

CONSULTATION PAPER NO.121



PROPOSALS FOR FUND PLATFORMS

19 DECEMBER 2018

PREFACE

Why are we issuing this paper?

1. The Dubai Financial Services Authority (the DFSA) proposes to permit Fund Managers to use Fund Platforms in the Dubai International Financial Centre (the Centre) as a distinctly different method to the conventional way of managing multiple Funds under the current Funds regime.¹
2. Under the current Funds regime, a Fund Manager cannot use a Fund Platform as a distinct means of managing multiple Funds. This is because the current regime does not recognise the concept of centralised dedicated infrastructure within a Fund Platform to manage multiple stand-alone Funds using the Incorporated Cell Company (ICC) structure. In the ICC structure, the Fund Platform is the ICC, and the Fund Manager manages the Funds, established as Incorporated Cells, of the ICC, using the infrastructure contained in the Fund Platform. This structure allows the Fund Manager to manage one or more Funds using the Fund Platform, where each such Fund is a stand-alone legal entity with its own characteristics, and is separate from the Fund Manager and the Fund Platform.
3. Instead, the current Funds regime only allows a Fund Manager to operate Umbrella Funds having multiple Sub-Funds using the infrastructure contained in the umbrella. These Sub-Funds have neither separate legal entity status, nor the ability to operate as truly stand-alone Funds with their own individual characteristics (such as one Sub-Fund being a Public Fund and another being a Qualified Investor Fund (QIF)).²
4. Our proposals will add a new type of Investment Company, called an Incorporated Cell Company, with Incorporated Cells that are separate legal entities. This will provide another model under which infrastructure needed for managing Funds can be centralised, so that a Fund Manager can operate a Fund Platform that hosts truly stand-alone Funds (and not just Sub-Funds of an Umbrella Fund).

Who should read this paper?

5. The proposals in this paper will be of interest to:
 - a) Fund Managers wishing to operate a Fund Platform;
 - b) sponsors of Funds wishing to use a Fund Platform to test new or start up investment strategies;
 - c) foreign asset managers seeking to gain exposure to DIFC markets;

¹ The Funds regime is mainly contained in the Collective Investment Law (the CI Law) and the CIR module of the DFSA Rulebook, and includes the requirements in the Markets Law and the MKT module of the DFSA Rulebook if a Fund is listed and traded. In addition, the requirements in the IFR module of the DFSA Rulebook apply to an Islamic Fund. These requirements provide for the determination of what constitutes a Fund, the requirements that apply to the Fund Managers of Funds, including when Funds are listed and traded.

² Generally, Fund Managers operate Umbrella Funds to offer different investment strategies to investors in a single Fund, so that investors can change their Units in one Sub-Fund for Units in another Sub-Fund that offers a different investment strategy and/or asset class. Our Umbrella Fund requirements are consistent with the requirements that apply to Umbrella Funds under the UK regime and those in other comparable jurisdictions such as Australia, Hong Kong, Jersey, and Guernsey, which require the interchangeability of Units in one Sub-Fund of an Umbrella Fund for Units in other Sub-Funds. See the more detailed discussion relating to Umbrella Funds in CP paragraphs 17 to 23.

- d) investors who wish to invest in Funds hosted on a Fund Platform; and
- e) other industry participants.

Terminology

6. Defined terms are identified by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning. More commonly used terms in this paper have the following meanings:
- a) a 'Fund Platform' (FP) means an Incorporated Cell Company (ICC);
 - b) a 'Fund managed by a Fund Manager using a FP' means a Fund established as an Incorporated Cell of an ICC;
 - c) an 'Incorporated Cell Company', or 'ICC', means a company that:
 - i) is registered as an ICC under the ICC Regulations (see draft ICC Regulations at Appendix 8);³
 - ii) has the ability to create one or more Incorporated Cells; and
 - iii) is a separate legal entity from each Incorporated Cell of that Company;
 - d) an 'Incorporated Cell' means a incorporated cell of an ICC which is a separate legal entity from the ICC and the other Incorporated Cells of that ICC; and
 - e) a 'sponsor' of a Fund means, in relation to a FP, a person who wishes to promote a new Fund as an Incorporated Cell of an ICC.

What are the next steps?

7. All comments should be emailed to consultation@dfsa.ae using the table provided in Appendix 9. Please refer to the CP number in the subject line. You may identify the organisation you represent when providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case and give your reasons for so requesting. The deadline for providing comments on this consultation is **18 January 2019**.
8. Following public consultation, we will proceed to make the relevant changes to the DFSA's Rulebook. The proposed changes to the CI Law will be submitted to HH the Ruler for his assent. For the proposed ICC Regulations, as they are Companies Regulations administered by DIFCA, we will proceed to submit draft Regulations to DIFCA Board for their enactment. You should not act on the proposals until the relevant changes to the laws and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

³ The draft ICC Regulations are part of the Companies Regulations administered by the Dubai International Financial Centre Authority (DIFCA), which administers the Companies Law. Therefore, both the DFSA and DIFCA are jointly inviting public comment on the draft ICC Regulations. The draft ICC Regulations themselves should be read in conjunction with the proposed changes to the Funds regime to introduce Fund Platforms.

Structure of this CP

Part I What is a Fund Platform and what is the rationale for introducing it in the DIFC?

Part II What is an appropriate legal structure for a Fund Platform?

Part III What is an appropriate regulatory regime for regulating a Fund Platform and Funds established on it?

Part IV Miscellaneous Issues;

Appendix 1 – Draft amendments to the CI Law;

Appendix 2 – Draft amendments to GEN;

Appendix 3 – Draft amendments to CIR;

Appendix 4 – Draft Amendments to IFR;

Appendix 5 – Draft amendments to PIB;

Appendix 6 – Draft amendments to GLO;

Appendix 7 – Draft amendments to FER;

Appendix 8 – Draft ICC Regulations (for joint consultation with DIFCA); and

Appendix 9 – Table for providing comments.

Part I What is a Fund Platform and what is the rationale for introducing it in the DIFC?

What is a Fund Platform?

1. In this Consultation Paper, a Fund Platform (FP) is an arrangement which:
 - a) is established as an Incorporated Cell Company (ICC); and
 - b) contains dedicated infrastructure (i.e. systems and controls such as common procedures, technical facilities, human resources, risk management tools and procedures, oversight facilities and other resources) to enable a Fund Manager to establish and manage one or more types or specialist classes of Funds, where each such Fund is established as an Incorporated Cell of the ICC.
2. Generally, an experienced fund manager would want to establish a FP to:
 - a) provide cost efficiencies resulting from the centralisation of infrastructure needed to manage Funds with different characteristics;
 - b) provide a fast track process for establishing and managing Funds – with the centralised platform containing, among other things, the necessary systems and controls to be able quickly to establish new Funds; and
 - c) to attract ‘sponsors’ of investment strategies who are less experienced (e.g. start-ups), or asset managers who are less familiar with domestic regulation, by offering an entry point for launching their Funds in the host jurisdiction under the auspices of an experienced fund manager.

How do we distinguish a FP from other similar structures/services?

3. This issue is critical because there are many structures available in the markets that are referred to as platforms. The following compares a Fund Platform of the kind specified in paragraph 1, to which our proposals apply, with other types of services that use platforms and are not within the scope of our proposals.

Fund Supermarkets and Fund aggregation sites

4. ‘Fund supermarkets’ or ‘fund aggregation sites’ can also be referred to as fund platforms. Such supermarkets and sites are generally electronic facilities that enable investors to access investments in multiple Funds, where they can compare and select Funds, and often execute transactions. Such facilities may also offer investors additional services, such as aggregated tax reporting and other administration services relating to their investments. The current proposals do not relate to such facilities, but instead deal with a FP that contains centralised infrastructure for Fund Managers to establish and operate their own Funds.

‘Platform Service providers’

5. Under the UK regime, the term ‘platform service provider’ is defined as ‘a service that involves arranging, safeguarding and administering investments and distribution of retail products offered by multiple product providers but as not including services solely paid for by adviser charges or a service ancillary to the activity of managing investments for a retail client’. Again, a FP under this paper is different to such Platform Service

Providers, because the focus of our FP is providing infrastructure support to a Fund Manager to manage its own multiple stand-alone Funds, rather than arranging, safeguarding and marketing of retail investment products.

Market infrastructures

6. Although a FP and a market infrastructure (such as an exchange or clearing house) are both infrastructure providers, the purposes of the infrastructure of the two differ from each other. An exchange, for example, is a facility that functions regularly and brings together third party buying and selling of Investments. A clearing house is a facility on which clearance and settlement of transactions in Investments take place.
7. Market infrastructures face extensive regulation due to systemic concerns traditionally associated with their operations, and in the interest of the public. A FP, on the other hand, contains infrastructure for a much narrower purpose, to facilitate a Fund Manager to manage multiple stand-alone Funds managed by it, using the infrastructure facilities centralised within the FP.

Crowdfunding platforms

8. We also use the term platform for 'crowdfunding platforms', which have a bespoke regime that takes account of the small scale, peer-to-peer, fund raising that takes place between those seeking either equity or debt capital, and providers of such capital (often retail). A FP is very different in that it contains bespoke infrastructure for the Fund Manager to manage its own multiple Funds.

Fund Administration services

9. An FP is not a third party administration service provider to a Fund Manager, although some of the infrastructure centralised within a FP includes administration support for Funds managed by the Fund Manager. Unlike a third party service provider, a FP is a Fund Manager operated facility.

Master Fund and Feeder Funds

10. It is also important to distinguish the Master Fund and Feeder Fund structure from a FP hosting stand-alone Funds. In a master-feeder structure, both the Master Fund and each Feeder Fund are stand-alone Funds. However, a Master Fund is not an infrastructure provider to a Fund Manager to manage Feeder Funds. Instead, the Master Fund is a Fund in itself, which manages the contributions flowing to it from its Feeder Funds.⁴

Umbrella Funds

11. The closest structure we have to the proposed FP is an Umbrella Fund. Such a Fund can be established using the Protected Cell Company (PCC) structure.⁵ An Umbrella Fund, like a FP proposed in this paper, provides infrastructure centralised in the umbrella (core) of that Fund to manage its multiple Sub-Funds – where the Sub-Funds and the

⁴ A FP is also not a specialist type of a Fund that invests in certain classes of assets (e.g. a Property Fund or Private Equity Fund), or a Fund pursuing a specific strategy (e.g. a Hedge Fund). A FP is simply an infrastructure provider to multiple stand-alone Funds that are hosted on the FP.

