

Appendix 6

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



The DFSA Rulebook

Collective Investment Rules

(CIR)



PART 1: INTRODUCTION

1 APPLICATION AND INTERPRETATION

1.1 Application

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1.1.3 CIR applies to every Person who is, or intends to be:

- (a) a Fund Manager;
- (b) an External Fund Manager;
- (c) a member of the Governing Body;
- (d) an Eligible Custodian;
- (e) a Trustee; and
- (f) an oversight provider; ~~and~~
- (g) ~~the Auditor.~~

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9 ACCOUNTING, AUDIT AND PERIODIC REPORTING OF A FUND

9.1 Application

9.1.1 (1) This chapter applies to a Fund Manager, and a Trustee ~~and an Auditor~~ of a Domestic Fund.

(2) In this Chapter, references to a "Fund" mean a "Domestic Fund".

Guidance

The IFR module contains specific requirements relating to reporting that apply to a Fund and its Fund Manager where that Fund is an Islamic Fund.

9.2 Preparation of Fund accounts financial statements**Accounting standards Financial statements and financial reporting standards**

- 9.2.1** (1) A Fund Manager of a Fund must prepare financial statements for each financial year of the Fund.
- (2) A Fund Manager must, in respect of a ~~Domestic~~ Fund, prepare and maintain all financial ~~accounts and~~ statements in accordance with the International Financial Reporting Standards (IFRS) or USGAAP as supplemented by the Statement of Recommended Practice (SORP) ~~issued from time to time by the United Kingdom's Investment Managers Association (IMA).~~

Accounting Records

- 9.2.2** A Fund Manager must keep Accounting Records that are sufficient to show and explain transactions and are as such, to:
- (a) be capable of disclosing the financial position of the Fund on an ongoing basis; and
 - (b) record the financial position of the Fund as at its financial year end.
- 9.2.3** Accounting Records must be maintained by a Fund Manager such as to enable the Governing Body and, if appointed, the Trustee or any Persons providing the oversight function of the Fund to ensure that any ~~accounts~~ financial statements prepared by the Fund Manager in relation to the Fund comply with the legislation applicable in the DIFC.
- 9.2.4** The Accounting Records must be:
- (a) retained by the Fund Manager or Fund for at least six years from the date to which they relate;
 - (b) at all reasonable times, open to inspection by the DFSA or the Registered Auditor of the Fund; and
 - (c) capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.

9.3 Auditors of a Fund

Guidance

1. Article 27(1)(c) of the Law requires every Domestic Fund to have a Registered Auditor appointed to it in accordance with Part 8 of the Regulatory Law 2004 and any Rules made for the purposes of that Part ~~an auditor appointed to that Fund.~~
2. ~~While Part 8 of the Regulatory Law 2004 sets out how an Auditor must be appointed to each Domestic Fund and the main duties and functions of the Auditor, this section sets out additional requirements that apply in relation to Registered Auditors and the audit function of a Fund.~~
2. ~~Only an auditor registered by the DFSA (Auditor) can undertake the audit function of a Domestic Fund.~~
3. Under Article 100(1) of the Regulatory Law 2004 a person is prohibited from providing any Audit Service to a Domestic Fund unless that person is a Registered Auditor.

Appointment and termination of auditors

9.3.1 A Fund Manager must:

- (a) notify the DFSA of the appointment of ~~an~~ a Registered Auditor to the Fund ~~by completing and submitting the appropriate form in AFN, including the name and business address of the Auditor and the date of the commencement of the appointment;~~
- (b) prior to the appointment of the Registered Auditor, take reasonable steps to ensure that the Registered Auditor has the required skills, resources and experience to audit the type of Fund for which the Registered Auditor has been appointed; and
- (c) ensure that the Registered Auditor, at the time of appointment and for the duration of the engagement ~~as Auditor of the Fund~~, is registered with the DFSA as a Registered Auditor.

Guidance

~~Section 8.7 and 8.8 of GEN AUD contains provisions in respect of registration and qualifications of Registered Auditors.~~

9.3.2 A Fund Manager must notify the DFSA immediately if the appointment of the Registered Auditor is or is about to be terminated, or on the resignation of the Fund's Registered Auditor, by completing and submitting the appropriate form in AFN giving the reasons for the cessation of the appointment.

9.3.3 A Fund Manager must appoint ~~an~~ a Registered Auditor to fill any vacancy in the office of Registered Auditor and ensure that the replacement Registered Auditor

can take up office at the time the vacancy arises or as soon as reasonably practicable.

