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**COLLECTIVE INVESTMENT LAW**  
**DIFC LAW No. 2 of 2010**

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## **PART 1: GENERAL**

### **1. Title and repeal**

- (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 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 necessary or deemed necessary to give effect to, or to facilitate, the transition from the Collective Investment Law 2006 to this Law.

### **2. Legislative Authority**

This Law is made by the Ruler of Dubai.

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

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

### **4. Date of enactment and commencement**

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

### **5. Commencement**

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

### **6. Interpretation**

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

### **7. Administration of the Law**

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

**8. General power to make Rules**

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

**9. Consultation**

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

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

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

- (a) shall not apply in relation to a person; or
- (b) shall apply to a person with such modifications as are set out in the written notice;

as provided for in Article 25 of the Regulatory Law 2004.

## **PART 2: DEFINITIONS**

### **Chapter 1: Collective Investment Funds**

#### **11. Arrangements constituting a Collective Investment Fund**

- (1) A Collective Investment Fund (“Fund”) is, subject to Article 12, any arrangements with respect to property of any description, including money, where:
  - (a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
  - (b) the arrangements must be such that the persons who are to participate (“Unitholders”) in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
  - (c) the arrangements have either or both of the following characteristics:
    - (i) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or
    - (ii) the property is managed as a whole by or on behalf of the Fund Manager.
- (2) If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.

#### **12. Arrangements not constituting a Collective Investment Fund**

The DFSA may, by Rules, specify when arrangements or types of arrangements that meet the definition of a Fund in Article 11(1) do not constitute a Fund.

### **Chapter 2: Types of Funds and relevant criteria**

#### **13. Domestic and Foreign Funds**

- (1) A Fund is either a Domestic Fund or a Foreign Fund.
- (2) A Fund is a Domestic Fund if it is either:
  - (a) established or domiciled in the DIFC; or
  - (b) an External Fund as defined in Article 14(1).
- (3) A Fund that does not meet the Domestic Fund criteria in Article 13(2) is a Foreign Fund.

**14. An External Fund**

- (1) An External ~~Domestic~~ Fund is a Fund which is:
  - (a) established or domiciled in a jurisdiction other than the DIFC; and
  - (b) managed by a Fund Manager which is an Authorised Firm.
- (2) The requirements relating to Domestic Funds do not apply to an External Fund except to the extent otherwise provided in this Law or the Rules.

**15. Types of Domestic Funds**

- (1) A Domestic Fund shall be one of the following types of Fund:
  - (a) a Public Fund;
  - (b) a Private Fund; or
  - (c) an Exempt Fund.
- (2) The DFSA may treat any type of Domestic Fund referred to in Article 15(1) as a specialist class of a Domestic Fund pursuant to Article 17.

**16. Domestic Fund criteria**

- (1) A Domestic Fund shall, subject to Article 16(5), be constituted as a Public Fund if:
  - (a) it has, or intends to have, more than 100 Unitholders;
  - (b) some or all of its Units are offered to investors by way of a public offer; or
  - (c) its Unitholders include Retail Clients.
- (2) A Domestic Fund may be constituted either as a Private Fund or as an Exempt Fund only if that Fund meets the relevant criteria in Article 16(3) or (4).
- (3) A Domestic Fund meets the Private Fund criteria, subject only to Article 16(6), if:
  - (a) it has, or intends to have, 100 or fewer Unitholders;
  - (b) its Units are offered to persons only by way of a private placement; and
  - (c) all its Unitholders are persons who meet the criteria to be classified as Professional Clients.
- (4) A Domestic Fund meets the Exempt Fund criteria, subject only to Article 16(6), if:
  - (a) it has, or intends to have, 100 or fewer Unitholders;
  - (b) its Units are offered to persons only by way of a private placement;



- (c) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - (d) the initial subscription to be paid by a person to become a Unitholder is at least US\$50,000.
- (5) Nothing in this Law or the Rules shall prevent a Fund that meets the criteria to be a Private Fund or an Exempt Fund being constituted as a Public Fund.
- (6) A Domestic Fund does not cease to be a Private Fund or an Exempt Fund under Article 16(3) or (4) merely because one or more Units in that Fund is registered in the name of a person who does not meet the criteria to be a Unitholder of that particular type of Fund as a result of:
- (a) inheritance from a registered Unitholder of the Fund; or
  - (b) any legal action brought for or against a registered Unitholder.
- (7) The DFSA shall, by Rules, prescribe:
- (a) the relevant criteria for a person to be classified as a Retail Client or a Professional Client;
  - (b) what activities constitute a public offer or a private placement; and
  - (c) any other requirements or matters which the DFSA considers necessary to give effect to the requirements or intent of the provisions in this chapter.

## **17. Specialist classes of Domestic Funds**

- (1) The DFSA may, by Rules, prescribe the circumstances in which any type of a Domestic Fund is to be treated as a specialist class of a Domestic Fund.
- (2) Without limiting the generality of Article 17(1), the DFSA may, by Rules, prescribe:
- (a) the circumstances in which a Domestic Fund will be treated as an Islamic Fund;
  - (b) the requirements applicable to such a Fund, including the appointment where appropriate of a Shari'a Supervisory Board; and
  - (c) any requirements relating to a Shari'a Supervisory Board appointed to an Islamic Fund such as its formation, membership, conduct and operation.

## **18. Additional matters**

- (1) The DFSA may, by Rules, apply additional criteria, requirements or conditions to:
- (a) a particular type of a Domestic Fund;
  - (b) a specialist class of a Domestic Fund; or

- (c) a Foreign Fund.
- (2) Without limiting the generality of Article 18(1), the additional criteria, requirements or conditions relating to a Fund that the DFSA may specify include:
  - (a) the type of legal structure or arrangement that must be used by a specialist class of Funds;
  - (b) whether or not a Fund must be an open-ended or closed-ended Fund, or a listed or unlisted Fund; and
  - (c) any criteria, requirements or conditions that apply to any person carrying on any function relating to a Fund and whether or not that person does so under a delegation or outsourcing arrangement entered into with the Fund Manager or if applicable the Trustee of the Fund.

## **19. Definition of an Offer of Units**

- (1) An “Offer” of a Unit of a Fund constitutes any one or more of the activities specified in Article 19(2) and such activities may also be referred to as “marketing” of Units of Funds.
- (2) 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.
- (3) For the purposes of Article 19(2), a “financial promotion” includes an advertisement or any other form of promotion, marketing or inducement inviting a person to:
  - (a) enter into an agreement;
  - (b) offer to enter into an agreement; or
  - (c) exercise any rights conferred by a Unit

to acquire, dispose of, underwrite or convert a Unit.
- (4) In Article 19(3), the financial promotion may be communicated in any manner including, but not limited to, the following:
  - (a) orally;

- (b) electronically; or
  - (c) in writing.
- (5) For the purposes of Article 19(2) and (3), where a Fund Manager of a Listed Fund discloses information in accordance with the requirements of the Markets Law 2004 or the Rules made for the purposes of that law, disclosure of such information is not a financial promotion provided the disclosure of the information does not:
- (a) include an express invitation or offer; or
  - (b) expressly encourage a person;
- to engage in any of the activities specified in Article 19(2) (a) or (b).

