

Appendix 3

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

**COLLECTIVE INVESTMENT LAW
DIFC LAW No. 2 of 2010**

PART 4: ESTABLISHMENT AND OPERATION OF DOMESTIC FUNDS

Chapter 1: Requirements applicable to all Domestic Funds

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27 General requirements

- (1) Every Domestic Fund shall have:
 - (a) a written Constitution which complies with the Rules;
 - (b) a purpose that is reasonably capable of being successfully carried into effect;
 - (c) a Registered Auditor appointed in accordance with Part 8 of the Regulatory Law 2004 and any Rules made for the purposes of that Part ~~an auditor appointed to it in accordance with Part 6;~~
 - (d) if it is an Investment Trust, a Trustee appointed to the Fund in accordance with the requirements in the Investment Trust Law 2006;
 - (e) if it is not an Investment Trust, an eligible person with whom the legal title to the Fund Property is registered; and
 - (f) in the case of an open-ended Fund, single pricing for the purposes of redemption and re-issue or sale of Units in the Fund where the price of a Unit is calculated by reference to the net asset value of the property of the Fund to which the Units relate and in accordance with the Rules.
- (2) Any provision in the Constitution of a Domestic Fund is void in so far as it would have the effect of exempting the Fund, the Fund Manager and if appointed, the Trustee from liability for any failure to discharge their obligations under this Law, the Regulatory Law 2004, the Law Regulating Islamic Financial Business 2004, the Investment Trust Law 2006 or any rules made for the purposes of these laws.
- (3) The DFSA shall, for the purposes of Article 27(1)(e), by Rules, prescribe the criteria that a person must meet to be considered “eligible” and such Rules may permit the Fund Manager to be considered “eligible” for the purposes of a particular type of, or a specialist class of, a Domestic Fund.
- (4) If, in the opinion of the DFSA, the name of a Fund or of a Sub-Fund of a Fund conflicts with the name of another Fund or is undesirable or misleading, it may direct the Fund Manager to change the name of the Fund or the Sub-Fund.

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PART 6: AUDITORS OF DOMESTIC FUNDS [NOT IN USE]

43 Deleted Appointment and removal of auditors

- (1) ~~The Fund Manager of a Domestic Fund shall:~~
- (a) ~~for the purposes of Article 27(1)(c) and subject to Article 43(7), appoint an auditor; and~~
 - (b) ~~at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting; or~~
 - (c) ~~at the beginning of each financial year appoint an auditor to hold office until the beginning of the next financial year.~~
- (2) ~~The appointment of a firm as an auditor of a Domestic Fund is taken to be an appointment of all persons who are partners of the firm.~~
- (3) ~~A Fund Manager and, if appointed, the Trustee shall ensure that at all times the Fund has an auditor.~~
- (4) ~~The Fund Manager shall not appoint to a Domestic Fund an auditor under this Article unless:~~
- (a) ~~the auditor has, prior to the appointment, consented in writing to serve as the auditor for the Domestic Fund;~~
 - (b) ~~the Fund Manager and, if appointed, the Trustee is not, on reasonable inquiry, aware of any matter which should preclude the auditor from giving its consent under Article 43(5); and~~
 - (c) ~~the auditor is registered with the DFSA in accordance with Part 8 of the Regulatory Law 2004.~~
- (5) ~~An auditor shall not consent to an appointment as an auditor of a Domestic Fund if:~~
- (a) ~~the auditor has, or may reasonably be perceived to have, a conflict of interest of a nature prescribed in the Rules;~~
 - (b) ~~the auditor does not have, or may reasonably be perceived not to have, a requisite degree of independence from the Fund Manager and, if appointed, the Trustee or other members of the Governing Body of the Domestic Fund as prescribed in the Rules; or~~
 - (d) ~~the auditor or any associate of the auditor in a firm or business undertaking has acted as an auditor of the Fund Manager and, if appointed, the Trustee within such earlier period or frequency as prescribed in the Rules.~~

- ~~(6) — The Fund Manager of a Domestic Fund may, subject to Articles 43(7) and 46, at any time remove an auditor notwithstanding anything in any agreement between it and the auditor.~~
- ~~(7) — In the case of an Investment Trust, the Fund Manager must obtain the prior approval of the Trustee before carrying out any activities under Article 43 in relation to the appointment or removal of an auditor.~~
- ~~(8) — The Court may, on an application made by the DFSA, order the removal of an auditor of a Domestic Fund.~~
- ~~(9) — Nothing in this Article is to be taken as depriving an auditor removed under it of compensation or damages payable to the auditor in respect of the termination of appointment as auditor.~~

44 Deleted Auditor's reports

- ~~(1) — An auditor of a Domestic Fund must make an audit report.~~
- ~~(2) — The DFSA may make Rules in relation to:
 - ~~(a) — the functions to be carried out by an auditor when auditing a Domestic Fund's accounts;~~
 - ~~(b) — the scope of the auditor's audit report; and~~
 - ~~(c) — the scope of ad hoc reports of the auditor.~~~~