⁵ An Umbrella Fund can also use a purely contractual structure (other than the incorporated structure in a PCC) to create a single Fund with a number of Sub-Funds. Such contractual arrangements are not relevant to the current proposals and are not discussed here.

umbrella form a single Fund. In fact, Umbrella Funds are generally used by Fund Managers to offer different investment strategies or classes of assets to investors in a single Fund, where they can switch freely from one strategy to another. An Umbrella Fund, and the PCC structure available to Umbrella Funds, does not provide the mechanism needed to operate a FP that offers infrastructure to host stand-alone Funds, with their own individual characteristics and attributes. See paragraphs 17 to 23 for a more detailed discussion on the limitations of the PCC structure.

Why are we proposing to regulate Fund Platforms?

12. Two Fund Managers have submitted applications asking us to facilitate the use of FPs in the Centre to manage stand-alone Funds to achieve the objectives noted in paragraph 2. The more detailed application provided by one applicant supports a regime for operating FPs with the following features:
 - a) a Fund Manager being able to operate a FP as a distinct type of activity under its Licence;
 - b) a Fund Manager operating a FP being fully accountable to investors for the proper operation of the FP, as well as the management of the Funds using the infrastructure centralised in the FP;
 - c) the FP, and each Fund established on the FP being separate stand-alone legal entities – so that an event giving rise to insolvency within one entity does not contaminate the other entities within the structure;
 - d) the FP being able provide infrastructure to manage Funds with different investment strategies sponsored by third parties;
 - e) the FP being able to be used by less experienced asset managers to gain a track-record by working with an experienced and well-resourced Fund Manager with a proven track record;
 - f) a Fund established on the FP being able to have its own investment manager and adviser, within an accountability framework that recognises their role;
 - g) the FP being able to host any type of Fund (Public Fund, Exempt Fund or QIF), or any specialist class of Fund (such as a REIT, MMF or ETF), or any form of Fund (Open-ended or Closed-ended), including listed or unlisted Funds;
 - h) the prospectus disclosure being tailored so that a Fund established on a FP can have a two part Prospectus, one part (the master prospectus) containing the Fund Manager and FP related disclosure, and the Fund specific disclosure in the other part;⁶ and
 - i) a Fund established on the FP having mobility so that – if it reaches critical mass and its investment manager gains a good track record by working alongside the Fund Manager operating the FP – it could be launched as a stand-alone Fund in its own right with its own Fund Manager.

⁶ The current prospectus regime for Funds does not expressly permit the use of a multi-part Fund Prospectus, and Umbrella Funds already use such Prospectuses. We propose to provide clearly for the use of multi-part prospectuses by Funds established on a Fund Platform. See proposal 20.

13. We consider the establishment of a suitable framework under which Fund Managers can use a FP would promote the Centre as a choice of domicile for Fund Managers as it:
- a) introduces a cost efficient and fast track process for establishing and managing Funds – with the centralised platform containing the necessary infrastructure the Fund Manager uses to manage multiple Funds;
 - b) would attract ‘sponsors’ of investment strategies who are less experienced (e.g. start-ups/Venture Capital), or asset managers who are less familiar with domestic regulation, by offering an entry point for launching their Funds in the Centre under the supervision of an experienced Fund Manager;
 - c) gives investors in Funds hosted on a FP the same level of legal certainty and protection (from adverse circumstances affecting the other Funds hosted on the FP, the FP itself, or the Fund Manager) as would be available to investors in a Fund that does not use the FP structure; and
 - d) brings our regime in line with jurisdictions which offer this model (such as Jersey, Guernsey), with some tailoring to adapt the FP concept to our regime.
14. We recognise that the use of a FP has the potential to reduce the number of Fund Managers establishing in the Centre. However, we believe having a regime that caters to FPs is beneficial to the Centre because FPs are designed to provide start-up companies with no track-record, as well as asset managers less familiar with the DFSA regime, an entry-point for access to the Centre under the supervision and oversight of an experienced Fund Manager. The expectation is that they will – in due course – be able to establish as Fund Managers in their own right, with their own Funds.

Proposal 1

See draft GEN Rule 2.2.7A at Appendix 2.

15. For the reasons set out in paragraphs 13 and 14 above, we propose expressly to include the activity of using a Fund Platform as a distinct way in which a Fund Manager can manage stand-alone Funds established on the FP.

Question 1

Do you agree with our rationale for introducing the Fund Platform structure? If not, why not?

Part II – What is an appropriate legal structure for a FP?

16. As many proposed regulatory features are reliant on the specific features of the legal structure proposed, we have considered the type of legal structure needed to introduce the FP structure before tailoring the current regime to cater to FPs.

The existing Protected Cell Company (PCC) structure and its limitations

17. As noted before, we already have the PCC structure, which permits pooling of assets and liabilities in segregated cells, which are managed using the infrastructure centralised in the core.
18. The PCC structure was initially introduced, in both Guernsey and Jersey, as a vehicle for use in the captive insurance industry. It soon became evident that the PCC structure

is ideally suited for Umbrella Funds, as they create segregated pools of assets (in Sub-Funds) to offer different investment strategies and objectives to wealth management clients within one Fund, instead of having to create separate Funds.

19. The current Funds regime provides that:

'... 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'.⁷
20. The PCC structure is usable by Umbrella Funds as the PCC regulations provide that the protected cell company, and its cells, together form part of the same legal person.⁸
21. There are a number of reasons why the PCC structure is not suited to operate a FP that contains dedicated infrastructure to manage stand-alone Funds established on the FP. First, although the PCC structure provides for the segregation of cell assets and liabilities from those in the other cells and the core of the PCC, the risk of cross-contamination between cells is considered possible.⁹ This is because segregation in a PCC is through purely procedural rules,¹⁰ instead of as a matter of substantive law – which underpins the 'legal person' status available to an incorporated cell of an 'incorporated cell company' (ICC). This risk is considered real if a creditor of a cell of a PCC brings proceedings in a jurisdiction where the PCC structure is not recognised,¹¹ as a court in that jurisdiction may not recognise the segregated cell structure within the PCC.
22. Secondly, as a Fund using the PCC structure has to offer to investors in a Sub-Fund a right to exchange interests in one Sub-Fund with interests in another, the Umbrella Fund and all its Sub-Funds need to be open-ended. Interchangeability may also require a degree of homogeneity of the type of investors in Sub-Funds. If one Sub-Fund has retail investors, the entire Umbrella Fund would need to be a Public Fund, having to meet all the Public Fund related requirements in respect of all Sub-Funds. None of these characteristics would suit a FP seeking to host stand-alone Funds with differing characteristics.
23. Finally, a Sub-Fund of an Umbrella Fund using the PCC structure would not be able to survive if the PCC goes into liquidation, because they all form part of a single Fund (although one Sub-Fund may be able to wind up without affecting the on-going viability of the other Sub-Funds).
24. Due to the reasons noted above, we do not consider the PCC structure to be a legal structure suited for establishing FPs to manage stand-alone Funds. If we are to use the PCC structure, significant amendments to the current PCC regulations are needed – so that it can be used by both (a) a conventional Umbrella Fund (which hosts Sub-Funds

⁷ See Article 11(2) of the CI Law.

⁸ The PCC Regulations provide that 'a Protected Cell Company is a single legal person and the creation by a Protected Cell Company of a cell does not create, in respect of that cell, a legal person separate from the Company'.

⁹ This is the reason that led the jurisdictions that pioneered the PCC structure (e.g. Jersey, Guernsey) to introduce the ICC structure.

¹⁰ The procedural rules that segregate assets and liabilities of cells of a PCC include: (a) the provisions requiring directors of the PCC to attribute cells and liabilities to the relevant cell, with personal liability if they fail to do so; and (b) the provisions preventing creditors of one cell from making a claim against assets in the other cells or the cell company.

¹¹ Not many jurisdictions have adopted the PCC structure – see the footnote below for details.

that offer different investment strategies for investors in a single Fund), and (b) a Fund Manager using a FP to manage stand-alone Funds established on the FP. Such changes would require more complex rule changes and pose a risk of confusion as to the difference between an Umbrella Fund, on the one hand, and multiple stand-alone Funds hosted on a FP, on the other hand.

Proposal 2

25. For the reasons set out in paragraphs 21 to 23 above, we do not propose to use the PCC structure for the operation of FPs.

Question 2

Do you agree with our view that the PCC structure is not appropriate for FPs? If not, why not?

Introducing the Incorporated Cell Company (ICC) structure for FPs

26. Jersey was the first to introduce the Incorporated Cell Company (ICC) structure into their Companies Law regime in 2006 to address the legal uncertainties identified in paragraphs 21 and 23.¹²
27. An ICC is a form of cell company, similar to a PCC, but with some significant differences.

A comparison between the DFSA's existing PCC and proposed ICC structures

PCC structure (existing)	ICC structure (only proposed)
A PCC is a cell company with a 'core' and cells	ICC is a cell company with a 'core' and 'cells'
The core (called the PCC) contains the infrastructure to manage the business of cells	The core (called the ICC) contains the infrastructure to manage the business of cells
The core and each cell of the PCC form a single legal entity	The core and each cell of the ICC are separate incorporated companies
Each cell of a PCC has a segregated pool of assets and liabilities to conduct the cell business	Each cell of an ICC, being a separate legal entity, has its own assets and liabilities to conduct its business
Segregation of cell assets is through 'procedural requirements' in the PCC regulations ¹³	Segregation of assets and liabilities in each cell is through substantive law, as the core and each cell have separate incorporated company status
The board of the PCC, as the operator, is responsible for managing the core and cell business	The ICC and incorporated cells (each being a separate legal entity) have their respective boards of directors

¹² We have restricted our benchmarking to Jersey (Guernsey has very similar provisions) because the DIFC Companies Law is substantially based on the Jersey Companies Law. Our PCC regulations are also modelled on the Jersey PCC regime. It seems appropriate to model our ICC proposals on the Jersey regime.

