

Appendix 3

In this appendix underlining indicates proposed new text and striking through indicates deleted text.

In some cases this appendix highlights by footnotes amendments to the text that were previously proposed under Consultation Paper No. 90.

Readers should also note that footnotes are included for information purposes only and are not part of the legislative proposals.

COLLECTIVE INVESTMENT LAW DIFC LAW No. 2 of 2010

PART 4: ESTABLISHMENT AND OPERATION OF DOMESTIC FUNDS

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Chapter 2: Registration requirement applicable to Public Funds

28. Registration requirement

- (1) Every Domestic Fund which is a Public Fund shall be registered with the DFSA.
- (2) The DFSA shall register a Public Fund if the Fund meets all the requirements in the Law.
- (3) The application for the registration of a Public Fund shall be made to the DFSA by the Fund Manager or, if the Fund is an Investment Trust, jointly by the Fund Manager and the Trustee, of that Fund.
- (4) Such an application shall:
 - (a) be accompanied by the Fund's Constitution and Prospectus both of which shall be in accordance with the requirements of this Law and any Rules; and
 - (b) comply with any other requirements prescribed by the DFSA in relation to such Funds, including the applications.
- (5) The DFSA shall, by Rules, prescribe the requirements which an application for registration must meet before such an application can be accepted by the DFSA.

29. Providing information in relation to the application

- (1) The DFSA may require the Fund Manager, and if relevant the Trustee, to provide additional information reasonably required for the DFSA to be able to make a decision with regard to the application.
- (2) If, at any time between the filing of an application for registration and the grant of a registration, the Fund Manager or, if appointed, the Trustee becomes aware of any material change, error or omission reasonably likely to be relevant to the application under consideration, it shall inform the DFSA in writing of such change without delay.

30. Rejection of an application

- (1) The DFSA may, ~~in its discretion,~~ refuse to grant an application for registration of a Public Fund if it is not satisfied that the requirements referred to in Article 28 have been met.
- (2) ~~Upon refusing to grant registration, the DFSA shall, without undue delay, inform the Fund Manager and, if appointed, the Trustee in writing of such refusal and, where requested by the Fund Manager or Trustee, the reasons for such refusal.~~

- (2) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under Article 30(1).
- (3) If the DFSA decides to exercise its power under Article 30(1), the applicant may refer the matter to the FMT for review.

31. Granting registration

- (1) The DFSA shall grant the registration to come into effect on a specified date.
- (2) Where the DFSA registers a Public Fund, it shall, without undue delay, inform the Fund Manager and, if relevant, the Trustee in writing of:
 - (a) that decision; and
 - (b) the date on which the registration shall come into effect.

32. Withdrawal of registration

- (1) The DFSA may, subject to Article 32(2), withdraw the registration of a Public Fund where one or more of the following circumstances apply:
 - (a) the Fund is not operating or has been wound up;
 - (b) any information provided to the DFSA by the Fund Manager or, if appointed, the Trustee, is false or misleading in a material particular or materially misleading;
 - (c) the Fund Manager or, if appointed, the Trustee has contravened a requirement imposed on it by or under this Law or the Investment Trust Law 2006;
 - (d) the Fund Manager or, if appointed, the Trustee or member of the Fund's Governing Body has not complied with a direction issued by the DFSA under the Law;
 - (e) a person other than a member of the Fund's Governing Body, Shari'a Supervisory Board, the Trustee or a person providing oversight functions is exercising significant influence over the Fund, the Fund Manager or any member of the Fund's Governing Body;
 - (f) the Fund Manager is no longer fit and proper to manage the Fund or is incapable of acting as the Fund Manager of the Fund in compliance with the Law or Rules or the terms of its Constitution;
 - (g) the Trustee is no longer fit and proper to act as Trustee of the Fund or is incapable of acting as Trustee of the Fund in compliance with this Law or Rules or the terms of its Constitution and the Investment Trust Law 2006;