45 Deleted Auditors' duties

- ~~(1) — An auditor shall, in preparing the audit report in relation to the accounts of a Domestic Fund, carry out such investigations as will enable the auditor to form an opinion as to the following matters:
 - ~~(a) — whether proper accounting records have been kept by the Fund Manager and, if appointed, the Trustee in respect of the Domestic Fund;~~
 - ~~(b) — whether the Domestic Fund's accounts are in agreement with the accounting records and regulatory returns;~~
 - ~~(c) — whether the Domestic Fund's accounts have been prepared in compliance with the applicable accounting standards; and~~
 - ~~(d) — whether the accounts of the Domestic Fund represent a true and fair view of the financial condition and state of affairs of the Domestic Fund.~~~~
- ~~(2) — If the auditor is of the opinion that proper accounting records have not been kept, or that the accounts are not in agreement with the accounting records and returns, or that the accounts do not comply with applicable accounting standards, the auditor shall state that fact in the audit report.~~

- ~~(3) — If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief are necessary for the purposes of the audit, the auditor shall state that fact in the report.~~
- ~~(4) — An auditor shall disclose to the Trustee and the person providing oversight function of a Public Fund any information relevant to such person's role.~~

46 Deleted Resignation of an auditor

- ~~(1) — An auditor of a Domestic Fund may resign from office by depositing a notice in writing to that effect together with a statement under Article 46(2) at the Domestic Fund's registered office and with the DFSA; and any such notice operates to bring its term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.~~
- ~~(2) — When an auditor ceases for any reason to hold office the auditor shall deposit at the Domestic Fund's and, if appointed, the Trustee's registered office and with the DFSA:~~
- ~~(a) — a statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the notice of the Unitholders or creditors of the Domestic Fund; or~~
- ~~(b) — if there are any circumstances as are mentioned above, a statement of the nature of such circumstances.~~
- ~~(3) — Where an auditor's statement falls within Article 46(2)(b), the Fund Manager, or failing which, the other members of the Governing Body of the Domestic Fund or, if appointed the Trustee, shall provide to the DFSA any response to the auditor's statement along with a copy of that statement.~~

47 Deleted Co-operation with auditors

- ~~(1) — A Domestic Fund, any member of its Governing Body, any person providing oversight, any officer, employee or agent of the Domestic Fund, its Fund Manager or where appointed its Trustee, shall not knowingly or recklessly make to the auditor a statement (whether written or oral) which:~~
- ~~(a) — conveys or purports to convey any information or explanation which the auditor requires, or is entitled to require, as auditor of the Domestic Fund; and~~
- ~~(b) — is either:~~
- ~~(i) — false, misleading or deceptive in a material particular; or~~
- ~~(ii) — such that it omits information where the omission of such information is likely to mislead or deceive the auditor.~~
- ~~(2) — A Domestic Fund, any member of its Governing Body, any person providing the oversight function, any officer or employee of the Domestic Fund, its Fund~~

~~Manager or, where appointed, its Trustee, or any person acting under the direction or authority of such persons, shall not without reasonable excuse engage in conduct, including without limitation the:~~

- ~~(a) — destruction or concealment of documents;~~
- ~~(b) — coercion, manipulation, misleading, or influencing of the auditor;~~
- ~~(c) — failure to provide access to information or documents specified by the auditor; or~~
- ~~(d) — failure to give any information or explanation which the person is able to give;~~

~~where the Domestic Fund, Fund Manager, Trustee, member of the Governing Body, officer, employee or other person knows or ought to know that such conduct could, if successful:~~

- ~~(e) — obstruct the auditor in the performance of his duties under this Part; or~~
- ~~(f) — result in the rendering of the accounts of the Domestic Fund or the auditor's report being materially misleading.~~

48 Deleted Obligation of disclosure to the DFSA

- ~~(1) — An auditor is subject to the obligations of disclosure under Article 48(3).~~
- ~~(2) — Without limiting the application of any other provision of this Law, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the DFSA:
 - ~~(a) — a notification as required under this Article; or~~
 - ~~(b) — any other information or opinion in relation to any such matter;~~if the auditor is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the DFSA.~~
- ~~(3) — Subject to Article 48(4), an auditor shall disclose to the DFSA any matter which reasonably tends to show one of the following:
 - ~~(a) — a breach, or likely breach of a provision of this Law or the Rules;~~
 - ~~(b) — a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or~~
 - ~~(c) — any other matter as the DFSA may prescribe in Rules;~~~~

~~which may be attributable to the conduct of the relevant Domestic Fund, the Trustee, the Fund Manager or other member of the Governing Body including the Domestic Fund's, the Trustee's or the Fund Manager's directors, officers, employees or agents.~~

- ~~(4) Article 48(3) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.~~
- ~~(5) The Fund Manager of a Domestic Fund shall establish and implement appropriate systems and internal procedures to enable it and its auditor to comply with Article 48(3).~~
- ~~(6) Any provision in an agreement between a Domestic Fund and a director, officer, employee, agent or auditor is void in so far as it purports to hinder any person from causing or assisting the auditor to comply with an obligation under Article 48(3).~~
- ~~(7) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an auditor to comply with an obligation under Article 48(3).~~
- ~~(8) The Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 48(7).~~

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**SCHEDULE 1
INTERPRETATION**

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3. Defined Terms

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

Terms	Definitions
<u>Registered Auditor</u>	<u>has the meaning given to that term in Article 97(b) of the Regulatory Law 2004.</u>