

Appendix 4

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

**INVESTMENT TRUST LAW
DIFC LAW No. 5 of 2006**

13. Creation of an Investment Trust

- (1) An Investment Trust shall be created by a Trust Deed entered into between:
 - (a) a person who meets the requirements to be a Fund Manager under Article 20(1) (a) or (b) n-Operator under Article 17(2) of the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of that law; and
 - (b) a person who meets the requirements to be a Trustee under Article 18 of this Law.
- (2) An Investment Trust shall be formed solely for collective investment purposes as defined in Article ~~15~~ 11 of the Collective Investment Law ~~2006~~ [2010]. Consequently, an Investment Trust created for the purposes of this Law is a Collective Investment Fund for the purposes of the Collective Investment Law ~~2006~~ [2010].
- (3) The Trust Deed shall:
 - (a) meet all the requirements that apply in respect of the Constitution of a Fund under the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of that law;
 - (b) set out clearly whether the Trustee is to provide the oversight function relating to the Investment Trust;
 - (c) confer on the Trustee all the powers that are necessary for the Trustee to discharge all its duties and perform all its functions under this Law and the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of those laws; and
 - (d) not contain any provision which conflicts with the requirements in the Collective Investment Law ~~2006~~ [2010] and rules made for the purposes of that law.

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15. Alteration to a Trust Deed

The terms of Trust Deed may be altered in accordance with the requirements in Article 35 Part 9 of the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of that Part.

16. Termination of an Investment Trust

An Investment Trust may be terminated in accordance with the requirements in Part ~~8~~ 40 of the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of that Part.

PART 3: EFFECT OF AN INVESTMENT TRUST

17. Unitholder liability

- (1) The Unitholders of an Investment Trust created under this Law are not liable for any debts or other liabilities incurred by or in respect of the Investment Trust except to the extent of any amount outstanding for the payment of the Units or interests in the Units at the price at which the Unitholder agreed to acquire the Units or interest in the Units.
- (2) No action shall be brought by any person against a Unitholder for any debts or other liabilities of, or in respect of, an Investment Trust or any actions or omissions of the Trustee or Fund Manager Operator except to the extent provided above.

PART 4: TRUSTEE REQUIREMENTS

18. Trustee requirements

A person meets the requirements to be a Trustee only if that person is:

- (a) a body corporate person specified in Article 21(1) of the Collective Investment Law [2010]; and
- ~~(b) either:~~
 - ~~(i) an Authorised Firm whose Licence authorises it to act as a Trustee of the specific type or class of Fund to which the Investment Trust belongs; or~~
 - ~~(ii) a person prescribed in the rules made for the purposes of this Article; and~~
- ~~(c)~~ (b) independent of the Fund Manager Operator as provided in Article 19.

19. Independence of the Trustee

The Trustee is not independent of the Fund Manager Operator for the purposes of Article 18~~(b)~~ (c) if:

- (a) the Fund Manager Operator or the Trustee holds, or exercises voting rights in respect of, any shares of the other;
- (b) the Fund Manager Operator and the Trustee have a common holding company or a common ultimate holding company;
- (c) the Fund Manager Operator or the Trustee have directors on its Governing Body, who are also directors of the other;
- (d) the Fund Manager Operator or the Trustee has individuals performing Licensed Functions who are also individuals performing Licensed Functions for the other; or
- (e) the Fund Manager Operator and the Trustee have been involved in the previous 2 years in any professional or material business dealings, other than acting as Fund Manager Operator or Trustee respectively of any other Fund.