## **PART 3: ROLES AND FUNCTIONS OF THE FUND MANAGER AND TRUSTEE**

### **Chapter 1: General prohibitions**

#### **20. Fund Manager**

- (1) A person shall not manage a Domestic Fund unless:
  - (a) that person is:
    - (i) a body corporate; and
    - (ii) an Authorised Firm whose Licence authorises it to act as the Fund Manager of the particular type or specialist class of the Fund;or
  - (b) the person is an External Fund Manager.
- (2) For the purposes of this Law, any other DFSA administered law and any rules made for the purposes of those laws, the person who “manages” a Fund, subject to Article 20(3), is the person who:
  - (a) is legally accountable to the Unitholders in the Fund for the management of the Fund, including the property held for or within the Fund (“Fund Property”); and
  - (b) establishes, manages or otherwise operates or winds up the Fund.
- (3) The DFSA may, by Rules, prescribe when a person who engages in any of the activities specified in Article 20(2) is not managing a Fund.
- (4) A person referred to in Article 20(1)(a) or (b) is a “Fund Manager” and a reference to a “Fund Manager” in this Law or in any other DIFC Law or any legislation made for the purposes of such laws includes both persons, unless otherwise provided.
- (5) A person is an External Fund Manager if that person:
  - (a) is a body corporate;
  - (b) manages a Domestic Fund:
    - (i) which is not an External Fund; and
    - (ii) which is excluded from the Financial Services Prohibition under Article 41(9) of the Regulatory Law 2004; and
  - (c) manages the Fund in (b):
    - (i) from a place of business in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA; and

- (iii) in accordance with any additional requirements prescribed by the DFSA for the purposes of this Article.

## **21. Trustee**

- (1) A person shall not act as a Trustee of a Domestic Fund which is an Investment Trust unless that person is either:
  - (a) a body corporate which is an Authorised Firm with a Licence authorising it to act as a Trustee or to Provide Custody; or
  - (b) a person regulated and supervised by a Financial Services Regulator in a Recognised Jurisdiction with respect to its custody or depository services.
- (2) A person does not breach the prohibition in Article 21(1) where that person acts under a sub-custody arrangement entered into between that person and a person referred to in Article 21(1)(a) or (b).

## **Chapter 2: Duties and functions**

### **22. Fund Manager's general duties and functions**

- (1) A Fund Manager of a Domestic Fund shall:
  - (a) manage the Fund including the Fund Property in accordance with the Fund's Constitution and its most recent Prospectus;
  - (b) perform the functions conferred on it by the Fund's Constitution and by or under this Law;
  - (c) comply with any conditions or restrictions imposed by the DFSA including those on its Licence or in respect of the Fund; and
  - (d) comply with any requirements or limitations imposed under this Law or Rules made for the purposes of this Law including any limits relating to financial interests it or any of its associates may hold in a Fund, for which it acts as the appointed Fund Manager.
- (2) In exercising its powers and carrying out its duties, a Fund Manager shall:
  - (a) act honestly;
  - (b) exercise the degree of care and diligence that a reasonable person would exercise if he were in the Fund Manager's position;
  - (c) act in the best interests of the Unitholders and, if there is a conflict between the Unitholders' interests and its own interests, give priority to the Unitholders' interests;
  - (d) treat the Unitholders who hold interests of the same class equally and Unitholders who hold interests of different classes fairly;

- (e) not improperly make use of information acquired through being the Fund Manager in order to:
    - (i) gain an advantage for itself or another person; or
    - (ii) cause detriment to the Unitholders in the Fund;
  - (f) ensure that Fund Property is:
    - (i) clearly identified as Fund Property; and
    - (ii) held separately from the property of the Fund Manager and the property of any other Fund it manages;
  - (g) report to the DFSA any breach of this Law or relevant provisions of any other law administered by the DFSA, or of any Rules made under those laws, that:
    - (i) relates to the Fund; and
    - (ii) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;

as soon as practicable after it becomes aware of the breach;
  - (h) in the case of a Fund Manager referred to in Article 20(1)(b), report to the DFSA any breach of any other laws or requirements that apply to that Fund Manager in its home jurisdiction, that:
    - (i) relates to the Fund; and
    - (iii) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;

as soon as practicable after it becomes aware of the breach;
  - (i) comply with any other duty or obligation as may be prescribed by or under this Law or any other legislation administered by the DFSA; and
  - (j) carry out or comply with any other duty, not inconsistent with any DIFC Law, that is conferred on the Fund Manager by the Fund's Constitution.
- (3) Every officer, employee or agent of the Fund Manager shall:
- (a) not make improper use of information acquired through being such an officer, employee or agent of the Fund Manager in order to:
    - (i) gain an advantage for himself or another person; or
    - (ii) cause detriment to Unitholders in the Fund;

- (b) not make improper use of his position as such an officer, employee or agent to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Unitholders in the Fund;
  - (c) comply with any other duty or obligation as may be prescribed by or under this Law or any other legislation administered by the DFSA; and
  - (d) carry out or comply with any other duty, not inconsistent with any DIFC Law, that is conferred on him by the Fund's Constitution.
- (4) A Fund Manager shall take reasonable steps to ensure that its officers, employees and agents comply with their obligations referred to in Article 22(3).

**23. Trustee's duties and functions**

The Trustee of an Investment Trust shall carry out its functions and duties in respect of the Fund in accordance with this Law, the Investment Trust Law 2006 and any rules made for the purposes of these laws.

**24. General powers including delegations and outsourcing**

- (1) A Fund Manager of a Domestic Fund shall have all the powers that are required or necessary for it to carry out its functions and discharge its duties as set out under the Fund's Constitution and the most recent Prospectus in accordance with this Law, any other DFSA administered law, or rules made for the purposes of those laws.
- (2) A Fund Manager may, subject to any restriction in the Domestic Fund's Constitution and subject to any Rules made for the purposes of this Article, delegate any of its activities or outsource any of its functions, to another person (a "service provider").
- (3) Where the Fund Manager delegates an activity or outsources a function, the Fund Manager remains responsible to Unitholders for any acts or omissions of the service provider as if they were the acts or omissions of the Fund Manager even where the service provider acted fraudulently or outside the scope of its authority or engagement.

**Chapter 4: Retirement or removal of the Fund Manager**

**25. Retirement or removal of a Fund Manager**

- (1) A Fund Manager may voluntarily retire as the Fund Manager of a Domestic Fund only where:
  - (a) a replacement Fund Manager has been appointed to the Fund in accordance with the requirements in this Law and Rules made for the purposes of this Law; or
  - (b) upon an application made by the Fund Manager or Trustee of the Fund to a Court, the Court has appointed a temporary Fund Manager to the Fund.
- (2) The DFSA, a Unitholder or a Trustee of a Domestic Fund may make an application to a Court for the removal of the Fund Manager where the Fund Manager:

- (a) no longer meets the requirements of this Law or the Rules; or
  - (b) engages, or has engaged in, any activities that may constitute misconduct, default or breach of any duty of the Fund Manager.
- (3) The Court may, upon application made under Article 25(2), make one or more of the following orders:
- (a) an order for the appointment of a temporary Fund Manager;
  - (b) an order for the winding up of the Fund pursuant to this Law; or
  - (c) any other order as the Court considers just and equitable and in the interests of the Fund and of its Unitholders.
- (4) The DFSA shall make Rules prescribing the manner and circumstances in which the Unitholders may approve the appointment of a new Fund Manager, or seek a Court order for the replacement of the existing Fund Manager or any other matter relevant or necessary to give effect to the provisions in this Article.



## **PART 4: ESTABLISHMENT AND OPERATION OF DOMESTIC FUNDS**

### **Chapter 1: Requirements applicable to all Domestic Funds**

#### **26. Permitted form of a Domestic Fund**

- (1) Every Domestic Fund shall be one of the following:
  - (a) an Investment Company;
  - (b) an Investment Partnership; or
  - (c) an Investment Trust.
- (2) In Article 26(1)(a), an Investment Company includes a Protected Cell Company.
- (3) The DFSA may, by Rules, prescribe:
  - (i) which of the forms referred to in Article 26(1) may be used by a specialist class of Domestic Funds; and
  - (ii) any additional criteria, requirements or conditions applicable to such a Fund.

