

Appendix 3

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



The DFSA Rulebook

Collective Investment Rules

(CIR)

PART 1: INTRODUCTION

1. Application and Interpretation

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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	✓	✓	✓
<u>Chapter 6A: Using a Fund Platform</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
Chapter 7: Constitution	✓	✓	Only Rules 7.1.1; 7.1.2(1)(b); 7.1.2(2) & 7.1.4 apply
Chapter 8: Management and Operation of a Fund	✓	✓	Only Rules 8.1.1, 8.1A.1, 8.1A.2, 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.

COLLECTIVE INVESTMENT RULES (CIR)

			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 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, 14.5.1, 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
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

PART 3: FUND FUNCTIONARIES

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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.

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6A USING A FUND PLATFORM

Guidance

Overview

1. The DIFC Incorporated Cell Company (ICC) Regulations ('the ICC Regulations') provide for the establishment of an Incorporated Cell Company and its Incorporated Cells. The Incorporated Cells are stand-alone companies distinct from each other and from the ICC itself, of which they are cells. The ICC Regulations permit such companies to be used to conduct Fund business.
2. The ICC contains the infrastructure (e.g. systems and controls) for the exclusive use by the Fund Manager to manage Funds established as Incorporated Cells of the ICC. The ICC is the 'core' and each Incorporated Cell of the ICC is a Fund on the ICC. Under the ICC Regulations, an ICC cannot itself be constituted as a Fund or act as a Fund Manager.
3. A Fund Manager with an endorsement to use a Fund Platform (see GEN 2.2.7A) can incorporate an Incorporated Cell Company to assist it to manage any type or specialist classes of Fund, in accordance with the applicable requirements in the Law and these Rules and in the DIFC Companies Law and ICC Regulations. However, a Fund Manager cannot use the Fund Platform to create, or provide services to, a type of Fund if it is contrary to its authorisation. For example, a Fund Manager permitted under its Licence to manage only QIFs cannot use the Fund Platform to establish or manage Exempt or Public Funds.
4. A Fund Manager may use the infrastructure available in the ICC (the core) to provide a range of services relating to the Funds on the ICC. These services include implementing the Fund's investment mandate (e.g. investment selection), carrying out administrative functions such as issuing, transferring and redeeming Fund Units, valuing Fund assets, account keeping, financial reporting and carrying out compliance and oversight functions, relating to each Fund constituted as an Incorporated Cell.
5. The activities which the Incorporated Cell Company carries out for the Funds are not those of a third party service provider appointed by the Fund Manager, however the Fund Manager remains legally responsible to Unitholders in the Funds for acts or omissions of the Incorporated Cell Company (see Rule 6A.1.3).

Incorporated Cell Companies and Protected Cell Companies

6. While both Incorporated Cell Companies (ICCs) and Protected Cell Companies (PCCs) have a similar structure as both have a 'core' containing the infrastructure to manage their 'cells', there is a significant difference between an ICC and a PCC. Unlike a cell of a PCC, each Incorporated Cell of an ICC is a separate legal entity operating under its own name and with its own directors and Articles of Association. Under the ICC Regulations, an Incorporated Cell is not a subsidiary of the ICC. By contrast, a PCC and its cells form a single Fund, with each cell being a Sub-Fund of the PCC.
7. A Fund Manager wishing to offer different investment strategies within a Single Fund (e.g. an Umbrella Fund) and different asset classes within its Sub-Funds to investors who can freely switch their investment strategies, can use the PCC structure. A Fund Manager wishing to manage different types or specialist classes of Funds, which are separate legal entities, using the infrastructure available in the core, can only do so by establishing an ICC.

