

Appendix 2

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



The DFSA Rulebook

Collective Investment Rules

(CIR)



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



COLLECTIVE INVESTMENT RULES (CIR)

	✓	✓	
Chapter 8: Management and Operation of a Fund	✓	✓ <u>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>	Only Rules 8.1.1, 8.1A.1, 8.1A.2, 8.3.1(2) (for a Venture Capital Fund), 8.4.1(1)(a), 8.6A.1 and 8.10.1 apply
Chapter 9: Accounting, Audit & Periodic Reporting of a Fund	✓	✓ A comparative table for the annual report is not required	✓ Rules on interim reports do not apply unless there has been a material change during the interim accounting period. A comparative table for the annual report is not required
Chapter 10: Requirements specific to Public Funds	✓	X	X
Chapter 12: Requirements specific to Exempt Funds	X	✓	X
Chapter 12A: Requirements specific to Qualified Investor Funds	X	X	✓
Chapter 13: Additional Requirements for Specialist Funds	✓	✓	Only Rules 13.1.1, 13.4.1, 13.5.1, 13.6.3 and 13.7 and 13.10 apply
Chapter 14: Marketing of Domestic Funds and Prospectus Disclosure	✓	✓	Only Rules 14.1.1, 14.2.1, 14.2.4-14.2.7, 14.4.6, 14.4.11, 14.4.12, 14.5.1, 14.5.2 & section 14.6 apply
Chapter 15: Marketing of Foreign Funds	X	X	X
Chapter 16: Transfer Schemes relating to Domestic Funds	✓	✓	✓
Chapter 17: Winding up of Domestic Funds	✓	✓	✓
APP 1: Delegation & Outsourcing	✓	✓	X
APP 2: Meeting Procedures	✓	X	X
APP 3: Approvals and Notifications	✓	X	X
APP 4: Guidance of Asset Valuation and Pricing	✓	✓	X
APP 5: Constitution of a Domestic Fund	✓	✓	X



COLLECTIVE INVESTMENT RULES (CIR)

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~~213~~13 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.~~4213~~13 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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Private Equity Fund

3.1.6 A Fund is a Private Equity Fund if it:

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

and does not meet the criteria in Rule 3.1.13 to be a Venture Capital Fund.

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Venture Capital Fund

3.1.13 A Fund is a Venture Capital Fund if it is an Exempt Fund or a Qualified Investor Fund and its investment objective is to invest:

- (a) at least 90% of its committed capital in unlisted business ventures that have been incorporated for no more than ten years at the time of the Fund's initial investment in each business; and
- (b) by means of Shares, convertible debt or other instruments carrying equity participation rights or reward that are directly issued by the unlisted business ventures.

Guidance

1. A Venture Capital Fund is expected to finance small to medium sized businesses which are in the early stages of business development and growth. Some business ventures would be using innovative technologies or new ways of doing business. However, where an established large-scale business spins off subsidiaries to expand existing businesses and operations, this would not be considered to be a start-up or small to medium sized business in which a Venture Capital Fund should invest.
2. The term "committed capital" refers to the total amount that Unitholders have agreed to contribute to the Venture Capital Fund.
3. A business venture is "unlisted" if it does not have securities admitted to an official list of securities of an exchange, or admitted to trading on a MTF or an OTF.
4. The type of investments referred to in Rule 3.1.13(b) include Warrants which confer rights to acquire unissued Shares or Units in an unlisted business venture. However, Warrants over unissued Debentures do not confer equity participation rights and are not included. Structured Products can also be used if the contractual rights confer on the

Venture Capital Fund the right to participate in profits and assets of the business venture, in which the Fund invests.

5. A Venture Capital Fund may also invest in a business venture using tokens that give the Fund rights attaching or analogous to holding Shares or Units, i.e. equity participation rights in the profits and assets of the venture, with or without governance rights. However, a right to receive utility tokens or payment tokens issued by a business venture, for example, operating in the distributed ledger or similar technology sector, which does not provide such rights, will not be an equity participation right referred to in Rule 3.1.13(b). The DFSA may consider, on a case-by-case basis, any new arrangements relating to tokens as a means of investing in a venture operating in distributed ledger or similar technology sector, to assess whether those tokens meet the criteria in Rule 3.1.13(b).