#### **27. General requirements**

- (1) Every Domestic Fund shall have:
  - (a) a written Constitution which complies with the Rules;
  - (b) a purpose that is reasonably capable of being successfully carried into effect;
  - (c) an auditor appointed to it in accordance with Part 6;
  - (d) if it is an Investment Trust, a Trustee appointed to the Fund in accordance with the requirements in the Investment Trust Law 2006;
  - (e) if it is not an Investment Trust, an eligible person with whom the legal title to the Fund Property is registered; and
  - (f) in the case of an open-ended Fund, single pricing for the purposes of redemption and re-issue or sale of Units in the Fund where the price of a Unit is calculated by reference to the net asset value of the property of the Fund to which the Units relate and in accordance with the Rules.
- (2) Any provision in the Constitution of a Domestic Fund is void in so far as it would have the effect of exempting the Fund, the Fund Manager and if appointed, the Trustee from liability for any failure to discharge their obligations under this Law, the Regulatory Law 2004, the Law Regulating Islamic Financial Business 2004, the Investment Trust Law 2006 or any rules made for the purposes of these laws.

- (3) The DFSA shall, for the purposes of Article 27(1)(e), by Rules, prescribe the criteria that a person must meet to be considered “eligible” and such Rules may permit the Fund Manager to be considered “eligible” for the purposes of a particular type of, or a specialist class of, a Domestic Fund.
- (4) If, in the opinion of the DFSA, the name of a Fund or of a Sub-Fund of a Fund conflicts with the name of another Fund or is undesirable or misleading, it may direct the Fund Manager to change the name of the Fund or the Sub-Fund.

## **Chapter 2: Registration requirement applicable to Public Funds**

### **28. Registration requirement**

- (1) Every Domestic Fund which is a Public Fund shall be registered with the DFSA.
- (2) The DFSA shall register a Public Fund if the Fund meets all the requirements in the Law.
- (3) The application for the registration of a Public Fund shall be made to the DFSA by the Fund Manager or, if the Fund is an Investment Trust, jointly by the Fund Manager and the Trustee, of that Fund.
- (4) Such an application shall:
  - (a) be accompanied by the Fund’s Constitution and Prospectus both of which shall be in accordance with the requirements of this Law and any Rules; and
  - (b) comply with any other requirements prescribed by the DFSA in relation to such Funds, including the applications.
- (5) The DFSA shall, by Rules, prescribe the requirements which an application for registration must meet before such an application can be accepted by the DFSA.

### **29. Providing information in relation to the application**

- (1) The DFSA may require the Fund Manager, and if relevant the Trustee, to provide additional information reasonably required for the DFSA to be able to make a decision with regard to the application.
- (2) If, at any time between the filing of an application for registration and the grant of a registration, the Fund Manager or, if appointed, the Trustee becomes aware of any material change, error or omission reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.

### **30. Rejection of an application**

- (1) The DFSA may, in its discretion, refuse to grant an application for registration of a Public Fund.

- (2) Upon refusing to grant registration, the DFSA shall, without undue delay, inform the Fund Manager and, if appointed, the Trustee in writing of such refusal and, where requested by the Fund Manager or Trustee, the reasons for such refusal.

### **31. Granting registration**

- (1) The DFSA shall grant the registration to come into effect on a specified date.
- (2) Where the DFSA registers a Public Fund, it shall, without undue delay, inform the Fund Manager and, if relevant, the Trustee in writing of:
  - (a) that decision; and
  - (b) the date on which the registration shall come into effect.

### **32. Withdrawal of registration**

- (1) The DFSA may, subject to Article 32(2), withdraw the registration of a Public Fund where one or more of the following circumstances apply:
  - (a) the Fund is not operating or has been wound up;
  - (b) any information provided to the DFSA by the Fund Manager or, if appointed, the Trustee, is false or misleading in a material particular or materially misleading;
  - (c) the Fund Manager or, if appointed, the Trustee has contravened a requirement imposed on it by or under this Law or the Investment Trust Law 2006;
  - (d) the Fund Manager or, if appointed, the Trustee or member of the Fund's Governing Body has not complied with a direction issued by the DFSA under the Law;
  - (e) a person other than a member of the Fund's Governing Body, Shari'a Supervisory Board, the Trustee or a person providing oversight functions is exercising significant influence over the Fund, the Fund Manager or any member of the Fund's Governing Body;
  - (f) the Fund Manager is no longer fit and proper to manage the Fund or is incapable of acting as the Fund Manager of the Fund in compliance with the Law or Rules or the terms of its Constitution;
  - (g) the Trustee is no longer fit and proper to act as Trustee of the Fund or is incapable of acting as Trustee of the Fund in compliance with this Law or Rules or the terms of its Constitution and the Investment Trust Law 2006;
  - (h) the Fund Manager or, if appointed, the Trustee requests the DFSA to withdraw the registration of the Fund on the grounds that the Unitholders have passed a Special Resolution approving the Fund to be deregistered;

- (i) the Fund Manager is no longer authorised under its Licence to manage the Fund; or
  - (j) in the case of a an External Fund Manager, that person ceases to meet the requirements in Article 20(5).
- (2) The DFSA may withdraw the registration of a Fund under Article 32(1) only if it considers that:
  - (a) the withdrawal is in the interests of the Unitholders of the Fund; or
  - (b) appropriate steps have been taken or may reasonably be taken to protect the interests of the Unitholders.
- (3) Where the DFSA has withdrawn, or proposes to withdraw, a registration under this Article, it may, by written notice, direct the Fund Manager, or if appointed, the Trustee to take such steps as the DFSA considers necessary or desirable to protect the interests of Unitholders in the Fund.
- (4) Unless the DFSA withdraws the registration of the Fund upon an application made by the Fund Manager or where relevant the Trustee or on the grounds the Fund Manager is no longer authorised under its Licence to manage the Fund, the DFSA shall only do so if it has given the relevant Fund Manager and, if appointed, the Trustee a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed withdrawal and the DFSA has informed the Fund Manager or where relevant the Trustee in writing of its response to any such representation.
- (5) Upon deciding to withdraw a registration, the DFSA shall, without undue delay, inform the Fund Manager and where relevant the Trustee in writing of:
  - (a) its decision;
  - (b) the date on which the withdrawal of registration shall come into effect; and
  - (c) if requested by the Fund Manager or the Trustee, the reasons for its decision.
- (6) The Court may order the DFSA to withdraw the registration of a Public Fund.

### **33. Reinstatement**

- (1) Where a Public Fund has been deregistered, an application for the reinstatement of the Fund may be made to the Court by:
  - (a) a person aggrieved by the deregistration; or
  - (b) a person who was winding up the Fund.
- (2) Upon such application, the Court may, if it is satisfied that it is just and equitable to do so:
  - (a) make an order that the DFSA reinstate the registration of the Fund: and

- (b) give any directions it thinks just for putting the Fund and other persons in the same position, as far as possible, as if the Fund had not been deregistered.

### **Chapter 3: Notification requirement applicable to Private and Exempt Funds**

#### **34. Notification requirement**

- (1) The Fund Manager of a Private Fund or Exempt Fund shall notify the DFSA at least 14 days prior to the initial, and in the case of if a closed-ended Fund any subsequent, Offer to issue Units in the Fund
- (2) Such a notification must be made in the manner prescribed in the Rules and include the name of the Fund and the type of Fund and any further details required under such Rules.
- (3) If a Domestic Fund can no longer meet the Private Fund or Exempt Fund criteria in Article 16(3) or (4) as applicable, the Fund Manager of that Fund shall apply either for the registration of the Fund as a Public Fund under Article 28 or for the winding up of that Fund as provided under Part 8 of this Law.

### **Chapter 4: Alterations to a Domestic Fund**

#### **35. Alterations**

- (1) Subject to Article 35(6):
  - (a) changes to a Domestic Fund's Constitution or Prospectus in respect of investment, borrowing or gearing powers may be made; or
  - (b) the Fund Manager, the Trustee, a member of the Governing Body or the auditor of a Fund may be replaced;

If, an appropriate Special Resolution has been passed, by the Unitholders at a meeting convened by the Unitholders solely for that purpose.