¹³ If the procedural requirements in the PCC regime are not met, the directors and officers of the PCC face significant administrative sanctions and penalties and contractual liability, including personal liability.

The board of the PCC has the capacity to bind the PCC and its cells	Each cell and the core have the legal capacity to bind themselves
Ring-fencing of assets and liabilities in each cell is effective only to the extent the procedural requirements in the PCC regulations are met	Ring-fencing of assets and liabilities in each cell is generally impregnable as it is provided through incorporated company status given to each cell
Cells cannot survive the insolvency of the core	As cells are incorporated entities, they can survive the insolvency of the core or of any other cell of the ICC
A PCC can convert to a general company or an ICC (if introduced)	ICC and each cell can merge with, or convert to, any other type of company

28. Introducing the ICC structure provides a bespoke vehicle ideally suited to operate a FP by a Fund Manager wishing to manage multiple stand-alone Funds using the infrastructure available within the core.¹⁴

Proposal 3

See the draft ICC Regulations at Appendix 8 and the draft amendment to Article 26(2) of the CI Law at Appendix 1.

29. We propose to introduce the ICC structure, to exist side-by-side with the current PCC structure, for the reasons set out in paragraph 28 above.

Question 3

Do you agree with our proposal to introduce the ICC structure for FPs? If not, why not?

The proposed ICC structure-related requirements

30. An ICC, like a PCC, would be a company limited by shares.¹⁵ Being a Company, the Companies Regulations need to contain the structural requirements for ICCs (in the same way as the PCC Regulations contain such requirements for PCCs).¹⁶ The Funds regime needs to include the bespoke regulatory requirements that apply when a Fund Manager uses a FP to manage Funds established on the FP (see Part III for the proposed bespoke requirements for Fund Managers using FPs).
31. The key requirements to be included in the ICC Regulations include the following:
- a definition of an ‘incorporated cell company’ to clearly distinguish such a company from a PCC, and to identify its different components, viz.:

¹⁴ A captive insurer should also be able to use the ICC structure to operate cell business for separate sponsors (discussed in paragraphs 133 and 134).

¹⁵ Under the DIFC Companies Law 2018, two types of companies limited by shares can be established in the DIFC – a Public Company or a Private Company. See Articles 31 and 32 of the Companies Law.

¹⁶ The new PCC Regulations (consulted on jointly by the DFSA and DIFCA in CP119) contain all the provisions that govern PCCs. Being part of the Companies Regulations, they are administered by the Registrar of Companies (RoC), although the DFSA also has a major administration role because PCCs can only be used for regulated business. For example, without the DFSA’s prior written approval, RoC cannot register or deregister a PCC, or waive or amend any of the requirements applicable to a PCC.

- i) the 'core' of the ICC – referred to as the Incorporated Cell Company or ICC; and
 - ii) the incorporated 'cells' of the ICC – referred to as the Incorporated Cells;
- b) provisions that:
- i) confer incorporated company status to the ICC (core) and each Incorporated Cell, and the procedures applicable to the incorporation of the ICC and to its Incorporated Cells;¹⁷
 - ii) stipulate that, where the ICC structure is used for conducting Fund business, each Incorporated Cell is a Fund (i.e. an Investment Company);¹⁸
 - iii) require the ICC and each cell to meet the requirements that are applicable to the use of its name, formation, operation, merger with, or conversion to another ICC or Company and winding up;
 - iv) set out the requirements relating to its board, articles of association, company resolutions and meeting procedures and accounting and reporting applicable to the ICC and its Incorporated Cells;
 - v) allow an Incorporated Cell to be an Open-ended or Closed-ended Investment Company, regardless of whether the other Incorporated Cells are Closed-ended or Open-ended Funds;
 - vi) prohibit investors of one Incorporated Cell having access to information relating to the other Incorporated Cells by virtue of being an investor in one cell; and
 - vii) prohibit an Incorporated Cell becoming a subsidiary or holding company of the ICC or any other Incorporated Cell (i.e. a cross-vesting prohibition); and
- c) the DFSA powers relating to both the ICC and its Incorporated Cells, where they conduct regulated activities (similar to those under the PCC Regulations).

These proposed features will underpin the more detailed regulatory regime for Fund Platforms proposed in the following Parts of the proposals.

Proposal 4

See draft ICC Regulations at Appendix 8.

32. We propose to introduce a stand-alone set of regulations, called ICC Regulations, with the features specified in paragraph 31.

Questions

- 4. Do you agree with our proposed requirements for the ICC structure? If not, what requirements do you oppose, and why?**

¹⁷ The ICC Regulations will need to include separate incorporation procedures for the ICC (core) and for its cells, with the former attracting normal procedures for company incorporation, and cell incorporation requiring truncated procedures recognising that the core has met the substantive requirements relating to incorporation.

¹⁸ To be consistent with our approach in allowing the PCC structure to be used for both Fund business and Insurance business, we propose the ICC structure to be also available to insurers (see the discussion under paragraphs 133 and 134).

5. Are there any additional requirements that should be included in the ICC Regulations? If so, what are they, and why should they be included?

Part III – What is an appropriate regulatory regime for regulating a FP and Funds established on it?

Introduction of the Fund Platform (FP) structure

33. The proposed introduction of FPs provides means by which a Fund Manager can manage multiple stand-alone Funds using the infrastructure centralised in that FP. As such, operating a FP is an activity of a Fund Manager, and only of a Fund Manager. Therefore, we propose to:
- a) establish the necessary link between the Fund Manager's activities of managing Funds established on a Fund Platform, using the infrastructure in that platform;
 - b) distinguish the activity of using a FP to manage Funds from the conventional approach to managing Funds with no interposition of a FP, or managing a cluster of Sub-Funds of a single Fund using the existing PCC structure – as in an Umbrella Fund; and
 - c) establish bespoke provisions relevant to a FP and Funds established on the FP (discussed below).
34. We considered the option of amending the Financial Services definition of Managing a Fund for regulating FPs, but decided against it because the use of a Fund Platform is a distinct way or means of managing multiple Funds, rather than an activity that in itself constitutes Managing Funds.

Proposal 5

See draft GEN Rule 2.2.7A at Appendix 2.

35. We propose that the use of a FP be recognised as a distinct way in which a Fund Manager may manage multiple Funds under its Licence.

Question 6

Do you agree with our proposal to include using a Fund Platform as a distinct way in which a Fund Manager may manage Funds established on the platform? If not, why not?

What activities can a FP carry out?

36. We propose to describe the activities of a FP to provide clarity. This is particularly important because some such activities can encompass Financial Services, such as Fund Administration, Providing Custody or Managing Assets. See the previous discussion of similar structures and services that do not constitute operating a FP in paragraphs 4 – 11.
37. While jurisdictions such as Jersey and Guernsey have introduced the incorporated cell company structure, which can be used for FPs, we could not find a definition of the activities of a FP (probably due to these jurisdictions allowing the ICC to be used for a wide range of different businesses).

38. However, to identify clearly the activities of a FP when it is used by a Fund Manager to manage stand-alone Funds established on the FP, and to differentiate the activities of such a FP from similar activities included in other Financial Services (as noted in paragraph 36), we propose to describe a Fund Platform as an arrangement that:
- a) provides dedicated infrastructure (e.g. systems and controls, such as common procedures, technical facilities, human resources, risk management tools and procedures, oversight facilities and other resources) to enable the Fund Manager to establish and manage one or more types or specialist classes of Funds; and
 - b) is established as an Incorporated Cell Company (ICC), which contains the infrastructure referred to in (a) to manage Funds established as Incorporated Cells of that ICC.

Proposal 6

See draft GEN Rule 2.2.7A(2) at Appendix 2 and draft CIR Rule 6A.1.2(a) at Appendix 3.

39. We propose to describe the activities of a Fund Platform along the lines set out in paragraph 38.

Question 7

Do you agree with our proposed description of the activities of a FP? If not, why not?

Regulation of the activities of a FP

40. As a Fund Manager is conducting the Financial Service of Managing Funds using the dedicated infrastructure within a Fund Platform it operates, the FP itself (i.e. the ICC) does not carry out the Financial Service of Managing Funds established on the FP. Therefore, we propose to clarify that a FP does not require authorisation to Manage Funds established on the FP, if the FP is used by a Fund Manager within the parameters proposed (see also Proposal 10).
41. A Fund Manager is also allowed to conduct certain types of Financial Services, as an integral part of Managing Funds, which are included in GEN 2.12.1(2).¹⁹ As a Fund Platform is a dedicated infrastructure provider to the Fund Manager to manage Funds established on the FP, we consider it appropriate for the FP to also have the ability to carry on the various Financial Services that are integral to the Fund Manager's role in managing the Funds established on the FP.

Proposal 7

See draft GEN Rule 2.12.3 at Appendix 2 and draft CIR Rules 12A.3.1(3) &

42. We propose to clarify that a Fund Platform that is being used by a Fund Manager to Manage Funds established on that platform does not need to be separately licensed

¹⁹ GEN 2.12.1(2) provides that to the extent that any activity (of managing a Fund as defined in 2.12.1(1)) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Managing a Collective Investment Fund.

13.4.2A at Appendix 3.

for the activities carried out by it for the reasons described in paragraphs 40 and 41.

Question 8

Do you agree with our proposed clarifications? If not, why not?

An express endorsement to be able to use the Fund Platform structure

43. Managing Funds established on a FP differs from the conventional fund management activities of a Fund Manager. Therefore, we propose to require such a Fund Manager to obtain an endorsement on its licence to be able to do so.
44. This approach enables those Fund Managers using the FP structure to differentiate themselves more clearly as expressly authorised to do so, and places in the public domain information that a Fund Manager has such a permission by an endorsement on its licence. It would also provide a clear mechanism for us to assess at the point of authorisation, and thereafter for on-going monitoring, whether a Fund Manager using a FP meets the relevant requirements.

Proposal 8

See draft GEN Rule 2.2.7A and 7.3.6 at Appendix 2.

45. We propose to require a Fund Manager wishing to use a FP to obtain an endorsement on its licence to do so.

Question 9

Do you agree with our proposal to use the endorsement power to permit Fund Managers to use FPs? If not, why not?