Funds constituted as Incorporated Cells

8. Each Incorporated Cell of an ICC that is established as a Fund will need to be registered with, or notified to, the DFSA as a separate Fund (as it is a separate legal entity). Unless specified otherwise, the requirements in the Law and these Rules apply to an Incorporated Cell that is a Fund in the same way that the requirements apply to other Funds that use a company structure. For example, this includes general requirements for the management or operation of Funds, requirements that apply according to whether the Fund is a Public Fund, Exempt Fund or QIF and relevant requirements for specialist classes of Funds.
9. An ICC is incorporated under the DIFC Companies Law, and so each Incorporated Cell of that ICC is a Domestic Fund as defined in the Law (see Article 26(2) of the Law).
10. An External Fund Manager is not permitted to use a Fund Platform (see Rule 6.1.4).
11. A Fund Manager that uses the ICC structure to establish and manage Funds is not prevented from also managing other Funds outside that structure. However, the Fund Manager cannot use the infrastructure available in the Incorporated Cell Company to provide services to Funds that are not Incorporated Cells of the ICC (see Rule 6A.1.4(c)).
12. This chapter sets out various requirements that apply to a Fund Manager that uses a Fund Platform using the ICC structure to manage Funds constituted as Incorporated Cells of that ICC. These requirements should be read in conjunction with the other obligations, particularly under the ICC Regulations.

Application of chapter

6A.1.1 This chapter applies to a Fund Manager that uses a Fund Platform.

General application of CIR to Incorporated Cell Companies

6A.1.2 Except as otherwise provided in these Rules, the requirements in CIR that apply:

- (a) to a Fund Manager, apply to a Fund Manager when it uses an Incorporated Cell Company (ICC) to provide infrastructure to a Fund; and
- (b) in relation to a Fund that is a Company, apply in relation to a Fund that is an Incorporated Cell of an ICC.

Guidance

Because each Fund (i.e. an Incorporated Cell) is a stand-alone Fund, the Fund Manager using a Fund Platform needs to comply with all the applicable requirements in respect of each such Fund, although it is a Fund on a Fund Platform.

Fund Manager responsible for acts of Fund Platform

6A.1.3 A Fund Manager using a Fund Platform remains responsible for any acts or omissions of the Incorporated Cell Company as if they were the acts or omissions of the Fund Manager.

The Fund Manager's obligations when using a Fund Platform

6A.1.4 Without limiting any other obligations of the Fund Manager under the Law or these Rules, a Fund Manager using a Fund Platform must ensure that the Incorporated Cell Company:

- (a) maintains adequate infrastructure to provide services to Funds on the Fund Platform, taking into account the type or specialist class of each particular Fund;
- (b) does not carry on any activity in relation to a Fund on the Fund Platform, other than the activities which the Fund Manager is authorised and permitted to undertake in respect of the relevant Fund;
- (c) does not provide any service to a Fund that is not an Incorporated Cell of the Incorporated Cell Company; and
- (d) maintains procedures and up-to-date records to demonstrate to the DFSA:
 - (i) the activities that the Incorporated Cell Company undertakes in relation to each Fund on the Fund Platform; and
 - (ii) that the Fund Manager has met all applicable requirements in respect of each Fund on the Fund Platform, taking into account the type or specialist class of the relevant Fund.

Guidance

Under Rule 6A.1.4(b), a Fund Manager using a Fund Platform cannot establish on its Fund Platform any Funds other than a QIF if its authorisation is limited to managing QIFs. What type of Funds a Fund Manager can manage is reflected in the fees applicable to Fund Managers under FER.

Directors of Fund Platform

6A.1.5 A Fund Manager using a Fund Platform must ensure that each of the following entities has the same directors as the Fund Manager:

- (a) the Incorporated Cell Company; and
- (b) except as provided in 6A.1.6, each Incorporated Cell of the Incorporated Cell Company.

6A.1.6 (1) A 'start-up' Fund on a Fund Platform may, in addition to the directors of the Fund Manager, have one additional person as a director of the Fund.

(2) The Fund Manager must ensure that the person referred to in (1) is fit and proper to be a director and has sufficient competencies to participate in the carrying out of the investment mandate of the start-up Fund.

(3) A Fund is a start-up Fund if it is sponsored by a person who has no established track record.

Guidance

A Fund Manager is permitted to appoint a person other than a member of its board to a start-up Fund on its Fund Platform. This provides flexibility for sponsors of start-up investment strategies to gain skills and expertise and a sound track-record, by working with a seasoned Fund Manager using the Fund Platform. Once such a person gains sufficient skills and expertise and the Fund gains appropriate economies of scale, the person may be able to launch their own Fund in the DIFC.

6A.1.7 A Fund Manager using a Fund Platform must not allow a Fund that is an Incorporated Cell of the Incorporated Cell Company to have a Corporate Director.