- (2) Any other materially significant changes not falling within Article 35(1), such as, replacing a member of the Shari'a Supervisory Board or changes to the Constitution or Prospectus which may adversely affect the Unitholders may be made in relation to a Fund if an appropriate ordinary resolution has been passed by a simple majority of the Unitholders at a meeting convened for that purpose.
- (3) If the Fund Manager and if appointed, the Trustee, consider on reasonable grounds that the change is not one that falls within Article 35(1) or (2) and will not adversely affect Unitholders' rights, such change may be made by the Fund Manager without recourse to the Unitholders other than to notify them after the change has been effected.
- (4) The DFSA may, by Rules, prescribe further requirements applicable for any changes to the Fund including the changes referred to in this Article.

- (5) The Fund Manager of a Domestic Fund shall give notice in writing to the DFSA of any proposal specified in Article 35(1). Any such notice given to the DFSA shall be accompanied by a certificate signed by the Fund Manager and if appointed, the Trustee, of the Fund to the effect that the proposed change will not affect compliance with this Law or any Rules made under this law.
- (6) Effect is not to be given to any proposal notified to the DFSA under Article 35(5) unless the DFSA has, by notice in writing, given its approval to the proposal.
- (7) An approved change must not be made to the trust deed of an Investment Trust except by a deed, expressed to be supplemental to the trust deed, entered into jointly by the Fund Manager and the Trustee.

### **36. Rejection of proposed alteration**

- (1) The DFSA may in its absolute discretion refuse to grant approval of a proposed alteration.
- (2) Upon refusing to grant approval, the DFSA shall, in writing and without undue delay, inform the Fund Manager, if appointed, the Trustee, and the Domestic Fund as is appropriate, of such refusal and, where requested by the Fund, the reasons for such refusal.

## **Chapter 5: Suspension of dealings in an open-ended Domestic Fund**

### **37. Suspension of dealings in Units**

- (1) The Fund Manager may, in the case of an open-ended Domestic Fund, temporarily suspend the issue, cancellation, sale and redemption of Units (“dealings in Units”) in the Fund where:
  - (a) due to exceptional circumstances it is in the interest of the Unitholders in the Fund to do so; and
  - (b) if there is an appointed Trustee:
    - (i) it has obtained the prior agreement of the Trustee for the suspension of dealings in Units; or
    - (ii) in the event that no agreement can be reached with the Trustee, upon request to the DFSA, the DFSA has issued a stop order under Article 69.
- (2) The Fund Manager shall continue the suspension of dealings in Units only for so long as it reasonably believes that the suspension is in the interests of the Unitholders of the Fund.
- (3) Upon suspension of dealings in Units, the Fund Manager shall, in writing, notify the DFSA immediately, and the Unitholders as soon as practicable, of the suspension and its reasons for doing so.

- (4) This Article and Rules made for the purposes of this Article apply to an open-ended cell of a Protected Cell Company as if that cell were an open-ended Fund.
- (5) The DFSA may, by Rules, prescribe any additional requirements or matters relating to the suspension of dealings in Units in an open-ended Domestic Fund.

## **PART 5: GOVERNANCE OF DOMESTIC FUNDS**

### **Chapter 1: Fund's systems and controls**

#### **38. Systems and controls requirement**

- (1) A Fund Manager of a Domestic Fund shall establish and maintain systems and controls including but not limited to financial and other risk controls to ensure sound management of the Fund:
  - (a) in accordance with the Fund's Constitution, its most recent Prospectus, this Law and the Rules made for the purposes of this Law; and
  - (b) taking account of the risks to which the Fund may be exposed, due to the nature, scale and complexity of the Fund's investments and operations.
- (2) The DFSA may, by Rules, prescribe any additional requirements relating to systems and controls that must be established and implemented by the Fund Manager of certain types of, or specialist classes of, Domestic Funds.

### **Chapter 2: Oversight of Public Funds**

#### **39. Requirements relating to oversight arrangements**

- (1) A Fund Manager of a Domestic Fund which is, or is to be, a Public Fund shall:
  - (a) establish and maintain one of the permitted oversight arrangements prescribed in the Rules; and
  - (b) ensure that a person appointed to carry out the oversight function for the Fund meets:
    - (i) the independence criteria set out in Article 42 of this Law; and
    - (ii) any additional suitability criteria prescribed in Rules made for the purposes of this Article.
- (4) The DFSA may, in its absolute discretion, at any time object to a particular oversight arrangement or an individual appointed to carry out the oversight function for a Fund and require the Fund Manager to appoint a replacement.
- (5) The DFSA shall notify the Fund Manager of such objection in writing and, where requested by the Fund Manager, the reasons for such objection.

#### **40. Powers and functions of the persons undertaking the oversight function**

- (1) The Fund Manager shall ensure that each person undertaking the oversight function for the Fund is appointed with the necessary powers and resources to discharge its duties and functions and is required to:
  - (a) monitor whether the Fund Manager is:



- (i) managing the Fund in accordance with the Constitution and the most recent Prospectus of the Fund and any investments and borrowing limitations or other restrictions imposed on the Fund under this Law or any Rules made for the purposes of this Law; and
  - (ii) complying with any terms and conditions on the Fund Manager's Licence, particularly with respect to the management of the Fund; and
- (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 Article 40(1)(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 appears 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 that the matter has had, or is likely to have, a materially adverse impact on the interests of the Unitholders of the Fund.
- (2) The DFSA may, by Rules, prescribe any additional matters or requirements relating to the oversight function or persons providing the oversight function for a Public Fund, including any period shorter than the period referred to in Article 40(1)(d) for reporting certain matters to the DFSA.

#### **41. Duties of a person providing oversight functions**

- (1) Each person appointed to provide the oversight function to a Fund shall:
- (a) act honestly;
  - (b) exercise the degree of care and diligence that a reasonable person would exercise if he were in that person's position;
  - (c) act in the best interests of the Unitholders in the Fund and, if there is a conflict between the Unitholders' interests and his own interests, give priority to the Unitholders' interests;
  - (d) not make improper use of his position, or information acquired in that position, in order to:
    - (i) gain an improper advantage for himself or another person; or

- (ii) cause detriment to Unitholders in the Fund;
  - (e) disclose to the Fund’s auditor any information relevant for the auditor to discharge its obligations;
  - (f) comply with any other duty or obligation as the DFSA may prescribe under this Law or any other legislation administered by the DFSA, and
  - (g) carry out or comply with any other duty, not inconsistent with DIFC Law, that is conferred on him by the Fund’s Constitution.
- (2) A person providing the oversight function for a Fund is to take all reasonable steps to assist the DFSA in exercising its powers under Part 5 of the Regulatory Law 2004.
- (3) Without limiting the application of any provision of this Law and any Rules made for the purposes of this Law, a person providing oversight function does not contravene any duty to which that person is subject where that person gives to the DFSA:
- (a) a notification as required under this chapter; or
  - (b) any other information or opinion in relation to any such matter;
- if the person is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.

#### **42. Independence**

- (1) A person providing the oversight function meets the independence criteria specified in Article 39(1)(b)(i) if, subject to Article 42(3), he:
- (a) is not, and has not been in the previous 2 years, an employee or an executive director or officer of the Fund Manager or a body corporate in the same group (a “related body corporate”);
  - (b) is not, and has not been in the previous 2 years, involved in material business dealings, or in a professional capacity, with the Fund Manager or a related body corporate;
  - (c) is not a member of a partnership or a trustee of a trust that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the Fund Manager or a related body corporate;
  - (d) does not have a material interest in the Fund Manager or a related body corporate;
  - (e) is not a relative or de facto spouse of a person who has a material interest in the Fund Manager or a related body corporate of a kind described in Article 42(1)(a) and to (d); and

- (f) if he is a person acting for the Trustee of the Fund where the latter is appointed for providing the oversight function, meets the independence criteria set out in Article 19 of the Investment Trust Law 2006.
- (2) A person does not cease to be independent for the purposes of this Article merely by virtue of being appointed as a person providing the oversight function for a Fund.
- (3) The DFSA may, by Rules, prescribe when a legal entity appointed as the person providing the oversight function to a Fund may or may not meet the independence criteria for the purposes of this Article.