- (h) the Fund Manager or, if appointed, the Trustee requests the DFSA to withdraw the registration of the Fund on the grounds that the Unitholders have passed a Special Resolution approving the Fund to be deregistered;
 - (i) the Fund Manager is no longer authorised under its Licence to manage the Fund; or
 - (j) in the case of an External Fund Manager, that person ceases to meet the requirements in Article 20(5).
- (2) The DFSA may withdraw the registration of a Fund under Article 32(1) only if it considers that:
- (a) the withdrawal is in the interests of the Unitholders of the Fund; or
 - (b) appropriate steps have been taken or may reasonably be taken to protect the interests of the Unitholders.
- (3) Where the DFSA has withdrawn, or proposes to withdraw, a registration under this Article, it may, by written notice, direct the Fund Manager, or if appointed, the Trustee to take such steps as the DFSA considers necessary or desirable to protect the interests of Unitholders in the Fund.
- ~~(4) Unless the DFSA withdraws the registration of the Fund upon an application made by the Fund Manager or where relevant the Trustee or on the grounds the Fund Manager is no longer authorised under its Licence to manage the Fund, the DFSA shall only do so if it has given the relevant Fund Manager and, if appointed, the Trustee a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed withdrawal and the DFSA has informed the Fund Manager or where relevant the Trustee in writing of its response to any such representation.~~
- ~~(5) Upon deciding to withdraw a registration, the DFSA shall, without undue delay, inform the Fund Manager and where relevant the Trustee in writing of:~~
- ~~(a) — its decision;~~
 - ~~(b) — the date on which the withdrawal of registration shall come into effect; and~~
 - ~~(c) — if requested by the Fund Manager or the Trustee, the reasons for its decision.~~
- (4) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Article. The DFSA shall give both the Fund Manager and the Trustee (if appointed) the opportunity to make representations under those procedures.
- (5) If the DFSA decides to exercise its power under this Article, the Fund Manager or the Trustee (if appointed) may refer the matter to the FMT for review.
- (6) The Court may order the DFSA to withdraw the registration of a Public Fund.

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Chapter 4: Alterations to a Domestic Fund

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36. Grant or r~~Rejection~~ of proposed alteration

- (1) The DFSA may ~~in its absolute discretion refuse to grant approval of~~ approve a proposed alteration if it is satisfied that the requirements in Article 35 have been met.
- (2) The DFSA may refuse to grant approval of a proposed alteration if it is not satisfied that the requirements in Article 35 have been met.
- (2) ~~Upon refusing to grant approval, the DFSA shall, in writing and without undue delay, inform the Fund Manager, if appointed, the Trustee, and the Domestic Fund as is appropriate, of such refusal and, where requested by the Fund, the reasons for such refusal.~~
- (3) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under Article 36(2). The DFSA shall give both the Fund Manager and the Trustee (if appointed) the opportunity to make representations under those procedures.
- (4) If the DFSA decides to exercise its power under Article 36(2), the Fund Manager or the Trustee (if appointed) may refer the matter to the FMT for review.

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PART 5: GOVERNANCE OF DOMESTIC FUNDS

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Chapter 2: Oversight of Public Funds

39. Requirements relating to oversight arrangements

- (1) A Fund Manager of a Domestic Fund which is, or is to be, a Public Fund shall:
 - (a) establish and maintain one of the permitted oversight arrangements prescribed in the Rules; and

- (b) ensure that a person appointed to carry out the oversight function for the Fund meets:
 - (i) the independence criteria set out in Article 42 of this Law; and
 - (ii) any additional suitability criteria prescribed in Rules made for the purposes of this Article.
- (24) ~~The DFSA may, in its absolute discretion,~~ at any time object to a particular oversight arrangement or an individual appointed to carry out the oversight function for a Fund and require the Fund Manager to appoint a replacement if it appears to the DFSA that the requirements in Article 39(1) are not being met.
- (5) ~~The DFSA shall notify the Fund Manager of such objection in writing and, where requested by the Fund Manager, the reasons for such objection.~~
- (3) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Article.
- (4) If the DFSA decides to exercise its power under this Article, the Fund Manager may refer the matter to the FMT for review.

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69 Stop orders

- (1) If the DFSA is satisfied that:
 - (a) any Prospectus or other document referred to in Article 56(1)(a) is misleading or deceptive;
 - (b) any dealings in a Unit in a Domestic Fund would contravene or has contravened this Law or the Rules;
 - (c) the Fund Manager is operating a type of, or specialist class of a Domestic Fund for which it is not authorised under its Licence;
 - (d) that due to exceptional circumstances it is in the interest of the Unitholders in the Fund;
 - (e) it is in the interests of the DIFC; or
 - (f) the Fund Manager has failed to comply with a direction given under Article 27(4);

the DFSA may issue a stop order directing that no Offers, issues, redemptions, sales or transfers of the Units of the Fund be made for such a period of time as it thinks appropriate.

