

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

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1.5 The Fund Protocol in the UAE

Guidance

1. The authorities responsible for the regulation of Funds in the UAE (the DFSA, SCA and the FSRA) have entered into arrangements (the “Fund Protocol”) to facilitate domestic funds established or domiciled in one jurisdiction (the Home Jurisdiction) being Promoted in the other jurisdictions (the Host Jurisdictions).
2. The Fund Protocol Rules (FPR) set out, among other things, the procedures and requirements that apply if a Fund established or domiciled in the DIFC (whether a Public Fund, Exempt Fund or Qualified Investor Fund) wishes to Promote the Fund in the other jurisdictions (a ‘Passported Fund’).
3. A Fund established or domiciled in the DIFC that wishes to be a Passported Fund will, in addition to complying with the procedures and requirements in FPR, still need to comply with the relevant requirements in this module. In some cases, the requirements in this module are modified for a Passported Fund for consistency with FPR. In summary, the main additional or modified requirements in FPR relate to:
 - (a) custodian requirements for Public Funds;
 - (b) prospectus requirements for Public Funds, including the requirement for a Key Investor Information Document (KIID); and
 - (c) requirements for notification of certain material events.
4. For more information about the procedures and requirements for a Passported Fund, see the Fund Protocol Rules (FPR).
5. If a Passported Fund is established or domiciled in one of the other UAE jurisdictions, many of the requirements in this module do not apply to the Fund as it is a Foreign Fund rather than a Domestic Fund (as those terms are defined in the Rulebook). Only certain requirements in this module apply to Foreign Funds (see for example Chapter 15: marketing of Foreign Funds). Instead, such a Passported Fund will need to comply with the requirements applicable in its Home Jurisdiction, including the relevant Fund Protocol rules or regulations enacted by its Home Regulator.

4. EXCLUDED OFFERS

4.1 Excluded transactions and offers

4.1.1 Pursuant to Article 50(2) of the Law, the activities specified in Rules 4.1.2, 4.1.3, ~~and 4.1.4~~ and 4.1.5 are hereby prescribed as not constituting an Offer for the purposes of the Law and the Rules.

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4.1.5 A Person does not make an Offer of a Unit if:

- (a) the Unit is of a Passported Fund;
- (b) the DIFC is a Host Jurisdiction in relation to the Passported Fund;
- (c) the Person making the Offer is the Fund Manager of the Fund, its Agent or another Licensed Person; and
- (d) the Offer is made in accordance with the offer requirements in the Home Jurisdiction of the Passported Fund, including its relevant Fund Protocol rules or regulations.

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8 MANAGEMENT AND OPERATION OF A FUND

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8.2 Duties in relation to Fund Property

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Eligible Custodian

8.2.4 For the purposes of the Rules in this module, except as provided in Rule 8.2.5, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria:

- (a) an Authorised Firm whose Licence authorises it to Provide Custody Services;
 - (b) an Authorised Firm that is a Bank;
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- (c) an Authorised Market Institution;
- (d) a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in the State;
- (e) a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in a Recognised Jurisdiction;
- (f) a legal entity where it, or its holding company, is authorised to provide custody services and is supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country;
- (g) a legal entity that is authorised or recognised by a Financial Services Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction; or
- (h) a legal entity that is:
 - (i) controlled and wholly owned by one or more of the national governments of the five member states of the Gulf Cooperation Council, other than the State; and
 - (ii) authorised to provide custody services, and supervised, by a Financial Services Regulator of at least one of the national governments specified in (i).

8.2.5 If a Public Fund (other than a Property Fund) is a Passported Fund, the Eligible Custodian of the Fund must be a Person who meets the requirements in Rule 6.5.3 of the Fund Protocol Rules.

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PART 7: MARKETING of domestic and foreign Funds

Guidance

1. Part 7 of the Law sets out the overarching provisions that apply to the Offer (also called marketing) of Units of both Domestic and Foreign Funds; and in the case of the latter, where Units of such Funds are marketed in or from the DIFC.
2. Article 50 of the Law contains the Marketing Prohibition. Under this prohibition, no Person is permitted to Offer a Unit of a Fund to prospective or existing Unitholders unless:

- a. a Prospectus that complies with the relevant requirements in the Law and the Rules is made available to the person to whom the Offer is made;
 - b. the Person making the Offer of the Unit is either the Fund Manager of the Fund or an Authorised Firm whose licence authorises it to do so; and
 - c. the Offer is made in accordance with the applicable requirements in the Law or the Rules.
 3. Article 19 of the Law defines the activities that constitute an Offer. Under this Article, a Person is to be regarded as making an Offer of a Unit if he:
 - a. makes an offer to another Person which, if accepted, would give rise to a contract for the issue or sale of Units by him or by another Person with whom he has made arrangements for the issue or sale of the Units; or
 - b. invites another Person to make an offer which, if accepted by him, would give rise to a contract for the issue or sale of Units by him or by another Person with whom he has made arrangements for the issue or sale of the Units,

whether or not the offer or invitation referred to in Article 19(2)(a) or (b) is made by way of a financial promotion of the Units..
 4. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. Finally, Rule 4.1.5 excludes an offer of a Unit of a Passported Fund from being treated as an Offer where the DIFC is the Host Jurisdiction. This is because such an offer will be subject to the requirements in the Home Jurisdiction. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 19 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
 5. This Part of the module sets out the detailed requirements that apply to the Offer of Units of Domestic and Foreign Funds, including Prospectus disclosure, under respective chapters. The Rules in this chapter supplement provisions of COB which also govern the carrying on of Financial Service activities by an Authorised Firm, except where otherwise provided.
 6. With the exception of Part 2 of the Markets Law 2012, that Law and Rules made for the purpose of that Law govern the listing of the Units of a Fund and continuous disclosure obligations that apply to in relation to Listed 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.