## **PART 6: AUDITORS OF DOMESTIC FUNDS**

### **43. Appointment and removal of auditors**

- (1) The Fund Manager of a Domestic Fund shall:
  - (a) for the purposes of Article 27(1)(c) and subject to Article 43(7), appoint an auditor; and
  - (b) at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting; or
  - (c) at the beginning of each financial year appoint an auditor to hold office until the beginning of the next financial year.
- (2) The appointment of a firm as an auditor of a Domestic Fund is taken to be an appointment of all persons who are partners of the firm.
- (3) A Fund Manager and, if appointed, the Trustee shall ensure that at all times the Fund has an auditor.
- (4) The Fund Manager shall not appoint to a Domestic Fund an auditor under this Article unless:
  - (a) the auditor has, prior to the appointment, consented in writing to serve as the auditor for the Domestic Fund;
  - (b) the Fund Manager and, if appointed, the Trustee is not, on reasonable inquiry, aware of any matter which should preclude the auditor from giving its consent under Article 43(5); and
  - (c) the auditor is registered with the DFSA in accordance with Part 8 of the Regulatory Law 2004.
- (5) An auditor shall not consent to an appointment as an auditor of a Domestic Fund if:
  - (a) the auditor has, or may reasonably be perceived to have, a conflict of interest of a nature prescribed in the Rules;
  - (b) the auditor does not have, or may reasonably be perceived not to have, a requisite degree of independence from the Fund Manager and, if appointed, the Trustee or other members of the Governing Body of the Domestic Fund as prescribed in the Rules; or
  - (c) the auditor or any associate of the auditor in a firm or business undertaking has acted as an auditor of the Fund Manager and, if appointed, the Trustee within such earlier period or frequency as prescribed in the Rules.

- (6) The Fund Manager of a Domestic Fund may, subject to Articles 43(7) and 46, at any time remove an auditor notwithstanding anything in any agreement between it and the auditor.
- (7) In the case of an Investment Trust, the Fund Manager must obtain the prior approval of the Trustee before carrying out any activities under Article 43 in relation to the appointment or removal of an auditor.
- (8) The Court may, on an application made by the DFSA, order the removal of an auditor of a Domestic Fund.
- (9) Nothing in this Article is to be taken as depriving an auditor removed under it of compensation or damages payable to the auditor in respect of the termination of appointment as auditor.

#### **44. Auditor's reports**

- (1) An auditor of a Domestic Fund must make an audit report.
- (2) The DFSA may make Rules in relation to:
  - (a) the functions to be carried out by an auditor when auditing a Domestic Fund's accounts;
  - (b) the scope of the auditor's audit report; and
  - (c) the scope of ad-hoc reports of the auditor.

#### **45. Auditors' duties**

- (1) An auditor shall, in preparing the audit report in relation to the accounts of a Domestic Fund, carry out such investigations as will enable the auditor to form an opinion as to the following matters:
  - (a) whether proper accounting records have been kept by the Fund Manager and, if appointed, the Trustee in respect of the Domestic Fund;
  - (b) whether the Domestic Fund's accounts are in agreement with the accounting records and regulatory returns;
  - (c) whether the Domestic Fund's accounts have been prepared in compliance with the applicable accounting standards; and
  - (d) whether the accounts of the Domestic Fund represent a true and fair view of the financial condition and state of affairs of the Domestic Fund.
- (2) If the auditor is of the opinion that proper accounting records have not been kept, or that the accounts are not in agreement with the accounting records and returns, or that the accounts do not comply with applicable accounting standards, the auditor shall state that fact in the audit report.

- (3) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief are necessary for the purposes of the audit, the auditor shall state that fact in the report.
- (4) An auditor shall disclose to the Trustee and the person providing oversight function of a Public Fund any information relevant to such person's role.

#### **46. Resignation of an auditor**

- (1) An auditor of a Domestic Fund may resign from office by depositing a notice in writing to that effect together with a statement under Article 46(2) at the Domestic Fund's registered office and with the DFSA; and any such notice operates to bring its term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.
- (2) When an auditor ceases for any reason to hold office the auditor shall deposit at the Domestic Fund's and, if appointed, the Trustee's registered office and with the DFSA:
  - (a) a statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the notice of the Unitholders or creditors of the Domestic Fund; or
  - (b) if there are any circumstances as are mentioned above, a statement of the nature of such circumstances.
- (3) Where an auditor's statement falls within Article 46(2)(b), the Fund Manager, or failing which, the other members of the Governing Body of the Domestic Fund or, if appointed the Trustee, shall provide to the DFSA any response to the auditor's statement along with a copy of that statement.

#### **47. Co-operation with auditors**

- (1) A Domestic Fund, any member of its Governing Body, any person providing oversight, any officer, employee or agent of the Domestic Fund, its Fund Manager or where appointed its Trustee, shall not knowingly or recklessly make to the auditor a statement (whether written or oral) which:
  - (a) conveys or purports to convey any information or explanation which the auditor requires, or is entitled to require, as auditor of the Domestic Fund; and
  - (b) is either:
    - (i) false, misleading or deceptive in a material particular; or
    - (ii) such that it omits information where the omission of such information is likely to mislead or deceive the auditor.

(2) A Domestic Fund, any member of its Governing Body, any person providing the oversight function, any officer or employee of the Domestic Fund, its Fund Manager or, where appointed, its Trustee, or any person acting under the direction or authority of such persons, shall not without reasonable excuse engage in conduct, including without limitation the:

- (a) destruction or concealment of documents;
- (b) coercion, manipulation, misleading, or influencing of the auditor;
- (c) failure to provide access to information or documents specified by the auditor;  
or
- (d) failure to give any information or explanation which the person is able to give;

where the Domestic Fund, Fund Manager, Trustee, member of the Governing Body, officer, employee or other person knows or ought to know that such conduct could, if successful:

- (e) obstruct the auditor in the performance of his duties under this Part; or
- (f) result in the rendering of the accounts of the Domestic Fund or the auditor's report being materially misleading.

#### **48. Obligation of disclosure to the DFSA**

- (1) An auditor is subject to the obligations of disclosure under Article 48(3).
- (2) Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the DFSA:
  - (a) a notification as required under this Article; or
  - (b) any other information or opinion in relation to any such matter;

if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.

- (3) Subject to Article 48(4), an auditor shall disclose to the DFSA any matter which reasonably tends to show one of the following:
  - (a) a breach, or likely breach of a provision of this Law or the Rules;
  - (b) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or
  - (c) any other matter as the DFSA may prescribe in Rules;

which may be attributable to the conduct of the relevant Domestic Fund, the Trustee, the Fund Manager or other member of the Governing Body including the Domestic Fund's, the Trustee's or the Fund Manager's directors, officers, employees or agents.

- (4) Article 48(3) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (5) The Fund Manager of a Domestic Fund shall establish and implement appropriate systems and internal procedures to enable it and its auditor to comply with Article 48(3).
- (6) Any provision in an agreement between a Domestic Fund and a director, officer, employee, agent or auditor is void in so far as it purports to hinder any person from causing or assisting the auditor to comply with an obligation under Article 48(3).
- (7) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an auditor to comply with an obligation under Article 48(3).
- (8) The Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 48(7).



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

### **Chapter 1: General**

#### **49. Applicable laws**

- (1) An offer to issue or sell a Unit or an interest in a Unit of a Fund (“Unit of a Fund”) is governed by this Law and the Rules made for the purposes of this Law, except to the extent otherwise provided in Article 49(2).
- (2) With the exception of Part 3 of the Markets Law 2004, the provisions in that law apply to any offer to issue or sell a Unit of a Fund.
- (3) For the purposes of this Part and the Rules made for the purposes of this Part, the offer of a Unit of a Fund (“Offer of a Unit”) has the meaning given to it in Article 19.

