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# The DFSA Rulebook

## Fund Protocol Rules

### (FPR)

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## **1. INTRODUCTION**

### **1.1 Application**

**1.1.1** The Rules in this module (FPR) apply to a Fund Manager of a Domestic Fund if:

- (a) the Fund Manager has notified the DFSA of its intention to Register the Domestic Fund as a Passported Fund under these Rules; or
- (b) the Fund Manager and Domestic Fund are included on the DFSA's Register of Passported Funds.

**1.1.2** This module also applies to an Agent and any other Licensed Person who Promotes a Passported Fund in or from the DIFC.

**1.1.3** Nothing in this module prevents a Fund Manager, its Agent or any other Licensed Person from Promoting a Domestic Fund in a Host Jurisdiction in accordance with the legislation applicable in that other Jurisdiction.

### **1.2 Overview and purpose of this module**

#### **Guidance**

1. The three UAE securities regulators: the SCA, the DFSA and the FSRA have agreed a "Protocol" regarding co-ordinated supervision of the marketing and selling of units of domestic funds within the UAE (State). The "Protocol" introduces a notification and registration process to enhance the monitoring and supervision of the financial services associated with the marketing and sale of units in domestic funds. The Protocol sets out a common regulatory framework which is to be implemented by each of the regulators. The Protocol is implemented in the DFSA Rulebook primarily through this module (FPR).
2. FPR specifies procedures and requirements that apply in relation to a Passported Fund where the DFSA is either the Home Regulator or the Host Regulator of the Fund.
3. FPR is applicable to Fund Managers of Domestic Funds (as that term is defined in Rule 1.3.1) but also to other Authorised Firms that propose to carry on, or are carrying on, the marketing and selling of the Units of such Funds from the DIFC to potential investors and Clients situated in the ADGM or the State, outside the DIFC. It will also be relevant to Fund Managers, their Agents and any other Licensed Persons domiciled outside the DIFC that propose to carry on the marketing and selling of the Units of Domestic Funds to potential investors and Clients situated in the DIFC. However, where a Fund Manager or any other Authorised Firm only carries on Financial Services involving the Units of Domestic Funds with or for potential investors and Clients situated within the DIFC, then the Rules in FPR will not be relevant.
4. Provided the Fund Manager has notified the DFSA and complies with other requirements of the Fund Protocol Rules, the manager may market and sell the Units in their Domestic Funds, or continue to do so, to potential investors and Clients situated in the DIFC or in the State outside the DIFC without the need for further authorisation or approval by any authority. Authorised firms other than the Fund Manager may also carry out such activities if the Fund has been registered under the Fund Protocol Rules.

## 1.3 Glossary for FPR

### Guidance

1. Some of the defined terms and abbreviations in this module may also be found in the DFSA's Glossary module (GLO). Where a defined term in this module does not appear in Rule 1.3.1, a Person to whom these Rules apply should refer to GLO to find the meaning.
2. A reference to legislation includes a reference to the legislation as amended or re-enacted from time to time.
3. Note that some terms, such as Fund and Domestic Fund, are defined differently in this module than elsewhere the Rulebook.

**1.3.1** In this module the terms and abbreviations listed in the table below have the following meanings:

Agent	A Licensed Person appointed by the Fund Manager of a Passported Fund to Promote the Units of that Fund.
Authority	The Securities and Commodities Authority (SCA), the Financial Services Regulatory Authority (FSRA) or the Dubai Financial Services Authority (DFSA).
Domestic Fund or Fund	Any arrangement that: (a) is established or domiciled in the UAE; and (b) is a "collective investment fund" as defined under the legislation administered by the DFSA or the FSRA or an "investment fund" as defined under the legislation administered by the SCA.
Fund Manager	The Person licensed by a Home Regulator to manage or operate a Domestic Fund.
Home Regulator	(a) In relation to a Fund, the Authority that is responsible for regulating the Fund in the Jurisdiction where the Fund is established or domiciled; and  (b) In relation to the Fund Manager of a Fund, the Authority that is responsible for regulating the Fund Manager in the Jurisdiction where the Fund is established or domiciled.
Home Jurisdiction	In relation to a Fund, the Jurisdiction in which the Fund is established or domiciled.

Host Jurisdiction	In relation to a Passported Fund, a Jurisdiction into which the Passported Fund may be Promoted under these Rules.
Host Regulator	In relation to a Passported Fund, the Authority in the Jurisdiction into which the Fund may be Promoted (Host Jurisdiction) under these Rules.
Jurisdiction	The UAE (excluding the Financial Free Zones), the Dubai International Financial Centre or the Abu Dhabi Global Market.
Licensed Person	A Person who is licensed or otherwise authorised by an Authority to Promote Funds.
Passported Fund	A Domestic Fund that is registered on its Home Jurisdiction's Register of Passported Funds.
Person	Any natural person, body corporate or body unincorporated, including a company, partnership, unincorporated association, government or state.
Promote Promoted Promotion Promoting	<p>The marketing and sale of units of a Passported Fund to investors domiciled in the UAE by means of any form of communication including a direct or indirect public offering or private placement performed by:</p> <ul style="list-style-type: none"> <li>(a) the Fund Manager;</li> <li>(b) an Agent; or</li> <li>(c) any other Licensed Person.</li> </ul> <p>In this definition "sale" includes any arranging, dealing and advising activities in relation to the units.</p>
Private Fund	<p>A Domestic Fund where:</p> <ul style="list-style-type: none"> <li>(a) the initial subscription paid by a Person to become a Unitholder of the Fund is no less than \$50,000; and</li> <li>(b) participation in the Fund is restricted to Unitholders who are Qualified Investors.</li> </ul>
Public Fund	<p>A Domestic Fund where:</p> <ul style="list-style-type: none"> <li>(a) Units of the Fund are offered to Persons in any of the Jurisdictions by way of a public offer; or</li> <li>(b) any Unitholder of the Fund is a Retail Client.</li> </ul>
Qualified Investor	Any Person who is either a:

	<p>(a) "Deemed" Qualified Investor;</p> <p>(b) "Service-based" Qualified Investor; or</p> <p>(c) "Assessed" Qualified Investor.</p> <p><i>"Deemed" Qualified Investor</i></p> <p>A Person is a "deemed" Qualified Investor if the Person falls within any of the following paragraphs and has not opted to be classified as a Retail Client:</p> <p>(a) a supranational organisation whose members are either countries, central banks or national monetary authorities;</p> <p>(b) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;</p> <p>(c) a public authority or state investment body;</p> <p>(d) an investment exchange or a clearing house that is authorised by an Authority or a financial services regulator outside the UAE;</p> <p>(e) a Person who is authorised to carry on a financial service by an Authority or by a financial services regulator;</p> <p>(f) the management company of a regulated pension fund;</p> <p>(g) a Person which, as at the date of its most recent financial statements, met at least two of the following requirements:</p> <p style="padding-left: 20px;">(i) a balance sheet total of US\$20 million;</p> <p style="padding-left: 20px;">(ii) a net annual turnover of US\$40 million; or</p> <p style="padding-left: 20px;">(iii) own funds or called up capital of at least US\$2 million,</p> <p style="padding-left: 40px;">or, in each case, equivalent amounts in another currency;</p> <p>(h) a Collective Investment Fund or a regulated pension fund;</p> <p>(i) a body corporate whose shares are listed or admitted to trading on any exchange of an IOSCO member country;</p> <p>(j) any other institutional investor whose main activity is to invest in financial instruments, including an entity dedicated to the securitisation of assets or other financial transactions;</p> <p>(k) a trustee of a trust which has, or had during the previous twelve months, assets of at least</p>
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	<p>US\$10,000,000, or an equivalent amount in another currency. An individual trustee on the board of such a trust is only a "deemed" Qualified Investor in relation to that particular trust;</p> <p>(l) a single family office with respect to its activities carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a single family office; or</p> <p>(m) a subsidiary or a parent of any of the Persons described in 1(a)-(l).</p> <p><i>"Service-based" Qualified Investor</i></p> <p>A Person is a "Service-based" Qualified Investor if:</p> <p>(a) the financial service provided to that Person is "Advising on Investments" or "Arranging Credit";</p> <p>(b) the service is provided for the purposes of corporate structuring and financing; and</p> <p>(c) the Person has not opted to be classified as a Retail Client.</p> <p><i>"Assessed" Qualified Investor</i></p> <p>A Person is an "assessed" Qualified Investor if the Person falls within any of the following paragraphs and has not opted to be classified as a Retail Client:</p> <p><i>Individuals</i></p> <p>(1) An individual is an "assessed" Qualified Investor if:</p> <p>(a) the individual has net assets of at least US\$1,000,000 (or an equivalent amount in another currency), the calculation of which must:</p> <p>(i) exclude the value of that person's primary residence; and</p> <p>(ii) include any assets held directly or indirectly by that Person; and</p> <p>(b) either:</p> <p>(i) the individual is, or has been, in the previous two years, an employee in a professional position in a Person authorised to carry on a financial service by an Authority or by a financial services regulator outside the UAE; or</p> <p>(ii) the individual appears, on reasonable grounds, to have sufficient experience and</p>
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	<p>understanding of relevant financial markets, products or transactions and any associated risks.</p> <p>(2) Any legal structure or vehicle, such as an undertaking, trust or foundation, is an “assessed” Qualified Investor if it is set up solely for the purpose of facilitating the management of an investment portfolio of an individual assessed as meeting the requirements in (1).</p> <p>(3) An individual who has a joint account (a "joint account holder") with an individual assessed as meeting the requirements in (1) (the "primary account holder") is an “assessed” Qualified Investor if:</p> <ul style="list-style-type: none"> <li>(a) the joint account holder is a family member of the primary account holder;</li> <li>(b) the account is used for the purposes of managing investments for the primary account holder and the joint account holder; and</li> <li>(c) the joint account holder has confirmed in writing that investment decisions relating to the joint account are generally made for, or on behalf of, him by the primary account holder.</li> </ul> <p>(4) An individual classified as a Qualified Investor may operate a joint account with more than one family member. Provided that each such family member meets the requirements set out in (3) above, they may all be classified as Qualified Investors.</p> <p>(5) A legal structure or vehicle of a Qualified Investor which is itself classified as a Qualified Investor may not opt to be treated as a Retail Client, as that right belongs to the Qualified Investor for whose purposes the vehicle is set up.</p> <p>(6) A family member of a Qualified Investor classified as a Qualified Investor under (3) above does not per se have a right to opt to be classified as a Retail Client with regard to the operation of the joint account.</p> <p>(7) A family member of a Qualified Investor classified as a Qualified Investor under (3) may withdraw his confirmation given to have decisions on behalf of him made by the Qualified Investor who is the primary account holder of the joint account. An Authorised Person must ensure that once such a withdrawal is made, the withdrawing individual is no longer classified as a Qualified Investor.</p> <p><i>Undertakings</i></p>
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	<p>(8) An undertaking is an "assessed" Qualified Investor if the undertaking:</p> <ul style="list-style-type: none"> <li>(a) has own funds or called up capital of at least US\$1,000,000 (or an equivalent amount in another currency); and</li> <li>(b) appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks.</li> </ul> <p>(9) An undertaking is an "assessed" Qualified Investor if the undertaking has a controller, holding company, a subsidiary or a joint venture partner which meets the requirement to be an "assessed" Qualified Investor under (1), (2) or (4), or a "deemed" Qualified Investor.</p>
Register of Passported Funds	<ul style="list-style-type: none"> <li>(a) In relation to the DFSA, the register of Passported Funds maintained by the DFSA; and</li> <li>(b) In relation to another Authority, the register of Passported Funds maintained by that Authority.</li> </ul>
Retail Investor	A Person who is not classified as a Qualified Investor
Unit	A unit in or a share representing the rights or interests of a Unitholder in a Fund.
Unitholder	In relation to a Fund, any holder of a Unit in the Fund or of any right or interest in such a Unit, and whose name is entered on the Fund's register in relation to that Unit.