Fund classification and related extra-territorial issues

46. Articles 13 to 17 of the CI Law contain classifications of:
 - a) Domestic Funds, Foreign Funds and External Funds (which are a sub-set of Domestic Funds); and
 - b) different types of Domestic Funds, viz., Public Funds, Exempt Funds and Qualified Investor Funds.
47. A unique feature of our Funds regime is that we allow a Domestic Fund Manager to operate an External Fund (a Fund located outside the DIFC), and an External (foreign) Fund Manager to manage a Domestic Fund. Around this extra territorial application of our Funds regime, some issues arise for Fund Managers wishing to operate a FP.

The use of the ICC structure for a FP

48. An ICC is a new type of company, which, if introduced following our proposals, needs to be incorporated under the Companies regime administered by DIFCA (see our proposals in Part II). Apart from Jersey, Guernsey and some others, not many jurisdictions offer the ICC structure. Therefore, to establish a FP, a Fund Manager would need to incorporate an ICC as a DIFC Company under the DIFC Companies Law.

Should an External Fund Manager be permitted to establish a FP in the Centre?

49. Technically, an External Fund Manager should be able to establish an ICC under the DIFC Companies Law by having a physical place of business in the DIFC. As the FP provides infrastructure to manage multiple Funds, the FP's presence in the Centre could be seen as sufficing for obtaining incorporation as an ICC in the Centre.
50. While the requirements applicable to an External Fund Manager itself under CIR are not extensive,²⁰ such an external manager is still required to comply, in respect of Domestic Funds it manages, with the requirements for the DIFC Funds. Technically, it is possible to allow an External Fund Manager, coming from a recognised jurisdiction or an otherwise acceptable jurisdiction to the DFSA, which submits to the DIFC laws and the DIFC Court's jurisdiction, to establish an ICC as a Domestic Company to operate a FP in the Centre.
51. However, we do not propose this approach because the infrastructure provided by a FP is very much the responsibility of the Fund Manager, and we believe that this can be adequately monitored and supervised only if the Fund Manager is a DFSA licensed Fund Manager and not an External Fund Manager.²¹

Should a FP be allowed to host External Funds?

52. As each Fund on a FP has its own separate legal personality, a Fund Manager using a FP might, at least theoretically, be able to use its FP to provide infrastructure to an External Fund (i.e. a Fund established in a jurisdiction outside the DIFC). However, we recognise that in practice it may not be possible for a Domestic Fund Manager to manage External Funds using the FP structure. This is because it would be difficult for a Fund Manager to comply with the requirements applicable to an External Fund in its home jurisdiction, particularly if the home jurisdiction does not recognise the ICC structure.²²

Proposal 9

**See draft
GEN Rule
2.2.7A(2) at
Appendix 2
and draft
CIR Rules
6.1.4 and
6A.1.4(c) at
Appendix 3**

53. We propose:
- a) that a FP must be a company registered under the DIFC Companies Law as an Incorporated Cell Company (ICC) for reasons set out in paragraph 48;
 - b) that only a Domestic Fund Manager (and not an External Fund Manager) should be permitted to Operate a FP for the reasons noted in paragraph 51; and

²⁰ An External Fund Manager must be a person regulated by a Financial Services Regulator in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA. In addition, such an External Fund Manager must also subject itself to the DIFC laws and the jurisdiction of the DIFC courts, as well as appoint a Fund Administrator licensed by the DFSA to the Domestic Fund it manages.

²¹ This is also consistent with the approach we proposed for defining the activity of 'Operating a Fund Platform', where one of the key elements is the requirement to have a Fund Manager (not an External Fund Manager) responsible for the platform.

²² The conditions that a Fund Manager needs to meet to manage External Funds include complying with the requirements in the home jurisdiction of the External Fund.

- c) not to allow a Fund Manager using a Fund Platform to host an External Fund on the FP operated by it, for the reasons set out in paragraph 52.

Questions

10. Do you agree with our proposals to require FPs to be a DIFC company (ICC)? If not, why not?
11. Do you agree with our proposal not to allow External Fund Managers to establish FPs?
12. Do you agree that External Funds should not be hosted on a DIFC FP? If not, what are your reasons and what should we do instead?

Should the FP itself be able to be a Fund or Fund Manager?

54. This issue arises because a FP, which is to be the core of an ICC, is a separate legal entity in its own right. We do not consider it is appropriate for the FP, although it is a separate legal entity, to be itself classified as a Fund in its own right, because the FP is:
- a) an infrastructure provider for Funds, and not a vehicle to pool investors' contributions (which occurs within each Incorporated Cell); and
 - b) a facility operated by a Fund Manager for the conduct of its Fund business, in managing Funds hosted on the FP.
55. The FP is a mere infrastructure provider to a Fund Manager to facilitate managing its Funds, so it is – similarly – not appropriate for a FP itself to be a Fund Manager.

Proposal 10

*See draft
ICC
Regulation
1.5.2(a) at
Appendix
8.*

56. We propose that a FP (i.e. the core of the ICC) should not be a Fund or Fund Manager for the reasons set out in paragraphs 54 and 55.

Question 13

Do you agree that a FP (ICC) should not be a Fund or Fund Manager? If not, why not?

How do the overarching duties and functions of a Fund Manager apply to the FP structure?

57. Article 22 of the CI Law contains the general overarching duties and functions of a Fund Manager when managing Funds. These duties and functions are cast in broad terms, thereby making it easy to apply them to a Fund Manager when using a FP to manage Funds (i.e. using the infrastructure centralised in that platform).
58. However, as a FP is not a Fund in itself (see proposal 10), but a separate legal entity interposed between the Fund Manager and each Fund hosted on the FP, clarification is

needed to ensure that the Fund Manager's general duties and functions apply to the Funds managed using a FP.

59. To provide such clarity, we propose a general provision that expressly applies the Fund Manager's overarching duties and functions to Funds established on a FP, and which recognises that the Fund Manager is legally accountable for acts or omissions of the Fund Platform:
- a) for the proper management and operation of the FP, particularly the integrity, safety and adequacy of the systems and controls centralised in the FP for managing the Funds hosted on the FP;
 - b) to investors in the Funds hosted on the FP, for the proper management of those Funds; and
 - c) to any third parties with whom the FP has any dealings.

Proposal 11

*See draft
CIR Rule
6A.1.2 and
6A.1.3 at
Appendix
3.*

60. We propose that an overarching provision, along the lines proposed in paragraph 59, be included in CIR so that the general duties and functions of a Fund Manager extend to both the FP and the Funds established on that FP. We also propose that the Fund Manager should be responsible for the acts and omissions of the FP both to the Unitholders in a Fund established on the FP and to any third parties with whom the FP has any dealings.

Questions

14. Do you agree with our proposal to extend the Fund Manager's overarching obligation to a FP and the Funds hosted on it, as noted in paragraph 59? If not, why not?
15. Do you agree with our approach to make the Fund Manager legally accountable for the acts and omissions of the Fund Platform? If not, why not?

Should a Fund Manager be able to establish any 'type', or any 'specialist classes', of Funds on its FP?

61. There are a wide range of requirements applicable to a Fund Manager, based on the type of the Fund (Public Fund, Exempt Fund or QIF) or the specialist class to which the Fund belongs (e.g. Property Fund, Private Equity or Hedge Fund). These include:
- a) more extensive obligations applicable to a Public Fund than those applicable to an Exempt Fund or QIF, due to retail participation in Public Funds;
 - b) unique requirements specific to certain specialist classes of Funds, such as Property Funds, Umbrella Funds, Hedge Funds, MMFs, ETFs or Islamic Funds;
 - c) liquidity management controls to ensure redemption requests are met as they fall due in Open-ended Funds, which are not applicable to Closed-ended Funds; and
 - d) the requirements applicable to listed and traded Funds (in the Markets Law and MKT Module), which are not applicable to unlisted Funds.

62. In principle, there is no impediment for a FP to establish any 'type' or 'specialist class' of Fund, because a FP and any Fund established on the FP each has its own separate legal entity status. Generally, the overarching provision in proposal 11, which requires a Fund Manager to comply with the applicable requirements to a Fund established on a FP taking into account the type and classification of that Fund, supports this position. We do not propose to remove this flexibility, except to the extent specified below.

Should a Fund Manager licensed to manage only a QIF be able to establish on its FP other types of Funds?

63. We draw a distinction between a Fund Manager authorised to manage a QIF, as opposed to one who can manage any type of Fund, including a Public Fund. The former, being restricted to managing only QIFs (DIFC-domiciled), attracts a faster authorisation process and lower capital requirements and fees. Implicit in the faster process and lower capital and fees is that a Fund Manager managing a QIF poses less risk, so is subject to less onerous regulatory requirements than those managing a Public Fund (or an Exempt Fund). This, in turn, is reflected in the more extensive requirements, including those relating to systems and controls, applicable to a Fund Manager managing a Public Fund, than those applying to others.
64. Consistent with the above approach, we propose that a Fund Manager authorised to manage a QIF should not be permitted to use a Fund Platform to operate another type of Fund. We believe that existing restrictions on the scope of an authorisation will have this effect, but we propose to add some Guidance to confirm this position. Such a Fund Manager would still need to obtain an endorsement on its licence to use the FP structure to establish QIFs. We also propose to provide a speedier process and lower regulatory fees for using the FP structure if it establishes only QIFs (DIFC-domiciled), compared to Fund Managers proposing to use a FP that can establish any type of Fund, including a Public Fund (see the discussion on fees and capital in Part IV).

Are there any specialist classes of Funds that cannot be established on a FP?

65. The centralisation of systems and controls within a FP would generally deliver cost savings and administrative efficiencies in managing multiple stand-alone Funds if much of the infrastructure in the FP can be used by most of the Funds established on the FP. Therefore, we believe there is a natural constraint on the type of Funds a FP may host. Nevertheless, we prefer to give a Fund Manager the option to establish any specialist classes of Funds on its FP, rather than impose any restrictions.
66. We considered whether there is any specialist class of Fund that is not, by its very nature, capable of being established on a FP. Generally, a FP should be able to host most specialist classes of Funds. 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 Fund²³ because of their unique structures. If an applicant wishes to establish one of these specialist classes of Funds on a FP, the DFSA will consider what practical difficulties would arise in that context, including any additional clarification or Rule changes if needed.
67. We believe that both Islamic and conventional Funds can be established on the same FP, provided the requirements relating to Shari'a compliance are met both as to investments and as to relevant operational matters, and that appropriate governance is

²³ An Umbrella Fund using the PCC structure, being a distinct type of an Investment Company in itself, will not be able to be established as an Incorporated Cell of an ICC.

in place to achieve this. This would generally require either all the Funds on an FP to be Islamic Funds, or the FP to operate through an Islamic Window in the same way as the Fund Manager operating the FP.