5. If a Domestic Fund is a Passported Fund and the DIFC is the Home Jurisdiction of the Fund, certain requirements relating to the Prospectus for the Fund are specified in the Fund Protocol Rules, rather than in this chapter. These include requirements relating to the form of the disclaimer in the Prospectus, the minimum contents of the Prospectus and the need for a Key Investor Information Document (KIID) that summarises the key features of the Fund and is in both Arabic and English. This chapter cross-refers to requirements in those Rules where applicable.

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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, except as provided in (4), be in the English language.
 - (4) The Key Investor Information Document (KIID) for a Passported Fund must be in Arabic and English.
 - (45) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.

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**
- 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) except as provided in (b), the information in App 7;

- (b) if the Public Fund is a Passported Fund, the information in App 1 to the Fund Protocol Rules, including a Key Investor Information Document (KIID) summarising the key features of the Fund;
- (bc) 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; and
- (ed) the mandatory statement required under Rule 14.3.3.

14.3.2 Information Memorandum of an Exempt Fund or a Qualified Investor Fund

Guidance

1. Under Article 50(3)(a) of the Law, an Information Memorandum of an Exempt Fund or a Qualified Investor Fund is a Prospectus for the purposes of the Law and the Rules unless otherwise provided. In limited circumstances, the Rules prescribe additional disclosure to be included in a Prospectus of an Exempt Fund (for example Rule 13.6.3 where an Exempt Fund appoints a prime broker with certain additional powers).
2. There is no detailed prescribed disclosure content for the Information Memorandum of an Exempt Fund or a Qualified Investor Fund. However, as an Information Memorandum is a Prospectus, it is subject to the disclosure obligation in Article 50(2) of the Law. As a result, a Fund Manager of such a Fund must include all the information which Professional Clients to whom it intends to Offer Units of the Fund would reasonably require and expect to find in such a Prospectus. This is to enable such Clients to make an informed decision relating to investing in the Fund.

Mandatory statement

- 14.3.3** (1) If a Fund is a Public Fund, the~~A Fund Manager of a Public Fund~~ must, except as provided in (1A), (2) and (4), include in the Fund's Prospectus, the following statement displayed prominently on its front page:

"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.

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."

- (1A) If a Public Fund is a Passported Fund, instead of the statement referred to in (1), the Fund Manager must include the statement specified in FPR Rule 3.2.3(e).
- (2) In the case of a Public Fund which is a Listed Fund, the Fund Manager must include, instead of the statement referred to in (1), the statement required under MKT Rule 6.3.1(1)(b)(iii) or (4) as applicable.
- (3) If ~~at~~ the Fund is an Exempt Fund, the Fund Manager must include, in addition to the statement referred to in (1), the following statement:
- “This Information Memorandum is intended for only Professional Clients who can make a minimum subscription of US\$50,000 and must not, therefore, be delivered to, or relied on by, a Retail Client or a Professional Client not able to make that minimum subscription.”
- (4) If an Exempt Fund is a Passported Fund, instead of the statement referred to in (1), the Fund Manager must include the statement specified in FPR Rule 3.1.3(d) and in addition the statement referred to in (3).

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15 MARKETING OF FOREIGN FUNDS

15.1 Access to Foreign Funds and availability of Prospectus

Guidance

1. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. Finally, Rule 4.1.5 excludes an offer of a Unit of a Passported Fund under the Fund Protocol, where the DIFC is the Host Jurisdiction, from being treated as an Offer. This is because such an offer will be subject to the requirements in the Home Jurisdiction. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 50 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
2. Article 54(1) of the Law prohibits the Offer of Units of a Foreign Fund unless one of three specified criteria in that Article are met, i.e.
 - 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, had it been a Domestic Fund, would meet the Exempt Fund criteria in Article 16(4) of this Law and the Offer is made in a manner that does not breach the requirements in that Article.
3. Under Article 54(2) of the Law, the DFSA has the power to prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of a Foreign Fund, including disclosure that must be included in a Prospectus and the legal form and structure of the Fund such as being open-ended or closed ended or listed or not. This section contains additional criteria and requirements prescribed pursuant to Article 54(2) of the Law.
4. In relation to Passported Funds under the UAE Fund Protocol for which the SCA or FSRA is the Home Regulator, the DFSA has specified that such Funds are Designated Funds for the purposes of Article 54(1)(a)(i) of the Law. The effect of that designation is that an Authorised Firm may Offer a Unit of such a Foreign Fund. Rule 15.1.1 specifies which requirements in this chapter apply to an Authorised Firm marketing such a Passported Fund.

Application

- 15.1.1** Only Rules 15.1.1A, 15.1.2, 15.1.4, 15.1.5(a), 15.1.8, 15.1.9, 15.1.10 and 15.1.11 apply to an Offer of a Unit of a Foreign Fund that is a Passported Fund where the DIFC is the Host Jurisdiction.

Clients to whom Offers of Units of Foreign Funds can be made

- 15.1.1A** An Authorised Firm must not, in or from the DIFC, Offer a Unit of a Foreign Fund to a Retail Client unless the Units of the Foreign Fund can be offered, under the home jurisdiction regulation applying to that Fund, to retail investors.

Prospectus disclosure relating to Foreign Funds

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