## **2. PASSPORTED FUNDS**

### **2.1 Passported Funds**

- 2.1.1** This section applies if the DIFC is the Home Jurisdiction or Host Jurisdiction of a Passported Fund.
- 2.1.2** A Domestic Fund that is registered as a Passported Fund in accordance with these Rules must be either a Public Fund or a Private Fund.
- 2.1.3** If a Passported Fund is a Private Fund, the Fund Manager, its Agent and any other Licensed Person may Promote the Units in the Fund only by way of private placement to Qualified Investors and if the initial subscription is not less than \$50,000 (or its equivalent in another currency).
- 2.1.4** If a Passported Fund is a Public Fund, the Fund Manager, its Agent and any other Licensed Person may Promote the Units in the Fund to Retail Investors and Qualified Investors.

#### **Guidance**

A Public Fund as defined in these Rules corresponds to a Public Fund under CIR and a Private Fund as defined in these Rules corresponds to an Exempt Fund or QIF under CIR.

### 3 PROCEDURE FOR NOTIFICATION

#### 3.1 Notification for Private Funds

**3.1.1** This section applies if the DFSA is the Home Regulator of a Private Fund.

**3.1.2** If the Fund Manager of a Private Fund wishes to use the passporting procedures under these Rules, it must notify the DFSA of its intention that the Private Fund be a Passported Fund.

**3.1.3** The notice referred to in Rule 3.1.2 must:

- (a) be in such form as the DFSA may from time to time determine;
- (b) identify the one or more Host Jurisdictions in which the Private Fund will be Promoted;
- (c) identify the Agents (if any) that will conduct the Promotion of the Private Fund;
- (d) include a copy of the offering document containing a disclaimer to the following effect:

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

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

No other regulatory authority in the UAE has any responsibility for reviewing or verifying this prospectus or any other documents in connection with the promotion of this fund. Accordingly, no regulatory authority in the UAE has approved this prospectus or any other associated documents, nor taken any steps to verify the information set out herein, and therefore no regulatory authority in the UAE has any responsibility for the same.

This Passported Fund is a Private Fund and, accordingly, the units thereof may only be promoted to Qualified Investors in [*insert relevant Host Jurisdiction(s)*] by means of private placement.

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

If you do not understand the contents of this document you should

consult an authorised financial adviser.”;

- (e) include the relevant fee referred to in chapter 7 of these Rules; and
- (f) contain, and be accompanied by, such other information as the DFSA may reasonably require.

**3.1.4** The DFSA will:

- (a) within 5 business days of receipt of the duly completed notice referred to in Rules 3.1.2 and 3.1.3, and subject to Rule 3.1.5, provide a notice of the intent to use the passporting procedures to the Host Regulator in the relevant Host Jurisdiction where the Passported Fund is intended to be Promoted; and
- (b) promptly following confirmation from the relevant Host Regulator that its respective Register of Passported Funds has been updated to include the details of the Passported Fund:
  - (i) publish the details of the Passported Fund on the DFSA's Register of Passported Funds; and
  - (ii) notify the Fund Manager that registration on the DFSA's Register of Passported Funds is complete.

**3.1.5** (1) The DFSA will not provide a notice under Rule 3.1.4(a):

- (a) if it considers that the Fund Manager or the Private Fund does not comply with, or it has reasonable grounds for determining that the Fund Manager or the Private Fund may in the future not comply with, applicable legislation including these Rules; or
- (b) if it considers that it is necessary and appropriate to refrain from doing so in order to further one or more of its objectives.

- (2) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to not provide a notice under (1).

**3.1.6** (1) The DFSA will immediately notify the Fund Manager of its decision not to provide a notice in accordance with Rule 3.1.5.

- (2) If the DFSA decides to not provide a notice, the Fund Manager of the Fund may refer the matter to the Financial Markets Tribunal for review.

**3.1.7** Following the earlier of:

- (a) the Passported Fund appearing on the Register of Passported Funds of the relevant Host Jurisdiction(s) referred to in Rule 3.1.4(b); or
- (b) the Fund Manager being notified that registration on the DFSA's Register of Passported Funds is complete under Rule 3.1.4(b)(ii),

the Passported Fund may, subject to these Rules (including Rule 3.1.8), be

Promoted to Qualified Investors in the Jurisdiction specified in its notification.

- 3.1.8** If the DFSA receives notice from a Host Regulator stating that the name of the Passported Fund is not available for use in the relevant Host Jurisdiction because it is already in use, or the use of the name is subject to restriction in that Host Jurisdiction, then the DFSA shall require the Fund Manager to immediately cease Promotion of the Passported Fund and the Passported Fund to adopt, as soon as practicable, an alternative name in the DIFC and in the relevant Host Jurisdiction in order to re-commence Promotion.
- 3.1.9** If, at any time between the notification under Rule 3.1.2 and the commencement of Promotion in a Host Jurisdiction, the Fund Manager becomes aware of any material change, error, or omission reasonably likely to be relevant to such notification, the Fund Manager must give written notice to the DFSA without delay. The DFSA will promptly provide the relevant Host Regulator with all relevant details of such material change, error or omission.
- 3.1.10** If, as a result of any material change, error, or omission referred to in Rule 3.1.9, the Fund Manager will no longer comply with applicable legislation, including these Rules, or if the DFSA otherwise considers it necessary and appropriate in the circumstances, the DFSA shall take all due measures, including, if necessary, the de-registration of the Private Fund from the DFSA's Register of Passported Funds in accordance with these Rules.