- 9.3.4** (1) A Fund Manager must take reasonable steps to ensure that the Registered Auditor and the relevant audit staff of the Registered Auditor are independent of, and not subject to, any conflict of interest with respect to the Fund Manager, the Trustee or the Fund.
- (2) A Fund Manager or Trustee must notify the DFSA if it becomes aware, or has reason to believe, that the Registered Auditor or the relevant audit staff of the Registered Auditor ~~or any member thereof~~ are no longer independent of the Fund Manager, the Trustee or the Fund, or have a conflict of interest which may affect their judgement in respect of the Fund ~~and take immediate steps to rectify the situation.~~
- ~~(3) The relevant staff of an Auditor are independent for the purposes of (1) if their appointment or retention by a Fund Manager is not contrary to any applicable ethical guidance issued by their professional supervisory body.~~

Guidance

1. A Fund Manager should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Registered Auditor or any of the relevant Employees of the Registered Auditor that may affect the judgement of the Registered Auditor when conducting an audit of the Fund or complying with all its legal obligations including the Regulatory Law 2004, AUD, AML and other relevant modules of the DFSA Rulebook.
2. A Fund Manager should consider rotating ~~Consideration should be given to rotating~~ the appointed relevant staff of the Registered Auditor on a regular basis ~~every five years~~ to ensure that the relevant staff of the Registered Auditor remains independent.

- ~~**9.3.5** Where an Auditor appointed by a Fund Manager is not suitable in the opinion of the DFSA, or where an Auditor has not been appointed, the DFSA may direct a Fund Manager to replace or appoint an Auditor to the Fund in accordance with the requirements in this section.~~

Co-operation with auditors

- 9.3.65** (1) A Fund Manager must take reasonable steps to ensure that it and its ~~the~~ Fund's Employees:
- (a) provide any information to its Registered Auditor that its Registered Auditor reasonably requires, or is entitled to receive as Registered Auditor ~~such assistance as the Auditor reasonably requires to discharge its duties;~~
 - (b) give the Registered Auditor right of access at all reasonable times to relevant records and information within its possession;

- (c) allow the Registered Auditor to make copies of any records or information referred to in paragraph (b);
- (ed) do not interfere with the Registered Auditor's ability to discharge its duties;
- ~~(d) do not provide false or misleading information to the Auditor; and~~
- (e) report to the Registered Auditor any matter which may significantly affect the financial position of the Fund- ; and
- (f) provide such other assistance as the Registered Auditor may reasonably request it to provide.

9.3.6 ~~(2)~~A Trustee must take reasonable steps to ensure that it and its Employees act in compliance with (1)(a)-~~(e f)~~.

9.3.7 A Fund Manager must, in writing, require any Person to whom the Fund Manager has delegated or outsourced any functions to co-operate with the Fund's Registered Auditor in accordance with the provisions specified in Rule 9.3.5.

Function of the Registered Auditor

Guidance

~~Article 44(1) of the Law requires an Auditor of a Domestic Fund to prepare an audit report.~~

9.3.8 A Fund Manager must, in writing, require ~~the Fund's~~ its Registered Auditor to:

- (a) conduct an audit of the Fund's ~~accounts~~ financial statements in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB); and
- (b) produce a Fund Auditor's Report ~~report~~ on the audited ~~accounts which states;~~ financial statements in accordance with AUD App5.
 - ~~(i) whether, in the Auditor's opinion, the accounts have been properly prepared in accordance with the accounting standards adopted by the Fund in accordance with the Rules in this module and the Constitution;~~
 - ~~(ii) whether the accounts give a true and fair view of the financial position of the Fund, including the net income and the net gains or losses of the Fund Property, or, as the case may be, the Fund Property attributable to the Sub-Fund for the annual accounting period in question and the financial position of the Fund or Sub-Fund as at the end of the annual accounting period;~~

- ~~(iii) whether, in the Auditor's opinion, proper accounting records for the Fund, or as the case may be, Sub-Fund 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 the applicable accounting standards; and~~
- ~~(iv) any other matter or opinion required by the Law or the Rules; and~~
- ~~(c) in addition to the opinion's referred to in (b), statements about:~~
 - ~~(i) whether the Auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and~~
 - ~~(ii) whether the Auditor is of the opinion that the information given in the report of the directors or in the report of the Fund Manager for that period is consistent with the accounts.~~

9.3.9 ~~The Fund Manager must ensure that the Fund's Auditor prepares and provides to the Fund Manager an audit report for inclusion in the annual report of the Fund containing all the opinions and statements specified in Rule 9.3.8(b) and (c).~~

9.4 Periodic Reports

Annual and interim reports

9.4.1

- 9.4.2** (1) A Fund Manager must produce the required annual report and interim report as follows:
- (a) an annual report within four months after the end of each annual accounting period; and
 - (b) an interim report within two months after the end of each interim accounting period.
- (2) For the purposes of (1), the first annual accounting period of a Fund begins:
- (a) in the case of a Public Fund, on the date of registration by the DFSA; or
 - (b) in the case of a Private Fund, on the date of notification to the DFSA; and

ends 12 months later. Thereafter, annual accounting periods cover the period between each subsequent financial year end.