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PART 4: CORE RULES RELATING TO ESTABLISHMENT AND MANAGEMENT OF DOMESTIC FUNDS**7 CONSTITUTION****7.1 Application**

- 7.1.1** (1) This chapter applies to a Fund Manager, and where appointed a Trustee, of a Domestic Fund.
- (2) Only this Rule and Rules 7.1.2(1)(b), 7.1.2(2) and 7.1.4 apply to a Fund Manager and, where appointed, a Trustee, of a Qualified Investor Fund.

Instrument constituting the Fund

- 7.1.2** (1) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee of a Fund, must ensure that the written Constitution which every Fund is required to have pursuant to Article 27(1) of the Law:
- (a) contains the statements and disclosures prescribed in the table in App5 as are applicable to the Fund; and
 - (b) does not contain any provision that is prejudicial to the interests of the Unitholders generally or to the Unitholders of any class of Units.
- (2) The Fund Manager and, in the case of an Investment Trust, both the Fund Manager and the Trustee, are responsible for maintaining the Constitution and for making necessary alterations to it in accordance with the applicable legislation.

Guidance

In the case of a Fund on a Fund Platform, such a Fund, being an Incorporated Cell of an Incorporated Cell Company, needs its own Articles of Association under the ICC Regulations.

- 7.1.3** (1) A Fund Manager may issue and in the case of an Investment Trust, may instruct the Trustee to issue such classes of Units as are set out in the Constitution, provided the rights of any class are not unfairly prejudicial to the interests of the Unitholders of any other class of Units in that Fund.
- (2) Units whose issue may be limited can be issued by a Fund Manager if permitted by the Constitution and if in accordance with the conditions set out in the Prospectus, provided that such issue will not materially prejudice any existing Unitholders in the Fund.
- (3) In the case of an Investment Trust, the Trustee must take reasonable measures to ensure, before carrying out the Fund Manager's instructions, that those instructions comply with the requirements in (1) and (2).

Name of the Fund

- 7.1.4** The Fund Manager, and if appointed the Trustee, of a Fund must ensure that the name of the Fund or any Sub-Fund or class of Units in the Fund or Sub-Fund, is not undesirable, misleading or in conflict with the name of another Fund or another Sub-Fund or class of Units in the Fund or Sub-Fund.

Guidance

1. Article 27(4) of the Law and this Rule give the DFSA the power to make a direction if a name of a Fund, Sub-Fund or class of Units in a Fund is undesirable, misleading or conflicts with a name used by another Fund, Sub-Fund or class of Units of a Fund. In the case of a Protected Cell Company or an Incorporated Cell Company, the PCC and the ICC Regulations confer additional powers on the DFSA to give a direction in relation to those companies and their cells.
2. In determining whether to make a direction under these powers, the matters that the DFSA may take into account include whether the name of the Fund, Sub-Fund or class of Units as the case may be:
 - a. implies that the Fund, Sub-Fund or class of Units has merits which are not, or might not be, justified;
 - b. is inconsistent with the Fund's investment objectives or policy;
 - c. might mislead Unitholders or prospective Unitholders into thinking that a Person other than the Fund Manager is responsible for the Fund, Sub-Fund or class of Units of the Fund;
 - d. is substantially similar to the name of another Collective Investment Fund in the DIFC or elsewhere;
 - e. implies that it is a specialist class of Fund or Sub-Fund, where the relevant requirements relating to that class of specialist Fund are not met; or
 - f. is in the opinion of the DFSA likely to offend the public.

- 7.1.5** Before using as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund the words "guaranteed", "protected" or any other words with a similar
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meaning implying a degree of security in relation to the capital or income, the Fund Manager must demonstrate to the satisfaction of the DFSA that:

- (a) the guarantor has the authority and resources to honour the terms of the guarantee; and
- (b) all the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the Prospectus and that any exclusions such as force majeure are highlighted.

Guidance

In considering whether to permit a Fund Manager to use the words “guaranteed” or “protected” as part of or in connection with the name of a Fund, Sub-Fund or class of Units in a Fund, the DFSA will also take into account whether the degree of security implied by the name fairly reflects the nature of the arrangements for providing that security.