68. We propose to give guidance relating to matters noted above, and to expand such guidance as needed, following public consultation on whether there are any other specialist classes of Funds that would face practical difficulties when using the FP structure.

Can a Public Fund or listed Fund be established on a FP?

69. We have considered the issue of Public Funds and listed Funds together because, to list and trade on an exchange, a Fund must be a Public Fund. Technically, there are no practical impediments to a FP hosting Public Funds and non-public Funds, and similarly listed Public Funds and unlisted Funds, as each Fund hosted on a FP has a separate legal entity status, provided that the Fund Manager meets the requirements applicable to the relevant Fund. Fund Managers proposing to use the FP structure would, we believe, prefer to have the flexibility to host any type of Fund on a FP, including Public Funds, whether listed or not.
70. Therefore, we propose to allow any type of Fund to be established on a FP, but we invite public comment on whether there would be any practical difficulties resulting from having a Public Fund or listed Fund established on a FP that also hosts non-public Funds.

Proposal 12

See draft Guidance item 5 in CIR Part 6 & Guidance under draft CIR 6A.1.4 at Appendix 3 and draft IFR Rule 3.3.1(2) & Guidance item 6 in Appendix 4.

71. We propose that a Fund Manager:
- a) authorised to manage only a QIF be allowed to use a FP which only establish QIFs, for the reasons noted in paragraph 64;
 - b) be allowed to establish any specialist classes of Funds on its FP, subject to the considerations noted in paragraphs 66 and 67, and give further Guidance to that effect; and
 - c) be allowed to establish Public Funds and listed Funds on its FP, but invite public comment on whether there are practical difficulties resulting from a FP establishing both public and non-public Funds.

Questions

16. Do you agree with our proposals to allow Fund Managers authorised to manage QIFs to establish only QIFs on their FP? If not, why not?
17. Do you have any concerns relating to our proposal to allow any type of Funds to be established on a FP, subject to the considerations noted in paragraphs 66 and 67? What are those concerns, and how should they be addressed?
18. Are there any practical difficulties for a FP to establish listed and unlisted Funds, or Public Funds and Exempt Funds and QIFs? What are they, and how can they be addressed?

Corporate Governance

72. As each Fund established on a FP (i.e. an Incorporated Cell) is a stand-alone legal entity, such a Fund must have its own board of directors.²⁴ Nevertheless, the overall responsibility for managing each Fund lies with the Fund Manager using the FP structure (see Proposal 11). We believe that to align the decision making within each such Fund with the legal accountability of the Fund Manager to Unitholders in those Funds, it would be appropriate for each such Fund to have a board constituted by the same persons²⁵ as the Fund Manager's board (with an exception for start-up Funds discussed in paragraphs 77 – 81 below). However, we invite public comment on whether we should allow more flexibility in relation to the constitution of the Fund boards generally.
73. We also propose to adopt the above approach with respect to the constitution of the board of the FP (which is the ICC). As the Fund Manager operates the FP, we propose that the FP also be required to have a board constituted by the same persons who constitute the Fund Manager's board. We invite public comment on whether the FP be also required to be fully owned by the Fund Manager.

Use of the 'internal' Fund Manager model in the FP (ICC) structure

74. A related issue is whether a Fund Manager should be able to use the 'internal' Fund Manager model recently introduced²⁶ for managing Funds using the FP (i.e. the ICC) structure. A Fund which is an Investment Company can have an internal Fund Manager if it has a sole Corporate Director, which is licensed to manage only that Fund (i.e. is the Investment Company) and no other Fund. A Fund Manager managing more than one Fund cannot use the internal Fund Manager model.
75. We believe allowing a Fund Manager managing multiple Funds using the FP (ICC) structure is inconsistent with the 'internal' Fund Manager model because it is not managing just the one Fund in which it is the Corporate Director, but a number of Funds established on its FP, particularly as each such Fund has a separate legal entity status.²⁷

Proposal 13

**See draft
CIR Rules
6A.1.5 and
6A.1.6 at
Appendix
3.**

76. We propose:
- a) each Fund which is established on a FP, and the FP itself, to have a board constituted by the same persons as the board of the Fund Manager operating the relevant FP (except for a start-up Fund that uses a FP – discussed below); and

²⁴ The Guernsey and Jersey incorporated cell company regimes (which is the structure we propose to use for FPs) require an incorporated cell company, and each cell of that company, to have the same directors, and the same company secretary and the same registered office. However, later, Jersey has removed the requirements for each cell company to have the same board of directors as the incorporated cell company. This may be because the Jersey and Guernsey regimes do not confine the use of incorporated cell companies to insurance and Funds business.

²⁵ A reference to a 'person' includes both legal and natural persons.

²⁶ The internal Fund Manager model was introduced following the CP115 consultation.

²⁷ See also the proposals that the duties and obligations of the Fund Manager apply to each Fund using the FP structure, taking into account the particular type of Fund and the classification of that Fund.

- b) not to allow a Fund Manager operating a FP to use the 'internal' Fund Manager model, for the reasons set out in paragraph 75.

Questions

19. Do you agree with our proposal to require Funds established on a FP to have the same persons as those on the Fund Manager's board? Would it suffice only a majority of the Fund's board to be constituted of persons on the Fund Manager's board? What are your reasons?
20. Do you agree with our proposal to require the FP to have the same persons on its board as the Fund Manager using that FP? If not, why not?
21. Do you agree with our proposal not to allow the use of the 'internal' Fund Manager for Funds hosted on a FP? If not, why not?

Start-up Funds

77. One of the key objectives of the applicants seeking to establish FPs in the Centre, referred to in paragraph 12, is to provide flexibility for fledgling investment managers - who do not have a sufficient track record to obtain their own Fund Manager licence - to be able to launch their Funds on a FP. This allows less experienced investment managers to gain experience in managing an investment strategy, by working with an experienced and well-resourced Fund Manager operating the FP, until they build the necessary track-record and reach critical mass to launch their own Fund.
78. We believe that it is possible to allow a person, proposing to sponsor (i.e. to set up) a start-up Fund to promote a new investment strategy, to participate in the implementation of that investment strategy (i.e. the investment mandate of the Fund). This would enable that person to gain a track record in managing a Fund, which should help the person obtain its own licence. However, this requires some controls to be in place to address risks that arise from removing the normal requirements that would otherwise apply to such a person. Such requirements generally include the person having to be licensed and regulated by the DFSA or by a regulator in a Zone 1 jurisdiction to qualify as a person to undertake the function of managing assets for a Fund, as a delegate of the Fund Manager.²⁸
79. We are of the view that any adverse impact resulting from a start-up Fund sponsor participating in managing asset activities of the start-up Fund without being subject to the normal requirements applicable to such a person as referred to in paragraph 78 can be mitigated because:
- a) it is permitted to do so under the oversight and guidance, as appropriate, of the experienced and well-resourced Fund Manager responsible for operating the FP and the Funds established on the FP; and

²⁸ See CIR 8.12.2(3).

- b) it will be a member of the board of the start-up Fund, which carries both the director's duties under the Companies Law and the duties imposed under CIR on members of the Governing Body of a Fund.²⁹
80. We do not think that the flexibility proposed for start-up Funds would generally warrant being extended to other types of Funds hosted on a FP. For example, the level of regulatory protection required for a Public Fund means that it would not be appropriate for an unlicensed or unregulated third party asset manager, who is looking to develop its asset management skills, to undertake asset management duties of such a Fund.
81. We do not propose to define a start-up Fund other than as a Fund sponsored by a person without an established track record in the DIFC to provide flexibility for such sponsors to gain experience in asset management.

Proposal 14

**See Draft
CIR Rule
6A.1.6 and
associated
Guidance
at
Appendix
3.**

82. We propose that:
- a) a start-up Fund established on a FP has the flexibility to have on its Governing Body a person who participates in investment management activities of that Fund; and
- b) such a person not be subject to any legal liabilities other than those which apply to members of the Governing Body of the Fund under the current Regime, for the reasons set out in paragraph 80.

Question 22

Do you have any concerns relating to our proposal to create an exception for start-up Funds so that its board can include a start-up asset manager? If so, how should such concerns be addressed?

Outsourcing and delegations

83. Under the current regime, a Fund Manager remains legally accountable to investors in the Fund for the proper discharge of duties and functions delegated or outsourced to another person ('service provider').³⁰ As such, the Fund Manager remains liable for all the acts and omissions of the service provider as if the Fund Manager has undertaken the relevant activity. Delegation or outsourcing does not relieve the Fund Manager from accountability for the proper conduct of a delegated activity.³¹
84. The above obligations extend to a Fund Manager managing Funds using the FP structure. This raises the issue whether the FP itself should be treated as a third party service provider to the Funds, as it contains the infrastructure to provide support services to Funds hosted on the FP and also it is a separate legal entity from the Fund Manager.

²⁹ The members of the Governing Body of a Fund have a range of duties – including legal accountability to investors for the prospectus disclosure. The other areas of their duties include CIR 8.8.1 – attending the 6 monthly meeting of the Governing Body of a Public Fund and CIR 8.12.7 – reviewing the 6 monthly report from the Fund Manager regarding the proper performance of outsourced/delegated activities by those service providers.

³⁰ Article 24(3) of the CI Law.

³¹ See GEN chapter 5 and CIR 8.12.

85. Although the FP is a separate legal entity (as it is an infrastructure facility operated by the Fund Manager, for which the Fund Manager is legally responsible), treating the FP as a third party service provider to the Funds using the FP structure is unwarranted. It is necessary to exclude a FP from being treated as a third party service provider to Funds hosted on the FP. See also the previous discussion on the Fund Manager's accountability for the activities of the Fund Platform in relation to Proposal 11.