## **3.2 Notification for Public Funds**

- 3.2.1** This section applies if the DFSA is the Home Regulator of a Public Fund.
- 3.2.2** If the Fund Manager of a Public Fund wishes to use the passporting procedures under these Rules, it must notify the DFSA of its intention that the Public Fund be a Passported Fund.
- 3.2.3** The notice referred to in Rule 3.2.2 must:
- (a) be in such form as the DFSA may from time to time determine;
  - (b) include a certification, given on behalf of the Fund Manager, to the effect that the Public Fund meets, and will continue to meet, the minimum requirements set out in App1;
  - (c) identify the one or more Host Jurisdictions in which the Public Fund will be Promoted;
  - (d) identify the Agents (if any) that will conduct the Promotion of the Public Fund;
  - (e) include a copy of the prospectus containing a disclaimer to the following effect:

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

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

No other regulatory authority in the UAE has any responsibility for reviewing or verifying this prospectus or any other documents in connection with the promotion of this fund. Accordingly, no regulatory authority in the UAE has approved this prospectus or any other associated documents, nor taken any steps to verify the information set out herein, and therefore no regulatory authority in the UAE has any responsibility for the same.

This Passported Fund is a Public Fund and, accordingly, the units thereof may be promoted, including by means of a public offer of the units for public subscription, to persons in [*insert relevant Host Jurisdiction(s)*].

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

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

- (f) include the relevant fee referred to in chapter 7 of these Rules;
- (g) include a copy of the Key Investor Information Document (KIID) in both English and Arabic; and
- (h) contain, and be accompanied by, such other information as the DFSA may reasonably require.

**3.2.4** The DFSA will:

- (a) within 5 business days of receipt of the duly completed notice referred to in Rules 3.2.2 and 3.2.3, and subject to Rule 3.2.5, provide notice of the intent to use the passporting procedures to the Host Regulator in the relevant Host Jurisdiction where the Passported Fund is intended to be Promoted; and
- (b) promptly following confirmation from the relevant Host Regulator that its respective Register of Passported Funds has been updated to include the details of the Passported Fund:
  - (i) publish the details of the Passported Fund on the DFSA's Register of Passported Funds; and
  - (ii) notify the Fund Manager that registration on the DFSA's Register of Passported Funds is complete.

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- 3.2.5** (1) The DFSA will not provide a notice under Rule 3.2.4(a):
- (a) if it considers that the Fund Manager or the Public Fund does not comply with, or it has reasonable grounds for determining that the Fund Manager or the Public Fund may in the future not comply with, applicable legislation, including these Rules; or
  - (b) if it considers that it is necessary and appropriate to refrain from doing so in order to meet its objectives.
- (2) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to not provide a notice under (1).
- 3.2.6** (1) The DFSA will immediately notify the Fund Manager of its decision not to transmit a notice in accordance with Rule 3.2.5.
- (2) If the DFSA decides not to provide a notice, the Fund Manager of that Fund may refer the matter to the Financial Markets Tribunal for review.
- 3.2.7** Following the earlier of:
- (a) the Passported Fund appearing on the Register of Passported Funds of the relevant Host Jurisdiction(s) referred to in Rule 3.2.4(b); or
  - (b) the Fund Manager being notified that registration on the DFSA's Register of Passported Funds is complete under Rule 3.2.4(b)(ii),
- the Passported Fund may, subject to these Rules (including Rule 3.2.8), be Promoted to any Persons in the Host Jurisdiction specified in its notification.
- 3.2.8** If the DFSA receives notice from a Host Regulator stating that the name of the Passported Fund is not available for use in the relevant Host Jurisdiction because it is already in use, or the use of the name is subject to restriction in that Host Jurisdiction, then the DFSA shall require the Fund Manager to immediately cease Promotion of the Passported Fund and the Passported Fund to adopt, as soon as practicable, an alternative name in the DIFC and in the relevant Host Jurisdiction in order to re-commence Promotion.
- 3.2.9** If, at any time between the notification under Rule 3.2.2 and the commencement of Promotion in a Host Jurisdiction, the Fund Manager becomes aware of any material change, error, or omission reasonably likely to be relevant to such notification, the Fund Manager must give written notice to the DFSA without delay. The DFSA will promptly provide the relevant Host Regulator with all relevant details of the material change, error or omission.
- 3.2.10** If, as a result of any material change, error, or omission referred to in Rule 3.2.9, the Fund Manager will no longer comply with applicable legislation, including these Rules, or if the DFSA otherwise considers it necessary in the circumstances, the DFSA shall take all due measures, including, if necessary, the de-registration of the Public Fund from the DFSA's Register of Passported Funds in accordance with these Rules.



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## **4 REGISTRATION OF NON-DIFC PASSPORTED FUNDS**

### **4.1 Notifications received by the DFSA (Host Regulator)**

**4.1.1** This section applies if the DFSA is the Host Regulator of a Passported Fund.

**4.1.2** Promptly following receipt by the DFSA of a notice provided by a Home Regulator to the effect that a Private Fund or Public Fund domiciled or registered in that Jurisdiction is a Passported Fund, the DFSA will update its Register of Passported Funds to include details of that Passported Fund. The DFSA will notify the relevant Home Regulator once the DFSA's Register of Passported Funds has been updated.