#### **50. Marketing prohibition**

- (1) Subject to Article 50(2), a person shall not, in or from the DIFC, Offer a Unit of a Fund to a prospective or existing Unitholder unless:
  - (a) a Prospectus that complies with the requirements in this Law and the Rules made for the purposes of this Law is made available to such a Unitholder;
  - (b) the person making the Offer is either the Fund Manager of the Fund or an Authorised Firm whose Licence authorises it do so; and
  - (c) the Offer is made in accordance with the requirements in this Law and the Rules made for the purposes of this Law.
- (2) The DFSA may, by Rules, exempt any person or class of persons from the prohibition in Article 50(1) and in doing so, may subject such person or class of persons to any conditions it considers appropriate.
- (3) A Prospectus includes, except where expressly stated otherwise:
  - (a) a Short Form Prospectus;
  - (b) an Information Memorandum in respect of an Offer of a Unit of an Exempt Fund;
  - (c) a Supplementary or Replacement Prospectus; and
  - (d) in the case of an External Fund or 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 External Fund or Foreign Fund.

## **Chapter 2: Marketing of Domestic Fund**

### **51. Prospectus requirement**

- (1) The Fund Manager of a Domestic Fund other than an External Fund shall:
  - (a) produce a Prospectus in accordance with the requirements in this Law; and
  - (b) if the Fund is a Public Fund, file a copy of the Prospectus with the DFSA.
- (2) The Fund Manager of an External Fund shall ensure that any prospectus or other disclosure document prepared in accordance with any legislation applicable to that External Fund contains any additional disclosure prescribed by the Rules.

### **52. Prospectus content**

- (1) The presentation of the information in a Prospectus shall be clear, fair and not misleading.
- (2) A Prospectus shall contain all the information which a person and his professional advisers would reasonably require and expect to find in a Prospectus to be able to make an informed decision to become a Unitholder of the Fund.
- (3) Without limiting the generality of the obligation in Article 52(2), the DFSA may, by Rules, prescribe the information that must be included in a Prospectus for the purposes of this Article including different provisions for different types of, or specialist classes of, Domestic Funds and any reduced content requirements for Private and Exempt Funds.
- (4) 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, the Fund Manager shall in accordance with the requirements prescribed in the Rules issue a Supplementary or a Replacement Prospectus.

### **53. Publicity**

- (1) A person undertaking a financial promotion in respect of a Prospectus shall ensure that:
  - (a) the information contained in the Prospectus complies with this Law and the Rules made for the purposes of this Law;
  - (b) the Fund Manager, in the case of a Public Fund, has filed a copy of the Prospectus with the DFSA; and
  - (c) the financial promotion states a Prospectus has been published and gives an address where a copy may be collected in the DIFC.
- (2) Nothing in Article 53(1) prevents a person from issuing a financial promotion before the issue of a Prospectus provided it clearly states that a Prospectus will be issued and where a copy may be collected in the DIFC.

## **Chapter 3: Marketing of Foreign Funds**

### **54. Marketing of Foreign Funds**

- (1) An Authorised Firm may only Offer a Unit of a Foreign Fund if:
  - (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 is a type of Fund that:
    - (i) has or intends to have only 100 or fewer Unitholders;
    - (ii) has its Units offered to persons only by way of a private placement;
    - (iii) has its Units offered to persons who meet the criteria to be classified as Professional Clients; and
    - (iv) requires an initial subscription of at least US\$50,000 to be paid by a person to become a Unitholder in the Fund.
- (2) For the purposes of Article 54(1), the DFSA may, by Rules, prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of Foreign Funds including:
  - (i) disclosure to be made to persons to whom such Offers are made;
  - (ii) when an offer document produced in accordance with the legislation applicable in a jurisdiction other than the DIFC is to be taken to comply with the requirements of this Law and any Rules made for the purposes of this Law;
  - (iii) whether such Funds are required to be open-ended or closed ended, listed or unlisted or meet any additional requirements relating to its legal form or manner of distribution; and
  - (iv) the circumstances in which the Islamic quality of the Fund may be promoted by using the words Shari'a compliant or Islamic in the name of the Foreign Fund or otherwise holding out that the Fund is in any way Islamic or Shari'a compliant.

### **55. Recognition and designation**

- (1) The DFSA may recognise any country or territory and designate any type of Fund constituted and domiciled in such a country or territory for the purposes of this Law.

- (2) The DFSA may not recognise any country or territory nor designate any Fund in that country or territory for the purposes of this Article unless it is satisfied:
  - (a) that the law and practice under which the relevant Foreign Fund is authorised or approved and supervised in that country or territory is broadly equivalent to the DFSA’s regulatory regime as it applies to Domestic Funds;
  - (b) that the law and practice under which fund managers and eligible custodians are authorised or licenced and supervised in that country or territory is broadly equivalent to the DFSA’s regulatory regime as it applies to such a person; and
  - (c) that adequate arrangements exist, or will exist, for co-operation between the Regulator in that country or territory, responsible for such authorisation, licensing, approval and supervision and the DFSA.
- (3) Any country or territory recognised under this Article shall be a “Recognised Jurisdiction” and the DFSA shall publish a list of such jurisdictions by means of a written notice. The DFSA may remove from that list any jurisdiction or Fund where the DFSA is no longer satisfied that the jurisdiction or Fund meets the criteria in Article 55(2).
- (4) Any Foreign Fund designated under this Article shall be a “Designated Fund” and a description of such a Fund shall be included in the list referred to in Article 55(3).
- (5) Any notice issued under this Article may contain such limitations or restrictions as the DFSA considers appropriate and make different provisions for different cases.

#### **Chapter 4: Misconduct in relation to Domestic and Foreign Funds**

##### **56. Misleading and deceptive statements**

- (1) A person shall not make an Offer of Units if there is:
  - (a) a misleading or deceptive statement in:
    - (i) the relevant Prospectus;
    - (ii) any application form that accompanies the relevant Prospectus; or
    - (iii) any other document that relates to the Offer, or the application form;
  - (b) an omission from any document specified in Article 56(1)(a) of information that is required to be stated or that is necessary to make the statement not misleading or deceptive; or
  - (c) a new circumstance that under the Law or the Rules requires a Supplementary or Replacement Prospectus to be published or issued and this has not been published or issued.

- (2) A person shall not, in or from the DIFC, make a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere.
- (3) This Article does not apply to conduct which occurs outside the DIFC unless the conduct affects the DIFC markets or users of the DIFC markets.

**57. Defences to misconduct**

- (1) A person does not commit a contravention of Article 56, if that person proves that he:
  - (a) made all inquiries that were reasonable in the circumstances; and
  - (b) after doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.
- (2) A person does not commit a contravention of Article 56, if that person proves that reasonable reliance was placed on information given to that person by:
  - (a) if the person is a body corporate, someone other than a director, employee or agent of that body corporate; or
  - (b) if the person is a natural person, someone other than an employee or agent of that individual.
- (3) For the purposes of Article 57(2), a person does not become an agent of another person simply because he performs a particular professional or advisory function for the person.

**58. Liability for misleading statements**

- (1) Any person prescribed in the Rules made by the DFSA as being responsible for a Prospectus is liable to pay compensation to another person who has acquired Units to which the Prospectus relates and who has suffered loss or damage arising from any untrue, deceptive or misleading statement in the Prospectus or the omission from it of any material matter required to have been included in the Prospectus under the Law or Rules.
- (2) The DFSA may make Rules prescribing circumstances in which a person who would otherwise be liable under Article 58(1) will not be so liable.
- (3) Nothing in this Article affects the powers, rights or liabilities that any person may have apart from this Article including the power to institute proceedings under Article 94 of the Regulatory Law 2004.
- (4) Nothing in this Article prevents a person who suffers any loss or damage arising from acting in reliance on any untrue, deceptive or misleading statement made in relation to a Fund or in connection with an Offer of Units by a person other than those referred to in Article 58(1) from being able to recover any loss suffered by that person as a result of relying on such statements.