Alterations to the Constitution of a Fund**Guidance**

Articles 35 and 36 of the Law govern the process of making alterations to a Constitution. These requirements apply to the alteration of Articles of Association of a Fund on a Fund Platform (i.e. an Incorporated Cell of an Incorporated Cell Company).

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) 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, 8.4.1(1)(a), 8.6A.1 and 8.10.1 in this chapter apply to, or in relation to, a Qualified Investor Fund.

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;
 - 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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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.
- (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.

Guidance

1. Section 8.12 of this module governs the power of a Fund Manager to delegate certain of its Financial Service activities, and to outsource its functions.
2. Where a Fund invests in infrastructure projects (for example, the development of public facilities such as roads, railways or bridges), the interest acquired by the Fund may not necessarily be suited to the conventional forms of holding custody of Real Property. Where this is the case, a Fund Manager may use adequate alternative custody arrangements that meet the requirements in CIR 8.2.2(3)(c)(2)(ii).

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8.3 Conflicts of interest

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Related Party Transactions

- 8.3.2**
- (1) A Fund Manager must not enter into a Related Party Transaction unless it is in accordance with the requirements in this Rule.
 - (2) A Fund Manager must ensure that any Related Party Transaction is on terms at least as favourable to the Fund as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
 - (3) The Fund Manager must, before entering into a Related Party Transaction:
 - (a) issue to the Unitholders a circular containing the details of the proposed transaction; and
 - (b) obtain Unitholders' prior approval by Special Resolution, or by ordinary resolution in the case of a Property Fund, in respect of the proposed transaction if the total consideration or value of the transaction is 5% or more of the most recent net asset value of the Fund as disclosed in the latest published audited accounts of the Fund.

- (4) The Fund Manager must:
 - (a) if Unitholders' prior approval is required pursuant to (3)(b), issue a notice to Unitholders providing details of the results of the Unitholders' voting at the general meeting as soon as practicable after the meeting;
 - (b) include, in the Fund's next published interim or annual report, a brief summary of the Related Party Transaction, and certification that the requirements in these Rules have been met for the transaction; and
 - (c) include, in the annual report of the Fund, the total value of any Related Party Transactions, their nature and the identities of the Related Parties with whom such transactions were made. Where there is no such transaction conducted during the financial year covered by the annual report, an appropriate negative statement to that effect must be made in the annual report.
- (5) The requirements in (3) and (4)(a) do not apply in relation to an Exempt Property Fund.
- (6) The requirements in (3) and (4)(a) do not apply to a Public Property Fund in respect of a Related Party Transaction if:
 - (a) the transaction is for the acquisition or sale of Real Property in the State; and
 - (b) all of the conditions in Rule 13.4.11A(1) are met.
- (7) The requirements in (3) and (4) do not apply to the Fund Manager of an ETF in relation to the appointment of a Price Information Provider, who is a Related Party, where such an appointment occurs at the time of establishment of the ETF.

Guidance

1. If a Fund Manager of an Exchange Traded Fund (ETF) has an arrangement with a Related Party, for that Related Party to provide an index or benchmark, then the Fund Manager is required to also treat that arrangement as a Related Party Transaction (see Rule 13.9.5) and comply with Rule 8.3.2 in relation to the transaction.
 2. An ETF Fund Manager is not required to comply with the requirements in Rule 8.3.2(3) and (4) in relation to a Price Information Provider (PIP), who is a Related Party and provides a custom made index or other benchmark which the ETF tracks, if that appointment takes place at the time of establishing the ETF. This is because, generally, there are no investors in the Fund at that time to give the prior approval that is envisaged.
 3. However, such an ETF Fund Manager does need to comply with the arm's length transaction requirement in Rule 8.3.2(2) and, also, disclose in the Fund Prospectus that it tracks a custom made index, or other benchmark, provided by a Related Party PIP (under Rule 14.4.8(d)).
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4. In relation to a Fund on a Fund Platform, the definition of a Related Party in GLO includes any other Fund on the Fund Platform.

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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; or
 - (c) a Fund 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 itself holds Fund Property of a kind referred to in (2) or if it uses a Fund Platform and the Incorporated Cell Company holds Fund Property of that 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) disappplies 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.
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.