**4.1.3** As soon as the Register of Passported Funds has been updated under Rule 4.1.2, the Passported Fund may, in accordance with applicable legislation, including these Rules, be Promoted in the DIFC:

- (a) where the Passported Fund is a Private Fund, to Qualified Investors in the DIFC; and
- (b) where the Passported Fund is a Public Fund, to any Persons in the DIFC.

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## **5 REGISTER OF PASSPORTED FUNDS**

### **5.1 Register of Passporting Funds**

**5.1.1** This section applies if the DIFC is the Home Jurisdiction or Host Jurisdiction of a Passporting Fund.

**5.1.2** The DFSA will establish and maintain a Register of Passporting Funds.

**5.1.3** The DFSA's Register of Passporting Funds will include the prescribed details of:

- (a) each Passporting Fund accepted for registration by the DFSA as Home Regulator, and
- (b) each Passporting Fund notified to the DFSA as Host Regulator by another Authority.

**5.1.4** The DFSA's Register of Passporting Funds will include at a minimum the following information in relation to each Passporting Fund appearing on it:

- (a) the name and registered office of the Passporting Fund;
- (b) the name and registered office of the Fund Manager of the Passporting Fund;
- (c) the names of the Agents (if any) Promoting the Passporting Fund;
- (d) in relation to a Passporting Fund domiciled in the DIFC, the fact that the Fund Manager is authorised by the DFSA and, in relation to a Passporting Fund domiciled in another Jurisdiction, the identity of the Authority that regulates the Fund Manager in that Jurisdiction;
- (e) whether the Passporting Fund is a Private Fund or a Public Fund; and
- (f) the date of registration of the Passporting Fund on the DFSA's Register of Passporting Funds.

**5.1.5** At the request of another Authority, the DFSA will, as soon as practicable, make its Register of Passporting Funds available to that Authority.

## **6 MANAGEMENT AND OPERATION OF A PASSPORTED FUND**

### **6.1 Compliance with Constitution**

**6.1.1** This section applies if the DIFC is the Home Jurisdiction of a Passported Fund.

**6.1.2** The Fund Manager of a Passported Fund must:

- (a) ensure that the Passported Fund is at all times managed and operated in compliance with its Constitution, with the laws of the jurisdiction in which it is domiciled, and with these Rules; and
- (b) maintain, or cause to be maintained, a Unitholder register for the Passported Fund.

### **6.2 Ongoing Appointment of Fund Manager**

**6.2.1** This section applies if the DIFC is the Home Jurisdiction or the Host Jurisdiction of a Passported Fund.

**6.2.2** The governing body or trustee of a Passported Fund must at all times have appointed a Fund Manager that is authorised by its Home Regulator to conduct the activity of fund management in its Home Jurisdiction.

### **6.3 Promotion by Fund Managers, Agents and other Licensed Persons**

**6.3.1** This section applies if the DIFC is the Host Jurisdiction of a Passported Fund.

**6.3.2** The Fund Manager, its Agent and any other Licensed Person established or domiciled in another Jurisdiction, may Promote a Passported Fund in the DIFC without the need for further authorisation or approval by the DFSA, provided that such Promotion activities are limited to the Passported Fund and the DIFC is nominated as a Host Jurisdiction on the relevant Registers of Passported Funds.

**6.3.3** In performing any activities in connection with the Promotion of a Passported Fund in the DIFC, the Fund Manager, its Agent and any other Licensed Person must comply at all times with the legislation applicable to them in the Jurisdiction in which they are domiciled.

### **6.4 Additional criteria for Public Funds**

**6.4.1** This section applies if the DIFC is the Home Jurisdiction or the Host Jurisdiction of a Passported Fund.

**6.4.2** The Fund Manager of a Passported Fund that is a Public Fund must ensure that it meets the minimum requirements for Public Funds set out in App1.

### **6.5 Custodian**

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- 6.5.1** This section applies if the DIFC is the Home Jurisdiction or the Host Jurisdiction of a Passported Fund.
- 6.5.2** To the extent that, under the legislation of its Home Jurisdiction, a custodian is required to be appointed for a Private Fund, the Fund Manager of a Passported Fund that is a Private Fund must ensure that the custodian:
- (a) meets all requirements as to eligibility and regulatory status as are imposed under the relevant legislation in its Home Jurisdiction; and
  - (b) is not the Fund Manager.

**Guidance**

Passported Private Funds domiciled in the DIFC have to comply with the applicable CIR requirements regarding custodians.

- 6.5.3** The Fund Manager of a Passported Fund that is a Public Fund must ensure that, except in the case of a Property Fund, a custodian is appointed at all times in relation to the Fund. Such custodian must:
- (a) be authorised by the Securities and Commodities Authority to carry on the activity of providing custody or safekeeping and administration of property of a Fund; and
  - (b) not be the Fund Manager.
- 6.5.4** Nothing in this section prevents a custodian appointing sub-custodians in the UAE or elsewhere.

**6.6 Reporting changes to the DFSA**

- 6.6.1** This section applies if the DFSA is the Home Regulator of a Passported Fund.
- 6.6.2** The Fund Manager of the Passported Fund must notify the DFSA as soon as practicable of any material events, in accordance with the applicable legislation. In particular, but without limitation, a Fund Manager or the governing body or trustee of a Passported Fund must notify the DFSA as soon as practicable, and in any case no later than 7 days after it becomes aware, of any of the following events:
- (a) the Fund Manager intends to retire as manager of the Passported Fund;
  - (b) it is proposed that a successor manager will be appointed in relation to the Passported Fund;
  - (c) the Fund Manager has been removed or replaced as manager of the Passported Fund;
  - (d) any material service provider to the Passported Fund (including, without limitation, any custodian) or an Agent resigns, is appointed, is removed, or is replaced;
  - (e) the prospectus or offering document relating to the Passported Fund

has been amended or replaced;

- (f) winding-up of the Passport Fund has commenced; or
- (g) the Fund Manager intends to vary or revoke its authorisation with its Home Regulator, or any of its permissions contained in that authorisation.