## **PART 8: TRANSFER SCHEMES AND WINDING UP OF DOMESTIC FUNDS**

### **59. Application of this Part to Protected Cell Companies**

- (1) Where a Domestic Fund uses the form of a Protected Cell Company, the provisions in this Part also apply to individual cells of that company as if each cell were a separate Fund, except where otherwise provided in the Constitution or Prospectus of that Fund in accordance with this Law and any other laws that apply to such Funds.
- (2) The DFSA may, by Rules, prescribe any additional requirements or conditions that apply to such Funds.

### **60. Transfer schemes**

- (1) Pursuant to Part 9 of the Regulatory Law 2004, a Domestic 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 this Article pursuant to the power conferred under Article 113 of the Regulatory Law 2004.

### **61. When a Domestic Fund may be wound up**

A Domestic Fund may be wound up:

- (a) by order of the Court as provided by or under this Law and the Insolvency Law 2004;
- (b) where not inconsistent with such Laws, in the manner and circumstances provided in the Fund's Constitution; or
- (c) in any other circumstances as may be prescribed in the Rules.

### **62. Winding up required by a Fund's Constitution**

The Constitution of a Fund may provide that the Fund is to be wound up:

- (a) at a specified time; or
- (b) in specified circumstances or on the happening of a specified event;

but a provision of the Constitution that purports to provide that the Fund is to be wound up if a particular Authorised Firm ceases to be its Fund Manager or Trustee is of no effect including for the purposes of Article 65(1)(a).

### **63. Winding up at direction of Unitholders**

If the Unitholders of a Fund want the Fund to be wound up, such persons may call an extraordinary meeting to pass a Special Resolution directing the Fund Manager or where appointed the Trustee to wind up the Fund.

**64. Winding up if the Fund's purpose has been accomplished or cannot be accomplished**

- (1) If the Fund Manager of a Fund considers that the Fund is not commercially viable or that the purpose of the Fund:
  - (a) has been accomplished; or
  - (b) cannot be accomplished;it may, in accordance with this Article, take steps to wind up the Fund.
- (2) The Fund Manager shall give to the Unitholders of the Fund and to the DFSA a notice in writing:
  - (a) explaining the proposal to wind up the Fund, including explaining how the Fund's purpose has been accomplished or why that purpose cannot be accomplished;
  - (b) informing the Unitholders of their rights to call a Unitholders' meeting to consider the proposed winding up of the Fund and to vote on any Special Resolution Unitholders propose about the winding up of the Fund; and
  - (c) informing the Unitholders that the Fund Manager or where appointed the Trustee is permitted to wind up the Fund unless a meeting is called to consider the proposed winding up of the Fund within 28 days of the Fund Manager giving the notice to the Unitholders.
- (3) If no meeting is called within that 28 days to consider the proposed winding up, the Fund Manager or where appointed the Trustee may wind up the Fund.

**65. Winding up by order of the Court**

- (1) The Court may order the winding up of a Domestic Fund if:
  - (a) in contravention of this Law, the Fund Manager of the Fund has not been granted consent to incorporate or register the Fund as an Investment Company, or Investment Partnership, as the case may be;
  - (b) in contravention of Part 8 of this Law, the Fund has not been registered with the DFSA or the DFSA has withdrawn the registration of the Fund;
  - (c) there is a stop order made pursuant to Article 69 in effect in relation to the Fund and the Fund Manager is unable to comply with the requirements of this Law, or any other law administered by the DFSA;
  - (d) the Fund Manager or other member of the Fund's Governing Body or where appointed the Trustee believes on reasonable grounds that a scheme of arrangement is not practical or possible;
  - (e) the Court thinks it is just and equitable to make the order;

- (f) within 3 months before the application for the order was made, execution or other process was issued on a judgment, decree or order obtained in the Court or in any other court (whether in the United Arab Emirates or otherwise) which is final and not subject to appeal in favour of a creditor of, and against, the Fund or the Fund Manager in its capacity as the Fund Manager of the Fund and the execution or process has been returned unsatisfied; or
  - (g) an application has been made under Article 25(2) of this Law for the removal of the Fund Manager.
- (2) The Court may make any orders it considers appropriate for the winding up of the Domestic Fund, including but not limited to:
- (a) an order appointing a person other than the Fund Manager or where appointed the Trustee to take responsibility for ensuring the Fund is wound up in accordance with its Constitution and any orders under this Article as the Court thinks expedient (including for the reason that the Fund Manager or Trustee has ceased to exist or is not properly discharging its obligations in relation to the winding up); and
  - (b) directions as to how the Fund is to be wound up including for the reason that the provisions in the Fund's Constitution are inadequate or impracticable.
- (3) Orders under Article 65(1)(a), (b) or (c) or (2) may be made on the application of:
- (a) the Fund Manager or other members of the Governing Body of the Fund;
  - (b) the Trustee;
  - (c) the auditor of the Fund;
  - (d) a Unitholder in the Fund; or
  - (e) the DFSA.
- (4) An order under Article 65(1)(f) may be made on the application of a creditor.

**66. Unclaimed or undistributed property**

If, on completion of the winding up of a Fund, the person who has been winding up the Fund has in his possession or under his control any unclaimed or undistributed money or other property that was part of the Fund Property, the person shall, as soon as practicable, pay the money into Court or transfer the property to the Court.

**67. Reinstatement of a Domestic Fund**

- (1) Where a Domestic Fund has been wound up in accordance or purported compliance with this Law, the Rules or its Constitution, the Court may make any order for reinstatement of the Fund or discontinuance of the winding up proceedings if:



- (a) an application for the reinstatement or the discontinuation of the winding up proceedings is made to the Court by:
    - (i) a person aggrieved by the winding up; or
    - (ii) a person who was winding up the Fund; and
  - (b) the Court is satisfied that it is just and equitable that the Fund be reinstated or the winding up proceedings be discontinued.
- (2) The Court may give any directions it thinks just for putting the Fund and other persons in the same position, as far as possible, as if the Fund had not been wound up.

## **PART 9: DFSA POWERS IN RELATION TO A FUND**

### **68. Powers of supervision**

- (1) Without limiting the generality of the DFSA powers under Part 5 of the Regulatory Law 2004, the DFSA may, at any time, require from the Fund Manager and where appointed the Trustee of a Domestic Fund, such information as is necessary or deemed necessary to ascertain whether the Fund and the Fund Manager or if appointed Trustee are complying with the Fund's Constitution or Prospectus and with any relevant provisions of or made under any legislation administered by the DFSA.
- (2) The Fund Manager and where appointed the Trustee shall comply with any such request for information within any time limit specified by the DFSA.

### **69. Stop orders**

- (1) If the DFSA is satisfied that:
  - (a) any Prospectus or other document referred to in Article 56(1)(a) is misleading or deceptive;
  - (b) any dealings in a Unit in a Domestic Fund would contravene or has contravened this Law or the Rules;
  - (c) the Fund Manager is operating a type of, or specialist class of a Domestic Fund for which it is not authorised under its Licence;
  - (d) that due to exceptional circumstances it is in the interest of the Unitholders in the Fund;
  - (e) it is in the interests of the DIFC; or
  - (f) the Fund Manager has failed to comply with a direction given under Article 27(4);

the DFSA may issue a stop order directing that no Offers, issues, redemptions, sales or transfers of the Units of the Fund be made for such a period of time as it thinks appropriate.

- (2) Upon making a decision in relation to Article 69(1) the DFSA shall without undue delay inform the Fund, the Fund Manager and if appointed the Trustee in writing of its decision and where requested by any such persons the reasons for the decision.
- (3) The DFSA may only exercise its power to issue a stop order if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed stop order.
- (4) The requirements imposed on the DFSA in Article 69(3) shall not apply where the DFSA concludes that any delay likely to arise as a result of such requirements is prejudicial to the interests of the DIFC or Unitholders in the Fund.