Proposal 15

See draft GLO definition of Service Provider at Appendix 6 and CIR Rule 6A.1.3 in Appendix 3.

86. We propose not to treat a FP as a third party service provider, but instead to rely on the Fund Manager's extended legal accountability to investors in the Funds established on the FP and to third parties for actions and omissions of the Fund Platform.

Question 23

Do you agree with our proposal to exclude a FP from being a third party service provider? If not, why not?

Systems and controls requirements

87. Neither the general systems and controls requirements in the CI Law and GEN, nor the more Fund specific requirements in CIR,³² pose difficulties when applied to Fund Managers using the FP structure to manage multiple Funds because:³³
- a) the general systems and controls requirements do not expressly deal with any Financial Service in particular. Instead, they are cast broadly to apply to a firm conducting any Financial Service, taking into account the nature, scale and complexity of the business conducted by the relevant firm; and
 - b) the more Fund specific systems and controls associated with any specific type or specialist class of Fund in CIR need to be satisfied in respect of the particular Fund – allowing flexibility for a FP to cater to those requirements (see also Proposal 12 above).
88. Therefore, we do not consider any changes are needed to the general systems and controls requirements to accommodate Funds hosted on a FP.

³² Such as those applicable to Open-ended Funds for managing liquidity risks and for Islamic Funds to ensure Shari'a compliance.

³³ As noted before, the type of Funds that a Fund Manager may choose to host on a FP would likely be more generic, so that the Fund Manager can use centralised common systems and controls in the FP to gain administrative and cost savings in managing those Funds – see also Proposal 12(b).

Should a Fund Manager be able to use the infrastructure within its FP to manage Funds other than those established on the FP?

89. If a Fund Manager manages Funds both within the FP structure and outside the FP structure, the issue arises whether the Fund Manager should be able to use the systems and controls available in the FP to manage Funds outside that structure.
90. As the FP (i.e. the ICC) contains infrastructure predicated to managing Funds hosted on the FP (i.e. the Incorporated Cells of the ICC), allowing such systems and controls to be used by Funds outside the ICC structure would be inconsistent with the dedicated systems and controls concept that underlies managing Funds using the FP structure. It would also cause administrative difficulties. Therefore, we do not propose to allow a Fund Manager to use the systems and controls within the FP for managing Funds other than those established on the FP (i.e. Incorporated Cells of the ICC).
91. We do not propose to restrict a Fund Manager's ability to manage Funds using both the FP (ICC) structure and outside that structure. However, to do so, a Fund Manager should be able to demonstrate that it has, among other things, adequate systems and controls to manage those other Funds, quite independently of the infrastructure available for managing Funds using the FP (ICC) structure.

Proposal 16

See draft CIR Rule 6A.1.4(c) and Guidance item 11 under 'overview' of section 6A at Appendix 3.

92. We propose that a Fund Manager operating a FP:
- a) be prohibited from using the dedicated infrastructure available within the FP to manage Funds other than those which are established on the FP (i.e. Incorporated Cells) for reasons set out in paragraph 90; and
 - b) not be prohibited from managing other Funds if it wishes to, in addition to Funds using the FP (ICC) structure, for the reasons set out in paragraph 91.

Questions

24. Do you agree with our proposal to prohibit the infrastructure within a FP being used to manage Funds that are not Incorporated Cells of the ICC? If not, why not?
25. Do you agree with our proposal to allow a Fund Manager using a Fund Platform to manage other Funds outside the Fund Platform structure? If not, why not?

Managing conflicts of interests

93. A fundamental obligation of a Fund Manager is to ensure that its conflicts of interests do not adversely impact on the interests of the investors in the Funds managed by that

Fund Manager. To ensure this, the CI Law contains the overarching requirements³⁴ and CIR³⁵ contains more granular requirements.

94. The Related Party Transaction (RPT) provisions contain a strong mitigant against any conflicts of interests of the Fund Manager adversely affecting the interests of investors in the Funds it manages. Given the interconnected nature of the Fund Manager, the FP and the Funds established on the FP (although each of these entities are separate legal entities), the issue arises as to how the RPT provisions should be applicable to the Fund Manager using the FP structure.
95. The current RPT provisions rely on a number of definitions. A related party transaction is defined as a transaction a Fund Manager enters into with a Related Party in respect of the Fund Property. A Related Party, in relation to a Fund, includes the Fund Manager, the Governing Body or Custodian of the Fund or any person holding 5% or more of the Units in the Fund.³⁶
96. To mitigate adverse effects on Unitholders of a Fund, the Fund Manager is required to ensure that a RPT is carried out on commercial terms on an arm's length basis. In addition, if the total consideration for the RPT is 5% or more of the most recent net asset value of the Fund, the Fund Manager must obtain the prior written approval of investors of the Fund for that transaction.³⁷
97. These RPT provisions are not designed to cater to a Fund Manager managing standalone Funds using the FP structure. However, we believe that the protection provided by the RPT provisions should be applied to any transaction between Funds using the FP, if the transaction relates to the Fund Property of one Fund, as they are both managed by the same Fund Manager and use common infrastructure provided by the FP.
98. We proposed, earlier, that an Incorporated Cell be prohibited from investing in the other Incorporated Cells of the ICC, or its ICC (the core), and that the ICC itself be prohibited from investing in its Incorporated Cells (see Proposal 10). As a result, a subsidiary/holding company relationship would not arise between such companies.
99. However, to ensure that the benefit of the RPT provisions apply to Funds hosted on a FP, we propose to clarify that any Transaction:
 - a) between Funds established on the FP relating to Fund Property of those Funds be treated as a RPT; and

³⁴ See Article 22(2) of the CI Law which requires, among other things, that a Fund Manager must act in the best interests of investors in the Fund and, where there is a conflict between the interests of the Fund Manager and those of the investors, it must give priority to the investors' interests. Further, a Fund Manager is required to treat investors in one class equally and investors in different classes fairly, and also, to not abuse information acquired by being the Fund Manager to gain an advantage for itself or for another person, or to cause detriment to investors in the Fund.

³⁵ CIR requires a Fund Manager to take reasonable steps to ensure that any dealings in relation to Fund Property do not give rise to a conflict of interest and, if any conflict arises in dealings, including with Related Parties, disclose to investors the conflict and how it is managed. See CIR 8.3.1.

³⁶ In addition, two companies are defined as related parties if they have a subsidiary or holding company relationship with each other, and an individual is a Related Party of a company, if the individual is a director, officer or spouse of the company, or that of a subsidiary or holding company, of that company.

³⁷ CIR 8.3.2.

- b) between a Fund on the FP and any other Fund managed by the same Fund Manager be also treated as a RPT,

for the purposes of those provisions.

Proposal 17

See Draft GLO definition of Related Party in Appendix 6.

100. We propose to ensure that the full benefit of the Related Party Transaction provisions apply to Funds using the FP structure in the manner proposed in paragraph 99.

Question 26

Do you agree with our proposal to apply RPT provisions to transactions between Funds established on a FP as noted in paragraph 99? If not, why not?

Fund-specific duties of a Fund Manager

101. There is a range of other duties of a Fund Manager, under CIR, which are in addition to those discussed in detail above. These are not discussed in as great detail as the previous, because they are not likely to pose significant difficulties for a Fund Manager to meet – in respect of each Fund hosted on the FP, taking into account the type, the specialist class and the nature and complexity of the particular Fund. These other fund-specific requirements deal with:
- a) best execution and fair allocation;
 - b) valuation of Fund Property;
 - c) determination of single price;
 - d) issue and redemption of Units in an Open-ended Fund;
 - e) issue of confirmation notes;
 - f) maintaining of unitholder register;
 - g) meetings, and procedures for meetings, of Unitholders;
 - h) maintenance of records; and
 - i) permissible fees, charges and other levies.
102. Much of the infrastructure to meet the above requirements will be embedded within the systems and controls contained in the FP. However, additional clarification might be needed on how the Fund Manager may, or may not, use the infrastructure within the FP to meet its obligations relating to Funds it manages. For example, if a Fund Manager proposes to bundle trades for all Funds it manages, both on the FP and outside it, the policies and procedures for best execution and fair allocation within the FP may not suffice to meet the Fund Manager's overall obligations relating to fair allocation across all Funds. The administration of such policies and procedures may also become

complex and difficult to manage. To identify specific areas that could give rise to such practical difficulties, we propose to invite public comments.

103. To provide clarity and proper application of the range of obligations noted in paragraph 101, we also propose to rely on the proposed overarching obligation of the Fund Manager for the proper management of each Fund established on a FP, and for the sound operation of the Fund Platform (see Proposal 11). The Fund Manager needs to ensure that its obligations are met in a manner that does not have any adverse impact on any particular Fund, at the expense of any other Fund that is managed by the Fund Manager, whether or not that Fund is established on the FP or outside it.
104. We also propose to provide further amendment or Guidance if needed after public consultation to address any other areas of ambiguity that need to be addressed.

Proposal 18

*See draft
CIR Rules
6A.1.2,
6A.1.3 and
6A.1.4(a) at
Appendix
3.*

105. We propose to:
- a) rely on the overarching obligations imposed on the Fund Manager using the FP structure for the proper management of the Funds established on a FP, and for the proper operation of the FP; and
 - b) invite public comment on whether there are any aspects of the obligations in CIR chapter 8 that would cause practical difficulties and hence warrant further modification or clarification.