PART 5: DUTIES AND POWERS OF THE TRUSTEE

20. General duties of the Trustee and its officers, employees and agents

- (1) A Trustee shall, when exercising its powers and carrying out its duties:
 - (a) act honestly;
 - (b) exercise the degree of care and diligence that a reasonable person would exercise in the position of a Trustee;
 - (c) act in the best interests of the Unitholders and, if there is a conflict between the Unitholders' interests and its own interests, give priority to the Unitholders' interests;
 - (d) not improperly make use of information acquired through being the Trustee in order to:
 - (i) gain an advantage for itself or another person; or
 - (ii) cause detriment to the Unitholders in the Fund; and
 - (e) carry out or comply with any other duty, not inconsistent with DIFC Law, that is conferred on the Trustee by the Trust Deed.
- (2) The Trustee shall ensure that its officers, employees and agents:
 - (a) do not make improper use of information acquired through being such an officer, employee or agent of the Trustee in order to:
 - (i) gain an advantage for himself or another person; or
 - (ii) cause detriment to Unitholders in the Fund;
 - (b) do not make improper use of their position as such officers, employees or agents to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Unitholders in the Fund; and
 - (c) comply with any other duty or obligation as may be prescribed under this Law, the Collective Investment Law ~~2006~~ [2010] or any other legislation administered by the DFSA.
- (3) Where the Fund Manager Operator is required to obtain the prior consent or approval of the Trustee before it is able to carry out any of its functions under the Collective Investment Law ~~2006~~ [2010] or rules made for the purposes of that law, the Trustee shall provide such consent or approval to the Fund Manager Operator without any unnecessary delay. If the Trustee decides to withhold such consent or approval, it shall also notify the Fund Manager Operator of that decision and the reasons without any unnecessary delay.

21. **Holding of Trust assets**

- (1) Subject to any specific requirements in the Collective Investment Law ~~2006~~ [2010], the Trustee shall take into its custody all property that forms part of the Investment Trust and hold such assets on trust for the Unitholders of the Trust.
- (2) The Trustee shall ensure that property of the Investment Trust is:
 - (a) clearly identified as the property of that Trust; and
 - (b) held separately from any other property held by or entrusted to the Trustee.

22. **Trustee's obligations relating to oversight functions**

- (1) If the Trust Deed confers on the Trustee the oversight function of the Investment Trust, the Trustee shall carry out the oversight function in accordance with the requirements in chapter 2 of Part 5 ~~Part 4~~ of the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of that Part.
- (2) If the oversight function in relation to an Investment Trust is carried out by persons other than the Trustee, the Trustee shall provide to those persons any assistance that is reasonably required by them to carry out the oversight function.

23. **Trustee's reporting and disclosure obligations**

- (1) The Trustee shall, as soon as practicable after becoming aware that there is a breach of the Trust Deed, this Law, the Collective Investment Law ~~2006~~ [2010] or any rules made for the purposes of those laws, or of any other relevant obligations imposed under a Licence condition of the Fund Manager Operator or any other person performing any function in respect of or providing any services to the Investment Trust, report that breach to the DFSA.
- (2) The Trustee is required to report a breach under (1) only where it is of the opinion on reasonable grounds that the breach has had, or is likely to have, a materially adverse effect on the interests of the Unitholders. The Trustee must report such a breach to the DFSA whether or not the Fund Manager Operator has already taken any steps to remedy that breach.
- (3) The Trustee shall provide to the Fund Manager Operator or any other person providing oversight function any information that the Fund Manager Operator, or the person providing the oversight function, may reasonably require relating to the Investment Trust as soon as possible after a request has been made for such information.
- (4) The Trustee shall disclose to the auditor of the Investment Trust all such information that is required by the auditor to carry out its audit functions relating to the Trust.

24. **Trustee's power to outsource**

- (1) The Trustee may, subject to any restrictions and requirements in the Trust Deed, this Law, the Collective Investment Law ~~2006~~ [2010] or any rules made for the purposes of those laws, delegate any of its activities or outsource any of its functions to a person ("service provider") other than the Fund Manager Operator.
- (2) When outsourcing any of its functions, the Trustee must ensure that the service provider is independent of the Fund Manager Operator as provided in (4).
- (3) The DFSA may by rule prescribe for the purposes of this Article:
 - (a) activities that can or cannot be delegated by a Trustee;
 - (b) functions that can or cannot be outsourced by a Trustee;
 - (c) the eligibility criteria for service providers;
 - (d) the activities or functions that must be performed in the DIFC;
 - (e) any notification procedures and DFSA approval requirements that apply to appointment of service providers; or
 - (f) any other matter incidental or relating to delegations and outsourcing by a Trustee for the purposes of this Article.
- (4) A service provider is not independent of the Fund Manager Operator for the purposes of (2) if it:
 - (a) is, or has been in the previous 2 years, an employee of the Fund Manager Operator or a body corporate in the same group (a "related body corporate");
 - (b) is, or has been in the previous 2 years, an executive officer of a related body corporate;
 - (c) is, and has been in the previous 2 years, involved in material business dealings, or in a professional capacity, with the Fund Manager Operator or a related body corporate;
 - (d) is a member of a partnership or a trustee of a trust that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the Fund Manager Operator or in a related body corporate;
 - (e) has a material interest in the Fund Manager Operator or a related body corporate; or
 - (f) is a relative or de facto spouse of a person who has a material interest in the Fund Manager Operator or a related body corporate of a kind described in (a) to (e) of this Article.
- (5) Where the Trustee engages a service provider, the Trustee remains liable to the Unitholders for any acts or omissions of the service provider even if such service provider was acting fraudulently or outside the scope of its authority or engagement.

