

**Appendix 1**

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

---

**PROPOSED CHANGES TO  
THE COLLECTIVE INVESTMENT LAW 2010**

---

## PART 2: DEFINITIONS

.....

### Chapter 2: Types of funds and relevant criteria

.....

#### 15. Types of Domestic Funds

- (1) A Domestic Fund shall be one of the following types of Fund:
  - (a) a Public Fund;
  - ~~(b) a Private Fund; or~~
  - ~~(eb) an Exempt Fund; or~~
  - (c) a Qualified Investor Exempt Fund.
- (2) The DFSA may treat any type of Domestic Fund referred to in Article 15(1) as a specialist class of a Domestic Fund pursuant to Article 17.

#### 16. Domestic Fund criteria

- (1) A Domestic Fund shall, ~~subject to Article 16(5),~~ be constituted as a Public Fund if:
  - (a) it has, or intends to have, more than 100 Unitholders;
  - (b) some or all of its Units are offered to investors by way of a public offer; or
  - (c) its Unitholders include Retail Clients.
- (2) A Domestic Fund may be constituted either ~~as a Private Fund or as an Exempt Fund or as a Qualified Investor Exempt Fund~~ but only if that Fund ~~meets the relevant criteria~~ satisfies all of the conditions in Article 16~~(3) or (4) or (5)~~ as applicable.
- (3) ~~Deleted~~ ~~A Domestic Fund meets the Private Fund criteria, subject only to Article 16(6), if:~~
  - ~~(a) it has, or intends to have, 100 or fewer Unitholders;~~
  - ~~(b) its Units are offered to persons only by way of a private placement; and~~
  - ~~(c) all its Unitholders are persons who meet the criteria to be classified as Professional Clients.~~
- (4) A Domestic Fund is an ~~meets the~~ Exempt Fund ~~criteria~~, subject only to Article 16(6), if:
  - (a) it has, ~~or intends to have,~~ 100 or fewer Unitholders;

- (b) its Units are offered to persons only by way of a Private Placement;
  - (c) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - (d) the initial subscription to be paid by a person to become a Unitholder is at least US\$50,000.
- (5) A Domestic Fund is a Qualified Investor Exempt Fund, subject only to Article 16(6), if:
- (a) it has 50 or fewer Unitholders;
  - (b) its Units are offered to persons only by way of a Private Placement;
  - (c) all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - (d) the initial subscription to be paid by a person to become a Unitholder is at least US\$1,000,000.
- (5) ~~Nothing in this Law or the Rules shall prevent a Fund that meets the criteria to be a Private Fund or an Exempt Fund being constituted as a Public Fund.~~
- (6) A Domestic Fund does not cease to be a ~~Private Fund or an Exempt Fund~~ or a Qualified Investor Exempt Fund under Article 16~~(3) or (4)~~ or (5) merely because one or more Units in that Fund is registered in the name of a person who does not meet the criteria to be a Unitholder of that particular type of Fund as a result of:
- (a) inheritance from a registered Unitholder of the Fund; or
  - (b) any legal action brought for or against a registered Unitholder.
- (7) The DFSA shall, by Rules, prescribe:
- (a) the relevant criteria for a person to be classified as a Retail Client or a Professional Client; and
  - ~~(b) what activities constitute a public offer or a private placement; and~~
  - (be) any other requirements or matters which the DFSA considers necessary to give effect to the requirements or intent of the provisions in this chapter.

.....

## **PART 4: ESTABLISHMENT AND OPERATION OF DOMESTIC FUNDS**

.....

### **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) 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 unless otherwise provided in the Rules; 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.

.....

### **Chapter 3: Notification requirement applicable to ~~Private and Exempt Funds~~ and Qualified Investor Exempt Funds**

#### **34. Notification requirement**

- (1) The Fund Manager of a ~~Private Fund or an Exempt Fund~~ or a Qualified Investor Exempt Fund shall notify the DFSA at least 14 days prior to the initial Offer to issue Units in the Fund, and in the case of ~~if~~ a closed-ended Fund, any subsequent, Offer to issue Units in the Fund.

- (2) Such a notification must be made in the manner prescribed in the Rules and include the name of the Fund and the type of Fund and any further details required under such Rules.
- (3) ~~If a Domestic Fund can no longer meet the Private Fund or Exempt Fund criteria in Article 16(3) or (4) as applicable, the Fund Manager of that Fund shall apply either for the registration of the Fund as a Public Fund under Article 28 or for the winding up of that Fund as provided under Part 8 of this Law.~~

If a Domestic Fund can no longer meet the conditions to be an Exempt Fund or a Qualified Investor Exempt Fund under Article 16(4) or (5) as applicable, the Fund Manager of that Fund shall, as soon as practicable, either:

- (a) in the case of an Exempt Fund, register the Fund as a Public Fund under Article 28, or in the case of a Qualified Investor Exempt Fund, reconstitute the Fund as an Exempt Fund or register the Fund as a Public Fund under Article 28; or
- (b) apply for the winding up of that Fund as provided under Part 8 of this Law.

