

Appendix 1

In this Appendix underlining indicates new text and striking through indicates deleted text.



The DFSA Rulebook

Collective Investment Rules

(CIR)

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 6A: Using a Fund Platform	✓	✓	✓
Chapter 7: Constitution	✓	✓	Only Rules 7.1.1; 7.1.2(1)(b); 7.1.2(2) & 7.1.4 apply



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Chapter 8: Management and Operation of a Fund	✓	<p>✓</p> <p><u>Rule 8.2.2(2) and sections 8.3 and 8.4, other than Rules 8.3.1(2) and 8.4.1(1)(a), do not apply if the Fund is a Venture Capital Fund.</u></p> <p><u>Rule 8.2.2(2) does not apply if the Fund is a Credit Fund.</u></p>	<p>Only Rules 8.1.1, 8.1A.1, 8.1A.2, 8.3.1(2) (for a Venture Capital Fund), <u>section 8.3 (for a Credit Fund), Rules 8.4.1(1)(a), 8.6A.1 and 8.10.1</u> apply</p>
Chapter 9: Accounting, Audit & Periodic Reporting of a Fund	✓	<p>✓</p> <p>A comparative table for the annual report is not required</p>	<p>✓</p> <p>Rules on interim reports do not apply unless there has been a material change during the interim accounting period.</p> <p>A comparative table for the annual report is not required</p>
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	✓	✓	<p>Only Rules 13.1.1, 13.4.1, 13.5.1, 13.6.3, 13.7, <u>and 13.10 and 13.12</u> apply</p>
Chapter 14: Marketing of Domestic Funds and Prospectus Disclosure	✓	✓	<p>Only Rules 14.1.1, 14.2.1, 14.2.4-14.2.7, 14.4.6, 14.4.11, 14.4.12, <u>14.4.13</u>, 14.5.1, 14.5.2 & section 14.6 apply</p>
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



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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: Content of a Public Fund Prospectus	✓	X	X
APP 8: Guidance for Hedge Fund Managers	✓	✓	✓
APP 9: Use of Price Information Providers	✓	X	X

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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 3.1.4~~3~~15 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 – 3.1.4~~3~~15 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. However, due to the definition of Private Equity Fund, a Fund cannot be both a Private Equity Fund and a Venture Capital Fund.
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. An Authorised Firm may, under Article 54(1)(a), (b) or (c) of the Law, offer Units of a Foreign Fund if the conditions of the relevant paragraph are met. For example, under Article 54(1)(c), the offer is required to be by private placement to Professional Clients who invest at least US\$ 50,000. 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.



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Credit Fund

- 3.1.15** (1) A Domestic Fund is a Credit Fund if its investment objective is to use at least 90% of its Fund Property to Provide Credit, including by acquiring loans.
- (2) A Foreign Fund is a Credit Fund if its investment objective is, or includes, Providing Credit, including by acquiring loans.
- (3) In this Rule, “acquire” a loan means to purchase, take transfer of, take credit risk or part of credit risk attaching to, or take other exposures to, the loan.

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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).

Use of a Fund Platform not permitted

- 6.1.4** An External Fund Manager must not use a Fund Platform.

External management of Credit Fund not permitted

- 6.1.5** An External Fund Manager must not manage a Domestic Fund that is a Credit Fund.

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



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- c. whether the relevant jurisdiction complies with the FATF or other relevant international standards or requirements.

Fund management of external Credit Fund not permitted

6.2.3 A Fund Manager must not manage an External Fund that is a Credit Fund.

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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. The DFSA has, 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) and (4) 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 8.1A.1, 8.1A.2, 8.3.1(2) in the case of a Venture Capital Fund, 8.4.1(1)(a), 8.6A.1 and 8.10.1 in this chapter apply to, or in relation to, a Qualified Investor Fund. Only this Rule and the following requirements in this chapter apply in relation to a Qualified Investor Fund:~~
- (a) Rule 8.1A.1;
 - (b) Rule 8.1A.2;
 - (c) Rule 8.3.1(2), if the QIF is a Venture Capital Fund;
 - (d) section 8.3, if the QIF is a Credit Fund;
 - (e) Rule 8.4.1(1)(a);
 - (f) Rule 8.6A.1, if the QIF is an Open-ended Fund; and
 - (g) Rule 8.10.1.
- (4) ~~Sections 8.3 and 8.4, other than Rules 8.3.1(2) and 8.4.1(1)(a), of this chapter do not apply to a Fund Manager of a Venture Capital Fund that is~~

an Exempt Fund. The following requirements in this chapter do not apply in relation to an Exempt Fund:

- (a) if the Exempt Fund is a Venture Capital Fund, Rule 8.2.2(2), section 8.3 (except for Rule 8.3.1(2)) and section 8.4 (except for Rule 8.4.1(1)(a)); and
- (b) if the Exempt Fund is a Credit Fund, Rule 8.2.2(2).