25. Trustee's obligation to maintain the Unitholder register

- (1) The Trustee shall ensure that a register of Unitholders of the Investment Trust is maintained in the DIFC containing the information set out in this Article and it is kept up to date and complete.
- (2) The register must contain:
 - (a) the name and address of each Unitholder, and if there are different classes of units, the class of the Unit;
 - (b) the number of Units including fractions of a Unit held by each Unitholder; and
 - (c) the date on which the Unitholder was registered in the register for Units standing in his name.
- (3) The Trustee shall ensure that the register is available for inspection by Unitholders during normal business hours.
- (4) The Trustee shall make the register available to the Fund Manager Operator during office hours and allow the Fund Manager Operator to make copies of the register for its purposes.

PART 6: REMOVAL AND RETIREMENT OF THE TRUSTEE

26. Removal and retirement of the Trustee

- (1) A Trustee may not retire, or be removed, except as provided in this Article.
- (2) A Fund Manager Operator of a Fund may at the request of the Trustee or otherwise, and if it is of the view that the Trustee is unable to discharge its functions shall, with the prior written approval of the DFSA, replace the existing Trustee.
- (3) The DFSA may grant approval for the replacement of a Trustee only where it has received:
 - (a) a written notice from the Fund Manager Operator of its intention to remove the Trustee and either:
 - (i) a legal certification that the removal of the Trustee will not adversely affect the interests of the Unitholders and the Fund Manager's Operator's ability to comply with its obligations under the Trust Deed, Prospectus and the Collective Investment Law ~~2006~~ [2010]; or
 - (ii) a Special Resolution of Unitholders approving the Fund Manager's Operator's proposal to remove the Trustee and its replacement with another Trustee; and
 - (b) the written consent of the person who agrees to be the replacement Trustee, and that person meets the requirements for a Trustee in Article 18 to be able to act as the replacement Trustee.
- (4) The Unitholders of the Investment Trust may replace the Trustee by Special Resolution as provided under Article ~~35~~ 58 of the Collective Investment Law ~~2006~~ [2010] or any rules made for the purpose of that Article.

- (5) The DFSA or the Fund Manager Operator may apply to the Court for an order for the removal of the Trustee and any other appropriate orders including, but not limited to, the appointment of a replacement Trustee where the Trustee is, or is believed to be, in breach of its obligations under the Trust Deed, its Licence, this Law or any other DIFC law or rules made under those laws.
- (6) The DFSA may make Rules prescribing other circumstances in which a Trustee may be replaced.
- (7) Subject to the terms of the Trust Deed, this Law and the Collective Investment Law ~~2006~~ [2010] and the rules made for the purposes of those laws, a Trustee appointed as a replacement Trustee shall have the same powers, discretions and duties as the previous Trustee.

27. **Position of the outgoing Trustee**

Where a Trustee is removed or retires under Article ~~26~~ 25, it shall, without any delay, transfer the assets of the Investment Trust held by it as directed by the Fund Manager Operator or, as required by any Court order. Until the assets of the Investment Trust are so transferred, the Trustee remains accountable to the Unitholders for the safety of those assets.

**SCHEDULE
INTERPRETATION**

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3. **Defined Terms**

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

Terms	Definitions
Governing Body	<p>a person who is, or a body of persons who together form the directing mind of a Fund including but not limited to:</p> <ul style="list-style-type: none"> a) its <u>Fund Manager Operator</u>, a member of its main or supervisory board, a General Partner; or b) any other person or body of persons exercising equivalent powers and functions in relation to directing the operation of a Fund.

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<u>Fund Manager Operator</u>	the person, described under Article 20(4) 17(3) of the Collective Investment Law 2006 [2010], who is responsible for the management of the property held for or within a Fund and otherwise, operating the Fund and, in relation to a Domestic Fund, is authorised under a Licence granted by the DFSA to operate the Fund.
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