- ~~(2) Upon making a decision in relation to Article 69(1) the DFSA shall without undue delay inform the Fund, the Fund Manager and if appointed the Trustee in writing of its decision and where requested by any such persons the reasons for the decision.~~
- ~~(3) The DFSA may only exercise its power to issue a stop order if it has given the relevant person a suitable opportunity to make representations in person and in writing to the DFSA in relation to the proposed stop order.~~
- (2) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Article.
- (3) If the DFSA decides to exercise its power under this Article, the Fund Manager or the Trustee (if appointed) may refer the matter to the FMT for review.
- ~~(4) The requirements imposed on the DFSA in Article 69(3) shall not apply where the DFSA concludes that any delay likely to arise as a result of such requirements is prejudicial to the interests of the DIFC or Unitholders in the Fund.~~
- ~~(5) Where pursuant to Article 69(4) the DFSA has issued a stop order directing that no Offers, issues, redemptions, sales or transfers of Units in a Fund be made without providing a prior opportunity to make representations, the DFSA shall:~~
- ~~(a) provide the relevant person an opportunity to make representations in person and in writing to the DFSA within the period of 14 days, or such further period as may be agreed, from the date on which such direction was made; and~~
- ~~(b) provide a response to any such submission, and make any consequential direction, variation or withdrawal of the direction, as it considers appropriate without undue delay.~~

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PART 10: THE FINANCIAL MARKETS TRIBUNAL

70 Deleted Jurisdiction of the FMT in relation to references

~~Without in anyway limiting the jurisdiction of the Regulatory Appeals Committee conferred upon it by or under the Regulatory Law 2004 or any other Law administered by the DFSA, the Regulatory Appeals Committee has additional jurisdiction in accordance with Article 27(2)(k) of the Regulatory Law 2004 to hear and determine any appeal where:~~

The FMT has jurisdiction to hear and determine any reference where:

- ~~(a) an applicant appeals the seeks a review of a decision of the DFSA in relation to an application for the registration of a Fund;~~

- (b) ~~a Fund, its Trustee or any member of its Governing Body appeals seeks review of a decision of the DFSA in relation to the exercise of its power to withdraw the registration of the Fund;~~
- (c) ~~a Fund, its Trustee or any member of its Governing Body appeals seeks review of the decision of the DFSA to issue, vary or withdraw a notice in relation to the Fund or any member of its Governing Body;~~
- (d) ~~a Fund, its Trustee or any member of its Governing Body appeals seeks review of the decision of the DFSA in relation to the proposed alteration of a Fund under Part 8; or~~
- (e) ~~a Fund, its Trustee or any member of its Governing Body appeals seeks review of the decision of the DFSA to issue a direction, objection or requirement or a stop order under the Law.¹~~

PART 11: ~~DELETED THE FINANCIAL MARKETS TRIBUNAL~~

71 ~~Jurisdiction of the Financial Markets Tribunal~~

- (1) ~~Without in any way limiting the jurisdiction of the Financial Markets Tribunal conferred upon it by or under the Regulatory Law 2004 or any other Law administered by the DFSA, the Financial Markets Tribunal has additional jurisdiction as set out in Article 71(2).~~
- (2) ~~The Financial Markets Tribunal has jurisdiction to hear and determine a proceeding in relation to an issue arising out of an Offer of Units of a Fund or in respect of the management and operation of a Fund.~~

71 Jurisdiction of the FMT in relation to regulatory proceedings

The FMT has jurisdiction to hear and determine any regulatory proceeding in relation to an issue arising out of an Offer of Units of a Fund or in respect of the management and operation of a Fund.

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¹ This is the text as it was proposed under CP 90. It is now proposed to delete the text as the ability to refer a matter to the FMT is now expressly provided for in the individual provision – which we believe is easier for the reader.

**SCHEDULE 1
INTERPRETATION**

3. Defined Terms

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

Terms	Definitions
<u>Financial Markets Tribunal</u>	<u>the Financial Markets Tribunal established pursuant to Article 26 of the Regulatory Law 2004.</u>
<u>FMT</u>	<u>the Financial Markets Tribunal</u>