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. There is an additional obligation on Fund Managers of all Open-ended Domestic Funds to have adequate systems and controls to address liquidity risks in such Fund – see Rule 8.6A.1.
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;



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- 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.
5. When a Fund Manager manages Funds that are Incorporated Cells of an ICC, the Fund Manager is subject to the additional duties under chapter 6A (as well as the duties in this chapter). The Fund Manager will need to ensure that it meets all of its obligations relating to each Fund on the Fund Platform, even if some activities or functions of the Fund Manager are carried out by the Fund Platform.

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[This section is not being amended but is included for reference]

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.



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- (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 (2) does not apply to:
 - (a) a Property Fund in respect of Real Property:
 - (i) that is held by the Fund Manager or by an Incorporated Cell Company in accordance with Rule 13.4.2 or 13.4.2A; or
 - (ii) for which the Fund Manager has made adequate alternative arrangements in accordance with Rule 13.4.2B;
 - (b) a Private Equity Fund where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.3.1; or
 - (c) an Exempt Fund where the Fund Property:
 - (i) comprises of an interest in the operation of a Real Property asset (such as an investment in an infrastructure project); and
 - (ii) the Fund Manager makes alternative arrangements to ensure that the Fund Property is clearly distinguishable as belonging to the Fund, and is segregated from the assets of the Fund Manager and from the assets of any other Fund which the Fund Manager manages.



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12A REQUIREMENTS SPECIFIC TO QUALIFIED INVESTOR FUNDS

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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 to the Fund Manager of a Qualified Investor Fund if it is:
 - (a) a Property Fund;
 - (b) a Private Equity Fund;
 - (c) a Venture Capital Fund; or
 - (d) a Credit Fund; or
 - (~~e~~) a Fund in so far as it is investing in an interest in the operation of a Real Property asset (such as investment in an infrastructure project).
 - (3) If the Fund Manager of a Qualified Investor Fund referred to in (2) itself holds Fund Property of any kind or if it uses a Fund Platform and the Incorporated Cell Company holds Fund Property of any kind, 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 or the Incorporated Cell Company (as the case may be).

Guidance

1. 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. Where Fund Property consists of cash or liquid assets, the assets must also be held under arrangements that clearly identify them as belonging to the Fund, and must be properly segregated from similar assets belonging to the Fund Manager and any other Funds.

2. Where a Fund invests in infrastructure projects (for example, the development of public facilities such as roads, railways or bridges), the Fund Manager may hold self-custody of the Fund Property which consists of the interest in the infrastructure project. However, where it does so, the Fund Manager is not exempt from the overarching obligation under CIR 8.2.2(1) to Unitholders of the QIF to ensure safe custody of the Fund Property. This envisages proper identification and segregation of the interest in the infrastructure project as Fund Property of the QIF.

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13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS

13.1 Application to Qualified Investor Funds

- 13.1.1** Only Rules 13.4.1, 13.5.1, 13.6.3 and sections 13.7, 13.10, ~~and~~ 13.11 and 13.12 of this chapter apply to, or in relation to, a Qualified Investor Fund.

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13.11 Funds investing in Investment Tokens

Restrictions on use of certain terms

- 13.11.1** A Fund Manager of a Fund must ensure that its offer document or marketing material does not refer to it as an “investment token fund”, or otherwise hold it out as being a Fund which has as its main purpose investing in Investment Tokens, unless the Fund meets the criterion in Rule 3.1.14.

Guidance

Other descriptions of a Fund that are likely to fall within the scope of Rule 13.11.1 include the use of terms such as ‘security token fund’, ‘derivative token fund’, ‘share token fund’ and ‘bond token fund’.

- 13.11.2** A Fund Manager of a Fund must ensure that its offer document or marketing material does not hold out that any part of the Fund Property consists or will consist of Investment Tokens, unless the relevant property consists or will consist of Investment Tokens, as defined in GEN Rule A2.1.1(3).

Guidance

Other descriptions of Fund Property that are likely to constitute the property being held out as consisting of Investment Tokens, include the use of terms such as ‘security tokens’, ‘derivative tokens’, ‘share tokens’ and ‘bond tokens’.