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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.
- (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.

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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; or
 - (c) a Venture Capital Fund; or
 - ~~(e)~~(d) 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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13.1 Application to Qualified Investor Funds

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

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13.10 Venture Capital Funds

Guidance

See Rule 3.1.13 for the definition of a Venture Capital Fund.

13.10.1 A Fund Manager must ensure that the investment vehicle used for a Venture Capital Fund is:

- (a) a Closed-ended legal structure; and
- (b) either an Investment Company or an Investment Partnership.

13.10.2 (1) The requirement in Article 27(1)(e) of the Law does not apply to the Fund Manager of a Venture Capital Fund that is an Exempt Fund.

- (2) If the Fund Manager of a Venture Capital 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

- 1. 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)(c) provides that this requirement does not apply to a Qualified Investor Fund that is a Venture Capital Fund. Rule 13.10.2 makes similar provision for the requirement not to apply where a Venture Capital Fund is an Exempt Fund.
- 2. Where a Fund Manager of a Venture Capital Fund holds Fund Property of any type, whether investments, cash or other liquid assets, the Fund Manager must ensure that the property is clearly identifiable as Fund Property and is properly segregated from all other

assets belonging to, or managed by, the Fund Manager, so that it is not available to creditors in the event of the insolvency of the Fund Manager.

3. The Fund Manager of a Venture Capital Fund does not need to have an internal audit function (see GEN Rule 5.3.13) or a Finance Officer (see GEN Rule 7.5.1) if the Fund Manager only manages Venture Capital Funds. The DFSA may, in the case of such a Fund Manager, also consider granting temporary relief from requirements in GEN section 7.5 for the appointment of other Authorised Individuals (such as a Compliance Officer) during the period between authorisation and any initial commitment of capital.
4. The DFSA may, in the case of a Fund Manager of a Venture Capital Fund, also consider granting temporary relief from the requirements in Rule 9.2.1 for the preparation of financial statements for the Fund for the period between authorisation and any initial commitment of capital.
5. The requirements in sections 8.3 and 8.4, other than Rules 8.3.1(2) and 8.4.1(1)(a), do not apply to a Fund Manager of a Venture Capital Fund (see Rule 8.1.1(3) and (4)).
6. If a Fund Manager of a Venture Capital Fund obtains the services of special advisers, for example, to select venture capital businesses to invest in, or to monitor their on-going performance, those advisers should not be held out as being an investment committee of the type referred to in Rule 13.3.1. Such a description would be misleading, unless the Fund Manager chooses to follow the requirements in that Rule.

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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) Rule 14.2.4 to 14.2.7;
 - (c) Rules 14.4.6, 14.4.11 and 14.4.12;
 - (d) Rules 14.5.1 and 14.5.2; and
 - (e) Rules in section 14.6.

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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.

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15.1 Access to Foreign Funds and availability of Prospectus

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Prospectus disclosure relating to Foreign Funds

- 15.1.2** Where an Authorised Firm Offers a Unit of a Foreign Fund to a Person, it must make available to that Person a copy of a current Prospectus relating to the Fund which complies with:
- (a) the additional requirements in Rule 15.1.3 at the time of the Offer; or
 - (b) for a Passported Fund, the relevant requirements of the Home Jurisdiction, including its relevant Fund Protocol rules or regulations.

Guidance

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

15.1.3 (1) The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.

(2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:

- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
- (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
- (c) describes the regulatory status accorded to the Fund by that Regulator;
- (d) includes the following warning:

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

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

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

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

- (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d); ~~and~~
- (f) in the case of an Offer of a Unit in a Money Market Fund, contains the risk warning referred to in Rule 14.4.7-; and
- (g) in the case of an Offer of a Unit in a Venture Capital Fund, contains the risk warning referred to in Rule 14.4.11 and the additional disclosure required under Rule 14.4.12.

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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;
~~and~~
- (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.