

**Appendix 1**

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

Note: some text that is not being amended is included for reference only.

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

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## **PART 2: DEFINITIONS**

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

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

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

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

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

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#### **15. Types of Domestic Funds**

- (1) A Domestic Fund shall be one of the following types of Fund:
  - (a) a Public Fund;
  - (b) an Exempt Fund; or
  - (c) a Qualified Investor Fund.

- (2) The DFSA may treat any type of Domestic Fund referred to in Article 15(1) as a specialist class of a Domestic Fund pursuant to Article 17.

## 16. Domestic Fund criteria

- (1) A Domestic Fund shall be constituted as a Public Fund if:
- ~~(a)~~ it has, or intends to have, more than 100 Unitholders;
  - ~~(b)~~(a) some or all of its Units are offered to investors by way of a public offer; or
  - ~~(e)~~(b) its Unitholders include, or may include, Retail Clients.
- (2) A Domestic Fund may be constituted either as an Exempt Fund or as a Qualified Investor Fund but only if that Fund satisfies all of the conditions in Article 16(4) or (5) as applicable.
- (3) Deleted
- (4) A Domestic Fund is an Exempt Fund, subject only to Article 16(6), if:
- ~~(a)~~ it has 100 or fewer Unitholders;
  - ~~(b)~~(a) its Units are offered to persons only by way of a Private Placement;
  - ~~(e)~~(b) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - ~~(d)~~(c) the initial subscription to be paid by a person to become a Unitholder is at least US\$50,000,
- and it does not satisfy the conditions in Article 16(5) to be a Qualified Investor Fund.
- (5) A Domestic Fund is a Qualified Investor Fund, subject only to Article 16(6), if:
- ~~(a)~~ it has 50 or fewer Unitholders;
  - ~~(b)~~(a) its Units are offered to persons only by way of a Private Placement;
  - ~~(e)~~(b) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - ~~(d)~~(c) the initial subscription to be paid by a person to become a Unitholder is at least US\$500,000.
- (6) A Domestic Fund does not cease to be an Exempt Fund or a Qualified Investor Fund under Article 16(4) or (5) merely because one or more Units in that Fund is registered in the name of a person who does not

meet the criteria to be a Unitholder of that particular type of Fund as a result of:

- (a) inheritance from a registered Unitholder of the Fund; or
  - (b) any legal action brought for or against a registered Unitholder.
- (7) The DFSA shall, by Rules, prescribe:
- (a) the relevant criteria for a person to be classified as a Retail Client or a Professional Client; and
  - (b) any other requirements or matters which the DFSA considers necessary to give effect to the requirements or intent of the provisions in this chapter.

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#### **18A. Definitions of Open-ended and Closed-ended Fund**

- (1) In this Law, an Open-ended Fund and a Closed-ended Fund have the meanings given in (2) and (3).
- (2) An Open-ended Fund means a Fund where investors have a right (generally, on request, or at a specified frequency) to have their Units redeemed or repurchased at a value calculated based on the net asset value of the Fund Property.
- (3) A Closed-ended Fund means a Fund where investors have no right of redemption or repurchase of their Units.

*[\*Note: If the proposed amendments to the CI Law are to be made by HH the Ruler, consequential amendments will need to be made to references in this Law to “open-ended Fund” and “closed-ended Fund” by capitalising those terms so that they have this defined meaning].*

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

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

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

- (1) A person shall not manage a Domestic Fund unless:
  - (a) that person is:
    - (i) is a body corporate; and

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

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

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

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

- (1) Every Domestic Fund shall be one of the following:
  - (a) an Investment Company;
  - (b) an Investment Partnership; or
  - (c) an Investment Trust.
- (2) In Article 26(1)(a), an Investment Company includes a Protected Cell Company.
- (3) The DFSA may, by Rules, prescribe:
  - ~~(i)~~(a) which of the forms referred to in Article 26(1) may be used by a specialist class of Domestic Funds; and
  - ~~(ii)~~(b) any additional criteria, requirements or conditions applicable to such a Fund.
- (4) A Person shall not use a form referred to in Article 26(1)(a), (b) or (c) for a purpose other than the main purpose of carrying on the business of a Fund.
- (5) A Person may only register an Investment Company as a Public Company under the DIFC Companies Law if the company is or is intended to be a Public Fund. In all other cases, a Person shall register an Investment Company as a Private Company.

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

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

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

- (1) An Authorised Firm may only Offer a Unit of a Foreign Fund if:
  - (a) the Foreign Fund meets either:
    - (i) the criteria for a Designated Fund in a Recognised Jurisdiction; or
    - (ii) other criteria prescribed in the Rules;

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

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**SCHEDULE 1  
INTERPRETATION**

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**3. Defined Terms**

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

Terms	Definitions
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<u>Closed-ended Fund</u>	<u>Has the meaning given in Article 18A(3).</u>
Investment Company	an open or closed ended company established for the <u>main</u> sole purpose of collective investment which is incorporated under <del>Article 90 of the DIFC Companies Law and the Regulations made under that Law. 2009</del> in accordance with chapter 13 of the Regulations made under that law and includes a Protected Cell Company incorporated under chapter 12 of the Regulations made under that law.
Investment Partnership	a limited partnership established for the <u>main</u> sole purpose of collective investment which is formed and registered under the <u>DIFC Limited Partnership Law, 2006</u> <del>in accordance with the regulations made under that Article.</del>
Investment Trust	a trust created under the <u>DIFC Investment Trust Law 2006</u> for the <u>main</u> purposes of collective investment.
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Protected Cell Company	has the meaning given in the <u>DIFC Companies Law 2004</u> or Regulations made for the purposes of that law.
<u>Open-ended Fund</u>	<u>Has the meaning given in Article 18A(2).</u>
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