13.12 Credit Funds

Application

- 13.12.1** This section applies to the Fund Manager of a Credit Fund.

Guidance

See Rule 3.1.15 for the definition of a Credit Fund.

Investment vehicle

- 13.12.2** The Fund Manager must ensure that a Credit Fund is:

- (a) either an Investment Company or an Investment Partnership;
- (b) a Closed-ended Fund; and
- (c) either an Exempt Fund or a Qualified Investor Fund.

Eligible Custodian not required for Exempt Fund

- 13.12.3** (1) The requirement in Article 27(1)(e) of the Law does not apply to the Fund Manager of a Credit Fund that is an Exempt Fund.
- (2) If the Fund Manager of a Credit Fund referred to in (1) itself holds Fund Property, it must have in place effective arrangements which ensure that the Fund Property is not available to the creditors of the Fund Manager, or of any other Fund it manages, in the event of the Fund Manager’s insolvency.

Guidance

Article 27(1)(e) of the Law requires a Fund Manager to appoint an Eligible Custodian with whom the legal title to the Fund Property is registered, unless the Rules provide otherwise. Rule 12A.3.1(2)(d) provides that this requirement does not apply to a Qualified Investor Fund that is a Credit Fund. Rule 13.12.3 makes similar provision for the requirement not to apply where a Credit Fund is an Exempt Fund.

Restrictions on credit a fund may provide

- 13.12.4** (1) The Fund Manager must ensure that the Credit Fund does not provide any of the following Credit Facilities:
- (a) a letter of credit;
 - (b) a financial guarantee; or
 - (c) trade finance unless the finance is for the trade of goods or services that takes place wholly within the State or another country.
- (2) In (1), “trade finance” means finance provided for the purpose of buying or selling goods or services.

Guidance

Rule 13.12.4 prohibits a Credit Fund from providing certain types of credit that involve greater operational or other risk. This includes a prohibition against providing trade finance unless the finance relates solely to the trading of goods or services within the UAE or another country. The reason for the distinction between trade finance within a country and cross border trade finance is that cross border trade finance is operationally more complex and involves a higher degree of risk. The prohibition does not, however, prevent the use of certain forms of credit that are often used for trade finance such as discounting and factoring of invoices, where they are used only to finance trade within a country or for purposes unrelated to trade finance.

- 13.12.5** The Fund Manager must ensure that the Credit Fund does not Provide Credit to any of the following:
- (a) a natural person;
 - (b) the Fund Manager, a Related Party of the Fund Manager or any other person acting for or on behalf of the Fund Manager;
 - (c) another fund or fund manager;
 - (d) a Financial Institution or a person Related to a Financial Institution;

- (e) a person who intends to use the credit for the purpose of trading in Investments, commodities or crypto assets; or
- (f) a person who intends to use the credit for the purpose of Providing Credit.

Policies and procedures for granting, acquiring, monitoring and managing credit

- 13.12.6** (1) The Fund Manager must ensure that the Credit Fund has in place appropriate policies and procedures relating to:
- (a) the assessment, pricing, granting, managing and acquiring of credit, in accordance with a defined risk appetite statement;
 - (b) credit monitoring, renewal and financing;
 - (c) the criteria, governance and decision making structures for (a) and (b);
 - (d) collateral management;
 - (e) concentration risk management;
 - (f) valuation, including collateral valuation and impairment;
 - (g) identification and management of problem debt;
 - (h) forbearance;
 - (i) delegated authority; and
 - (j) documentation and security.
- (2) The Fund Manager of a Credit Fund must ensure that the policies and procedures referred to in (1) are kept up-to-date and are in writing.

13.12.7 The Fund Manager of a Credit Fund must ensure that:

- (a) credit granting and acquisition of loans is based on sound and well-defined criteria and, for that purpose, the process for approving, amending, renewing and re-financing credit and acquiring loans is clearly established;
- (b) internal methodologies are in place to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the

portfolio level, which do not rely solely or mechanistically on external credit ratings;

- (c) there is ongoing monitoring and administration of the various credit risk bearing portfolio positions and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions;
- (d) measures are in place for the adequate diversification of credit positions having regard to the target markets and overall credit strategy;
- (e) if credit risk mitigation techniques adopted prove less effective than expected, there are measures to address and control credit risks; and
- (f) measures to address concentration risk, arising from exposure to counterparties, include indirect exposures.