PART 6: RULES SPECIFIC TO SPECIALIST CLASSES OF DOMESTIC FUNDS

Guidance

1. Article 17 of the Law confers on the DFSA the power to prescribe any type of Domestic Fund (i.e. a Public Fund, an Exempt Fund, or a Qualified Investor Fund) as a “specialist class” of a Domestic Fund and in so doing apply any requirements as are suitable for that specialist class of Funds. This Part sets out the requirements that apply to such a Fund by virtue of being a specialist class of Fund.
2. Most of the requirements that are set out in this part as applying to specialist classes of Domestic Funds are generally in addition to the core requirements that apply to every Domestic Fund (see Part 4). Further, depending on whether it is a Public Fund, an Exempt Fund or a Qualified Investor Fund, the additional requirements in Part 5 of this module would also apply to a specialist class of Fund.
3. A Qualified Investor Fund may be constituted as a specialist class of a Domestic Fund without being subject to most of the detailed requirements that would normally apply to such specialist classes of Funds. However, there are some requirements which need to be met as the obligation to do so arises under the general provisions applicable to certain specialist classes of Funds, regardless of whether such Funds are Public Funds, Exempt Funds or Qualified Investor Funds. An example is a Fund constituted as an Islamic Fund. While some of the detailed requirements such as the appointment of a Shari’a Supervisory Board do not apply to the Fund Manager of an Islamic Qualified Investor Fund (see IFR 6.2.1), the other general requirements such as ensuring compliance with Shari’a requirements continue to apply to such Funds and the Fund Manager.
4. The only specialist class requirements in this chapter that apply to a Qualified Investor Fund are those in Rule 13.6.3 and section 13.7 (Umbrella Funds).
5. Generally, a Fund Manager using the Incorporated Cell Company structure can manage any specialist classes of Funds using the infrastructure of the Fund Platform. However, some types of specialist classes of Funds may not be easily established on a Fund Platform, such as a Fund of Funds, Master Fund or an Umbrella Fund because of their unique structures. If an applicant wishes to establish one of these specialist classes of Funds on a Fund Platform, the DFSA will consider what practical difficulties would arise in that context, including any additional clarification or Rule changes if needed.

13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS

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Self-custody of Real Property for Public Funds

- 13.4.2** (1) A Fund Manager of a Public Property Fund is not required to appoint an Eligible Custodian under Rule 8.2.2(2) for Real Property if the Fund Manager:
- (a) acts as custodian of the Real Property;

- (b) has in place adequate systems and controls to ensure the proper segregation and protection of the Real Property; and
 - (c) has in place effective arrangements which ensure that the real Property is not available to creditors if the Fund Manager becomes insolvent.
- (2) The systems and controls referred to in (1)(b) must, as a minimum, ensure that:
- (a) legal title to the Real Property is registered in the name of the Fund;
 - (b) the Fund Manager identifies, manages and monitors any conflicts of interest that may arise due to it acting as custodian of the Real Property;
 - (c) the Fund Manager clearly designates the employees who are responsible for safeguarding the ownership rights of the Fund over any Real Property including but not limited to:
 - (i) safekeeping title deeds and other legally relevant documents relating to the Real Property; and
 - (ii) ensuring that legal title to the Real Property is registered in the name of the Fund; and
 - (d) the employees referred to in (c) are not required to carry out duties and functions which may conflict with their duties and functions referred to in that paragraph.
- (3) If a Fund Manager referred to in (1) uses a Fund Platform, the Incorporated Cell Company (ICC) may act as the custodian of the Real Property.
- (4) If an ICC acts as the custodian under (3), this Rule applies as if a reference to:
- (a) the Fund Manager acting as custodian is to the ICC acting as custodian; and
 - (b) the Fund Manager becoming insolvent is to the ICC becoming insolvent.

Guidance

1. A Fund Manager of a Public Property Fund may itself act as custodian of Real Property if it has in place adequate systems and controls to ensure the segregation and protection of the Real Property. This option only applies for Real Property (defined as land or buildings, whether freehold or leasehold, where the unexpired term of any lease exceeds 20 years). It does not permit the Fund Manager to act as custodian of Property Related Assets such as Shares in a Body Corporate which invests in Real Property or Units in another Property Fund.
 2. In identifying, managing and monitoring conflicts of interest that may arise due to it acting as custodian, the Fund Manager must take into account that it is required under the Law to give priority to Unitholders' interests if there is a conflict between its own interests and the interests of Unitholders.
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3. If a Fund Manager decides to act as custodian of Real Property as permitted under this Rule, it must disclose in the Fund's Prospectus that it acts as custodian, the additional risks that may arise due to it acting as custodian, and how it has addressed those risks (see Rule 14.4.4A).