**6.6.3** The notification referred to in Rule 6.6.2 must be in such prescribed form as the DFSA may direct from time to time. At a minimum, the notification must be accompanied by reasonable detail of the event and, where the prospectus or offering document has been amended or replaced, by a copy of the new prospectus or offering document.

**6.6.4** Upon receiving such a notification as described in Rule 6.6.2, the DFSA must without undue delay notify the relevant Host Regulator of such changes.

**6.6.5** To the extent that a Fund Manager is already required to make a notification to the DFSA under applicable legislation in relation to a matter set out in this section, the provisions of this section do not require a further notification to be made.

## **7 FEES**

### **7.1 Notification and Annual Fees**

**7.1.1** This chapter applies if the DFSA is the Home Regulator of a Passported Fund.

**7.1.2** A Fund Manager or its duly appointed agent must pay to the DFSA the notification fee and annual fees specified in FER in respect of the Fund.

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## **8 DE-REGISTRATION OF PASSPORTED FUNDS**

### **8.1 De-registration by the DFSA**

**8.1.1** This section applies if the DFSA is the Home Regulator of a Passported Fund.

**8.1.2** The DFSA may de-register a Passported Fund:

- (a) on its own initiative if either the Passported Fund or the Fund Manager is not complying, or is likely not to comply, with any applicable legislation, including these Rules, or in accordance with Rules 3.1.10 or 3.2.10;
- (b) at the written request of the Fund Manager;
- (c) upon the commencement of the winding-up of the Passported Fund; or
- (d) in respect of a specific Host Jurisdiction, at the request of the Host Regulator.

**8.1.3** The DFSA will promptly update its Register of Passported Funds to reflect any de-registration.

**8.1.4** Any removal of a Passported Fund from the DFSA's Register of Passported Funds by the DFSA will be promptly notified to the Fund Manager and each relevant Host Regulator.

**8.1.5** The Fund Manager, its Agents and any other Licensed Person must immediately cease all Promotion of the relevant Passported Fund in a Host Jurisdiction in accordance with these Rules upon the earlier of its removal from the Host Jurisdiction's Register of Passported Funds or the Register of Passported Funds maintained by the DFSA.

**8.1.6** (1) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to de-register a Passported Fund under this section.

- (2) If the DFSA decides to de-register a Passported Fund, the Fund Manager of that Passported Fund may refer the matter to the Financial Markets Tribunal for review.

### **8.2 Notification of de-registration by Home Regulator to the DFSA**

**8.2.1** This section applies if the DFSA is the Host Regulator of a Passported Fund.

**8.2.2** If a Home Regulator informs the DFSA that a Passported Fund has been de-registered and removed from the Register of Passported Funds maintained by that Home Regulator, the DFSA will promptly update the Register of Passported Funds maintained by it to reflect such de-registration.

**8.2.3** All Promotion of the Passported Fund in the DIFC under these Rules must immediately cease upon its removal from the earlier of the relevant Home Jurisdiction's Register of Passported Funds or the Register of Passported

Funds maintained by the DFSA.



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## **9 SUPERVISORY AND INVESTIGATORY POWERS**

### **9.1 Requests for Assistance**

**9.1.1** This section applies if the DFSA is the Home Regulator of a Passported Fund.

**9.1.2** The DFSA may request assistance from the Host Regulator to separately conduct an investigation relating to the Passported Fund in the Host Jurisdiction. Upon completion of the DFSA's investigation, it will inform the relevant Host Regulator of its findings, including any penalties imposed on the Fund Manager or any other Person in relation to the Passported Fund.

### **9.2 Inspections**

**9.2.1** This section applies if the DFSA is the Home Regulator of a Passported Fund.

**9.2.2** Where the DFSA receives a request from a Host Regulator to carry out an on-site inspection in relation to a Passported Fund, the DFSA must, subject to Rule 9.3.2, permit such inspection and accompany the Host Regulator during the on-site inspection.

**9.2.3** Prior to the inspection, the Host Regulator must provide to the DFSA:

- (a) information on the purpose of such a request and the names of officials from the Host Regulator that will be involved; and
- (b) copies of public and non-public documents and information in the Host Regulator's possession that may assist in any inquiry and that may be reasonably relevant.

### **9.3 Circumstances in which the DFSA may decline a request for an inspection**

**9.3.1** This section applies if the DFSA is the Home Regulator of a Passported Fund.

**9.3.2** The DFSA may refuse to act on a request by a Host Regulator under section 9.2 for cooperation in relation to an inspection if:

- (a) the DFSA has already commenced, or concluded, enforcement action in respect of the same conduct and the same Persons; or
- (b) judicial proceedings have already been initiated, or concluded, in respect of the same conduct and the same Persons.

### **9.4 Exercise of DFSA's powers at the request of another authority**

**9.4.1** This section applies if the DFSA is the Home Regulator or Host Regulator of a Passported Fund.

**9.4.2** The DFSA's powers may be exercised at the request of, or for the purpose of assisting, another Authority in relation to a Passported Fund.

**9.4.3** If a request has been submitted to the DFSA to exercise its powers under these Rules, the DFSA will, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary and permitted under applicable law to do so.

**9.4.4** In deciding whether or not to exercise its powers, the DFSA may take into account factors including, but not limited to, the following:

- (a) whether the case concerns the breach of a law, or other requirements, in the DIFC;
- (b) the seriousness of the case and its importance in the public interest to give the assistance sought; and
- (c) whether it would further one or more of the DFSA's statutory objectives.