Stress testing programme

13.12.8 The Fund Manager of a Credit Fund must ensure that:

- (a) the Fund has in place a comprehensive stress-testing programme;
- (b) stress testing under the programme is carried out at least annually or, if requested by the DFSA, at more frequent intervals specified by the DFSA; and
- (c) the results of stress testing are reported to the Governing Body of the Fund at least annually or, if requested by the DFSA, at more frequent intervals specified by the DFSA.

Guidance

1. The stress testing programme for a Credit Fund should, among other things, identify possible events or future changes in economic conditions that could have unfavourable effects on the Fund's credit exposures and assess the Fund's ability to withstand such changes.
2. The DFSA is likely to review the results of stress testing during the initial stages of a Fund's operation and then on an ad hoc basis once the Fund becomes established.

Risk diversification strategy

13.12.9 The Fund Manager of a Credit Fund must:

- (a) have a clear strategy which aims, within a specified period not exceeding three years from the date the Fund is established, to achieve a diversified

portfolio of loans that limits exposure to any one person or Group to a maximum of 25% of net assets (the “risk diversification limit”);

- (b) take reasonable steps to ensure the risk diversification limit is achieved within the specified period referred to in (a);
- (c) if it is unable to achieve the risk diversification limit within the specified period referred to in (a), then within 30 days from the end of that period, seek Unitholder approval to amend its strategy or to extend the period for achieving its strategy;
- (d) if Unitholder approval is obtained under (c), take reasonable steps to ensure the risk diversification limit is achieved within the extended period, which must not exceed four years from the date the Fund is established; and
- (e) once the risk diversification limit is achieved under (b) or (d) take reasonable steps to ensure it is not breached.

Redemptions and distributions

13.12.10 The Fund Manager of a Credit Fund must ensure that:

- (a) the Fund is established for a finite period not exceeding 10 years; and
- (b) if the Fund’s Constitution, and the laws and regulations under which it was established, permit redemptions or distributions before the end of the period referred to in (a), a redemption or distribution is made only:
 - (i) to the extent that there is unencumbered cash or liquid assets available for redemption or distribution purposes;
 - (ii) if the redemption or distribution will not result in contravention of any liquidity or other requirement under legislation administered by the DFSA; and
 - (iii) if the redemption or distribution has been approved by an ordinary resolution of Unitholders.

Borrowing limit

13.12.11 (1) The Fund Manager must not borrow money for use by the Credit Fund on terms that the borrowing is to be repayable out of the Fund Property, unless:

- (a) the borrowing is in accordance with the Fund's Constitution;
 - (b) the borrowing does not on any day exceed 10% of the net asset value of the Fund Property; and
 - (c) reasonable arrangements are in place that will enable borrowings to be repaid to ensure the limit in (b) is complied with.
- (2) If the limit in (1)(b) is breached, the Fund Manager must take immediate action to rectify that breach.
- (3) In this Rule, "borrowing" includes any arrangement involving the use of a combination of Derivatives to achieve a temporary injection of money into Fund Property in the expectation that the sum will be repaid.

Periodic reports

13.12.12 A Fund Manager of a Credit Fund must ensure that its annual report and interim report include the following information about credit provided and loans acquired:

- (a) a breakdown between senior secured debt, junior debt and mezzanine debt;
- (b) a breakdown between loans with an amortising repayment schedule and loans with bullet repayments;
- (c) a breakdown of the loan-to-value ratio for each loan;
- (d) information about non-performing exposures and aggregated information about exposures subject to forbearance activities; and
- (e) any material changes to the credit assessment and monitoring process.

Guidance

In considering what constitutes a non-performing exposure under this Rule or elsewhere under this section, the relevant classifications in PIB section 4.5 are likely to be useful to classify, manage and report problem debt.

Risk warnings in marketing materials

13.12.13 A Fund Manager must take reasonable steps to ensure that marketing material relating to a Credit Fund includes a prominent risk warning setting out:

- (a) the particular risks that arise from Providing Credit or acquiring loans;

- (b) that return of capital in an investment in the Fund is not guaranteed; and
- (c) that it is possible that investors in Units of the Fund may suffer investment losses or that the Units may become illiquid.

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14.1 Prospectus disclosure for Domestic Funds

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Application

- 14.1.1**
- (1) This chapter applies, subject to (4), to:
 - (a) a Fund Manager of a Domestic Fund;
 - (b) each Director or partner of the Fund Manager;
 - (c) if the Fund Manager is a Corporate Director, the individuals who are Directors of that Corporate Director; and
 - (d) if the Fund 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) Rules 14.4.6, 14.4.11, ~~and 14.4.12~~ and 14.4.13;

- (d) Rules 14.5.1 and 14.5.2; and
- (e) Rules in section 14.6.

