilities attributable to any particular Sub-Fund out of the assets attributable to that Sub-Fund, the remaining liabilities may have to be met out of the assets attributable to other Sub-Funds i.e. that the Sub-Funds are not "ring fenced".</p>
<b>18</b>	<b>Other relevant information</b>
	If applicable, names and addresses of the banker, lawyer, registrar and any other Person undertaking any significant activities in relation to the Fund.



## **App 8 Guidance for Hedge Fund Managers**

[Click here to view the DFSA's Hedge Fund Code of Practice](#)

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## **App 6 GUIDANCE ON FITNESS AND PROPRIETY FOR OVERSIGHT FUNCTIONS**

### **Guidance**

#### **General**

1. The guidance in this Appendix is intended to assist a Fund Manager when making appointments in accordance with Rule 10.3.2 in respect of oversight functions.

#### **Integrity**

2. The Fund Manager may have regard to matters including, but not limited to, the following.
  - a. the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
  - c. whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self regulatory organisation or other professional body;
  - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
  - e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - f. a dismissal or a request to resign from any office or employment;
  - g. whether the individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
  - h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
  - i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an individual in excess of \$10,000 or awards that total more than \$10,000;
  - j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;

- k. whether the individual has been a director, or concerned in the management of, a Body Corporate which has gone into liquidation or administration whilst that individual was connected with that Body Corporate or within one year of such a connection;
- l. whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that individual was connected with that partnership or within a year of such a connection;
- m. whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- n. whether the individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any DFSA, or any officially appointed inquiry, or Financial Services Regulator; or
- o. whether the individual has been candid and truthful in all his dealings with the Fund Manager .