#### **Chapter 4: Alterations to a Domestic Fund**

##### **35. Alterations**

- (1) Subject to Article 35(6):
  - (a) changes to a Domestic Fund's Constitution or Prospectus in respect of investment, borrowing or gearing powers may be made; or
  - (b) the Fund Manager, the Trustee, a member of the Governing Body or the auditor of a Fund may be replaced;

if, an appropriate Special Resolution has been passed, by the Unitholders at a meeting convened by the Unitholders solely for that purpose.
- (2) Any other materially significant changes not falling within Article 35(1), such as, replacing a member of the Shari'a Supervisory Board or changes to the Constitution or Prospectus, which may adversely affect the Unitholders may be made in relation to a Fund if an appropriate ordinary resolution has been passed by a simple majority of the Unitholders at a meeting convened for that purpose.
- (3) If the Fund Manager and, if appointed, the Trustee, consider on reasonable grounds that the change is not one that falls within Article 35(1) or (2) and will not adversely affect Unitholders' rights, such change may be made by the Fund Manager without recourse to the Unitholders other than to notify them after the change has been effected.
- (4) The DFSA may, by Rules, prescribe:
  - (a) further requirements applicable for any changes to the Fund including the changes referred to in this Article; and,
  - (b) exemptions from the requirements in this Article.

.....

## **PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS**

### **Chapter 1: General**

.....

#### **50. Marketing prohibition**

- (1) Subject to Article 50(2), a person shall not, in or from the DIFC, Offer a Unit of a Fund to a prospective or existing Unitholder unless:
  - (a) a Prospectus that complies with the requirements in this Law and the Rules made for the purposes of this Law is made available to such a Unitholder;
  - (b) the person making the Offer is either the Fund Manager of the Fund or an Authorised Firm whose Licence authorises it do so; and
  - (c) the Offer is made in accordance with the requirements in this Law and the Rules made for the purposes of this Law.
- (2) The DFSA may, by Rules, exempt any person or class of persons from the prohibition in Article 50(1) and in doing so, may subject such person or class of persons to any conditions it considers appropriate.
- (3) A Prospectus includes, except where expressly stated otherwise:
  - ~~(a) a Short Form Prospectus;~~
  - (a) an Information Memorandum in respect of an Offer of a Unit of an Exempt Fund or a Qualified Investor Exempt Fund;
  - (b) a Supplementary or Replacement Prospectus; and
  - (c) in the case of an External Fund or Foreign Fund, the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that External Fund or Foreign Fund.

### **Chapter 2: Marketing of Domestic Fund**

.....

#### **52. Prospectus content**

- (1) The presentation of the information in a Prospectus shall be clear, fair and not misleading.
- (2) A Prospectus shall contain all the information which a person and his professional advisers would reasonably require and expect to find in a Prospectus to be able to make an informed decision to become a Unitholder of the Fund.

- (3) Without limiting the generality of the obligation in Article 52(2), the DFSA may, by Rules, prescribe the information that must be included in a Prospectus for the purposes of this Article including different provisions for different types of, or specialist classes of, Domestic Funds and any reduced content requirements for ~~Private and Exempt Funds~~ and Qualified Investor Exempt Funds.
- (4) If at any time after the issue of a Prospectus there is a material change affecting any matter contained in the Prospectus or a significant new matter arises, the Fund Manager shall in accordance with the requirements prescribed in the Rules issue a Supplementary or a Replacement Prospectus.

.....

## SCHEDULE 1 INTERPRETATION

.....

### 3. Defined Terms

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

Term	Definition
<del>Private Fund</del>	<del>has the meaning given in Article 16(3) of this Law.</del>
<u>Private Placement</u>	<p><u>an Offer made to a Person who is likely to be interested in the Offer having regard to:</u></p> <p>(a) <u>previous contact between the Person making the Offer and that Person;</u></p> <p>(b) <u>a professional or other connection between the Person making the Offer and that Person; or</u></p> <p>(c) <u>statements or actions by that Person that indicate that he is interested in Offers of that kind.</u></p>
<u>Qualified Investor Exempt Fund</u>	<u>has the meaning given in Article 16(5) of this Law.</u>