Guidance

1. 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).
2. A Fund that is an Incorporated Cell of an Incorporated Cell Company (i.e. a Fund on a Fund Platform) will be a Domestic Fund as the Incorporated Cell is established under the DIFC Companies Law and the ICC Regulations.

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14.4 Additional Prospectus disclosure for specialist Funds

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Prospectus of a Venture Capital Fund

- 14.4.11** A Fund Manager of a Venture Capital Fund must ensure that the Fund's Prospectus includes a prominent risk warning disclosing that the small to medium size businesses in which the Fund invests are highly illiquid investments, are likely to need to be held for a considerable period by the Fund, and also are likely to have a high rate of failure as they are usually new businesses.

Guidance

1. An Information Memorandum issued by a Fund Manager of a Venture Capital Fund is a Prospectus (see Article 50(3)(a) of the Law).
2. The obligation under Article 52(2) of the Law for a Prospectus to include "all the information which an investor would reasonably require and expect to find in a prospectus to make an informed decision to become a member of the Fund" will, among other things, require disclosure of any inherent risks in the proposed investment strategy and the types of investments proposed. If the proposed investment strategy or the types of investment instruments of the Fund are complex, we expect the Prospectus to alert potential investors for the need to seek professional advice.

- 14.4.12** (1) A Fund Manager of a Venture Capital Fund must ensure that the Fund's Prospectus sets out clearly any legal requirements that ordinarily apply to

Fund Managers and their Funds, but which are, by DFSA Rules, disapplied to the Fund Manager in relation to the Venture Capital Fund.

- (2) A Fund Manager is not required under (1) to disclose that a requirement is disapplied if it voluntarily complies in full with the disapplied provision.

Guidance

Examples of legal requirements that do not apply in relation to a Venture Capital Fund and therefore should be clearly set out in the Prospectus under Rule 14.4.12 include not having to appoint an Eligible Custodian, not having an internal audit function and not having a Finance Officer.

Prospectus of a Credit Fund

14.4.13 A Fund Manager of a Credit Fund must ensure that the Fund's Prospectus includes:

- (a) a prominent risk warning disclosing the information set out in Rule 13.12.13;
- (b) information about the specific lending strategy of the Fund;
- (c) information about the extent to which the Fund intends to be concentrated with respect to individual entities, geographic locations and sectors and risks arising from any proposed concentrations;
- (d) its risk diversification strategy as required under Rule 13.12.9; and
- (e) whether borrowing by the Fund is permitted and, if so, the limitations on borrowing including those set out in Rule 13.12.11.

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15 MARKETING OF FOREIGN FUNDS

15.1 Access to Foreign Funds and availability of Prospectus

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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;
- (b) if it is a Property Fund, the requirements in Rule 15.1.7 are satisfied;
- (c) if it is an Exchange Traded Fund, the requirements in Rule 13.9.1 are satisfied; ~~and~~
- (d) if it is a Venture Capital Fund, it is a Closed-ended Fund; and
- (e) if it is a Credit Fund:
 - (i) it is a Closed-ended Fund;
 - (ii) it satisfies the conditions that would be necessary for it to be an Exempt Fund or Qualified Investor Fund if it was a Domestic Fund;
 - (iii) it has in place appropriate policies and procedures for assessing, pricing, granting, managing and acquiring credit;
 - (iv) it has in place an appropriate stress testing programme; and
 - (v) it is subject to regulatory requirements that provide an equivalent level of protection to that provided under section 13.12 and Rule 14.4.13.

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;
 - (b) if the Fund is a Property Fund, it meets the requirements in Rule 15.1.7; ~~and~~
 - (c) if it is an Exchange Traded Fund, the requirements in Rule 13.9.1 are satisfied; and
 - (d) if it is a Credit Fund:
 - (i) it is a Closed-ended Fund;
 - (ii) it satisfies the conditions that would be necessary for it to be an Exempt Fund or Qualified Investor Fund if it was a Domestic Fund;
 - (iii) it has in place appropriate policies and procedures for assessing, pricing, granting, managing and acquiring credit;
 - (iv) it has in place an appropriate stress testing programme; and
 - (v) it is subject to regulatory requirements that provide an equivalent level of protection to that provided under section 13.12 and Rule 14.4.13.



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- (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:
 - (in) 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



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- (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.

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