- (3) Notwithstanding the requirement in (2), a Fund Manager may, subject to the prior approval of the DFSA, produce the Fund's reports and ~~accounts~~ financial statements in accordance with the Fund Manager's reporting periods.
- (4) For the purposes of (1), an interim accounting period is the period covering:
 - (a) 6 months after the date of registration of the Fund with the DFSA in the case of a Public Fund, or the date of notification to the DFSA in the case of an Exempt Fund or Private Fund; and
 - (b) 6 months after the anniversary of each annual accounting period.
- (5) If a Fund intends to change its annual or interim accounting period, the Fund Manager must:
 - (a) obtain written confirmation from its Registered Auditor that the change of its annual accounting period would not result in any significant distortion of the financial position of the Fund; and
 - (b) obtain the DFSA's prior consent before implementing the change.
- (6) For a Fund which is an Umbrella Fund, the Fund Manager must prepare an interim report for each Sub-Fund, but this is not necessary for the Umbrella Fund as a whole.
- (7) The Fund Manager must prepare the annual and interim reports of the Fund in accordance with Rule 9.2.1.
- (8) The reports must:
 - (a) be supplied free of charge to Unitholders;
 - (b) be available in English,
 - (c) be sent to the DFSA; and
 - (d) if the Fund is a Public Fund, be available for inspection free of charge during ordinary office hours at a place specified.

9.4.3

Contents of the annual report

9.4.5 An annual report of a Fund, other than a Fund which is an Umbrella Fund, must contain:

- (a) the full audited ~~accounts~~ financial statements for the annual accounting period;
- (b) the report produced by ~~of the~~ Registered Auditor in accordance with Rule 9.3.8(b) ~~9.3.9~~;
- (c) the report of the Fund Manager in accordance with Rule 9.4.9; and
- (d) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.4.10; or
- (e) if the Fund is a Private Fund, a statement on the performance of the Fund in accordance with the Constitution and Prospectus; and
- (f) if the Fund is a Public Fund, the Oversight report in accordance with Rule 10.3.13.

9.4.6 An annual report on a Fund which is an Umbrella Fund must contain:

- (a) for each Sub-Fund:
 - (i) the full audited ~~accounts~~ financial statements for the annual accounting period;
 - (ii) the report of the Fund Manager in accordance with Rule 9.4.9; and
 - (iii) if the Fund is a Public Fund, the comparative table in accordance with Rule 9.4.10; or
 - (iv) if the Fund is a Private Fund, a statement on the performance of the Sub-Fund in accordance with the Constitution and Prospectus;
- (b) an aggregation of the ~~accounts~~ financial statements required by (a)(i) for each Sub-Fund;
- (c) the report produced by ~~of the~~ Registered Auditor in accordance with Rules 9.3.8(b) ~~9.3.9~~; and
- (d) if the Fund is a Public Fund, the Oversight Report in accordance with Rule 10.3.13.

9.4.7 (1) Where a Fund is required to appoint an investment committee pursuant to Rule 9.4.7(1) or 13.3.1, the annual report must also include a report by that committee.

(2) Where a Fund is a Hedge Fund, the annual report must also include a report of its Eligible Custodian.

9.4.8 The Fund Manager must ensure that the ~~accounts~~ financial statements give a true and fair view of the net income and the net gains and the losses on the Fund Property of the Fund, or, the Sub-Fund, for the annual accounting period in question and the financial position of the Fund or Sub-Fund as at the end of that period.

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9.5 Table illustrating content of the annual report

Guidance

Type of Report	CIR Ref	Public Funds	Private Funds	Exempt Funds
Annual and interim reports	9.4.2	✓	✓	✓
Fund Manager's Report	9.4.9	✓	✓	✓
Fund Auditor's Report	9.4.6 9.3.8(b)	✓	✓	✓
Oversight Report	10.3.13	✓	Not applicable	Not applicable
Comparative Table	9.4.10	✓	Performance Statement (9.4.5(e))	Not applicable
Eligible Custodian Report	9.4.7(2)	Hedge Funds only	Hedge Funds only	Hedge Funds only
Independent Committee	9.4.7(1) & 13.4.3	Private Equity Funds, Property Funds and where appropriate	Private Equity Funds, Property Funds and where appropriate	Private Equity Funds, Property Funds and where appropriate

This table illustrates the different content requirements for an annual report of a Public Fund and a Private Fund.

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