**9.4.5** Nothing in this section limits any other powers that DFSA may exercise at the request of, or for the purpose of assisting, another Authority.

## **9.5 Exercise of the DFSA's powers as Host Regulator**

**9.5.1** This section applies if the DFSA is the Host Regulator of a Passported Fund.

**9.5.2** If, despite the measures, if any, taken by a Home Regulator in relation to a Passported Fund, a Fund Manager's activities, or the activities of its Agent or any other Licensed Person that is Promoting the Passported Fund in the DIFC, appear to the DFSA to be materially prejudicial to either:

- (a) Unitholders of the Passported Fund who are situated in the DIFC; or
- (b) the interests of the DIFC,

the DFSA may request urgent discussions with the Home Regulator.

**9.5.3** If the urgent discussions referred to in Rule 9.5.2 fail to resolve the issues to the satisfaction of the DFSA within a period that is reasonable in the circumstances, then the DFSA may take all appropriate measures needed in order to protect the interests of Unitholders situated in the DIFC or the interests of the DIFC.

**9.5.4** Subject to Rule 9.5.2, the DFSA may take any action that is necessary and appropriate to enable it to further its objectives, including, but not limited to:

- (a) preventing the Fund Manager, its Agent or any other Licensed Person from further Promotion of the Passported Fund in the DIFC, including de-registering the relevant Passported Fund from its Register of Passported Funds; and
- (b) imposing a penalty on the Fund Manager, its Agent or any other Licensed Person, of such amount as it considers appropriate under the applicable legislation of the DIFC, following consultation with the Home Regulator.

## **APP 1 MINIMUM REQUIREMENTS FOR PUBLIC FUNDS**

**A1.1.2** The Fund Manager of a Passported Fund that is a Public Fund must ensure that:

- (a) the incorporation and other legal formalities relating to the formation of the Public Fund are completed;
- (b) if it is a trust, it has a trustee which meets the requirements set out for acting as a trustee of a Public Fund in the Home Jurisdiction;
- (c) it has appointed an auditor who complies with the relevant audit rules in the Home Jurisdiction; and
- (d) the Prospectus for the Fund meets the minimum requirements set out in A1.1.2.

**A1.1.2** The Prospectus for a Passported Fund that is a Public Fund must contain, at a minimum, the information prescribed in the following table.

### **Guidance**

1. The Rules in this module do not require an additional Prospectus to be made available for a Public Fund that is domiciled in the DIFC. If the Fund has a Prospectus that complies with the Rules in CIR, a Fund Manager would comply with A1.1.2 if it amends its Prospectus so as to include the additional minimum content required under this Rule that is not required under CIR.
2. The Prospectus for a Passported Fund must be made available in English. The Key Investor Information Document (KIID) referred to in the table in A1.1.2 must be made available in both English and Arabic.

<b>1. Document Status</b>	
	A statement that this document is the Prospectus of the Public Fund and is valid as at a particular date which shall be the date of the Prospectus.
<b>2. Description of the Fund</b>	
	Information detailing: <ul style="list-style-type: none"> <li>(a) the name of the Public Fund and the fact that it is a Public Fund established in the DIFC;</li> <li>(b) the effective date of commencement of the Public Fund's operations and, if the duration of the Public Fund is not unlimited, when it will or may terminate;</li> <li>(c) the legal structure of the Public Fund;</li> <li>(d) the basis upon which persons are eligible to participate in the Public Fund and, where applicable, the minimum initial investment;</li> <li>(e) that the Unitholders are not liable for the debts of the Public Fund,</li> </ul>

	<p>unless the applicable legislation in the DIFC prescribes otherwise and, if so, a statement specifying the circumstances in which Unitholders may be so liable;</p> <p>(f) the base currency of the Public Fund and, where relevant, the maximum and minimum sizes of the Public Fund's capital;</p> <p>(g) the circumstances in which the Public Fund may be wound up; and</p> <p>(h) that no Units will be issued on the basis of the Prospectus after the expiry date specified in the Prospectus.</p>
<b>3. Investment Objectives and Policy</b>	
	<p>Sufficient information to enable a Unitholder or a prospective Unitholder to ascertain:</p> <p>(a) the investment objectives of the Public Fund and its investment policy for achieving those investment objectives;</p> <p>(b) the Public Fund's policy and any operating restrictions in relation to the use of debt;</p> <p>(c) a description of any restrictions in the assets in which investment may be made; and</p> <p>(d) the extent, if any, to which that investment policy does not envisage remaining fully invested at all times.</p> <p>If intended, whether the Fund Property may consist of Units in Domestic Funds which are managed or operated by the Fund Manager or by one of its associates and a statement specifying:</p> <p>(a) the basis of the maximum amount of the charges in respect of transactions in the Fund invested in; and</p> <p>(b) the extent to which any such charges will be reimbursed to the Public Fund.</p>
<b>4. The characteristics of Units in the Public Fund</b>	
	<p>Information as to:</p> <p>(a) the names of the classes of Units of the Public Fund in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes of Units in the Public Fund;</p> <p>(b) how Unitholders may exercise their voting rights and what they are; and</p> <p>(c) the circumstances where a mandatory redemption, cancellation or conversion of a Unit from one class to another may be required.</p>
<b>5. The Fund Manager</b>	
	<p>The following particulars of the Fund Manager:</p>