- (5) Where pursuant to Article 69(4) the DFSA has issued a stop order directing that no Offers, issues, redemptions, sales or transfers of Units in a Fund be made without providing a prior opportunity to make representations, the DFSA shall:
- (a) provide the relevant person an opportunity to make representations in person and in writing to the DFSA within the period of 14 days, or such further period as may be agreed, from the date on which such direction was made; and
  - (b) provide a response to any such submission, and make any consequential direction, variation or withdrawal of the direction, as it considers appropriate without undue delay.

## **PART 10: THE REGULATORY APPEALS COMMITTEE**

### **70. Jurisdiction**

Without in anyway limiting the jurisdiction of the Regulatory Appeals Committee conferred upon it by or under the Regulatory Law 2004 or any other Law administered by the DFSA, the Regulatory Appeals Committee has additional jurisdiction in accordance with Article 27(2)(k) of the Regulatory Law 2004 to hear and determine any appeal where:

- (a) an applicant appeals the decision of the DFSA in relation to an application for the registration of a Fund;
- (b) a Fund, its Trustee or any member of its Governing Body appeals a decision of the DFSA in relation to the exercise of its power to withdraw the registration of the Fund;
- (c) a Fund, its Trustee or any member of its Governing Body appeals the decision of the DFSA to issue vary or withdraw a notice in relation to the Fund or any member of its Governing Body;
- (d) a Fund, its Trustee or any member of its Governing Body appeals the decision of the DFSA in relation to the proposed alteration of a Fund under Part 8; or
- (e) a Fund, its Trustee or any member of its Governing Body appeals the decision of the DFSA to issue a direction, objection or requirement or a stop order under the Law.

## **PART 11: THE FINANCIAL MARKETS TRIBUNAL**

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

- (1) Without in any way limiting the jurisdiction of the Financial Markets Tribunal conferred upon it by or under the Regulatory Law 2004 or any other Law administered by the DFSA, the Financial Markets Tribunal has additional jurisdiction as set out in Article 71(2).
- (2) The Financial Markets Tribunal has jurisdiction to hear and determine a proceeding in relation to an issue arising out of an Offer of Units of a Fund or in respect of the management and operation of a Fund.

## **PART 12: MISCELLANEOUS**

### **72. Fees**

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

### **73. Filing of material with the DFSA**

Without in any way limiting the generality of the Article 115 of the Regulatory Law 2004, the DFSA may by means of Rules require the filing of certain material, including without limitation, in relation to applications for registration, notification, constitutional documents, Prospectuses, and other documents.

## **SCHEDULE 1 INTERPRETATION**

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

- (1) In the Law, unless the contrary intention appears, a reference to:
  - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
  - (b) a person includes any natural person, body corporate or body incorporated, including a company, partnership, unincorporated association, government or state;
  - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
  - (d) unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official state holiday in the DIFC, the obligation shall take place on the next calendar day which is a business day;
  - (e) a calendar year shall mean a year of the Gregorian calendar; and
  - (f) the masculine gender includes the feminine; and
  - (g) any reference to 'dollars' or '\$' is a reference to United States Dollars.
- (2) The headings in the Law shall not affect its interpretation.

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

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

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Law is the Collective Investments Law 2010 made by the Ruler;
- (e) the Rules are legislation made by the DFSA for the purpose of this Law and are binding in nature;
- (f) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the Chief Executive as notations to the Rules; and (ii) any standard or code of

practice issued by the DFSA Board of Directors which has not been incorporated into the Rules; and

- (g) references to “legislation administered by the DFSA” are references to DIFC Law and rules conferring functions and powers on the DFSA.

### 3. Defined Terms

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

Terms	Definitions
Authorised Firm	A person who holds a Licence to carry on one or more Financial Services prescribed pursuant to Article 42(1) of the Regulatory Law 2004, as an Authorised Firm.
Authorised Market Institution	A person who is licensed by the DFSA in relation to the carrying on of one or more Financial Services prescribed pursuant to Article 42(1) of the Regulatory Law 2004.
Collective Investment Fund	has the meaning given in Article 11 of this Law subject to any Rules made under Article 12 of this Law.
Constitution	in relation to a Fund:  (a) which is in the form of a body corporate, the instrument of incorporation;  (b) which is in the form of trust, the trust deed; and  (c) which is in the form of a partnership, the partnership deed.
Court	the DIFC Court as established under Dubai Law.
Designated Fund	A Foreign Fund which has been designated by the DFSA under Article 55 of this Law.
DFSA	the Dubai Financial Services Authority.
DFSA Board of Directors	the governing body of the DFSA established under Chapter 2 of Part 2 of the Regulatory Law 2004.
DIFC	the Dubai International Financial Centre.
Domestic Fund	has the meaning given in Article 13(2) of this Law
Exempt Fund	has the meaning given in Article 16(4) of this Law.
External Fund	has the meaning given in Article 14(1) of this Law.
External Fund Manager	has the meaning given in Article 20(5) of this Law.



<b>Terms</b>	<b>Definitions</b>
Foreign Fund	has the meaning given in Article 13(3) of this Law
Fund	a Collective Investment Fund.
Fund Manager	Is the person referred to in Article 20(4) of this Law.
Governing Body	a person who is, or a body of persons who together form the directing mind of a Fund including but not limited to: <ul style="list-style-type: none"> <li>a) its Fund Manager, a member of its main or supervisory board, a General Partner; or</li> <li>b) any other person or body of persons exercising equivalent powers and functions in relation to directing the management and operation of a Fund.</li> </ul>
Investment	has the meaning prescribed in the Rules made under the Regulatory Law 2004.
Investment Company	an open or closed ended company established for the sole purpose of collective investment which is incorporated under Article 90 of the Companies Law 2009 in accordance with chapter 13 of the Regulations made under that law and includes a Protected Cell Company incorporated under chapter 12 of the Regulations made under that law.
Investment Partnership	a limited partnership established for the sole purpose of collective investment which is formed and registered under the Limited Partnership Law 2006 in accordance with the regulations made under that Article.
Investment Trust	a trust created under the Investment Trust Law 2006 for the purposes of collective investment.
Islamic Fund	a Fund whose entire Fund operations are, or are intended to be, conducted in accordance with Shari'a.
Law	the Collective Investment Law 2010.
Licence	a licence granted by the DFSA under Chapter 2 of Part 3 of the Regulatory Law 2004.
Listed Fund	a Fund whose Units have been admitted to the Official List of Securities of an Authorised Market Institution.
Official List of Securities	a list of Securities maintained by an Authorised Market Institution in accordance with the Markets Law 2004 and any Rules made for the purposes of that law.
Private Fund	has the meaning given in Article 16(3) of this Law.
Privileged Communication	a communication attracting a privilege arising from the

Terms	Definitions
	provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality.
Prospectus	has the meaning given in Article 50(3) of this Law.
Protected Cell Company	has the meaning given in the Companies Law 2004 or Regulations made for the purposes of that law.
Public Fund	has the meaning given in Article 16(1) of this Law.
Recognised Jurisdiction	a jurisdiction which has been recognised by the DFSA under Article 55 of this Law.
Regulator	the competent authority of a Recognised Jurisdiction which is responsible for regulating financial services in that jurisdiction.
Ruler	the ruler of the Emirate of Dubai.
Rules	has the meaning given in Article 2(e) of Schedule 1 to this Law.
Schedule	a schedule to the Law.
Securities	has the meaning prescribed in the rules made under the Regulatory Law 2004.
Special Resolution	in relation to a Domestic Fund, a resolution passed by a majority of not less than 75% of the votes validly cast (whether on a show of hands or on a poll) for and against the resolution at a general meeting or class meeting of Unitholders, of which notice specifying the intention to propose the resolution as a special resolution has been duly given.
Trustee	a person described in Article 21(1) of this Law.
Unit	a Unit or share representing the rights or interests of Unitholders in a Fund and includes a right or interest in such a Unit.
Unitholder	in relation to a Fund, means any holder of a Unit in the Fund, otherwise known as a 'participant'.