Self-custody of Real Property for Exempt Funds

13.4.2A A Fund Manager of an Exempt Property Fund is not required to appoint an Eligible Custodian under Rule 8.2.2(2) for Real Property if ~~the Fund Manager~~:

- (a) the Fund Manager acts as custodian of the Real Property or, if the Fund Manager uses a Fund Platform, the Incorporated Cell Company acts as custodian of the Real Property; and
- (b) the Fund Manager has in place effective arrangements which ensure that the Real Property is not available to creditors if the Fund Manager or the Incorporated Cell Company (as the case may be) becomes insolvent.

Guidance

Under this Rule, the arrangements must be legally effective to ensure that the Real Property is not available to creditors if the Fund Manager or ICC becomes insolvent. This might involve, for example, the use of trust arrangements or registration of title in the name of the Fund. This option only applies to custody of Real Property and not, for example, to Property Related Assets.

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PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS

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14 MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE

14.1 Prospectus disclosure for Domestic Funds

Guidance

1. While a Person is required by virtue of Article 50(1) of the Law when making an Offer of a Unit of a Domestic Fund to another Person to make available to that other Person a Prospectus, the obligation to produce a Prospectus is imposed under Article 51(a) of the Law on the Fund Manager of a Domestic Fund.
2. This chapter sets out the detailed requirements that apply to the Fund Manager who is obliged to produce a Prospectus, and the obligations and liabilities relating to Prospectuses, as well as the obligation relating to making available a Prospectus which applies to the activity of making an Offer of Units.

3. Some requirements relating to Prospectus disclosure are common to all Domestic Funds. However, in other areas, particularly relating to the content of disclosure required in a Prospectus, and the manner of distribution, different requirements apply depending on whether the Fund is a Public Fund, Exempt Fund or Qualified Investor Fund. Further, specialist class of Funds attract additional disclosure requirements that are unique to their activities. This chapter sets out those requirements and where necessary by reference to the types and classes of Domestic Funds.
4. Article 14(2) of the Law provides that the requirements relating to Domestic Funds do not apply to an External Fund (i.e. a Fund established in a jurisdiction other than the DIFC by a DFSA licensed Fund Manager), unless otherwise provided in the Law or Rules. As a result, the general Prospectus requirements set out in the Law and this module do not apply to External Funds, except that:
 - a. any offer document prepared for the purposes of complying with the requirements applicable in the jurisdiction in which the External Fund is established is regarded as a Prospectus for the purposes of the requirements relating to the Offer of Units of such a Fund in or from the DIFC (see Article 50(3)(c) of the Law); and
 - b. the DFSA has the power to prescribe any additional disclosure to be included in such a document (see Article 51(2) of the Law).

Those requirements are specified in Rules 14.2.4 – 14.2.7.

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) Rule 14.4.6;
 - (d) Rules 14.5.1 and 14.5.2; and
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- (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.

14.2 General Requirements relating to Prospectuses

- 14.2.1**
- (1) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
 - (2) For the purposes of the information that must be included in a Prospectus pursuant to Article 52 of the Law:
 - (a) such information must be material information; and
 - (b) information is material if it is either:
 - (i) within the knowledge of the Directors or partners of the Fund Manager; or
 - (ii) which such Directors or partners ought reasonably have obtained by making reasonable enquiries.
 - (3) The Prospectus must be in the English language.
 - (4) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.
 - (5) A reference to a Director in this Rule includes the Corporate Director of an Investment Company, and the individual directors of that Corporate Director.

Guidance

In conducting inquiries relating to the obligations under (2), a Fund Manager must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed decision about the merits of investing and the extent and characteristics of risk.