Questions

- 27. Do you agree with the way in which we propose to apply the Fund Manager's obligations in CIR chapter 8 to those Funds established on a FP? If not, why not?**
- 28. Are there any requirements in CIR chapter 8 that require modification or clarification in their application to Funds established on a FP? If so, what are they, and how should they be addressed?**

Accounting, audit and periodic reporting of Funds

106. As the Funds established on a FP are stand-alone Funds, the requirements in CIR chapter 9 and, if a Fund is an Islamic Fund, the Shari'a related accounting and reporting requirements in IFR, will apply to each Fund. Under these requirements, the Fund Manager must, in respect of each Fund it manages:
- a) prepare financial statements in accordance with the applicable accounting standards;
 - b) keep sufficient records relating to the transactions of the Fund to properly disclose the financial position of the Fund;
 - c) appoint an auditor, to the Fund who meets the DFSA requirements, and have the accounts of the Fund audited by that auditor;
 - d) provide investors in the Fund with annual and interim reports (only an annual report if it is a QIF); and

- e) file with the Registrar of Companies (RoC) an annual return.
107. We do not see a Fund Manager using the FP structure facing any significant practical difficulties when complying with these requirements in respect of each Fund established on its FP. Therefore, we propose to rely on the proposed overarching obligation of the Fund Manager for the proper management of each Fund established on a FP and for the sound operation of the Fund Platform (see Proposal 11) to ensure proper application of the Accounting, Audit and Reporting obligations in CIR chapter 9 to each such Fund. We also propose to invite public comments to identify any areas that could give rise to any practical difficulties, and hence warrant clarification.
108. We think that there may be some areas where flexibility can be introduced to promote cost efficiencies and administrative convenience. An example would be to allow a Fund Manager to file with the RoC a single annual return for the FP and all the Funds hosted on the FP (containing all the information relating to the FP and to each Fund on the FP).³⁸ However, there may be practical difficulties, for example, with different accounting periods that apply to different Funds, including public access to information to the RoC database. As we are not certain what further flexibility can be appropriate, without compromising the requirements relating to accounting and audit to each Fund established on a FP, depending on the type and specialist class of the Fund, we propose to invite public comments on this aspect.
109. Given that the Fund Platform is operated by the Fund Manager, we propose to require the Fund Manager operating a FP to consolidate its accounts and those of the FP for prudential purposes (see Proposal 23).

Proposal 19

*See draft
CIR Rules
6A.1.2,
6A.1.3 and
6A.1.4(a) at
Appendix 3
and draft
PIB Rule
3.7.3A at
Appendix
5.*

110. We propose to:
- a) rely on the proposed overarching obligation in Proposal 11 to ensure that the accounting, audit and reporting requirements in CIR chapter 9 apply to each Fund established on the FP; and
 - b) invite public comments on whether there are any aspects of the obligations in CIR chapter 9 that would cause practical difficulties and hence warrant further modification or clarification.

Questions

29. Do you agree with the manner in which we propose to extend the Fund Manager's obligations in CIR chapter 9 to those Funds established on a FP? If not, why not?

30. Are there any requirements in CIR chapter 9 that require modification or clarification in their application to Funds established on a FP? If so, what are they, and how should they be addressed?

³⁸ The Jersey regime provides this flexibility.

Prospectus Disclosure

111. The prospectus disclosure regime forms an essential part of the regulatory protection provided to investors under the Funds regime. We do not propose to alter the legal accountability or content of prospectus disclosure applicable to any type of Fund under the current regime, which differentiates the content of disclosure depending on whether it is a Public, Exempt or Qualified Investor Fund, or on the specialist class of Fund. We believe that a Fund Manager using the FP structure will be able to comply with the prospectus disclosure as applicable to each Fund established on the FP, taking into account the type and specialist class of the relevant Fund.
112. However, a key issue is whether, and to what extent, a prospectus of a Fund established on a FP can have a multi-part prospectus. One part would contain information relating to the FP, another contain information specific to the particular Fund, and there would be a Summary covering key information (see paragraph 114 below for details relating to the Summary). The Funds regime does not expressly permit multi-part prospectuses, although we have allowed Umbrella Funds to use two part prospectuses, one relating to the core and the other relating to the particular Sub-Fund.
113. We propose expressly to allow a Fund established on a FP to use a multi-part Prospectus, the first part containing the summary with key information, the second part the information relating to the Fund Manager and the FP, and the final part containing the information relating to the particular Fund. This is consistent with the stand-alone legal entity status of each Fund and the FP, and enables cost and administrative efficiencies to be achieved in managing such Funds, whilst also meeting the industry objective noted in paragraph 12(h). To provide greater clarity, we also propose to provide expressly that other types of Funds, such as Umbrella Funds, can also issue a multi-part prospectus.
114. We further propose to invite public comment on whether there are any prospectus requirements, particularly those relating to Public Funds, which would cause practical difficulties if the Fund is to be established on a FP. Our objective is to provide further flexibility and clarity for easy application of the prospectus regime to Funds established on FPs. For example, we recently introduced a Summary Document requirement (like the Key Investor Information Document (KIID) in the EU) for a Public Fund prospectus. That document must contain concise information, such as that relating to the investment objectives and strategies of the Funds, costs (e.g. fees and charges) of the Fund, and the risks associated with the Fund's investment strategy, to enable investors to compare easily different Funds, without derogating from the content of full prospectus disclosure.

Proposal 20

**See draft
CIR Rule
14.3.1 at
Appendix
3.**

115. We propose to:
- a) expressly allow a Fund established on a FP to use a multi-part Fund Prospectus as discussed in paragraph 113;
 - b) extend the flexibility proposed in a) to other types of Funds wishing to use multi-part Prospectuses; and
 - c) treat the Summary Document as a distinct part from the other two parts.

Question 31

Do you agree with our proposal to allow the use of multi-part prospectuses

across all Funds? If not, why not?

Transfer schemes and winding up of Funds

Transfer schemes

116. The current requirements relating to the transfer schemes of a Domestic Fund (in CIR chapter 16) clearly provide for the transfer of a Sub-Fund of an Umbrella Fund 'as if' it is a stand-alone legal entity (even though it is not legally so).
117. However, given that each Fund (i.e. an Incorporated Cell) established on a Fund Platform (the Incorporated Cell Company) is a stand-alone Fund, we propose to provide detailed procedures in the draft ICC Regulations dealing with the transfer of Incorporated Cells which are Funds.

Winding up of Funds

118. The current requirements relating to the winding up of a Domestic Fund (in CIR chapter 17) can easily be adapted to cater to the winding up of a Fund established on a FP, as it is a stand-alone legal entity.
119. However, the current winding up provisions do not clearly provide for the winding up of a FP and its impact on Funds established on the FP. Given that a FP contains the essential infrastructure for the Fund Manager to manage those Funds on the FP, it cannot, without detriment to those Funds, be wound-up until the last of the Funds established on it is either transferred to another Fund Manager following the procedures in the draft ICC Regulations, or wound up. Therefore, we propose to prohibit the winding up of a FP until the completion of either the transfer out, or the winding up, of the last of the Funds established on that FP.
120. We also propose to invite public comment on whether there are any further aspects relating to the transfer or winding up provisions that need addressing.

Proposal 21

*See draft
ICC
Regulation
1.14.1 at
Appendix
8.*

121. We propose to:
- a) specify in the ICC Regulations the relevant requirements dealing with the transfer of Funds which are Incorporated Cells and the winding up of such Funds;
 - b) prohibit the winding up of a FP until the transfer or winding up of the last of the Funds on a FP is completed; and
 - c) invite public comment on whether there are any further areas that need to be modified or clarified to facilitate orderly transfer or winding up of Funds established on a FP, and the FP itself.

Questions

- 32. Do you agree with our proposal to provide for the orderly transfer of Funds established on a FP as noted above? If not, why not?**
- 33. Are there any other areas relating to transfer and winding up of Funds that need to be addressed? If so, what are they and how should they**

be addressed?

Residual CIR requirements

122. There is a range of additional requirements in CIR that apply to:
- a) Public Funds, which require registration of the Fund with the DFSA – these requirements relate to independent oversight of Fund operations by a committee or trustee and certain investment and borrowing restrictions (CIR chapter 10);
 - b) Exempt Funds – particularly those relating to systems and controls needed to ensure that the Fund meets the relevant criteria to remain an Exempt Fund, and the less prescriptive information to be included in the Fund prospectus (i.e. the Information Memorandum) (CIR chapter 12);
 - c) QIFs – in addition to meeting the QIF criteria, systems and controls to meet the less onerous QIF specific requirements (CIR chapter 12A); and
 - d) Specialist classes of Funds, such as a Fund of Funds, Master and Feeder Funds, Property Funds and REITS, and ETFs (CIR chapter 13).
123. As noted before, we do not consider that applying the above requirements to Funds established on a FP could pose any significant difficulties because they are fund-specific requirements and each Fund is a stand-alone entity. However, we propose to invite public comments to ascertain if any further clarity or flexibility is needed in relation to the application of those provisions.

Proposal 22

No Rule change at this stage

124. We propose to invite public comment on whether there are any areas in the provisions in CIR chapters 10, 12, 12A and 13 that require further clarity or flexibility when applied to a Fund hosted on a FP.

Question 34

Are there any provisions in CIR chapters 10, 12, 12A and 13 that require further clarity or flexibility when applied to a Fund established on a FP? What are they and how should they be modified or clarified?

PART IV - Miscellaneous Issues

An appropriate prudential regime for a Fund Manager operating a FP

125. A Fund Manager attracts the prudential regime (in PIB) which is applicable to a Prudential Category 3C firm. Among other things, the prudential regime requires a firm to have, and maintain at all times, capital resources adequate to meet its liabilities as they fall due. Such resources should reflect the nature, scale and complexity of the firm's business, and be maintained at a level above the prescribed minimum capital. The prescribed minimum capital is:
- a) for a Fund Manager who manages a Public Fund – USD 140,000 or operational expenses for 13 weeks; and

- b) for a Fund Manager who manages Funds other than Public Funds, a lower capital requirement of USD 70,000 or operational expenses for 13 weeks.
126. Consistent with the above approach, we propose to distinguish a Fund Manager who has a Public Fund on its FP from a Fund Manager who does not have a Public Fund on its FP. While we acknowledge that the winding up of a FP requires each Fund hosted on the FP to be either wound up or transferred out, and would require a longer period, we do not consider it is to be a sufficient reason to increase the base capital requirement beyond what is currently required (as noted in paragraph 125) because:
- a) if a Fund Manager has a significant number of Funds hosted on its FP, the expenditure based component applicable is likely to be higher than the prescribed base capital – requiring the firm to hold more capital reflecting the nature of its business; and
- b) we wish to keep costs down for Fund Managers proposing to establish FPs in the Centre as a cost efficient means to manage Funds.
127. We propose to aggregate the expenditure of the Fund Manager with that of the FP when calculating the expenditure based capital component of the Fund Manager because the FP contains the infrastructure the Fund Manager uses to manage Funds established on the FP.

