

Appendix 3

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



The DFSA Rulebook

Collective Investment Rules

(CIR)

Item 4. CIR - Exclusion of certain closed ended companies and partnerships from constituting a fund**2 ARRANGEMENTS AMOUNTING TO COLLECTIVE INVESTMENT**

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2.3 Arrangements not constituting a Fund

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2.3.2 Arrangements do not, for the purposes of Article 15 of the Law, amount to a Collective Investment Fund if:

- (a) the whole amount of each participant's contribution is a Deposit which is accepted by an Authorised Firm authorised under its Licence to carry on the Financial Service of Accepting Deposits;
- (b)
 - (i) the arrangements are arrangements under which the rights or interests of participants are rights or interests in money held in a common account; and
 - (ii) the money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied in making payments to him or in satisfaction of sums owed by him or in the acquisition of property for him or the provision of services to him;
- (c) each of the participants:
 - (i) carries on a business which does not involve the carrying on of any of the activities specified under GEN Rule 2.2.2(d) to (k) or (n) to (q) or an activity which would be such an activity were it not for any applicable exclusion; and
 - (ii) enters into the arrangements for commercial purposes related to that business except where the participant would carry on the business in question by virtue of being a participant in the arrangements;
- (d) each of the participants is a Body Corporate in the same Group as the Operator;
- (e) the arrangements are franchise arrangements;

- (f) the purpose is the provision of clearing services and the services are operated by an Authorised Market Institution;
- (g) the rights or interests of the participants are Investments of the kind specified under GEN Rule A2.1.1(d);
- (h) the rights or interests of the participants are time share rights; or
- (i)
 - (i) a predominant purpose of the arrangements is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and
 - (ii) the property to which the arrangements relate does not consist of the currency of any country or territory and does not consist of or include any Investment of the kind specified in GEN Rule A2.1.1 or which would be of such a kind apart from any applicable exclusion; or
- (i) the arrangements comprise a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such arrangements appears to be the investment management, in the exercise of discretion for a collective purpose, of Investments or Real Estate assets for the benefit of the shareholders or partners.

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- 2.3.5** ~~[Deleted] (1) — Unless the purpose or effect of an arrangement is that referred to in Article 15(1)(a) of the Law, a Body Corporate, whether it is a closed-ended or open-ended company, does not amount to a Collective Investment Fund.~~
- ~~(2) — Unless the purpose or effect of an arrangement is that referred to in Article 15(1)(a) of the Law a Partnership, whether or not it is in the form of a limited partnership, does not amount to a Collective Investment Fund.~~

Item 5. CIR 2.3.9 - Certain sukuk excluded from being a fund

- 2.3.9** Arrangements do not, for the purposes of Article 15 of the Law, amount to a Collective Investment Fund if the arrangements are arrangements under which the rights or interests of the participants are evidenced by sukuk certificates issued for the benefit of a single entity on whose credit worthiness the participants rely for obtaining their rights and benefits arising under the certificates.

Item 6. CIR 2.3.10 and OSR 2.4.1 Employee share scheme exclusion

- 2.3.10** (1) Arrangements do not amount to a Collective Investment Fund if the arrangements are for the purposes of enabling or facilitating the operation of an employee compensation or reward scheme and the arrangements meet the criteria in (2) and (3).
- (2) The compensation or reward is in the form of Securities made available only to:
- (a) an Employee or former Employee of the Issuer or of another member of the same Group as the Issuer; or
 - (b) a Close Relative of any such Employee.
- (3) The arrangements must be operated by the Issuer or by a member of the same Group as the Issuer or by a trustee who, in pursuance of the arrangements, holds the Securities issued by the Issuer for the benefit of any eligible Persons referred to in (2) (a) or (b).

Item 9. Foreign and domestic property funds**3.7 Foreign Property Funds**

- 3.7.1** (1) An Authorised Firm must ensure that it does not Offer or undertake a Transaction in respect of a Unit of a Foreign Fund which is a Property Fund ~~in respect of which 60% or more of the Fund's assets comprise Real Property~~ unless:
- (a) the Fund is a closed-ended structure; and
 - (b) the Fund is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction, unless the Units are to be Offered, issued or sold by means only of Private Placement.
- (2) For the purposes of (1), a "Property Fund" is a Foreign Fund in respect of which 60% or more of the Fund's assets comprise Real Property, Property Related Assets or Units in another Property Fund.

Guidance

A closed-ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund.