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14.3 Prospectus content

Public Fund Prospectus

- 14.3.1** (1) Without limiting the generality of the Prospectus disclosure required under Article 52 of the Law the Fund Manager must, in the case of a Public Fund, include in the Fund's Prospectus:
- (a) the information in App 7;
 - (b) if it is a specialist class of a Public Fund, any information as is relevant to that specialist class of Fund as set out in section 14.4;
 - (c) the mandatory statement required under Rule 14.3.3;
 - (d) a Summary Document containing:
 - (i) information to clearly identify the Fund and its classification;
 - (ii) a short description of the Fund's investment objectives and investment policy for achieving those objectives;
 - (iii) past-performance presentation or, where relevant, performance scenarios;
 - (iv) costs and associated charges; and
 - (v) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant Fund; and
 - (e) if it is an Open-ended Fund, the information relating to the powers available to the Fund Manager to address liquidity risks that may arise in the Fund, and procedures, including triggers, for the exercise of such powers, required under Rule 8.6A.1(2)(d).
- (2) A Prospectus may consist of a single document, or a multi-part Prospectus containing:
- (a) a Summary;
 - (b) information relating to the Fund Manager and Trustee; and
 - (c) information relating to the Fund.
- (3) If a Prospectus is a multi-part Prospectus, the Fund Manager must ensure that the Prospectus as a whole is up-to-date.

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14.4 Additional Prospectus disclosure for specialist Funds

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Prospectus for a Fund on a Fund Platform

14.4.10 A Fund Manager of a Fund that is an Incorporated Cell of an Incorporated Cell Company (ICC) must ensure that the Fund Prospectus includes information that:

- (a) the Fund is an Incorporated Cell of an ICC;
- (b) the Fund, being an Incorporated Cell:
 - (i) is a separate legal entity to the ICC and to any other Incorporated Cells of the ICC; and
 - (ii) does not have a subsidiary or holding company relationship to the ICC;
- (c) the ICC, which is the Fund Platform, contains the infrastructure needed by the Fund Manager for managing the Fund; and
- (d) the Fund Manager is:
 - (i) responsible for the sound and prudent operation of the Fund Platform; and
 - (ii) liable for any acts or omissions of the Fund Platform in respect of the Fund.

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PART 8 – TRANSFER SCHEMES AND WINDING UP OF DOMESTIC FUNDS

16. TRANSFER SCHEMES RELATING TO DOMESTIC FUNDS

16.1 Application of the Regulatory Law

Guidance

1. Pursuant to Part 9 of the Regulatory Law 2004, a Fund may be transferred in whole or in part to another body in accordance with that Part.
2. The DFSA may make Rules for the purposes of that Article pursuant to the power conferred under Article 113 of the Regulatory Law 2004.

16.1.1 This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company, in respect of each cell as if though each cell is a separate Fund.

Guidance

A Fund Manager of a Fund that is an Incorporated Cell of an ICC is, in addition to the requirements in this chapter, required to comply with the requirements in the ICC Regulations that apply to the transfer of a Incorporated Cell of an ICC.

16.1.2 Pursuant to Article 113 of the Regulatory Law 2004, the DFSA prescribes, in Rule 16.1.3, the modification to Part 9 of that Law necessary for the purposes of transferring a Fund's property or liability to another Fund.

- 16.1.3**
- (1) Part 9 of the Regulatory Law 2004 is to be read and, to have effect, as if it were subject to the provisions set out in this Rule.
 - (2) Where, for the purpose of a transfer scheme, it is proposed that the property of a Fund should become the property of another Fund or the property of a Sub-Fund of an Umbrella Fund, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the Fund, unless (3) applies.
 - (3) Where, for the purposes of a transfer scheme, it is proposed that Fund Property attributable to a Sub-Fund of an Umbrella Fund should become the property of another Fund, the proposal must not be implemented without the sanction of:
 - (a) a Special Resolution of the Unitholders in the Sub-Fund of that Umbrella Fund; and
 - (b) in the case of an Umbrella Fund that does not use the form of a Protected Cell Company, unless implementation of the transfer scheme is not likely to result in any material prejudice to the interests of the Unitholders in any other Sub-Fund of that Umbrella

Fund, a Special Resolution of the Unitholders of other Sub-Funds of that that Umbrella Fund.