	<ul style="list-style-type: none"> <li>(a) its name, the jurisdiction in which the Fund Manager is incorporated and the date of such incorporation;</li> <li>(b) confirmation that the Fund Manager has been authorised to manage a Fund by the DFSA;</li> <li>(c) its address;</li> <li>(d) the names and brief biographies of the directors or other officers of the Fund Manager;</li> <li>(e) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;</li> <li>(f) the amount of its issued share capital and how much of it is paid up; and</li> <li>(g) a summary of the material provisions of the contract between the Public Fund and its Fund Manager which may be relevant to Unitholders, including provisions relating to termination, compensation on termination and indemnity.</li> </ul>
<b>6. Directors and other Officers</b>	
	<p>If the Public Fund has directors or other officers, the names and brief biographies of those directors or other officers.</p>
<b>7. Service Providers and Advisers</b>	
	<p>If a Fund Manager delegates any activities or outsources any functions to a service provider, or if an investment adviser is retained in connection with the business of the Public Fund:</p> <ul style="list-style-type: none"> <li>(a) its name;</li> <li>(b) its Home Regulator; and</li> <li>(c) details of the arrangements.</li> </ul>
<b>8. The Auditor, Custodian and Trustee</b>	
	<p>The name of the Auditor, the name of the custodian and (if applicable) the name of the Trustee.</p>
<b>9. The Register of Unitholders</b>	
	<p>Details of the address in the DIFC where the register of Unitholders is kept and can be inspected by Unitholders of the Public Fund.</p>
<b>10. Payments out of the Fund Property</b>	
	<p>The payments that may be made out of the Fund Property to any person, whether by way of remuneration for services or reimbursement of expenses. For each category of remuneration or expense, the following should be specified in a manner which is clear, concise and understandable for Retail</p>

	<p>Clients where the Public Fund is to be offered:</p> <ul style="list-style-type: none"> <li>(a) the current rates or amounts of such remuneration;</li> <li>(b) how the remuneration will be calculated and accrue and when it will be paid;</li> <li>(c) how notice will be given to Unitholders of the Fund Manager's intention to: <ul style="list-style-type: none"> <li>(i) introduce a new category of remuneration for its services;</li> <li>(ii) increase the basis of any current charge;</li> <li>(iii) change the basis of the treatment of a payment from the capital property; and</li> <li>(iv) particulars of that introduction or increase and when it will take place;</li> </ul> </li> <li>(d) the types of any other charges and expenses that may be taken out of the Fund Property; and</li> <li>(e) if all or part of the remuneration or expenses are to be treated as a capital charge: <ul style="list-style-type: none"> <li>(i) that fact; and</li> <li>(ii) the basis of the charges which may be so treated.</li> </ul> </li> </ul>
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**11. Dealing**

	<p>Details of:</p> <ul style="list-style-type: none"> <li>(a) the dealing days and times in the dealing day on which the Fund Manager will receive requests for the sale and redemption of Units;</li> <li>(b) the procedures for effecting: <ul style="list-style-type: none"> <li>(i) the issue, sale and redemption (including in specie) of Units; and</li> <li>(ii) the settlement of transactions;</li> </ul> </li> <li>(c) the steps required to be taken by a Unitholder in redeeming Units before he can receive the proceeds, including any relevant notice periods, and the circumstances and periods in which a deferral of payment may be applied;</li> <li>(d) the circumstances in which the redemption of Units may be suspended;</li> <li>(e) details of the minimum number or value of each type of Unit in the Public Fund which: <ul style="list-style-type: none"> <li>(i) any one person may hold; and</li> <li>(ii) may be the subject of any one transaction of issue, sale or redemption by the Fund Manager;</li> </ul> </li> <li>(f) the circumstances in which the further issue of Units in any particular</li> </ul>
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	class may be limited and the procedures relating to this.
<b>12. Valuation of the Fund Property</b>	
	<p>Details as to:</p> <ul style="list-style-type: none"> <li>(a) how frequently and at what times of the day the Fund Property will be regularly valued to determine the price at which Units in the Public Fund may be purchased from or redeemed by the Fund Manager and a description of any circumstance where the Fund Property may be specially valued;</li> <li>(b) in relation to each purpose for which the Fund Property must be valued, the basis on which it will be valued;</li> <li>(c) how the single price of Units of each class will be determined, including whether a forward or historic price basis is to be applied;</li> <li>(d) details as to how the prices of Units will be published following each valuation; and</li> <li>(e) if valuation is to be suspended under certain circumstances, details of such circumstances.</li> </ul>
<b>13. Sale and Redemption Charges</b>	
	If the Fund Manager imposes any charges on sale or redemption of Units, details of the charging structure and how notice will be provided to Unitholders of any change in the relevant charge.
<b>14. Financial Reports</b>	
	<p>Details as to:</p> <ul style="list-style-type: none"> <li>(a) when annual and interim reports will be published; and</li> <li>(b) the address in the DIFC at which copies of the Fund Constitution, any amending instrument and the most recent annual and interim reports may be inspected and from which copies may be obtained.</li> </ul>
<b>15. Information in respect of Umbrella Funds</b>	
	<p>In the case of an umbrella fund, the following information:</p> <ul style="list-style-type: none"> <li>(a) that a Unitholder may exchange Units in one sub-fund for Units in another sub-fund and that such an exchange is treated as a redemption and sale;</li> <li>(b) what charges may be made on exchanging Units in one sub-fund for Units in other sub-funds;</li> <li>(c) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the Fund Property which are not attributable to any particular sub-fund;</li> <li>(d) in respect of each sub-fund, the currency in which the Fund Property</li> </ul>

	<p>allocated to it will be valued, and the price at which Units will be calculated and payments will be made, if this currency is not the base currency of the umbrella fund; and</p> <p>(e) in the case of an umbrella fund that is not formed as a protected cell company, in the event of such an umbrella fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, that the remaining liabilities may have to be met out of the assets attributable to other sub-funds (i.e., that the sub-funds are not "ring fenced").</p>
<p><b>16. Key Investor Information Document (KIID)</b></p>	
	<p>A summary of the key features of the Fund in Arabic and English.</p>