Proposal 23

*See draft
PIB Rule
3.7.3A at
Appendix
5.*

128. We propose that:
- a) the capital resources a Fund Manager using the FP structure needs to have and maintain attract the same higher or lower base capital requirement depending on whether or not the FP hosts Public Funds, as noted in paragraph 125, for the reasons noted in paragraph 126; and
- b) the Fund Manager's and the FP's expenditure are aggregated for the purpose of calculating the expenditure based capital component of the Fund Manager for the reasons noted in paragraph 127.

Question 35

Do you have any concerns relating to our proposed application of the prudential requirements to a Fund Manager using the FP structure as noted above? What are they and how should they be addressed?

Applicable regulatory fees

129. The current regulatory fees of a Fund Manager also differentiate between those applicable to:
- a) a Fund Manager managing a Public Fund or Exempt Fund – who attracts an application fee of USD 10,000 and an annual fee of USD 10,000; and
- b) a Fund Manager managing only a QIF – who attracts an application fee of USD 5,000 and an annual fee of USD 5,000.

130. In line with the approach relating to fees noted above, we propose to apply to a Fund Manager having a Public Fund or Exempt Fund an application and annual fees set at USD 10,000, while a Fund Manager having only QIFs on its FP attracts application and annual fees each set at USD 5,000. We are of the view that no increase from these current levels is warranted to minimise costs.
131. We also propose an application fee of US\$ 20,000 for an endorsement on the licence of a Fund Manager allowing it to use the FP structure.

Proposal 24

*See draft
FER Rule
2.1.6(c) at
Appendix
7.*

132. We propose that:
- a) the application and annual fees for a Fund Manager operating a FP be set at:
 - (i) USD 10,000 if the FP hosts a Public Fund or Exempt Fund; and
 - (ii) USD 5,000 if the FP hosts only QIFs; and
 - b) the application fee for an endorsement to use the FP structure be set at US\$ 20,000.

Question 36

Do you have any concerns relating to our proposed fees as proposed in paragraph 132? What are they, and how should they be addressed?

Should the use of the ICC structure be limited to Fund business?

133. The PCC structure, which is in some respects similar to the ICC structure (as both host cells), can be used for conducting both Fund business and Insurance Business (by captive insurers). Captive insurers use cells to host business of different sponsors.
134. We believe that the ICC structure is potentially even more effective than the PCC structure for a captive insurer to cater to differing needs of separate sponsors, with tighter quarantine of assets and liabilities in cells. Therefore, in line with what we have done in the PCC regulations, we propose to make provision to allow captive insurers to use the ICC structure.
135. We are not sure whether there are any other Financial Services or regulated activities (e.g. Sukuk issues) for which the ICC structure is appropriate and that could benefit from using the ICC structure. We propose to invite public comment on that issue.

Proposal 25

*See Draft
ICC
Regulation
1.5.1(1)(a)
at
Appendix
8.*

136. We propose to:
- (a) allow Insurers to use the ICC structure for the reasons set out in paragraph 134; and

- (b) invite public comment on whether there are Financial Services or other regulated activities that would benefit from being able to use the ICC structure.

Question 37

Are there any other types of business that should be allowed to use the ICC structure? What are they and why should they be so allowed?

Providing clarity relating to custody

137. We found that the current inclusion of Providing Custody as an integrated activity of a Fund Manager under GEN 2.12.1(2) has given rise to an unintended ambiguity. GEN 2.12.1(2) permits a Fund Manager to Provide Custody only in limited circumstances. These include:
- a) if the Fund Manager is managing Private Equity Funds or Infrastructure Funds;
 - b) if the legal title to the Fund Property of a Property Fund is to be held in the name of the Fund; or
 - c) where, due to local ownership restrictions, the Fund Manager of a Property Fund is required to establish an SPV with majority control to hold the legal title to the Fund Property of a Property Fund.³⁹
138. We propose to clarify through Guidance that a Fund Manager can Provide Custody for the Funds it manages as an integral Financial Service under GEN 2.12.1(2) only if it is allowed to do so under the permitted circumstances noted above. As a result, the activities of a FP operated by the Fund Manager will also be limited to providing custody where the Fund Manager is permitted to do so as noted in paragraph 137 (see also Proposal 7).

Proposal 26

See draft Guidance under GEN Rule 2.12.1 at Appendix 2.

139. We propose to clarify that a Fund Manager can Provide Custody to Funds it manages only within the exemptions from the requirement to appoint an Eligible Custodian as noted in paragraph 138.

Questions

- 37. Do you agree with our proposal? If not, why not?**
- 38. Do you have any other concerns relating to our proposals? What are they and how should they be addressed?**

³⁹ There are certain controls that apply where these exceptions are available, for example, an overriding obligation on the Fund Manager that it must clearly identify the relevant assets as belonging to the Fund and segregate such assets from the other assets of the Fund Manager and of the other Funds it manages.

Appendix 9: Table of Comments

Name of commentator:	Click or tap here to enter text.	
Name of entity (if applicable)	Click or tap here to enter text.	
Is your response confidential?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If your response to the previous question is Yes, please state your reasons for such a request:	Click or tap here to enter text.	

Notes:

- The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case. You must also provide an explanation of why you wish your comments be kept confidential.
- Your answers may require explanations. Please include those in the second column.
- If you do not wish to comment on any issue, please select the “no comments” box.

Ref.	Response	Comments on proposal
Q1:	Do you agree with our rationale for introducing the Fund Platform structure? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q2:	Do you agree with our view that the PCC structure is not appropriate for FPs? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q3:	Do you agree with our proposal to introduce the ICC structure for FPs? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q4:	Do you agree with our proposed requirements for the ICC structure? If not, what requirements do you oppose, and why?	
	<input type="checkbox"/> Yes	Click here to enter text.
		<input type="checkbox"/> No comments

Ref.	Response	Comments on proposal
	<input type="checkbox"/> No	
Q5:	Are there any additional requirements that should be included in the ICC Regulations? If so, what are they, and why should they be included?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q6:	Do you agree with our proposal to include using a Fund Platform as a distinct way in which a Fund Manager may manage Funds established on the platform? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q7:	Do you agree with our proposed description of the activities of a FP? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q8:	Do you agree with our proposed clarifications? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q9:	Do you agree with our proposal to use the endorsement power to permit Fund Managers to use FPs? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q10:	Do you agree with our proposals to require FPs to be a DIFC company (ICC)? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q11:	Do you agree with our proposal not to allow External Fund Managers to establish FPs?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments
Q12:	Do you agree that External Funds should not be hosted on a DIFC FP? If not, what are your reasons and what should we do instead?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	<input type="checkbox"/> No comments

Ref.	Response	Comments on proposal
Q13:	Do you agree that a FP (ICC) should not be a Fund or Fund Manager? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q14:	Do you agree with our proposal to extend the Fund Manager's overarching obligation to a FP and the Funds hosted on it, as noted in paragraph 59? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q15:	Do you agree with our approach to make the Fund Manager legally accountable for the acts and omissions of the Fund Platform? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q16:	Do you agree with our proposals to allow Fund Managers authorised to manage QIFs to establish only QIFs on their FP? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q17:	Do you have any concerns relating to our proposal to allow any type of Funds to be establish on a FP, subject to the considerations noted in paragraphs 66 and 67? What are those concerns, and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q18:	Are there any practical difficulties for a FP to establish listed and unlisted Funds, or Public Funds and Exempt funds and QIFs? What are they, and how can they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q19:	Do you agree with our proposal to require Funds established on a FP to have the same persons as those on the Fund Manager's board? Would it suffice only a majority of the Fund's board to be constituted of persons on the Fund Manager's board? What are your reasons?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q20:	Do you agree with our proposal to require the FP to have the same persons on its board as the Fund Manager using that FP? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	

Ref.	Response	Comments on proposal
Q21:	Do you agree with our proposal not to allow the use of the ‘internal’ Fund Manager for Funds hosted on a FP? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q22:	Do you have any concerns relating to our proposal to create an exception for start-up Funds so that its board can include a start-up asset manager? If so, how should such concerns be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q23:	Do you agree with our proposal to exclude a FP from being a third party service provider? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q24:	Do you agree with our proposal to prohibit the infrastructure within a FP being used to manage Funds that are not Incorporated Cells of the ICC? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q:25	Do you agree with our proposal to allow a Fund Manager using a Fund Platform to manage other Funds outside the Fund Platform structure? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q26:	Do you agree with our proposal to apply RPT provisions to transactions between Funds established on a FP as noted in paragraph 99? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q27:	Do you agree with the way in which we propose to apply the Fund Manager’s obligations in CIR chapter 8 to those Funds established on a FP? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q28:	Are there any requirements in CIR chapter 8 that require modification or clarification in their application to Funds established on a FP? If so, what are they, and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	

Ref.	Response	Comments on proposal
Q29:	Do you agree with the manner in which we propose to extend the Fund Manager's obligations in CIR chapter 9 to those Funds established on a FP? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q30:	Are there any requirements in CIR chapter 9 that require modification or clarification in their application to Funds established on a FP? If so, what are they, and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q31:	Do you agree with our proposal to allow the use of multi-part prospectuses across all Funds? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q32:	Do you agree with our proposal to provide for the orderly transfer of Funds established on a FP as noted above? If not, why not?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q33:	Are there any other areas relating to transfer and winding up of Funds that need to be addressed? If so, what are they and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q34:	Are there any provisions in CIR chapters 10, 12, 12A and 13 that require further clarity or flexibility when applied to a Fund established on a FP? What are they and how should they be modified or clarified?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q35:	Do you have any concerns relating to our proposed application of the prudential requirements to a Fund Manager using the FP structure as noted above? What are they and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	
Q36:	Do you have any concerns relating to our proposed fees as proposed in paragraph 132? What are they, and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text.
	<input type="checkbox"/> No	

Ref.	Response	Comments on proposal	
Q37:	Do you agree with our proposal? If not, why not?		
<input type="checkbox"/> Yes	Click here to enter text.		<input type="checkbox"/> No comments
<input type="checkbox"/> No			
Q38:	Do you have any other concerns relating to our proposals? What are they and how should they be addressed?		
<input type="checkbox"/> Yes	Click here to enter text.		<input type="checkbox"/> No comments
<input type="checkbox"/> No			