- (4) If it is proposed that a Fund or a Sub-Fund of an Umbrella Fund should receive property, other than its first property pursuant to a transfer scheme, or an arrangement equivalent to a scheme of arrangement entered into with some other Fund or Sub-Fund, or a Body Corporate, the proposal must not be implemented without the sanction of a Special Resolution of the Unitholders in the relevant Fund or Sub-Fund and, in the case of an Umbrella Fund which is not in the form of a Protected Cell Company, the class or classes of Units related to the Sub-Fund, unless (5) applies.
- (5) In (4), if the Fund Manager and if appointed the Trustee agree that the receipt of the property concerned for the account of the Fund:
 - (a) is not likely to result in any material prejudice to the interest of the Unitholders of the Fund;
 - (b) is consistent with the objectives of the Fund or Sub-Fund of an Umbrella Fund; and
 - (c) could be effected without any breach of the requirements relating to the borrowing and investment restrictions relating to the Fund or Sub-Fund in chapter 10.5;

then the transfer may be effective and the issue of Units in exchange for assets as part of a transfer scheme may be undertaken.

17 Winding up of Domestic Funds

Guidance

Part 8 of the Law sets out all the provisions relating to transfer schemes and the winding up of Funds. Article 61(c) enables the DFSA to prescribe additional circumstances to those contained in the Law in relation to when a Fund may be wound up. This section contains such Rules.

17.1 Application

17.1.1 This Chapter applies to a Fund Manager and, where appointed, the Trustee of a Domestic Fund and, if the Fund is an Umbrella Fund using the form of a Protected Cell Company, in respect of each cell as though each cell is a separate Fund.

Guidance

Additional requirements in the ICC Regulations apply to the winding up of a Fund that is an Incorporated Cell of an Incorporated Cell Company (ICC). In particular, the ICC Regulations provide that an ICC shall not be wound up until after all of its Incorporated Cells are either transferred or converted into another Company or wound up.

17.1.2 Pursuant to Article 61(c) of the Law, the DFSA prescribes in this chapter the additional circumstances in which a Domestic Fund may be wound up.

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App 7 – Content of a Public Fund Prospectus

A7.1 Application

A7.1.1 This table applies to the Persons referred to in Rule 14.1.1(1).

A7.1.2 If a Public Fund is to be a Listed Fund, there are additional requirements applicable to such a Fund under section 6.3 of the MKT module. If such a Fund is to be an Islamic Fund, please refer to section 6.5 of the IFR module. See also CIR 14.3.3(2).

A7.1.3 The Prospectus for a Public Fund must contain the information prescribed in the following table.

A7.1.4 A Prospectus is required to contain all the information an investor would reasonably require and expect to find in a Prospectus to be able to make an informed decision. CIR contains additional disclosure for Public Funds. This Table sets out the key mandatory disclosures required in a Public Fund Prospectus under the Law, CIR and IFR, including for specialist classes of Public Funds.

Mandatory disclosure for all Public Funds	
1.	Persons Responsible for the Prospectus
1.1	(a) Names and details of all Persons responsible for the information given in the Prospectus. (b) If some Persons are responsible for only certain parts of the Prospectus (e.g. Experts), an indication of the relevant parts for which they are responsible.

Additional mandatory disclosure for specialist classes of Public Funds	

7.	Exchange Traded Fund (“ETF”)
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<u>Additional mandatory disclosure for Funds on a Fund Platform</u>	

<p>1.</p>	<p><u>A Fund Manager of a Fund that is an Incorporated Cell of an Incorporated Cell Company must ensure that the Fund Prospectus includes information that:</u></p> <p>(a) <u>the Fund is an Incorporated Cell of an ICC;</u></p> <p>(b) <u>the Fund, being an Incorporated Cell:</u></p> <p style="padding-left: 40px;">(i) <u>is a separate legal entity to the ICC and to any other Incorporated Cells of the ICC; and</u></p> <p style="padding-left: 40px;">(ii) <u>does not have a subsidiary or holding company relationship with the ICC;</u></p> <p>(c) <u>the ICC, which is the Fund Platform, contains the infrastructure needed by the Fund Manager for managing the Fund; and</u></p> <p>(d) <u>the Fund Manager is:</u></p> <p style="padding-left: 40px;">(i) <u>responsible for the sound and prudent operation of the Fund Platform; and</u></p> <p style="padding-left: 40px;">(ii) <u>liable for any acts or omissions of the Fund Platform in respect of the Fund.</u></p>
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